

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2010

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File Number 1-12002

**ACADIA REALTY TRUST**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State of incorporation)

**23-2715194**  
(I.R.S. employer identification no.)

**1311 Mamaroneck Avenue, Suite 260**  
**White Plains, NY 10605**

(Address of principal executive offices)

**(914) 288-8100**

(Registrant's telephone number)

**Securities registered pursuant to Section 12(b) of the Act:**

Common Shares of Beneficial Interest, \$.001 par value

(Title of Class)

New York Stock Exchange

(Name of Exchange on which registered)

**Securities registered pursuant to Section 12(g) of the Act:**

None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

YES  NO

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15 (d) of the Securities Act.

YES  NO

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

YES  NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

YES  NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer (as defined in Rule 12b-2 of the Act).

Large Accelerated Filer  Accelerated Filer  Non-accelerated Filer  Smaller Reporting Company

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act)

YES  NO

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was approximately \$685.6 million, based on a price of \$17.08 per share, the average sales price for the registrant's common shares of beneficial interest on the New York Stock Exchange on that date.

The number of shares of the registrant's common shares of beneficial interest outstanding on February 28, 2011 was 40,320,306.

**DOCUMENTS INCORPORATED BY REFERENCE**

Part III – Portions of the registrant's definitive proxy statement relating to its 2011 Annual Meeting of Shareholders presently scheduled to be held May 10, 2011 to be filed pursuant to Regulation 14A.

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## **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Certain statements contained in this Annual Report on Form 10-K may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities and Exchange Act of 1934 and as such may involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations are generally identifiable by use of the words “may,” “will,” “should,” “expect,” “anticipate,” “estimate,” “believe,” “intend” or “project” or the negative thereof or other variations thereon or comparable terminology. Factors which could have a material adverse effect on our operations and future prospects include, but are not limited to those set forth under the headings “Item 1A. Risk Factors” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operation” in this Form 10-K. These risks and uncertainties should be considered in evaluating any forward-looking statements contained or incorporated by reference herein.

**ITEM 1. BUSINESS.****GENERAL**

Acadia Realty Trust (the “Trust”) was formed on March 4, 1993 as a Maryland real estate investment trust (“REIT”). All references to “Acadia,” “we,” “us,” “our,” and “Company” refer to the Trust and its consolidated subsidiaries. We are a fully integrated, self-managed and self-administered equity REIT focused primarily on the ownership, acquisition, redevelopment and management of retail properties, including neighborhood and community shopping centers and mixed-use properties with retail components. We currently operate 79 properties, which we own or have an ownership interest in. These assets are located primarily in the Northeast, Mid-Atlantic and Midwestern regions of the United States and, in total, comprise approximately eight million square feet. We also have private equity investments in other retail real estate related opportunities including investments for which we provide operational support to the operating ventures in which we have a minority equity interest.

All of our investments are held by, and all of our operations are conducted through, Acadia Realty Limited Partnership (the “Operating Partnership”) and entities in which the Operating Partnership owns a controlling interest. As of December 31, 2010, the Trust controlled 99% of the Operating Partnership as the sole general partner. As the general partner, the Trust is entitled to share, in proportion to its percentage interest, in the cash distributions and profits and losses of the Operating Partnership. The limited partners generally represent entities or individuals which contributed their interests in certain assets or entities to the Operating Partnership in exchange for common or preferred units of limited partnership interest (“Common OP Units” or “Preferred OP Units”, respectively, and collectively, “OP Units”). Limited partners holding Common OP Units are generally entitled to exchange their units on a one-for-one basis for our common shares of beneficial interest (“Common Shares”). This structure is referred to as an umbrella partnership REIT or “UPREIT”.

**BUSINESS OBJECTIVES AND STRATEGIES**

Our primary business objective is to acquire and manage commercial retail properties that will provide cash for distributions to shareholders while also creating the potential for capital appreciation to enhance investor returns. We focus on the following fundamentals to achieve this objective:

- Own and operate a Core Portfolio (as defined in Item 2 of this Form 10-K) of community and neighborhood shopping centers and main street retail located in markets with strong demographics and generate internal growth within the Core Portfolio through aggressive redevelopment, re-anchoring and/or leasing activities.
- Maintain a strong and flexible balance sheet through conservative financial practices while ensuring access to sufficient capital to fund future growth.
- Generate external growth through an opportunistic yet disciplined acquisition program. We target transactions with high inherent opportunity for the creation of additional value through redevelopment and leasing and/or transactions requiring creative capital structuring to facilitate the transactions. These transactions may include other types of commercial real estate besides those which we currently invest in through our Core Portfolio. These may also include joint ventures with private equity investors for the purpose of making investments in operating retailers with significant embedded value in their real estate assets.

**Investment Strategy — External Growth through Opportunistic Acquisition Platforms**

The requirements that acquisitions be accretive on a long-term basis based on our cost of capital, as well as increase the overall portfolio quality and value, are core to our acquisition program. As such, we constantly evaluate the blended cost of equity and debt and adjust the amount of acquisition activity to align the level of investment activity with capital flows. We may also engage in discussions with public and private entities regarding business combinations. In addition to our direct investments in real estate assets, we have also capitalized on our expertise in the acquisition, redevelopment, leasing and management of retail real estate by establishing discretionary opportunity funds in which we earn, in addition to a pro-rata return based on our equity interest and carried interest (“Promote”), fees and priority distributions for our services. To date, we have launched three opportunity funds (“Opportunity Funds”), Acadia Strategic Opportunity Fund, LP (“Fund I”), Acadia Strategic Opportunity Fund II, LLC (“Fund II”) and Acadia Strategic Opportunity Fund III, LLC (“Fund III”). Due to the level of our control, we consolidate these Opportunity Funds for financial reporting purposes.

**Fund I**

During September of 2001, we and four of our institutional shareholders formed Fund I, and during August of 2004 formed a limited liability company, Acadia Mervyn Investors I, LLC (“Mervyns I”), in which the investors, including the Operating Partnership, committed a total of \$90.0 million for the purpose of acquiring real estate assets. The Operating Partnership is the general partner or managing member with a 22.2% interest. In addition to a pro-rata return on its invested equity, the Operating Partnership is entitled to a Promote based upon certain investment return thresholds. Cash flow was distributed pro-rata to the partners (including the Operating Partnership) until they earned a 9% cumulative return (“Preferred Return”) and of all capital contributions were returned.

Fund I investors have received a return of all of their capital invested in Fund I and Mervyns I and their Preferred Return. Accordingly, all cash flow is now distributed 20% to the Operating Partnership as a Promote and 80% to the partners (including the Operating Partnership). The Operating Partnership also earns fees and/or priority distributions for asset management services equal to 1.5% of the allocated invested equity, as well as for property management, leasing, legal and construction services. All such fees and priority distributions are reflected as a reduction in the noncontrolling interest share in income from Opportunity Funds in the Consolidated Financial Statements beginning on page F-1 of this Form 10-K.

As of December 31, 2010, there were 20 assets comprising approximately 0.9 million square feet remaining in Fund I in which the Operating Partnership's interest in cash flow and income is 37.8% as a result of the Promote.

## Fund II

Following our success with Fund I, during June of 2004 we formed a second, larger Opportunity Fund, Fund II, and during August of 2004, formed Acadia Mervyn Investors II, LLC ("Mervyns II"), with the investors from Fund I as well as two additional institutional investors, whereby the investors, including the Operating Partnership, committed capital totaling \$300.0 million. The Operating Partnership is the managing member with a 20% interest in Fund II and Mervyns II and can invest the committed equity on a discretionary basis within the parameters defined in the Fund II and Mervyns II operating agreements. The terms and structure of Fund II and Mervyns II are substantially the same as Fund I and Mervyns I with the exception that the Preferred Return is 8%. As of December 31, 2010, \$265.2 million of Fund II's and Mervyns II's capital was invested and the balance of \$34.8 million is expected to be utilized to complete development activities for existing Fund II investments.

Given the market conditions for commercial real estate at the time Fund II was formed, we channeled our acquisition efforts through Fund II in two opportunistic strategies described below – the New York Urban/Infill Redevelopment Initiative and the Retailer Controlled Property Venture, which are more fully described below.

### New York Urban/Infill Redevelopment Initiative

During September of 2004, through Fund II, we launched our New York Urban/Infill Redevelopment Initiative. We believe that retailers continue to recognize that many of the nation's urban markets are underserved from a retail standpoint, and we have capitalized on this situation by investing in redevelopment projects in dense urban areas where retail tenant demand has effectively surpassed the supply of available sites. During 2004, Fund II, together with an unaffiliated partner, P/A Associates, LLC ("P/A"), formed Acadia-P/A Holding Company, LLC ("Acadia-P/A") for the purpose of acquiring, constructing, developing, owning, operating, leasing and managing certain retail or mixed-use real estate properties in the New York City metropolitan area. P/A agreed to invest 10% of required capital up to a maximum of \$2.2 million and Fund II, the managing member, agreed to invest the balance to acquire assets in which Acadia-P/A agreed to invest. See Item 7 of this Form 10-K for further information on the Acadia-P/A Joint Venture as detailed in "Liquidity and Capital Resources – New York Urban/Infill Redevelopment Initiative." To date, Fund II has invested in nine projects, eight of which are in conjunction with P/A, as discussed further in "—PROPERTY ACQUISITIONS— New York Urban/Infill Redevelopment Initiative" below in this Item 1.

### Retailer Controlled Property Venture (the "RCP Venture")

During 2004, through Funds I and II or affiliates thereof, we entered into an association, known as the RCP Venture, with Klaff Realty, L.P. ("Klaff") and Lubert-Adler Management, Inc. ("Lubert-Adler") for the purpose of making investments in surplus or underutilized properties owned by retailers. The RCP Venture is neither a single entity nor a specific investment. Any member of this group has the option of participating, or not, in any individual investment and each individual investment has been made on a stand-alone basis through a separate limited liability company. These investments have been made through different investment vehicles with different affiliated and unaffiliated investors and different economics to us. The initial size of the RCP Venture was expected to be approximately \$300.0 million in equity, of which our share would be \$60.0 million. Based on the investment opportunities, the size of the RCP Venture could be and was expanded. Mervyns I and II and Fund II have invested a total of \$62.2 million in the RCP Venture to date on a non-recourse basis. Investments under the RCP Venture are structured as separate joint ventures as there may be other investors participating in certain investments in addition to Klaff, Lubert-Adler and us. While we are not required to invest any additional capital into any of these investments, should additional capital be required and we elect not to contribute our share, our proportionate share in the investment will be reduced. Cash flow from any RCP Venture investment is distributed to the participants until they have received a 10% cumulative return on and a full return of all capital contributions. Thereafter, remaining cash flow is distributed 20% to Klaff ("Klaff's Promote") and 80% to the partners (including Klaff). As the participants have received a return of all of their capital invested and their unpaid cumulative return, all cash flow is now distributed 20% to Klaff as Klaff's Promote and then 80% to the partners. The Operating Partnership may also earn market-rate fees for property management, leasing and construction services on behalf of the RCP Venture. While we are primarily a passive partner in the investments made through the RCP Venture, historically we have provided our services in reviewing potential acquisitions and operating and redevelopment assistance in areas where we have both a presence and expertise. We continue to seek to invest opportunistically with the RCP Venture primarily in any of the following four ways:

- Invest in operating retailers to control their real estate through private equity joint ventures

- Work with financially healthy retailers to create value from their surplus real estate
- Acquire properties, designation rights or other control of real estate or leases associated with retailers in bankruptcy
- Complete sale-leasebacks with retailers in need of capital

Our RCP Venture investments are further discussed in “—PROPERTY ACQUISITIONS – RCP Venture” below in this Item 1.

### Fund III

Following the success of Fund I and the full commitment of Fund II, Fund III was formed during 2007, with fourteen institutional investors, including a majority of the investors from Fund I and Fund II, whereby the investors, including the Operating Partnership, committed capital totaling \$502.5 million. The Operating Partnership’s share of the committed capital is \$100.0 million and it is the sole managing member with a 19.9% interest in Fund III and can invest the committed equity on a discretionary basis within the parameters defined in the Fund III operating agreement. The terms and structure of Fund III are substantially the same as Fund I and Fund II with the exception that the Preferred Return is 6%. As of December 31, 2010, \$96.5 million of Fund III’s capital was invested. To date, Fund III has invested in 15 projects as discussed further in “—PROPERTY ACQUISITIONS” below in this Item 1.

### Notes Receivable, Preferred Equity and Other Real Estate Related Investments

We may also invest in notes receivable, preferred equity investments, other real estate interests and other investments. As of December 31, 2010, our notes receivable investments aggregated \$89.2 million, and were collateralized by either the properties (either first or second mortgage liens) or the borrower’s ownership interest in the properties. In addition, certain notes receivable are personally guaranteed by principals of the borrowers. Interest rates on our notes receivable, mezzanine loan investments and preferred equity investment, ranged from 10% to 24% with maturities that range from demand notes to January 2017.

### **Capital Strategy — Balance Sheet Focus and Access to Capital**

Our primary capital objective is to maintain a strong and flexible balance sheet through conservative financial practices, including moderate leverage levels, while ensuring access to sufficient capital to fund future growth. We intend to continue financing acquisitions and property redevelopment with sources of capital determined by management to be the most appropriate based on, among other factors, availability in the current capital markets, pricing and other commercial and financial terms. The sources of capital may include the issuance of public equity, unsecured debt, mortgage and construction loans, and other capital alternatives including the issuance of OP Units. We manage our interest rate risk primarily through the use of fixed rate debt and, where we use variable rate debt, we use certain derivative instruments, including London Interbank Offered Rate (“LIBOR”) swap agreements and interest rate caps as discussed further in Item 7A of this Form 10-K.

During April 2009, we issued 5.75 million Common Shares and generated net proceeds of approximately \$65.0 million. The proceeds were primarily used to purchase a portion of our outstanding convertible notes payable as discussed below and pay down existing lines of credit.

During December of 2006 and January of 2007, we issued \$115.0 million of 3.75% unsecured Convertible Notes (the “Notes”). See Note 9 to our Consolidated Financial Statements, which begin on page F-1 of this Form 10-K for a discussion of the terms and conditions of the Notes. The \$112.1 million in proceeds, net of related costs, were used to retire variable rate debt, provide for future Opportunity Fund capital commitments and for general working capital purposes. Through December 31, 2010, we purchased \$65.2 million in principal amount of the Notes, all at an average discount of approximately 19%.

### **Operating Strategy — Experienced Management Team with Proven Track Record**

Our senior management team has decades of experience in the real estate industry. We believe our management team has demonstrated the ability to create value through anchor recycling, property redevelopment and strategic non-core dispositions. We have capitalized on our expertise in the acquisition, redevelopment, leasing and management of retail real estate by establishing joint ventures, such as the Opportunity Funds, in which we earn, in addition to a return on our equity interest and Promote, fees and priority distributions. In connection with these joint ventures we have launched several successful acquisition platforms including our New York Urban/Infill Redevelopment Initiative and RCP Venture.

Operating functions such as leasing, property management, construction, finance and legal (collectively, the “Operating Departments”) are generally provided by our personnel, providing for fully integrated property management and development. By incorporating the Operating Departments in the acquisition process, acquisitions are appropriately priced giving effect to each asset’s specific risks and returns. Also, because of the Operating Departments involvement with, and corresponding understanding of, the acquisition process, transition time is minimized and management can immediately execute on its strategic plan for each asset.

We typically hold our Core Portfolio properties for long-term investment. As such, we continuously review the existing portfolio and implement programs to renovate and modernize targeted centers to enhance the property’s market position. This in turn strengthens the competitive position of the leasing program to attract and retain quality tenants, increasing cash flow and consequently property

value. We also periodically identify certain properties for disposition and redeploy the capital to existing centers or acquisitions with greater potential for capital appreciation. Our Core Portfolio consists primarily of neighborhood and community shopping centers, which are generally dominant centers in high barrier-to-entry supply constrained markets and are principally anchored by supermarkets and necessity-based retailers. We believe these attributes enable our properties to better withstand the current post recessionary period.

During 2010, 2009 and 2008 we sold two non-core properties and redeployed capital to acquire one retail property as further discussed in “—ASSET SALES AND CAPITAL/ASSET RECYCLING” below in this Item 1.

## PROPERTY ACQUISITIONS

### RCP Venture

#### Mervyns Department Stores

In September 2004, we made our first RCP Venture investment. Through Mervyns I and Mervyns II, we invested in a consortium to acquire Mervyns consisting of 262 stores (“REALCO”) and its retail operation (“OPCO”) from Target Corporation. Our share of this investment was \$23.2 million. Subsequent to the initial acquisition of Mervyns, we made additional investments of \$2.9 million. To date, REALCO has disposed of a significant portion of the portfolio. In addition, during November 2007, we sold our interest in, and as a result, have no further investment in OPCO. Through December 31, 2010, we have received distributions from this investment totaling \$46.0 million.

Through December 31, 2010, we, through Mervyns I and Mervyns II, made additional investments in locations that are separate from these original investments (“Add-On Investments”) in Mervyns totaling \$6.5 million and have received distributions totaling \$1.7 million.

#### Albertson’s

During June of 2006, the RCP Venture made its second investment as part of an investment consortium, acquiring Albertson’s and Cub Foods, of which our share was \$20.7 million. Through December 31, 2010, we have received distributions from this investment totaling \$77.1 million, including \$11.4 million received in 2010.

Through December 31, 2010, we, through Mervyns II, made Add-On Investments in Albertson’s totaling \$2.4 million and received distributions totaling \$1.2 million.

#### Other RCP Investments

Through December 31, 2010, we, through Fund II, made investments of \$1.1 million in Shopko, \$0.7 million in Marsh, and \$2.0 million in Add-On Investments in Marsh. As of December 31, 2010, we have received distributions totaling \$1.7 million from our Shopko investment and \$2.6 million from our Marsh and Marsh Add-On Investments.

During July of 2007, the RCP Venture acquired a portfolio of 87 retail properties from Rex Stores Corporation (“Rex”), in which we invested through Mervyns II. Our share of this investment was \$2.7 million. As of December 31, 2010, we have received distributions from Rex totaling \$0.8 million.

The following table summarizes the RCP Venture investments from inception through December 31, 2010, and the Operating Partnership’s share of this activity:

(dollars in millions)

Investor	Investment	Year acquired	Invested Capital	Distributions	Operating Partnership Share	
					Invested Capital	Distributions
Mervyns I and Mervyns II	Mervyns	2004	\$ 26.1	\$ 46.0	\$ 4.9	\$ 11.3
Mervyns I and Mervyns II	Mervyns Add-On Investments	2005/2008	6.5	1.7	1.1	0.3
Mervyns II	Albertson’s	2006	20.7	77.1	4.2	15.4
Mervyns II	Albertson’s Add-On Investments	2006/2007	2.4	1.2	0.4	0.2
Fund II	Shopko	2006	1.1	1.7	0.2	0.3
Fund II	Marsh	2006	2.7	2.6	0.5	0.5
Mervyns II	Rex	2007	2.7	0.8	0.5	0.2
Total			\$ 62.2	\$ 131.1	\$ 11.8	\$ 28.2

## **New York Urban/Infill Redevelopment Initiative**

As of December 31, 2010, we had ten New York Urban/Infill Redevelopment Initiative projects. Construction is substantially complete at seven of the projects, one is under construction and two are in the design phase as follows:

### Construction Substantially Complete

Fordham Place — During September of 2004, Acadia-P/A purchased 400 East Fordham Road, Bronx, New York. Construction of a 119,000 square foot retail component and 157,000 square foot office tower are complete. The retail component is 100% occupied and the office component is 30% occupied. Acadia-P/A's total cost of the project was approximately \$134.0 million.

Pelham Manor Shopping Plaza — During October of 2004, Acadia-P/A entered into a 95-year, inclusive of extension options, ground lease to redevelop a 16-acre site in Pelham Manor, Westchester County, New York. We demolished the existing industrial and warehouse buildings, and completed construction of a 229,000 square foot community retail center and a 90,000 square foot self-storage facility at a total cost of approximately \$64.0 million. Home Depot was originally slated to anchor the project, but announced its decision to curtail plans for expansion. As part of our lease termination agreement with Home Depot, we purchased the building that Home Depot had constructed on the site for \$10.0 million, representing approximately half of their cost of construction. The retail center is currently 91% leased and anchored by a BJ's Wholesale Club.

216<sup>th</sup> Street — During December of 2005, Acadia-P/A acquired a parking garage located at 10<sup>th</sup> Avenue and 216<sup>th</sup> Street in the Inwood section of Manhattan. During 2007, we completed the construction of a 60,000 square foot office building and we relocated an agency of the City of New York ("NYC"), which was a tenant at another of our New York Urban/Infill Redevelopment Initiative projects, to this location. Acadia-P/A's total cost for the project, which also includes a 100-space rooftop parking deck, was approximately \$28.0 million.

Liberty Avenue — During December of 2005, Acadia-P/A acquired the remaining 40-year term of a leasehold interest in land located at Liberty Avenue and 98<sup>th</sup> Street in Ozone Park (Queens), New York. Construction of approximately 30,000 square feet of retail anchored by a CVS drug store and a 98,500 square foot self-storage facility is complete and Acadia-P/A's total cost of the redevelopment was approximately \$15.0 million.

161<sup>st</sup> Street — During August of 2005, Acadia-P/A purchased 244-268 161<sup>st</sup> Street located in the Bronx, New York for \$49.3 million. The redevelopment plan for this currently 83% occupied, 10-story office building, is to recapture and convert street level office space into retail. Additional redevelopment costs to Acadia-P/A are anticipated to be approximately \$17.4 million.

Atlantic Avenue — During May of 2007, we, through Fund II and in partnership with Post Management, LLC ("Storage Post"), acquired a property on Atlantic Avenue in Brooklyn, New York. Storage Post is our unaffiliated partner in our self-storage portfolio (see below) and at two of our other New York Urban/Infill Redevelopment Initiative projects with a self-storage component. During 2009, we completed construction of the 110,000 square feet, six-story storage facility and commenced operations. The total cost of the project was approximately \$22.0 million.

Canarsie — During October of 2007, Acadia-P/A acquired a 530,000 square foot warehouse building in Canarsie, Brooklyn for approximately \$21.0 million. The development included the construction of a 279,000 square foot mixed-use project consisting of retail and office. The total cost of the redevelopment, including acquisition costs, was approximately \$90.0 million. We had executed a lease with Home Depot to anchor the project. However, during 2008, Home Depot terminated their lease and paid us a fee of \$24.5 million. Construction was substantially complete in November 2010 and the property is 85% leased. The project is anchored by BJ's Wholesale Club and the New York City Police Department.

### Under Construction

CityPoint — During June of 2007, Acadia-P/A and an unaffiliated joint venture partner, California Urban Investment Partners, LLC ("CUIP") purchased the leasehold interests in The Gallery at Fulton Street in downtown Brooklyn for approximately \$115.0 million, with an option to purchase the fee position, which is owned by the City of New York, at a later date. On June 30, 2010, Acadia-P/A acquired all of CUIP's interest in CityPoint for a total consideration of \$9.2 million and the assumption of CUIP's share of debt of \$19.6 million. The development will proceed in three phases. Construction has commenced on Phase 1, a four-story retail building of approximately 50,000 square feet. Phase 2 will consist of approximately 500,000 square feet of additional retail. Phase 2 is also expected to contain an affordable and market-rate residential component. Phase 3 is anticipated to be a stand-alone mixed use, but primarily residential building, of approximately 700,000 square feet.

### In Design

Sherman Plaza — During April of 2005, Acadia-P/A acquired 4650 Broadway located in the Washington Heights/Inwood section of Manhattan. The property, which was occupied by NYC and a commercial parking garage, was acquired for a purchase price of



\$25.0 million. During 2007 we relocated NYC to Acadia-P/A's 216<sup>th</sup> Street redevelopment as discussed above and closed the parking garage. We are currently reviewing various alternatives to redevelop the site to include retail and office components.

Sheepshead Bay. — During November of 2007, Fund III acquired a property in Sheepshead Bay, Brooklyn for approximately \$20.0 million. The project is currently in the design phase and we have demolished one of two buildings on the existing site and expect to develop a multi-level community shopping center.

### **Self-Storage Portfolio**

On February 29, 2008, Fund III, in conjunction with Storage Post, acquired a portfolio of eleven self-storage properties from Storage Post's existing institutional investors for approximately \$174.0 million. In addition, we, through Fund II, developed three self-storage properties as discussed above. The fourteen self-storage property portfolio, located throughout New York and New Jersey, totals approximately 1,127,000 net rentable square feet, and is operating at various stages of stabilization.

### **Other Investments**

In addition to the RCP Venture, the New York Urban/Infill and Self-Storage Portfolio investments as discussed above, through Fund III, we have also acquired the following:

During February 2011, Fund III, in a joint venture with an unaffiliated partner, acquired a 64,600 square foot single tenant retail property located in Silver Springs, Maryland, for approximately \$9.8 million.

During February 2011, Fund III, in a joint venture with an unaffiliated partner, acquired a three property portfolio (the "Portfolio") for an aggregate purchase price of \$51.9 million with \$20.6 million of in-place mortgage financing assumed at closing. The Portfolio consists of three street-retail properties, aggregating 61,000 square feet, and is located in South Miami Beach, Florida.

During December 2010, Fund III, in a joint venture with an unaffiliated partner, purchased the White City Shopping Center for \$56.0 million. The operating property is a 255,000 square foot shopping center located in Shrewsbury, MA.

During June 2010, Fund III, in a joint venture with an unaffiliated partner, invested in an entity formed for the purpose of providing management services to owners of self-storage properties, including the 14 locations currently owned through Fund II and Fund III. To date, Fund III has invested \$2.1 million in this entity.

During January 2009, we purchased Cortlandt Towne Center for \$78.0 million. The operating property is a 641,000 square foot shopping center located in Westchester County, New York.

During November 2007, we acquired 125 Main Street, Westport, Connecticut for approximately \$17.0 million. Redevelopment efforts have commenced, at an estimated cost of \$8.4 million, with the execution of a lease with Gap Inc. to anchor the property. Gap is anticipated to open in the second half of 2011.

## Core Portfolio

See Item 2. PROPERTIES for the definition of our Core Portfolio.

During April of 2008, the Operating Partnership acquired a 20,000 square foot single tenant retail property located on 17<sup>th</sup> Street near 5<sup>th</sup> Avenue in Manhattan, New York for \$9.7 million.

During March of 2007, the Operating Partnership purchased a 52,000 square foot single-tenant building located at 1545 East Service Road in Staten Island, New York for \$17.0 million and a 10,000 square foot retail commercial condominium at 200 West 54th Street located in Manhattan, New York for \$36.4 million.

### Notes Receivable, Preferred Equity and Other Real Estate Related Investments

During December 2009, the Operating Partnership made a loan for \$8.6 million which bears interest at 14.5% and matures on June 30, 2011.

During June 2008, the Operating Partnership made a \$40.0 million preferred equity investment in a portfolio of 18 properties located primarily in Georgetown, Washington D.C. The portfolio consists of 306,000 square feet of principally retail space. During September 2010, this investment was fully liquidated. The Operating Partnership received \$40.0 million of invested capital along with \$9.4 million of accrued preferred return. The Operating Partnership has an additional Georgetown loan receivable of \$8.0 million, collateralized by a 5 property portfolio.

During July 2008, the Operating Partnership made a \$34.0 million mezzanine loan, which is collateralized by an interest in a mixed-use retail and residential development at 72<sup>nd</sup> Street and Broadway on the Upper West Side of Manhattan.

During September 2008, Fund III made a \$10.0 million first mortgage loan, which is collateralized by land located on Long Island, New York.

The following table sets forth our notes receivable investments as of December 31, 2010:

Notes Receivable (dollars in thousands)	Weighted Averages								Underlying third-party first mortgage loan	
	Investment	Principal	Accrued interest	Total	Stated Interest rate	Effective interest rate <sup>(1)</sup>	Maturity date	Extension options (years)	Amount	Maturity dates
Georgetown - 5 property portfolio	\$ 8,000	\$ 675	\$ 8,675	9.75%	10.23%	11/2011	1 year	\$ 9,596	2012 through 2020	
72nd Street	46,715	6,137	52,852	13.00%	20.85%	7/2011	1 year	170,727	2011 w/ 1 year extension	
First mortgage and other notes	18,854	463	19,317	11.93%	12.48%	2011	—	n/a	n/a	
Mezzanine notes	15,633	330	15,963	14.14%	15.43%	2012	—	272,289	2011 through 2019	
<b>Total notes receivable</b>	<b>\$ 89,202</b>	<b>\$ 7,605</b>	<b>\$ 96,807</b>	<b>12.68%</b>	<b>17.18%</b>					

#### Note:

<sup>(1)</sup> The effective rate includes points and exit fees

## ASSET SALES AND CAPITAL/ASSET RECYCLING

### Core Portfolio

We periodically identify certain core properties for disposition and redeploy the capital to existing centers or acquisitions with greater potential for capital appreciation. Since January of 2008, we have sold the following Core Portfolio assets:

<u>Property</u>	<u>Location</u>	<u>Date sold</u>	<u>Gross leasable area</u>	<u>Sales price (dollars in thousands)</u>
Blackman Plaza	Wilkes-Barre, Pennsylvania	November 2009	125,264	\$ 2,500
Village Apartments	Winston-Salem, North Carolina	April 2008	599,106	23,300
Total			724,370	\$ 25,800

Proceeds from these sales in part have been used to fund the Core Portfolio acquisitions as discussed in “—PROPERTY ACQUISITIONS” above.

### Monetization of Fund I

Given that Fund I was established as a finite life entity, we are currently engaged in the multi-year process of monetizing the Fund’s investments. As of December 31, 2010 there were 20 assets comprising 0.9 million square feet remaining in Fund I as summarized by region below:

<u>Shopping Center</u>	<u>Location</u>	<u>Year acquired</u>	<u>GLA</u>
<b>New York Region</b>			
<i>New York</i>			
Tarrytown Centre	Tarrytown	2004	35,291
<b>Midwest Region</b>			
<i>Ohio</i>			
Granville Centre	Columbus	2002	134,997
<b>Various Regions</b>			
Kroger/Safeway Portfolio	Various (18 properties)	2003	709,400
Total			879,688

During March 2010, Fund I sold the Sterling Heights Shopping Center for \$2.3 million. The proceeds from the sale along with Fund I’s recourse obligation of \$0.6 million were used to fully liquidate the outstanding loan obligation.

During February 2009, The Kroger Co. purchased the fee at six locations in Fund I’s Kroger/Safeway Portfolio for \$14.6 million, resulting in a \$5.6 million gain. The Operating Partnership’s share of the gain was \$1.6 million.

During April 2008, Fund I sold Haygood Shopping Center located in Virginia Beach, Virginia, for \$24.9 million, resulting in a \$6.8 million gain. The Operating Partnership’s share of the gain was \$1.3 million.

### ENVIRONMENTAL LAWS

For information relating to environmental laws that may have an impact on our business, please see “Item 1A. Risk Factors - Possible liability relating to environmental matters.”

### COMPETITION

There are numerous entities that compete with us in seeking properties for acquisition and tenants that will lease space in our properties. Our competitors include other REITs, financial institutions, insurance companies, pension funds, private companies and individuals. Our properties compete for tenants with similar properties primarily on the basis of location, total occupancy costs (including base rent and operating expenses) and the design and condition of the improvements.

## FINANCIAL INFORMATION ABOUT MARKET SEGMENTS

We have five reportable segments: Core Portfolio, Opportunity Funds, Self-Storage Portfolio, Notes Receivable and Other. Notes Receivable consists of the Company's notes receivable and related interest income, Other primarily consists of management fees and interest income. The accounting policies of the segments are the same as those described in the summary of significant accounting policies set forth in Note 1 to our Consolidated Financial Statements, which begin on page F-1 of this Form 10-K. We evaluate property performance primarily based on net operating income before depreciation, amortization and certain nonrecurring items. Investments in our Core Portfolio are typically held long-term. Given the contemplated finite life of our Opportunity Funds, these investments are typically held for shorter terms. Fees earned by us as general partner/member of the Opportunity Funds are eliminated in our Consolidated Financial Statements. See Note 3 to our Consolidated Financial Statements, which begin on page F-1 of this Form 10-K for information regarding, among other things, revenues from external customers, a measure of profit and loss and total assets with respect to each of our segments.

## CORPORATE HEADQUARTERS AND EMPLOYEES

Our executive offices are located at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and our telephone number is (914) 288-8100. As of December 31, 2010, we had 116 employees, of which 92 were located at our executive office and 24 were located at regional property management offices. None of our employees are covered by collective bargaining agreements. Management believes that its relationship with employees is good.

## COMPANY WEBSITE

All of our filings with the Securities and Exchange Commission, including our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, are available free of charge at our website at [www.acadiarealty.com](http://www.acadiarealty.com), as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. These filings can also be accessed through the Securities and Exchange Commission's website at [www.sec.gov](http://www.sec.gov). Alternatively, we will provide paper copies of our filings free of charge upon request. If you wish to receive a copy of the Form 10-K, you may contact Robert Masters, Corporate Secretary, at Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, NY 10605. You may also call (914) 288-8100 to request a copy of the Form 10-K. Information included or referred to on our website is not incorporated by reference in or otherwise a part of this Form 10-K.

## CODE OF ETHICS AND WHISTLEBLOWER POLICIES

The Board of Trustees adopted a Code of Ethics for Senior Financial Officers that applies to our Chief Executive Officer, Senior Vice President-Chief Financial Officer, Senior Vice President-Chief Accounting Officer, Vice President-Controller, Vice President- Financial Reporting, Vice President of Taxation and Assistant Controllers. The Board also adopted a Code of Business Conduct and Ethics applicable to all employees, as well as a "Whistleblower Policy." Copies of these documents are available in the Investor Information section of our website. We intend to disclose future amendments to, or waivers from, our Code of Ethics for Senior Financial Officers in the Investor Information section of our website within four business days following the date of such amendment or waiver.

## ITEM 1A. RISK FACTORS.

If any of the following risks actually occur, our business, results of operations and financial condition would likely suffer. This section includes or refers to certain forward-looking statements. Refer to the explanation of the qualifications and limitations on such forward-looking statements discussed in the beginning of this Form 10-K.

### **We rely on revenues derived from major tenants.**

We derive significant revenues from certain anchor tenants that occupy space in more than one center. We could be adversely affected in the event of the bankruptcy or insolvency of, or a downturn in the business of, any of our major tenants, or in the event that any such tenant does not renew its leases as they expire or renews at lower rental rates. Vacated anchor space not only would reduce rental revenues if not re-tenanted at the same rental rates but also could adversely affect the entire shopping center because of the loss of the departed anchor tenant's customer drawing power. Loss of customer drawing power also can occur through the exercise of the right that most anchors have to vacate and prevent re-tenanting by paying rent for the balance of the lease term ("going dark") as would the departure of a "shadow" anchor tenant that owns its own property. In addition, in the event that certain major tenants cease to occupy a property, such an action may result in a significant number of other tenants having the right to terminate their leases, or pay a reduced rent based on a percentage of the tenant's sales, at the affected property, which could adversely affect the future income from such property ("co-tenancy"). See "Item 2. Properties—Major Tenants" for quantified information with respect to the percentage of our minimum rents received from major tenants.

**We may not be able to renew current leases and the terms of re-letting (including the cost of concessions to tenants) may be less favorable to us than current lease terms.**

Upon the expiration of current leases for space located in our properties, we may not be able to re-let all or a portion of that space, or the terms of re-letting (including the cost of concessions to tenants) may be less favorable to us than current lease terms. If we are unable to re-let promptly all or a substantial portion of the space located in our properties or if the rental rates we receive upon re-letting are significantly lower than current rates, our net income and ability to make expected distributions to our shareholders will be adversely affected due to the resulting reduction in rent receipts. There can be no assurance that we will be able to retain tenants in any of our properties upon the expiration of their leases. See “Item 2. Properties – Lease Expirations” in this Annual Report on Form 10-K for additional information as to the scheduled lease expirations in our portfolio.

**The current economic environment, while improving, may cause us to lose tenants and may impair our ability to borrow money to purchase properties, refinance existing debt or finance our current redevelopment projects.**

Our operations and performance depend on general economic conditions, including the health of the consumer. The U.S. economy recently experienced a financial downturn, with a decline in consumer spending, credit tightening and high unemployment. This economic downturn has had, and may continue to have, an adverse affect on the businesses of many of our tenants. We and the Opportunity Funds may experience higher vacancy rates as well as delays in re-leasing vacant space.

The current downturn has had, and may continue to have, an unprecedented impact on the global credit markets. While we currently believe we have adequate sources of liquidity, there can be no assurance that we will be able to obtain mortgage loans to purchase additional properties, obtain financing to complete current redevelopment projects, or successfully refinance our properties as loans become due. To the extent that the availability of credit is limited, it would also adversely impact our notes receivable as counterparties may not be able to obtain the financing required to repay the loans upon maturity.

**The bankruptcy of, or a downturn in the business of, any of our major tenants or a significant number of our smaller tenants may adversely affect our cash flows and property values.**

The bankruptcy of, or a downturn in the business of, any of our major tenants causing them to reject their leases, or not renew their leases as they expire, or renew at lower rental rates may adversely affect our cash flows and property values. Furthermore, the impact of vacated anchor space and the potential reduction in customer traffic may adversely impact the balance of tenants at a shopping center.

Certain of our tenants have experienced financial difficulties and have filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code (“Chapter 11 Bankruptcy”). Pursuant to bankruptcy law, tenants have the right to reject their leases. In the event the tenant exercises this right, the landlord generally has the right to file a claim for lost rent equal to the greater of either one year’s rent (including tenant expense reimbursements) for remaining terms greater than one year, or 15% of the rent remaining under the balance of the lease term, but not to exceed three years rent. Actual amounts to be received in satisfaction of those claims will be subject to the tenant’s final plan of reorganization and the availability of funds to pay its creditors.

Since January 1, 2010, there has been one significant tenant bankruptcy within our portfolio:

On December 12, 2010, the Great Atlantic & Pacific Tea Company, Inc. (“A&P”) filed for protection under Chapter 11 Bankruptcy. A&P operates in four locations in our Core Portfolio, totaling approximately 198,000 square feet. Rental revenues from A&P at these locations totaled \$3.5 million, \$3.4 million, and \$3.3 million for the years ended December 31, 2010, 2009 and 2008, respectively. In addition, A&P operates in one Fund III location, totaling approximately 65,000 square feet. Rental revenues from A&P at this location totaled \$1.0 million for each of the years ended December 31, 2010 and 2009. A&P has availed itself of the statutory maximum time to assume or reject these leases which is July 10, 2011. With respect to two of these leases, A&P has received a bankruptcy court order to close the two locations on or around April 15, 2011 and to exit the locations on or around April 30, 2011.

**There are risks relating to investments in real estate.**

Real property investments are subject to multiple risks. Real estate values are affected by a number of factors, including: changes in the general economic climate, local conditions (such as an oversupply of space or a reduction in demand for real estate in an area), the quality and philosophy of management, competition from other available space, the ability of the owner to provide adequate maintenance and insurance and to control variable operating costs. Shopping centers, in particular, may be affected by changing perceptions of retailers or shoppers regarding the safety, convenience and attractiveness of the shopping center and by the overall climate for the retail industry. Real estate values are also affected by such factors as government regulations, interest rate levels, the availability of financing and potential liability under, and changes in, environmental, zoning, tax and other laws. A significant portion of our income is derived from rental income from real property. Our income and cash flow would be adversely affected if a significant number of our tenants were unable to rent our vacant space to viable tenants on economically favorable terms. In the event of default by a tenant, we may experience delays in enforcing, and incur substantial costs to enforce, our rights as a landlord. In addition, certain significant expenditures associated with each equity investment (such as mortgage payments, real estate taxes and maintenance costs) are generally not reduced even though there may be a reduction in income from the investment.

**Our ability to change our portfolio is limited because real estate investments are illiquid.**

Equity investments in real estate are relatively illiquid and, therefore, our ability to change our portfolio promptly in response to changed conditions is limited. Our Board of Trustees may establish investment criteria or limitations as it deems appropriate, but currently does not limit the number of properties in which we may seek to invest or the concentration of investments in any one geographic region. We could change our investment, disposition and financing policies without a vote of our shareholders.

**We could become highly leveraged, resulting in increased risk of default on our obligations and in an increase in debt service requirements, which could adversely affect our financial condition and results of operations and our ability to pay distributions.**

We have incurred, and expect to continue to incur, indebtedness to support our activities. Neither our Declaration of Trust nor any policy statement formally adopted by our Board of Trustees limits either the total amount of indebtedness or the specified percentage of indebtedness that we may incur. Accordingly, we could become more highly leveraged, resulting in increased risk of default on our obligations and in an increase in debt service requirements, which could adversely affect our financial condition and results of operations and our ability to make distributions.

Interest expense on our variable rate debt as of December 31, 2010 would increase by \$4.4 million annually for a 100 basis point increase in interest rates. We may seek additional variable-rate financing if and when pricing and other commercial and financial terms warrant. As such, we would consider hedging against the interest rate risk related to such additional variable rate debt, primarily through interest rate swaps but can use other means.

We enter into interest rate hedging transactions, including interest rate swaps and cap agreements, with counterparties. There can be no guarantee that the future financial condition of these counterparties will enable them to fulfill their obligations under these agreements.

**Competition may adversely affect our ability to purchase properties and to attract and retain tenants.**

There are numerous commercial developers, real estate companies, financial institutions and other investors with greater financial resources than we have that compete with us in seeking properties for acquisition and tenants who will lease space in our properties. Our competitors include other REITs, financial institutions, insurance companies, pension funds, private companies and individuals. This competition may result in a higher cost for properties that we wish to pay. In addition, retailers at our properties face increasing competition from outlet malls, discount shopping clubs, Internet commerce, direct mail and telemarketing, which could (i) reduce rents payable to us; (ii) reduce our ability to attract and retain tenants at our properties leading to increased vacancy rates at our properties.

**We could be adversely affected by poor market conditions where properties are geographically concentrated.**

Our performance depends on the economic conditions in markets in which our properties are concentrated. We have significant exposure to the greater New York region, from which we derive 38% of the annual base rents within our Core Portfolio. Our operating results could be adversely affected if market conditions, such as an oversupply of space or a reduction in demand for real estate, in this area occurs.

**We have pursued, and may in the future continue to pursue extensive growth opportunities, which may result in significant demands on our operational, administrative and financial resources.**

We are pursuing extensive growth opportunities. This expansion places significant demands on our operational, administrative and financial resources. The continued growth of our real estate portfolio can be expected to continue to place a significant strain on our resources. Our future performance will depend in part on our ability to successfully attract and retain qualified management personnel to manage the growth and operations of our business. In addition, the acquired properties may fail to operate at expected levels due to the numerous factors that may affect the value of real estate. There can be no assurance that we will have sufficient resources to identify and manage the properties.

**Our inability to carry out our growth strategy could adversely affect our financial condition and results of operations.**

Our earnings growth strategy is based on the acquisition and development of additional properties, including acquisitions through co-investment programs such as our Opportunity Funds. In the context of our business plan, “redevelopment” generally means an expansion or renovation of an existing property. The consummation of any future acquisitions will be subject to satisfactory completion of our extensive valuation analysis and due diligence review and to the negotiation of definitive documentation. We cannot be sure that we will be able to implement our strategy because we may have difficulty finding new properties, negotiating with new or existing tenants or securing acceptable financing.

Acquisitions of additional properties entail the risk that investments will fail to perform in accordance with expectations, including operating and leasing expectations. Redevelopment is subject to numerous risks, including risks of construction delays, cost overruns

or uncontrollable events that may increase project costs, new project commencement risks such as the receipt of zoning, occupancy and other required governmental approvals and permits, and incurring development costs in connection with projects that are not pursued to completion.

A component of our growth strategy is through private-equity type investments made through our RCP Venture. These include investments in operating retailers. The inability of the retailers to operate profitably would have an adverse impact on income realized from these investments. Through our investments in joint ventures we have also invested in operating businesses that have operational risk in addition to the risks associated with real estate investments, including among other risks, human capital issues, adequate supply of product and material, and merchandising issues.

**We operate through a partnership structure, which could have an adverse effect on our ability to manage our assets.**

Our primary property-owning vehicle is the Operating Partnership, of which we are the general partner. Our acquisition of properties through the Operating Partnership in exchange for interests in the Operating Partnership may permit certain tax deferral advantages to limited partners who contribute properties to the Operating Partnership. Since properties contributed to the Operating Partnership may have unrealized gain attributable to the difference between the fair market value and adjusted tax basis in such properties prior to contribution, the sale of such properties could cause adverse tax consequences to the limited partners who contributed such properties. Although we, as the general partner of the Operating Partnership, generally have no obligation to consider the tax consequences of our actions to any limited partner, there can be no assurance that the Operating Partnership will not acquire properties in the future subject to material restrictions designed to minimize the adverse tax consequences to the limited partners who contribute such properties. Such restrictions could result in significantly reduced flexibility to manage our assets.

**Exclusivity obligation to our Opportunity Funds.**

Under the terms of our Fund III joint venture, which is similar to the terms of Fund I and Fund II, we are required to first offer to Fund III all of our opportunities to acquire retail shopping centers with limited exceptions. We may only pursue opportunities to acquire retail shopping centers directly if (i) the ownership of the acquisition opportunity by Fund III would create a material conflict of interest for us; (ii) we require the acquisition opportunity for a “like-kind” exchange; or (iii) the consideration payable for the acquisition opportunity is our Common Shares, OP Units or other securities. As a result, we may not be able to make attractive acquisitions directly and may only receive a minority interest in such acquisitions through Fund III.

**Risks of joint ventures.**

Partnership or joint venture investments may involve risks not otherwise present for investments made solely by us, including the possibility that our partner or co-venturer might become bankrupt, and that our partner or co-venturer may take action contrary to our instructions, requests, policies or objectives, including our policy with respect to maintaining our qualification as a REIT. Other risks of joint venture investments include impasse on decisions, such as a sale, because neither we nor a joint venture partner would have full control over the joint venture. Also, there is no limitation under our organizational documents as to the amount of funds that may be invested in joint ventures.

Any disputes that may arise between joint venture partners and us may result in litigation or arbitration that would increase our expenses and prevent our officers and/or directors from focusing their time and effort on our business. Consequently, actions by or disputes with joint venture partners might result in subjecting properties owned by the joint venture to additional risk. In addition, we may in certain circumstances be liable for the actions of our third-party joint venture partners.

During 2010, 2009 and 2008, our Fund I and Mervyns I joint ventures provided Promote income. There can be no assurance that the joint ventures will continue to operate profitably and thus provide additional Promote income in the future.

These factors could limit the return that we receive from such investments or cause our cash flows to be lower than our estimates. In addition, a partner or co-venturer may not have access to sufficient capital to satisfy its funding obligations to the joint venture.

**Market factors could have an adverse effect on our share price.**

One of the factors that may influence the trading price of our Common Shares is the annual dividend rate on our Common Shares as a percentage of its market price. An increase in market interest rates may lead purchasers of our Common Shares to seek a higher annual dividend rate, which could adversely affect the market price of our Common Shares. A decline in our share price, as a result of this or other market factors, could unfavorably impact our ability to raise additional equity in the public markets.

**The loss of a key executive officer could have an adverse effect on us.**

Our success depends on the contribution of key management members. The loss of the services of Kenneth F. Bernstein, President and Chief Executive Officer, or other key executive-level employees could have a material adverse effect on our results of operations. We have obtained key-man life insurance for Mr. Bernstein. In addition, we have entered into an employment agreement with Mr. Bernstein; however, it could be terminated by Mr. Bernstein. We have not entered into employment agreements with other key

executive level employees.

**Our Board of Trustees may change our investment policy without shareholder approval.**

Our Board of Trustees may determine to change our investment and financing policies, our growth strategy and our debt, capitalization, distribution, acquisition, disposition and operating policies. Our Board of Trustees may establish investment criteria or limitations as it deems appropriate, but currently does not limit the number of properties in which we may seek to invest or on the concentration of investments in any one geographic region. Although our Board of Trustees has no present intention to revise or amend our strategies and policies, it may do so at any time without a vote by our shareholders. Accordingly, the results of decisions made by our Board of Trustees and implemented by management may or may not serve the interests of all of our shareholders and could adversely affect our financial condition or results of operations, including our ability to distribute cash to shareholders or qualify as a REIT.

**Distribution requirements imposed by law limit our operating flexibility.**

To maintain our status as a REIT for federal income tax purposes, we are generally required to distribute to our shareholders at least 90% of our taxable income for each calendar year. Pursuant to IRS pronouncements, up to 90% of such distribution may be made in Common Shares rather than cash. Our taxable income is determined without regard to any deduction for dividends paid and by excluding net capital gains. To the extent that we satisfy the distribution requirement, but distribute less than 100% of our taxable income, we will be subject to federal corporate income tax on our undistributed income. In addition, we will incur a 4% nondeductible excise tax on the amount, if any, by which our distributions in any year are less than the sum of (i) 85% of our ordinary income for that year; (ii) 95% of our capital gain net income for that year and; (iii) 100% of our undistributed taxable income from prior years. We intend to continue to make distributions to our shareholders to comply with the distribution requirements of the Internal Revenue Code and to minimize exposure to federal income and nondeductible excise taxes. Differences in timing between the receipt of income and the payment of expenses in determining our income as well as required debt amortization payments and the capitalization of certain expenses could require us to borrow funds on a short-term basis to meet the distribution requirements that are necessary to achieve the tax benefits associated with qualifying as a REIT. The distribution requirements also severely limit our ability to retain earnings to acquire and improve properties or retire outstanding debt.

**There can be no assurance we have qualified or will remain qualified as a REIT for federal income tax purposes.**

We believe that we have consistently met the requirements for qualification as a REIT for federal income tax purposes beginning with our taxable year ended December 31, 1993, and we intend to continue to meet these requirements in the future. However, qualification as a REIT involves the application of highly technical and complex provisions of the Internal Revenue Code, for which there are only limited judicial or administrative interpretations. No assurance can be given that we have qualified or will remain qualified as a REIT. The Internal Revenue Code provisions and income tax regulations applicable to REITs differ significantly from those applicable to other corporations. The determination of various factual matters and circumstances not entirely within our control can potentially affect our ability to continue to qualify as a REIT. In addition, no assurance can be given that future legislation, regulations, administrative interpretations or court decisions will not significantly change the requirements for qualification as a REIT or adversely affect the federal income tax consequences of such qualification. Under current law, if we fail to qualify as a REIT, we would not be allowed a deduction for dividends paid to shareholders in computing our net taxable income. In addition, our income would be subject to tax at the regular corporate rates. We also could be disqualified from treatment as a REIT for the four taxable years following the year during which qualification was lost. Cash available for distribution to our shareholders would be significantly reduced for each year in which we do not qualify as a REIT. In that event, we would not be required to continue to make distributions. Although we currently intend to continue to qualify as a REIT, it is possible that future economic, market, legal, tax or other considerations may cause us, without the consent of our shareholders, to revoke the REIT election or to otherwise take action that would result in disqualification.

**Limits on ownership of our capital shares.**

For the Company to qualify as a REIT for federal income tax purposes, among other requirements, not more than 50% of the value of our capital shares may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of each taxable year after 1993, and such capital shares must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year (in each case, other than the first such year). Our Declaration of Trust includes certain restrictions regarding transfers of our capital shares and ownership limits that are intended to assist us in satisfying these limitations. These restrictions and limits may not be adequate in all cases, however, to prevent the transfer of our capital shares in violation of the ownership limitations. The ownership limit discussed above may have the effect of delaying, deferring or preventing someone from taking control of us.

Actual or constructive ownership of our capital shares in excess of the share ownership limits contained in our Declaration of Trust would cause the violative transfer or ownership to be null and void from the beginning and subject to purchase by us at a price equal to the lesser of (i) the price stipulated in the challenged transaction; and (ii) the fair market value of such shares (determined in accordance with the rules set forth in our Declaration of Trust). As a result, if a violative transfer were made, the recipient of the shares would not acquire any economic or voting rights attributable to the transferred shares. Additionally, the constructive ownership



rules for these limits are complex and groups of related individuals or entities may be deemed a single owner and consequently in violation of the share ownership limits.

#### **Concentration of ownership by certain investors.**

Six institutional shareholders own 5% or more individually, and 53.8% in the aggregate, of our Common Shares. A significant concentration of ownership may allow an investor or a group of investors to exert a greater influence over our management and affairs and may have the effect of delaying, deferring or preventing a change in control of us.

#### **Restrictions on a potential change of control.**

Our Board of Trustees is authorized by our Declaration of Trust to establish and issue one or more series of preferred shares without shareholder approval. We have not established any series of preferred shares. However, the establishment and issuance of a series of preferred shares could make more difficult a change of control of us that could be in the best interest of the shareholders.

In addition, we have entered into an employment agreement with our Chief Executive Officer and severance agreements are in place with our executives which provide that, upon the occurrence of a change in control of us and either the termination of their employment without cause (as defined) or their resignation for good reason (as defined), those executive officers would be entitled to certain termination or severance payments made by us (which may include a lump sum payment equal to defined percentages of annual salary and prior years' average bonuses, paid in accordance with the terms and conditions of the respective agreement), which could deter a change of control of us that could be in our best interest.

#### **Legislative or regulatory tax changes could have an adverse effect on us.**

There are a number of issues associated with an investment in a REIT that are related to the federal income tax laws, including, but not limited to, the consequences of a company's failing to continue to qualify as a REIT. At any time, the federal income tax laws governing REITs or the administrative interpretations of those laws may be amended or modified. Any new laws or interpretations may take effect retroactively and could adversely affect us or our shareholders. Reduced tax rates applicable to certain corporate dividends paid to most domestic noncorporate shareholders are not generally available to REIT shareholders since a REITs income generally is not subject to corporate level tax. As a result, investment in non-REIT corporations may be viewed as relatively more attractive than investment in REITs by domestic noncorporate investors. This could adversely affect the market price of the Company's shares.

#### **Our development and construction activities could affect our operating results.**

We intend to continue the selective development and construction of retail properties. As opportunities arise, we expect to delay construction until sufficient pre-leasing is reached and financing is in place. Our development and construction activities include risks that:

- We may abandon development opportunities after expending resources to determine feasibility;
- Construction costs of a project may exceed our original estimates;
- Occupancy rates and rents at a newly completed property may not be sufficient to make the property profitable;
- Financing for development of a property may not be available to us on favorable terms;
- We may not complete construction and lease-up on schedule, resulting in increased debt service expense and construction costs; and
- We may not be able to obtain, or may experience delays in obtaining necessary zoning, land use, building, occupancy and other required governmental permits and authorizations.

Additionally, the time frame required for development, construction and lease-up of these properties means that we may not realize a significant cash return for several years. If any of the above events occur, the development of properties may hinder our growth and have an adverse effect on our results of operations and cash flows. In addition, new development activities, regardless of whether or not they are ultimately successful, typically require substantial time and attention from management.

#### **Redevelopments and acquisitions may fail to perform as expected.**

Our investment strategy includes the redevelopment and acquisition of shopping centers in supply contained markets in densely populated areas with high average household incomes and significant barriers to entry. The redevelopment and acquisition of properties entails risks that include the following, any of which could adversely affect our results of operations and our ability to meet our obligations:

- the property may fail to achieve the returns we have projected, either temporarily or for extended periods;
- we may not be able to identify suitable properties to acquire or may be unable to complete the acquisition of the properties we identify;
- we may not be able to integrate an acquisition into our existing operations successfully;

- properties we redevelop or acquire may fail to achieve the occupancy or rental rates we project, within the time frames we project, at the time we make the decision to invest, which may result in the properties' failure to achieve the returns we projected;
- our pre-acquisition evaluation of the physical condition of each new investment may not detect certain defects or identify necessary repairs until after the property is acquired, which could significantly increase our total acquisition costs or decrease cash flow from the property; and
- our investigation of a property or building prior to our acquisition, and any representations we may receive from the seller of such building or property, may fail to reveal various liabilities, which could reduce the cash flow from the property or increase our acquisition cost.

### **Climate change and catastrophic risk from natural perils.**

Some of our current properties could be subject to potential natural or other disasters. We may acquire properties that are located in areas which are subject to natural disasters. Any properties located in coastal regions would therefore be affected by any future increases in sea levels or in the frequency or severity of hurricanes and tropical storms, whether such increases are caused by global climate changes or other factors.

Climate change is a long-term change in the statistical distribution of weather patterns over periods of time that range from decades to millions of years. It may be a change in the average weather conditions or a change in the distribution of weather events with respect to an average, for example, greater or fewer extreme weather events. Climate change may be limited to a specific region, or may occur across the whole Earth.

There may be significant physical effects of climate change that have the potential to have a material effect on our business and operations. These effects can impact our personnel, physical assets, tenants and overall operations.

Physical impacts of climate change may include:

- Increased storm intensity and severity of weather (e.g., floods or hurricanes);
- Sea level rise; and
- Extreme temperatures.

As a result of these physical impacts from climate-related events, we may be vulnerable to the following:

- Risks of property damage to our shopping centers;
- Indirect financial and operational impacts from disruptions to the operations of major tenants located in our shopping centers from severe weather, such as hurricanes or floods;
- Increased insurance premiums and deductibles, or a decrease in the availability of coverage, for properties in areas subject to severe weather;
- Increased insurance claims and liabilities;
- Increase in energy cost impacting operational returns;
- Changes in the availability or quality of water, or other natural resources on which the tenant's business depends;
- Decreased consumer demand for consumer products or services resulting from physical changes associated with climate change (e.g., warmer temperatures or decreasing shoreline could reduce demand for residential and commercial properties previously viewed as desirable);
- Incorrect long term valuation of an equity investment due to changing conditions not previously anticipated at the time of the investment; and
- Economic disruptions arising from the above.

### **Possible liability relating to environmental matters.**

Under various federal, state and local environmental laws, statutes, ordinances, rules and regulations, as an owner of real property, we may be liable for the costs of removal or remediation of certain hazardous or toxic substances at, on, in or under our property, as well as certain other potential costs relating to hazardous or toxic substances (including government fines and penalties and damages for injuries to persons and adjacent property). These laws may impose liability without regard to whether we knew of, or were responsible for, the presence or disposal of those substances. This liability may be imposed on us in connection with the activities of an operator of, or tenant at, the property. The cost of any required remediation, removal, fines or personal or property damages and our liability therefore could exceed the value of the property and/or our aggregate assets. In addition, the presence of those substances, or the failure to properly dispose of or remove those substances, may adversely affect our ability to sell or rent that property or to borrow using that property as collateral, which, in turn, could reduce our revenues and affect our ability to make distributions.

A property can also be adversely affected either through physical contamination or by virtue of an adverse effect upon value attributable to the migration of hazardous or toxic substances, or other contaminants that have or may have emanated from other properties. Although our tenants are primarily responsible for any environmental damages and claims related to the leased premises, in the event of the bankruptcy or inability of any of our tenants to satisfy any obligations with respect to the property leased to that tenant, we may be required to satisfy such obligations. In addition, we may be held directly liable for any such damages or claims

irrespective of the provisions of any lease.

From time to time, in connection with the conduct of our business, and prior to the acquisition of any property from a third party or as required by our financing sources, we authorize the preparation of Phase I environmental reports and, when necessary, Phase II environmental reports, with respect to our properties. Based upon these environmental reports and our ongoing review of our properties, we are currently not aware of any environmental condition with respect to any of our properties that we believe would be reasonably likely to have a material adverse effect on us. There can be no assurance, however, that the environmental reports will reveal all environmental conditions at our properties or that the following will not expose us to material liability in the future:

- The discovery of previously unknown environmental conditions;
- Changes in law;
- Activities of tenants; and
- Activities relating to properties in the vicinity of our properties.

Changes in laws increasing the potential liability for environmental conditions existing on properties or increasing the restrictions on discharges or other conditions may result in significant unanticipated expenditures or may otherwise adversely affect the operations of our tenants, which could adversely affect our financial condition or results of operations.

**Uninsured losses or a loss in excess of insured limits could adversely affect our financial condition.**

We carry comprehensive general liability, fire, extended coverage, loss of rent insurance, and environmental liability on most of our properties, with policy specifications and insured limits customarily carried for similar properties. However, with respect to those properties where the leases do not provide for abatement of rent under any circumstances, we generally do not maintain loss of rent insurance. In addition, there are certain types of losses, such as losses resulting from wars, terrorism or acts of God that generally are not insured because they are either uninsurable or not economically insurable. Should an uninsured loss or a loss in excess of insured limits occur, we could lose capital invested in a property, as well as the anticipated future revenues from a property, while remaining obligated for any mortgage indebtedness or other financial obligations related to the property. Any loss of these types would adversely affect our financial condition.

**Future terrorist attacks or civil unrest could harm the demand for, and the value of, our properties.**

Future terrorist attacks or civil unrest, such as the attacks that occurred in New York, Pennsylvania and Washington, D.C. on September 11, 2001, and other acts of terrorism or war, could harm the demand for, and the value of, our properties. Terrorist attacks could directly impact the value of our properties through damage, destruction, loss or increased security costs, and the availability of insurance for such acts may be limited or may be subject to substantial cost increases. To the extent that our tenants are impacted by future attacks, their ability to continue to honor obligations under their existing leases could be adversely affected. A decrease in retail demand could make it difficult for us to renew or re-lease our properties at lease rates equal to or above historical rates. These acts might erode business and consumer confidence and spending, and might result in increased volatility in national and international financial markets and economies. Any one of these events might decrease demand for real estate, decrease or delay the occupancy of our properties, and limit our access to capital or increase our cost of raising capital.

**Outages, computer viruses and similar events could disrupt our operations.**

We rely on information technology networks and systems, some of which are owned and operated by third parties, to process, transmit and store electronic information. Any of these systems may be susceptible to outages due to fire, floods, power loss, telecommunications failures, terrorist attacks and similar events. Despite the implementation of network security measures, our systems and those of third parties on which we rely may also be vulnerable to computer viruses and similar disruptions. If we and the third parties on whom we rely are unable to prevent such outages and breaches, our operations could be disrupted.

**ITEM 1B. UNRESOLVED STAFF COMMENTS.**

None.

## ITEM 2. PROPERTIES.

### SHOPPING CENTER PROPERTIES

The discussion and tables in this Item 2 include properties held through our Core Portfolio and our Opportunity Funds. We define our Core Portfolio as those properties either 100% owned by, or partially owned through joint venture interests by, the Operating Partnership, or subsidiaries thereof, not including those properties owned through our Opportunity Funds. The discussion of the Opportunity Funds does not include our investment in a portfolio of self-storage properties, which are detailed separately within this Item 2.

As of December 31, 2010, excluding two properties under redevelopment, there are 32 operating properties in our Core Portfolio totaling approximately 4.8 million square feet of gross leasable area ("GLA"). The Core Portfolio properties are located in 12 states and are generally well-established community and neighborhood shopping centers anchored by supermarkets or value-oriented retail. The properties are diverse in size, ranging from approximately 10,000 to 875,000 square feet and as of December 31, 2010, were, in total, 92% occupied.

As of December 31, 2010, we owned and operated 27 properties totaling 2.5 million square feet of GLA in our Opportunity Funds, excluding five properties under redevelopment. In addition to shopping centers, the Opportunity Funds have invested in mixed-use properties, which generally include retail activities and self-storage properties. The Opportunity Fund properties are located in 13 states and as of December 31, 2010, were, in total, 87% occupied.

Within our Core Portfolio and Opportunity Funds, we had approximately 550 leases as of December 31, 2010. A majority of our rental revenues were from national tenants. A majority of the income from the properties consists of rent received under long-term leases. These leases generally provide for the payment of fixed minimum rent monthly in advance and for the payment by tenants of a pro-rata share of the real estate taxes, insurance, utilities and common area maintenance of the shopping centers. Minimum rents and expense reimbursements accounted for approximately 85% of our total revenues for the year ended December 31, 2010.

Certain of our leases also provided for the payment of percentage rents either in addition to, or in place of, minimum rents. These arrangements generally provide for payment to us of a certain percentage of a tenant's gross sales in excess of a stipulated annual amount. Percentage rents accounted for less than 1% of the total 2010 revenues of the Company.

Four of our Core Portfolio properties and 21 of our Opportunity Fund properties are subject to long-term ground leases in which a third party owns and has leased the underlying land to us. We pay rent for the use of the land and are responsible for all costs and expenses associated with the building and improvements at all 25 locations.

No individual property contributed in excess of 10% of our total revenues for the years ended December 31, 2010, 2009 or 2008. Reference is made to Note 8 to our Consolidated Financial Statements, which begin on page F-1 of this Form 10-K, for information on the mortgage debt pertaining to our properties. The following sets forth more specific information with respect to each of our shopping centers at December 31, 2010:

Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy % 12/31/10 (1)	Annual Base Rent	Annual Base Rent PSF	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
<b>Core Portfolio</b>								
<b>New York</b>								
<b>Connecticut</b>								
239 Greenwich Avenue	Greenwich	1998 (A)	Fee/JV	16,834(2)	100%	\$ 1,554,663	\$ 92.35	Restoration Hardware 2014/2024 Coach 2016/2021
<b>New Jersey</b>								
Elmwood Park Shopping Center	Elmwood Park	1998 (A)	Fee	149,491	92%	3,397,955	24.75	A&P 2017/2052 Walgreen's 2022/2062
A&P Shopping Plaza	Boonton	2006 (A)	Fee/JV	62,908	90%	1,166,305	20.58	A&P 2024/2054
<b>New York</b>								
Village Commons Shopping Center	Smithtown	1998 (A)	Fee	87,330	75%	2,065,110	31.60	
Branch Shopping Plaza	Smithtown	1998 (A)	LI (3)	125,712	99%	2,681,144	21.46	A&P 2013/2028 CVS 2020/—
Amboy Road	Staten Island	2005 (A)	LI (3)	60,090	100%	1,605,791	26.72	King Kullen 2028/2043 Duane Reade 2013/2018
Bartow Avenue	Bronx	2005 (C)	Fee	14,676	89%	439,249	33.43	
Pacesetter Park Shopping Center	Pomona	1999 (A)	Fee	96,380	91%	1,108,621	12.67	Stop & Shop 2020/2040
West Shore Expressway	Staten Island	2007 (A)	Fee	55,000	100%	1,265,000	23.00	LA Fitness 2021/2036
West 54 <sup>th</sup> Street	Manhattan	2007 (A)	Fee	9,693	100%	2,564,844	264.61	Stage Deli 2013/—
East 17 <sup>th</sup> Street	Manhattan	2008 (A)	Fee	19,622	100%	625,000	31.85	Barnes & Noble 2013/2018
Crossroads Shopping Center	White Plains	1998 (A)	Fee/JV (4)	309,487	94%	6,093,005	21.00	A&P 2012/2032 Kmart 2012/2032 B. Dalton 2012/2022 Modell's 2014/2019 Pier 1 2012/—Home Goods 2018/2033
<b>Total New York Region</b>				1,007,223	93%	\$ 24,566,687	\$ 26.24	

Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy % 12/31/10 (1)	Annual Base Rent	Annual Base Rent PSF	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
<b>Core Portfolio, continued</b>								
<b>New England</b>								
<u>Connecticut</u>								
Town Line Plaza	Rocky Hill	1998 (A)	Fee	206,346(5)	98%	\$ 1,632,831	\$ 15.55	Stop & Shop 2024/2064 Wal-Mart(5)
<u>Massachusetts</u>								
Methuen Shopping Center	Methuen	1998 (A)	Fee	130,021	100%	958,689	7.37	Demoulas Market 2015/— Wal-Mart 2012/2052
Crescent Plaza	Brockton	1984 (A)	Fee	218,141	91%	1,585,619	8.02	Supervalu 2012/2042 Home Depot 2021/2056
<u>New York</u>								
New Loudon Center	Latham	1982 (A)	Fee	255,673	74%	1,535,346	8.06	Price Chopper 2015/2035 Marshall's 2014/2029 Raymour and Flanigan 2019/2034 AC Moore 2014/2024
<u>Rhode Island</u>								
Walnut Hill Plaza	Woonsocket	1998 (A)	Fee	284,717	94%	2,354,928	8.84	Supervalu 2013/2028 Sears 2013/2033 CVS 2011/2014
<u>Vermont</u>								
The Gateway Shopping Center	South Burlington	1999 (A)	Fee	101,784	92%	1,798,042	19.16	Supervalu 2024/2053
<b>Total New England Region</b>				<u>1,196,682</u>	<u>90%</u>	<u>\$ 9,865,455</u>	<u>\$ 10.03</u>	
<b>Midwest</b>								
<u>Illinois</u>								
Hobson West Plaza	Naperville	1998 (A)	Fee	99,126	92%	\$ 1,087,179	11.92	Garden Fresh Markets 2012/2032
Clark Diversey	Chicago	2006 (A)	Fee	19,265	92%	799,766	45.34	
<u>Indiana</u>								
Merrillville Plaza	Merrillville	1998 (A)	Fee	235,904	93%	2,859,030	13.08	TJ Maxx 2019/2029 JC Penney 2013/2018 OfficeMax 2013/2028 Pier 1 2014/— K&G Fashion 2017/2027 David's Bridal 2011/2021
<u>Michigan</u>								
Bloomfield Town Square	Bloomfield Hills	1998 (A)	Fee	234,095	98%	2,841,021	12.37	TJ Maxx 2019/2029 Marshalls 2011/2026 Home Goods 2011/2021 OfficeMax 2011/2026 Best Buy 2021/2041
<u>Ohio</u>								
Mad River Station	Dayton	1999 (A)	Fee	125,984	88%	1,397,908	12.66	Babies 'R' Us 2015/2020 Office Depot 2015/— Pier 1 2015/—
<b>Total Midwest Region</b>				<u>714,374</u>	<u>93%</u>	<u>\$ 8,984,904</u>	<u>\$ 13.46</u>	

Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy % 12/31/10 (1)	Annual Base Rent	Annual Base Rent PSF	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
<b>Core Portfolio, continued</b>								
<b>Mid-Atlantic</b>								
<u>New Jersey</u>								
Marketplace of Absecon	Absecon	1998 (A)	Fee	104,718	72%	1,128,904	15.05	Rite Aid 2020/2040 Dollar Tree 2015/2030
<u>Delaware</u>								
Brandywine Town Center	Wilmington	2003 (A)	Fee/JV (7)	874,989	94%	12,901,436	15.68	Bed, Bath & Beyond 2014/2029 Dick's Sporting Goods 2013/2028 Lowe's Home Centers 2018/2048 Target 2018/2058
Market Square Shopping Center	Wilmington	2003 (A)	Fee/JV (7)	102,047	100%	2,450,846	24.02	TJ Maxx 2011/2021 Trader Joe's 2019/2034
Route 202 Shopping Center	Wilmington	2006 (C)	LI/JV (3) (7)	19,970	55%	558,340	50.89	
<u>Pennsylvania</u>								
Mark Plaza	Edwardsville	1968 (C)	LI/Fee (3)	216,401	86%	829,922	4.46	Redner's Markets 2018/2028 Kmart 2014/2049
Plaza 422	Lebanon	1972 (C)	Fee	156,279	100%	795,852	5.09	Home Depot 2028/2058 Dunham's 2016/2031
Route 6 Mall	Honesdale	1994 (C)	Fee	175,519	100%	1,171,690	6.68	Kmart 2020/2070 Rite Aid 2011/2026
Chestnut Hill	Philadelphia	2006 (A)	Fee (8)	40,570	23%	325,483	35.57	
Abington Towne Center	Abington	1998 (A)	Fee	216,369(6)	99%	1,093,775	19.16	TJ Maxx 2016/2026 Target (6)
<b>Total Mid-Atlantic Region</b>				1,906,862	92%	\$ 21,256,248	\$ 13.33	
<b>Total Core Operating Properties</b>				4,825,141	92%	\$ 64,673,294	\$ 15.46	
<b>Properties under Redevelopment</b>								
2914 Third Avenue	Bronx	2006 (A)	Fee	42,400	24%	180,000	17.45	
Ledgewood Mall	Ledgewood	1983 (A)	Fee	517,151	79%	3,466,745	8.44	Wal-Mart 2019/2049 Macy's 2015/2025 The Sports Authority 2012/2037 Marshalls 2014/2035 Ashley Furniture 2015/2020 Barnes and Noble 2015/2035
<b>Total Core Properties</b>				5,384,692	90%	\$ 68,320,039	\$ 14.84	

Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy % 12/31/10 (1)	Annual Base Rent	Annual Base Rent PSF	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
<b>Opportunity Fund Portfolio</b>								
<b>Fund I Properties</b>								
<u>Ohio</u>								
Granville Centre	Columbus	2002 (A)	Fee	134,997	36%	593,022	12.37	Lifestyle Family Fitness 2017/2027
<u>New York</u>								
Tarrytown Shopping Center	Tarrytown	2004 (A)	Fee	34,979	85%	891,483	29.97	Walgreen's 2080/—
<b>VARIOUS REGIONS</b>								
Kroger/Safeway Portfolio	Various	2003 (A)	LI/JV (3)	709,400	100%	3,560,326	5.02	18 Kroger/Safeway Supermarkets Various
<b>Total Fund I Properties</b>				879,376	90%	\$ 5,044,831	\$ 6.41	
<b>Fund II Properties</b>								
<u>New York</u>								
Pelham Plaza	Pelham Manor	2004 (A)	LI/JV (3)	228,521	78%	4,751,941	26.67	BJ's Wholesale Club 2033/2053 Michaels 2013/2033
Fordham Place	Bronx	2004(A)	Fee/JV	119,446	100%	5,519,760	46.21	Best Buy 2019/2039 Sears 2023/2033
Liberty Avenue	New York	2005 (A)	LI/JV (3)	26,125	83%	730,377	33.72	CVS 2032/2052
Canarsie Plaza	Brooklyn	2007 (A)	Fee/JV	278,737	64%	5,100,000	28.79	BJ's Wholesale Club 2030/2055
216 <sup>th</sup> Street	New York	2005 (A)	Fee/JV	60,000	100%	2,460,000	41.00	NYC 2027/2032
<b>Total Fund II Properties</b>				712,829	78%	\$ 18,562,078	\$ 33.36	
<b>Fund III Properties</b>								
<u>New York</u>								
Cortlandt Towne Center	Mohegan Lake	2009 (A)	Fee	641,254	91%	9,139,440	15.72	Walmart 2018/2048 A&P 2022/2047 Best Buy 2017/2032
<u>Massachusetts</u>								
White City Shopping Center	Shrewsbury	2010 (A)	Fee/JV	255,199	93%	4,880,720	20.51	Shaw's 2018/2033 Michaels 2012/2022 Core Fitness 2016/2021
<b>Total Fund III Properties</b>				896,453	91%	\$ 14,020,160	\$ 17.11	
<b>Total Opportunity Fund Operating Properties</b>				2,488,658	87%	\$ 37,627,069	\$ 17.40	
<b>Properties under Redevelopment</b>								
Sherman Plaza	New York	2005 (A)	Fee/JV	—	—	—	—	
CityPoint	Brooklyn	2007 (A)	LI/JV	—	—	—	—	
Westport	Westport	2007 (A)	Fee/JV	—	—	—	—	
Sheepshead Bay	Brooklyn	2007 (A)	Fee/JV	—	—	—	—	
161 <sup>st</sup> Street	Bronx	2005 (A)	Fee/JV	230,218	83%	4,384,824	23.07	City of New York 2011/—
<b>Total Redevelopment Properties</b>				230,218	83%	\$ 4,384,824	\$ 23.07	



## Notes:

- (1) Does not include space for which lease term had not yet commenced as of December 31, 2010.
- (2) In addition to the 16,834 square feet of retail GLA, this property also has 21 apartments comprising 14,434 square feet.
- (3) We are a ground lessee under a long-term ground lease.
- (4) We have a 49% investment in this property.
- (5) Includes a 97,300 square foot Wal-Mart which is not owned by us.
- (6) Includes a 157,616 square foot Target Store that is not owned by us.
- (7) We have a 22% investment in this property.
- (8) Property consists of two buildings.

**MAJOR TENANTS**

No individual retail tenant accounted for more than 5.7% of minimum rents for the year ended December 31, 2010 or occupied more than 6.8% of total leased GLA as of December 31, 2010. The following table sets forth certain information for the 20 largest retail tenants based upon minimum rents in place as of December 31, 2010. The amounts below include our pro-rata share of GLA and annualized base rent for the Operating Partnership's partial ownership interest in properties, including the Opportunity Funds:

Retail Tenant	Number of Stores in Portfolio	Total GLA	Annualized Base Rent <sup>(1)</sup>	Percentage of Total Represented by Retail Tenant	
				Total Portfolio GLA <sup>(2)</sup>	Annualized Base Rent <sup>(2)</sup>
A&P (A&P, Pathmark)	5	191,899	\$ 3,468,080	3.8%	5.7%
Supervalu (Shaw's)	4	186,500	2,563,590	3.7%	4.2%
TJX Companies (T.J. Maxx, Marshalls, Homegoods)	10	249,771	2,161,722	5.0%	3.6%
Wal-Mart	3	235,991	1,713,365	4.7%	2.8%
Sears (Kmart, Sears)	5	341,708	1,654,280	6.8%	2.7%
BJ's Wholesale Club	2	54,223	1,476,000	1.1%	2.4%
Ahold (Stop & Shop)	2	117,911	1,363,237	2.3%	2.3%
LA Fitness	1	55,000	1,265,000	1.1%	2.1%
Restoration Hardware	1	12,293	1,166,090	0.2%	1.9%
Barnes & Noble	4	43,259	1,146,079	0.9%	1.9%
Home Depot	2	211,003	1,099,996	4.2%	1.8%
Stage Deli	1	4,211	999,996	0.1%	1.7%
Walgreens	3	22,692	854,313	0.5%	1.4%
Sleepy's	5	34,543	848,761	0.7%	1.4%
Price Chopper	1	87,709	836,660	1.7%	1.4%
King Kullen	1	37,266	745,320	0.7%	1.2%
Pier 1 Imports	4	25,454	646,154	0.5%	1.1%
Safeway	12	123,626	630,177	2.5%	1.0%
CVS	3	36,476	619,808	0.7%	1.0%
Payless Shoesource	9	28,466	561,220	0.6%	0.9%
<b>Total</b>	<b>78</b>	<b>2,100,001</b>	<b>\$ 25,819,848</b>	<b>41.8%</b>	<b>42.5%</b>

## Notes:

- (1) Base rents do not include percentage rents, additional rents for property expense reimbursements and contractual rent escalations due after December 31, 2010.
- (2) Represents percentage of total GLA and annualized base rent for our retail properties including the Operating Partnership's pro-rata share of joint venture properties, including the Opportunity Funds.

## LEASE EXPIRATIONS

The following table shows scheduled lease expirations for retail tenants in place as of December 31, 2010, assuming that none of the tenants exercise renewal options. (GLA and Annualized Base Rent in thousands):

### Core Portfolio:

Leases maturing in	Number of Leases	Annualized Base Rent (1)		GLA	
		Current Annual Rent	Percentage of Total	Square Feet	Percentage of Total
Month to Month	13	\$ 466	1%	34	1%
2011	61	7,798	11%	446	10%
2012	57	6,706	10%	561	12%
2013	63	10,109	15%	553	12%
2014	61	8,192	12%	497	11%
2015	44	7,685	11%	572	12%
2016	12	1,852	3%	133	3%
2017	18	4,633	7%	202	4%
2018	24	5,639	8%	401	9%
2019	20	2,746	4%	286	6%
Thereafter	39	12,494	18%	921	20%
Total	412	\$ 68,320	100%	4,606	100%

### Opportunity Funds:

Leases maturing in	Number of Leases	Annualized Base Rent (1)		GLA	
		Current Annual Rent	Percentage of Total	Square Feet	Percentage of Total
Month to Month	3	\$ 156	0%	17	1%
2011	29(2)	7,699	18%	882	37%
2012	21	2,421	6%	107	5%
2013	10	2,321	6%	105	4%
2014	14	2,310	5%	115	5%
2015	11	980	2%	49	2%
2016	9	1,107	3%	48	2%
2017	5	1,586	4%	97	4%
2018	9	3,185	8%	258	11%
2019	9	2,588	6%	62	3%
Thereafter	23	17,659	42%	613	26%
Total	143	\$ 42,012	100%	2,353	100%

#### Note:

- (1) Base rents do not include percentage rents, additional rents for property expense reimbursements, nor contractual rent escalations.
- (2) Includes the master lease term for all 18 Kroger/Safeway leases representing annualized base rent of \$3,560 and GLA of 709 square feet. The underlying operating leases at fourteen of these locations representing 547 square feet and rents aggregating \$2,743 expire during 2014. The operating leases at two locations, representing 92 square feet and rents aggregating \$426, expire during 2019. Reference is made to page 28 below for a discussion of the Kroger/Safeway portfolio.

## GEOGRAPHIC CONCENTRATIONS

The following table summarizes our retail properties by region as of December 31, 2010. The amounts below also reflect properties that we invest in through joint ventures and that are held in our Opportunity Funds (GLA and Annualized Base Rent in thousands):

Region	GLA (1)	Occupied % (2)	Annualized Base Rent (2)	Annualized Base Rent per Occupied Square Foot	Percentage of Total Represented by Region	
					GLA	Annualized Base Rent
<b>Core Properties:</b>						
<b>Operating Properties:</b>						
New York Region	1,007	93%	\$ 24,567	\$ 26.24	20%	38%
New England	1,197	90%	9,865	10.03	25%	15%
Midwest	714	93%	8,985	13.46	15%	14%
Mid-Atlantic	1,907	92%	21,256	13.33	40%	33%
<b>Total Core Operating Properties</b>	<b>4,825</b>	<b>92%</b>	<b>\$ 64,673</b>	<b>\$ 15.46</b>	<b>100%</b>	<b>100%</b>
<b>Redevelopment Properties:</b>						
Mid-Atlantic	517	79%	\$ 3,467	\$ 8.44	92%	95%
New York Region	42	24%	180	17.45	8%	5%
<b>Total Core Redevelopment Properties</b>	<b>559</b>	<b>75%</b>	<b>\$ 3,647</b>	<b>\$ 8.66</b>	<b>100%</b>	<b>100%</b>
<b>Opportunity Funds:</b>						
<b>Operating Properties:</b>						
Midwest	135	36%	\$ 593	\$ 12.37	5%	2%
New York Region	1,389	84%	28,593	24.49	56%	76%
Various (Kroger/Safeway Portfolio)	709	100%	3,560	5.02	29%	9%
New England	255	93%	4,881	20.51	10%	13%
<b>Total Opportunity Fund Operating Properties</b>	<b>2,488</b>	<b>87%</b>	<b>\$ 37,627</b>	<b>\$ 17.40</b>	<b>100%</b>	<b>100%</b>
<b>Redevelopment Properties:</b>						
New York Region	230	83%	\$ 4,385	\$ 23.07	100%	100%

### Notes:

- Property GLA includes a total of 255,000 square feet, which is not owned by us. This square footage has been excluded for calculating annualized base rent per square foot.
- The above occupancy and rent amounts do not include space that is currently leased, but for which payment of rent had not commenced as of December 31, 2010.

## SELF-STORAGE PORTFOLIO

During February 2008, we, through Fund III, acquired a 95% controlling interest in a portfolio of eleven self-storage properties from Storage Post's existing institutional investors for approximately \$174.0 million. In addition, we, through Fund II, developed three self-storage properties. The fourteen self-storage property portfolio, located throughout New York and New Jersey, totals 1,127,490 net rentable square feet, and is operating at various stages of stabilization as detailed in the table below. The portfolio is operated by Self Storage Management, a joint venture entity formed by Fund III and an unaffiliated partner.

Owner	Operating Properties	Location	Net Rentable Square Feet	Occupancy as of December 31, 2010
<b>Stabilized</b>				
Fund III	Suffern	Suffern, New York	78,950	
Fund III	Yonkers	Westchester, New York	100,643	
Fund III	Jersey City	Jersey City, New Jersey	76,920	
Fund III	Webster Ave	Bronx, New York	36,175	
Fund III	Linden	Linden, New Jersey	84,035	
Fund III	Bruckner Blvd	Bronx, New York	89,473	
Fund III	New Rochelle	Westchester, New York	42,158	
Fund III	Lawrence	Lawrence, New York	97,743	
	Subtotal Stabilized		606,097	87.5%
<b>Redeveloped - in Lease-up</b>				
Fund III	Long Island City	Queens, New York	135,558	
	Subtotal in Lease-up		135,558	75.3%
	Total Operating Properties		741,655	85.3%
<b>In Initial Lease-up</b>				
Fund III	Fordham Road	Bronx, New York	85,155	
Fund III	Ridgewood	Queens, New York	88,789	
Fund II	Liberty Avenue	Queens, New York	72,925	
Fund II	Pelham Plaza	Pelham Manor, New York	62,020	
Fund II	Atlantic Avenue	Brooklyn, New York	76,946	
	Subtotal in Initial Lease-up		385,835	66.1%
	Total Self-Storage Portfolio		1,127,490	

## KROGER/SAFEWAY PORTFOLIO

At December 31, 2010, Fund I, together with an unaffiliated joint venture partner ("Kroger/Safeway JV"), owns interests, through two master leases with an unaffiliated entity ("Master Lessee"), in 18 triple-net Kroger and Safeway supermarket leases ("Operating Leases") aggregating approximately 0.7 million square feet. There are six Kroger and twelve Safeway locations in eleven states averaging approximately 39,000 square feet at rents ranging from approximately \$3.70 to \$7.00 per square foot. The master leases expire in January 2011 with the Master Lessee having the option of extending the term of either or both of the master leases. The Master Lessee exercised the option to cancel the master lease in the first quarter of 2011. As a result, the Kroger/Safeway JV became the operating landlord of the locations. The Kroger/Safeway JV holds its interest through long-term ground leases, which have a term in excess of 80 years, inclusive of multiple renewal options. Although there is no obligation for the Kroger/Safeway JV to pay ground rent during the initial term of the master lease, to the extent it exercises an option to renew a ground lease for a property thereafter, it will be obligated to pay an average ground rent of approximately \$2.00 per square foot.

The Kroger Co. purchased six locations comprising 277,700 square feet, or 28% of the portfolio, during February of 2009 for \$14.6 million, resulting in a gain of approximately \$5.6 million.

The initial Operating Leases expired during 2009. Options on these leases provide for extensions through 2049 at an average rent of approximately \$5.00 per square foot upon the commencement of the initial option period during 2009. Of the remaining 18 locations, 15 are currently occupied and paying rent, one is unoccupied and paying rent, and two remain vacant.

### **ITEM 3. LEGAL PROCEEDINGS.**

We are involved in other various matters of litigation arising in the normal course of business. While we are unable to predict with any certainty the amounts involved, management is of the opinion that, when such litigation is resolved, our resulting exposure to loss contingencies, if any, will not have a significant effect on our consolidated financial position, results of operations, or liquidity.

During September 2008, we, and certain of our subsidiaries, and other unrelated entities were named as defendants in an adversary proceeding brought by Mervyn's LLC ("Mervyns") in the United States Bankruptcy Court for the District of Delaware. This lawsuit involves five claims alleging fraudulent transfers. The first claim is that, at the time of the sale of Mervyns by Target Corporation to a consortium of investors including Acadia, a transfer of assets was made in an effort to defraud creditors. We believe this aspect of the case is without merit. There are four other claims relating to transfers of assets of Mervyns at various times. We believe there are substantial defenses to these claims. The matter is in the early stages of discovery and we believe the lawsuit will not have a material adverse effect on our results of operations, consolidated financial condition, or liquidity.

During August 2009, we terminated the employment of a former Senior Vice President (the "Former Employee") for engaging in conduct that fell within the definition of "cause" in his severance agreement with us. Had the Former Employee not been terminated for "cause," he would have been eligible to receive approximately \$0.9 million under the severance agreement. Because we terminated him for "cause," we did not pay the Former Employee any severance benefits under the agreement. The Former Employee has brought a lawsuit against us in New York State Supreme Court, alleging breach of the severance agreement. The suit is in the pre-trial discovery stage. We believe we have meritorious defenses to the suit.

### **ITEM 4. REMOVED AND RESERVED.**

**PART II**

**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.**

*(a) Market Information, dividends and record holders of our Common Shares*

The following table shows, for the period indicated, the high and low sales price for our Common Shares as reported on the New York Stock Exchange, and cash dividends declared during the two years ended December 31, 2010 and 2009:

<b>Quarter Ended 2010</b>	<b>High</b>	<b>Low</b>	<b>Dividend Per Share</b>
March 31, 2010	\$ 18.40	\$ 14.88	\$ 0.1800
June 30, 2010	19.80	16.22	0.1800
September 30, 2010	19.77	15.87	0.1800
December 31, 2010	20.17	17.72	0.1800
<b>2009</b>			
March 31, 2009	\$ 14.69	\$ 8.50	\$ 0.2100
June 30, 2009	15.44	10.37	0.1800
September 30, 2009	16.51	11.55	0.1800
December 31, 2009	17.69	13.31	0.1800

At February 28, 2011, there were 309 holders of record of our Common Shares.

We have determined for income tax purposes that 100% of the total dividends distributed to shareholders during 2010 represented ordinary income. The dividend for the quarter ended December 31, 2010 was paid on February 1, 2011 and will be taxable in 2011. Our cash flow is affected by a number of factors, including the revenues received from rental properties, our operating expenses, the interest expense on our borrowings, the ability of lessees to meet their obligations to us and unanticipated capital expenditures. Future dividends paid by us will be at the discretion of the Trustees and will depend on our actual cash flows, our financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Code and such other factors as the Trustees deem relevant. In addition, we have the ability to pay dividends in cash, Common Shares or in any combination of cash (minimum 10%) and Common Shares (maximum 90%).

*(b) Issuer purchases of equity securities*

We have an existing share repurchase program that authorizes management, at its discretion, to repurchase up to \$20.0 million of our outstanding Common Shares. The program may be discontinued or extended at any time and there is no assurance that we will purchase the full amount authorized. There were no Common Shares repurchased by us during the year ended December 31, 2010.

(c) Securities authorized for issuance under equity compensation plans

The following table provides information related to our 1999 Share Incentive Plan (the “1999 Plan”), 2003 Share Incentive Plan (the “2003 Plan”) and the 2006 Share Incentive Plan (the “2006 Plan”) as of December 31, 2010:

	Equity Compensation Plan Information		
	(a)	(b)	(c)
	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted - average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders	152,283	\$ 18.20	763,444(1)
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>152,283</b>	<b>\$ 18.20</b>	<b>763,444(1)</b>

Notes:

(1) The 1999 Plan authorizes the issuance of options equal to up to 8% of the total Common Shares outstanding from time to time on a fully diluted basis. However, not more than 4,000,000 of the Common Shares in the aggregate may be issued pursuant to the exercise of options and no participant may receive more than 5,000,000 Common Shares during the term of the 1999 Plan. The 2003 Plan authorizes the issuance of options equal to up to 4% of the total Common Shares outstanding from time to time on a fully diluted basis. However, no participant may receive more than 1,000,000 Common Shares during the term of the 2003 Plan. The 2006 Plan authorizes the issuance of a maximum number of 500,000 Common Shares. No participant may receive more than 500,000 Common Shares during the term of the 2006 Plan. We have also issued LTIP Units, which are generally exchangeable on a one-for-one basis for our Operating Partnership Units which in turn are convertible into Common Shares. Reference is made to Note 15 to our Consolidated Financial Statements, which begin on Page F-1 of this Form 10-K, for a summary of our Share Incentive Plans.

Remaining Common Shares available under our share incentive plans is as follows:

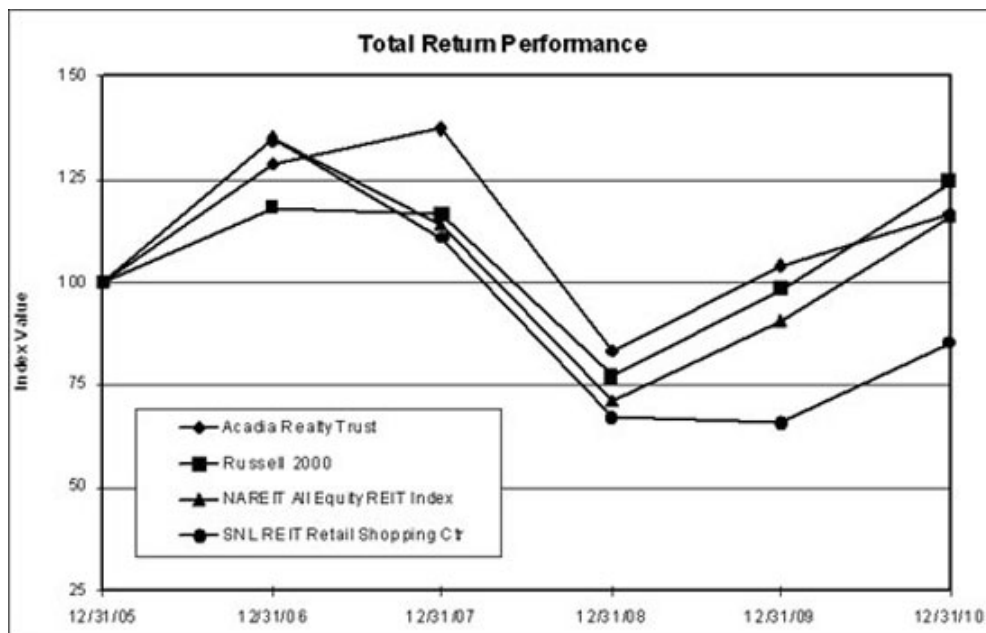
Outstanding Common Shares as of December 31, 2010	40,254,525
Outstanding OP Units as of December 31, 2010	360,114
<b>Total Outstanding Common Shares and OP Units</b>	<b>40,614,639</b>
12% of Common Shares and OP Units pursuant to the 1999 and 2003 Plans	4,873,757
Common Shares pursuant to the 2006 Plan	500,000
<b>Total Common Shares available under equity compensation plans</b>	<b>5,373,757</b>
Less: Issuance of Restricted Shares and LTIP Units Granted	(1,834,794)
Issuance of Options Granted	(2,775,519)
<b>Number of Common Shares remaining available</b>	<b>763,444</b>

(d) Share Price Performance Graph (1)

The following graph compares the cumulative total shareholder return for our Common Shares for the period commencing December 31, 2005 through December 31, 2010 with the cumulative total return on the Russell 2000 Index (“Russell 2000”), the NAREIT All Equity REIT Index (the “NAREIT”) and the SNL Shopping Center REITs (the “SNL”) over the same period. Total return values for the Russell 2000, the NAREIT, the SNL and the Common Shares were calculated based upon cumulative total return assuming the investment of \$100.00 in each of the Russell 2000, the NAREIT, the SNL and our Common Shares on December 31, 2005, and assuming reinvestment of dividends. The shareholder return as set forth in the table below is not necessarily indicative of future performance.

Note:

(1) The information in this section is not “soliciting material,” is not deemed “filed” with the SEC, and is not to be incorporated by reference into any filing of the Trust under the Securities Act or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language contained in such filing.



*Period Ended*

<i>Index</i>	<i>12/31/05</i>	<i>12/31/06</i>	<i>12/31/07</i>	<i>12/31/08</i>	<i>12/31/09</i>	<i>12/31/10</i>
Acadia Realty Trust	100.00	128.74	137.06	83.20	103.95	116.96
Russell 2000	100.00	118.37	116.51	77.15	98.11	124.46
NAREIT All Equity REIT Index	100.00	135.06	113.87	70.91	90.76	116.12
SNL REIT Retail Shopping Ctr Index	100.00	134.61	110.82	66.72	65.86	85.53

**ITEM 6. SELECTED FINANCIAL DATA**

The following table sets forth, on a historical basis, our selected financial data. This information should be read in conjunction with our audited Consolidated Financial Statements and Management’s Discussion and Analysis of Financial Condition and Results of Operations appearing elsewhere in this Form 10-K. Funds from operations (“FFO”) amounts for the year ended December 31, 2010 have been adjusted as set forth in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations – Reconciliation of Net Income to Funds from Operations and Adjusted Funds From Operations.”



**Years ended December 31,**

(dollars in thousands, except per share amounts)

	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>
<b>OPERATING DATA:</b>					
Revenues	\$ 151,958	\$ 145,703	\$ 133,566	\$ 88,259	\$ 85,577
Operating expenses, excluding depreciation and reserves	69,379	70,963	61,215	46,090	40,227
Interest expense	34,471	32,154	28,893	24,564	19,929
Depreciation and amortization	40,115	36,634	32,749	24,529	22,431
Gain on sale of land	—	—	763	—	—
Equity in earnings (losses) of unconsolidated partnerships	10,971	(1,529)	19,906	6,619	2,559
Impairment of investment in unconsolidated affiliate	—	(3,768)	—	—	—
Reserve for notes receivable	—	(1,734)	(4,392)	—	—
Other interest income	408	642	3,370	5,833	2,318
Gain from bargain purchase	33,805	—	—	—	—
Gain on debt extinguishment	—	7,057	1,523	—	—
Income tax expense (benefit)	2,890	1,541	3,362	297	(508)
Income from continuing operations	50,287	5,079	28,517	5,231	8,375
Income from discontinued operations	380	7,627	8,920	7,486	25,780
Income from extraordinary item (1)	—	—	—	27,844	—
Net income	50,667	12,706	37,437	40,561	34,155
<b>(Income) loss attributable to noncontrolling interests in subsidiaries:</b>					
Continuing operations	(20,307)	23,472	(11,438)	9,750	6,039
Discontinued operations	(303)	(5,045)	(931)	(798)	(1,274)
Extraordinary item	—	—	—	(24,167)	—
Net (income) loss attributable to noncontrolling interests in subsidiaries	(20,610)	18,427	(12,369)	(15,215)	4,765
Net income attributable to Common Shareholders	\$ 30,057	\$ 31,133	\$ 25,068	\$ 25,346	\$ 38,920
<b>Supplemental Information:</b>					
Income from continuing operations attributable to Common Shareholders	\$ 29,980	\$ 28,551	\$ 17,079	\$ 14,981	\$ 14,414
Income from discontinued operations attributable to Common Shareholders	77	2,582	7,989	6,688	24,506
Income from extraordinary item attributable to Common Shareholders	—	—	—	3,677	—
Net income attributable to Common Shareholders	\$ 30,057	\$ 31,133	\$ 25,068	\$ 25,346	\$ 38,920
<b>Basic earnings per share:</b>					
Income from continuing operations	\$ 0.75	\$ 0.75	\$ 0.51	\$ 0.45	\$ 0.43
Income from discontinued operations	—	0.07	0.23	0.20	0.72
Income from extraordinary item	—	—	—	0.11	—
Basic earnings per share	\$ 0.75	\$ 0.82	\$ 0.74	\$ 0.76	\$ 1.15
<b>Diluted earnings per share:</b>					
Income from continuing operations	\$ 0.74	\$ 0.75	\$ 0.50	\$ 0.44	\$ 0.42
Income from discontinued operations	—	0.07	0.23	0.19	0.71
Income from extraordinary item	—	—	—	0.11	—
Diluted earnings per share	\$ 0.74	\$ 0.82	\$ 0.73	\$ 0.74	\$ 1.13
<b>Weighted average number of Common Shares outstanding</b>					
- basic	40,136	38,005	33,813	33,600	33,789
- diluted	40,406	38,242	34,267	34,282	34,440
Cash dividends declared per Common Share (3)	\$ 0.7200	\$ 0.7500	\$ 0.8951	\$ 1.0325	\$ 0.7550
<b>BALANCE SHEET DATA:</b>					
Real estate before accumulated depreciation	\$ 1,386,299	\$ 1,200,483	\$ 1,085,072	\$ 810,697	\$ 606,905
Total assets	1,524,806	1,382,464	1,291,383	998,783	851,396
Total mortgage indebtedness	806,212	732,287	653,543	399,997	315,147
Total convertible notes payable	48,712	47,910	100,403	105,790	90,256
Total Common Shareholders' equity	318,212	312,185	227,722	249,717	250,567
Noncontrolling interests in subsidiaries	269,310	220,292	214,506	171,111	113,737
Total equity	587,522	532,477	442,228	420,828	364,304
<b>OTHER:</b>					
Funds from Operations, adjusted for extraordinary item (1) (2)	50,440	49,613	37,964	42,094	39,860
<b>Cash flows provided by (used in):</b>					
Operating activities	44,377	47,462	66,517	105,294	39,627
Investing activities	(60,745)	(123,380)	(302,265)	(208,998)	(58,890)
Financing activities	43,152	83,035	199,096	87,476	68,359

Notes:

- (1) The extraordinary item relates to 2007 and represents our share of an extraordinary gain from our investment in Albertson's. We consider this to be a private-equity style investment in an operating businesses as opposed to real estate. Accordingly, all gains and losses from this investment is included in FFO, which we believe provides a more accurate reflection of our operating performance.

- (2) We consider funds from operations (“FFO”) as defined by the National Association of Real Estate Investment Trusts (“NAREIT”) to be an appropriate supplemental disclosure of operating performance for an equity REIT due to its widespread acceptance and use within the REIT and analyst communities. FFO is presented to assist investors in analyzing our performance. It is helpful as it excludes various items included in net income that are not indicative of the operating performance, such as gains (losses) from sales of depreciated property and depreciation and amortization. However, our method of calculating FFO may be different from methods used by other REITs and, accordingly, may not be comparable to such other REITs. FFO does not represent cash generated from operations as defined by generally accepted accounting principles (“GAAP”) and is not indicative of cash available to fund all cash needs, including distributions. It should not be considered as an alternative to net income for the purpose of evaluating our performance or to cash flows as a measure of liquidity. Consistent with the NAREIT definition, we define FFO as net income (computed in accordance with GAAP), excluding gains (losses) from sales of depreciated property, plus depreciation and amortization, and after adjustments for unconsolidated partnerships and joint ventures.
- (3) In addition to the \$0.8951 cash dividends declared in 2008, we declared a Common Share dividend of \$0.4949.

## **ITEM 7. MANagements DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.**

### **OVERVIEW**

As of December 31, 2010, we operated 79 properties, which we own or have an ownership interest in, within our Core Portfolio or within our three Opportunity Funds. Our Core Portfolio consists of those properties either 100% owned by, or partially owned through joint venture interests by the Operating Partnership, or subsidiaries thereof, not including those properties owned through our Opportunity Funds. These 79 properties consist of commercial properties, primarily neighborhood and community shopping centers, self-storage and mixed-use properties with a retail component. The properties we operate are located primarily in the Northeast, Mid-Atlantic and Midwestern regions of the United States. Excluding two properties under redevelopment, there are 32 properties in our Core Portfolio totaling approximately 4.8 million square feet. Fund I has 20 properties comprising approximately 0.9 million square feet. Fund II has 10 properties, eight of which (representing 1.2 million square feet) are currently operating, one is under construction, and one is in the design phase. Three of the properties also include self-storage facilities. We expect the Fund II portfolio will have approximately 2.0 million square feet upon completion of all current construction and anticipated redevelopment activities. Fund III has 15 properties totaling approximately 1.8 million square feet, of which 11 locations representing 0.9 million net rentable square feet are self-storage facilities and one is in the design phase. The majority of our operating income is derived from rental revenues from these 79 properties, including recoveries from tenants, offset by operating and overhead expenses. As our RCP Venture invests in operating companies, we consider these investments to be private-equity style, as opposed to real estate, investments. Since these are not traditional investments in operating rental real estate but investments in operating businesses, the Operating Partnership invests in these through a taxable REIT subsidiary (“TRS”).

Our primary business objective is to acquire and manage commercial retail properties that will provide cash for distributions to shareholders while also creating the potential for capital appreciation to enhance investor returns. We focus on the following fundamentals to achieve this objective:

- Own and operate a Core Portfolio of community and neighborhood shopping centers and main street retail located in markets with strong demographics and generate internal growth within the Core Portfolio through aggressive redevelopment, re-anchoring and/or leasing activities
- Maintain a strong and flexible balance sheet through conservative financial practices while ensuring access to sufficient capital to fund future growth
- Generate external growth through an opportunistic yet disciplined acquisition program. We target transactions with high inherent opportunity for the creation of additional value through redevelopment and leasing and/or transactions requiring creative capital structuring to facilitate the transactions. These transactions may include other types of commercial real estate besides those which we currently invest in through our Core Portfolio. These may also include joint ventures with private equity investors for the purpose of making investments in operating retailers with significant embedded value in their real estate assets

### **BUSINESS OUTLOOK**

The U.S. economy is currently in a post recessionary period, which has resulted in a significant decline in retail sales due to reduced consumer spending. Although the occupancy and net operating income within our portfolio has not been materially adversely affected through December 31, 2010, should retailers continue to experience deteriorating sales performance, the likelihood of additional tenant bankruptcy filings may increase, which would negatively impact our results of operations. In addition to the impact on retailers, this period has had an unprecedented impact on the U.S. credit markets. Traditional sources of financing, such as the commercial-mortgage backed security market, have become severely curtailed. If these conditions continue, our ability to finance new acquisitions or refinance existing debts as they mature will be adversely affected. Accordingly, our ability to generate external growth in income, as well as maintain existing operating income, could be limited.

See the “Item 1A. Risk Factors,” including the discussions under the headings “The current economic environment, while improving, may cause us to lose tenants and may impair our ability to borrow money to purchase properties, refinance existing debt or finance our current redevelopment projects” and “The bankruptcy of, or a downturn in the business of, any of our major tenants or a significant number of our smaller tenants may adversely affect our cash flows and property values.”

## RESULTS OF OPERATIONS

Reference is made to Note 3 to the Notes to Consolidated Financial Statements beginning on page F-1 of this Form 10-K for an overview of our five reportable segments.

### Comparison of the year ended December 31, 2010 ("2010") to the year ended December 31, 2009 ("2009")

Revenues	2010				2009			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Rental income	\$ 48.3	\$ 39.0	\$ 19.6	\$ —	\$ 51.2	\$ 34.7	\$ 9.8	\$ —
Mortgage interest income	—	—	—	19.2	—	—	—	19.7
Expense reimbursements	13.3	8.7	—	—	13.7	7.2	—	—
Lease termination income	0.3	—	—	—	2.8	—	—	—
Management fee income (1)	—	—	—	1.4	—	—	—	2.0
Other	0.3	0.2	1.7	—	1.9	1.4	1.3	—
<b>Total revenues</b>	<b>\$ 62.2</b>	<b>\$ 47.9</b>	<b>\$ 21.3</b>	<b>\$ 20.6</b>	<b>\$ 69.6</b>	<b>\$ 43.3</b>	<b>\$ 11.1</b>	<b>\$ 21.7</b>

Note:

(1) Fees earned by us as general partner/managing member of the Opportunity Funds are eliminated in consolidation and adjust the loss (income) attributable to noncontrolling interests and are not reflected above. The balance reflected in the table represents third party fees that are not eliminated in consolidation.

The decrease in rental income in the Core Portfolio was primarily attributable to tenant vacancies at Chestnut Hill and Third Avenue. The increase in rental income in the Opportunity Funds primarily related to additional rents following the acquisition of Cortlandt Towne Center ("2009 Fund Acquisition") of \$1.0 million and additional rents at Fordham Place, Pelham Manor and Canarsie for leases that commenced in 2009 and 2010 ("Fund Redevelopment Properties"). The increase in rental income in the Storage Portfolio related to the full amortization of acquired lease intangible costs during 2009, increased occupancy in the Storage Portfolio as well as our discontinued practice of reporting the Storage Portfolio one month in arrears which was based on the historical unavailability of timely financial information. Based on improvements in the Storage Portfolio accounting systems, we report this activity on a current basis. Accordingly, the year ended December 31, 2010 reflects thirteen months of storage activity while the year ended December 31, 2009 reflects twelve months of storage activity ("Storage Portfolio Activity").

Expense reimbursements in the Opportunity Funds increased for both real estate taxes and common area maintenance primarily as a result of the 2009 Fund Acquisition and Fund Redevelopment Properties.

Lease termination income in the Core Portfolio for 2009 related to termination fee income received from a former tenant at Absecon Marketplace.

Other in the Core Portfolio in 2009 included \$1.7 million resulting from a forfeited sales contract deposit.

Other in the Opportunity Funds during 2009 included \$0.9 million received by Fund II in settlement of litigation in connection with a property acquisition.

Operating Expenses	2010				2009			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Property operating	\$ 10.5	\$ 11.8	\$ 10.2	\$ (1.5)	\$ 12.1	\$ 10.1	\$ 8.7	\$ (1.2)
Real estate taxes	9.0	6.3	2.9	—	9.3	5.3	2.2	—
General and administrative	22.4	13.5	0.1	(15.8)	24.0	13.5	0.1	(15.6)
Depreciation and amortization	16.2	19.4	5.1	(0.6)	17.2	16.5	4.4	(1.5)
Abandonment of project costs	—	—	—	—	—	2.5	—	—
Reserve for notes receivable	—	—	—	—	—	—	—	1.7
<b>Total operating expenses</b>	<b>\$ 58.1</b>	<b>\$ 51.0</b>	<b>\$ 18.3</b>	<b>\$ (17.9)</b>	<b>\$ 62.6</b>	<b>\$ 47.9</b>	<b>\$ 15.4</b>	<b>\$ (16.6)</b>

The decrease in property operating expenses in the Core Portfolio was primarily attributable to a decrease in bad debt expense in 2010. The increase in property operating expenses in the Opportunity Funds was primarily attributable to the 2009 Fund Acquisition and Fund Redevelopment Properties. The increase in property operating expenses in the Storage Portfolio primarily related to higher

operating costs in 2010 following increased occupancy as well as the Storage Portfolio Activity.

The increase in real estate taxes in the Opportunity Funds was primarily attributable to the 2009 Fund Acquisition as well as Fund Redevelopment Properties.

The decrease in general and administrative expense in the Core Portfolio was primarily attributable to reduced compensation expense following staff reductions in 2009.

Depreciation and amortization expense in the Core Portfolio decreased as a result of the write-off of lease intangible costs in connection with a terminated lease in 2009. Depreciation expense in the Opportunity Funds increased \$0.3 million as result of the 2009 Acquisition. Amortization expense in the Opportunity Funds increased \$2.6 million primarily due to the write-off of deferred financing costs related to refinanced debt in 2010. Depreciation and amortization expense in the Storage Portfolio increased \$0.7 million primarily as a result of two self storage properties placed in service during the second quarter 2009.

The \$2.5 million abandonment of project costs in the Opportunity Funds in 2009 was attributable to our determination that we most likely would not participate in a specific future development project.

The reserve for notes receivable of \$1.7 million in 2009 related to the loss of an anchor tenant at the underlying collateral property.

<i>Other</i>	2010				2009			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Equity in earnings (losses) of unconsolidated affiliates	\$ 0.6	\$ 11.8	(1.4)	\$ —	\$ 0.7	\$ (2.2)	\$ —	\$ —
Impairment of investment in unconsolidated affiliate	—	—	—	—	—	(3.8)	—	—
Other interest income	—	—	—	0.4	—	—	—	0.6
Gain from bargain purchase	—	33.8	—	—	—	—	—	—
Gain on debt extinguishment	—	—	—	—	7.1	—	—	—
Interest and other finance expense	(17.1)	(13.4)	(4.1)	0.1	(18.7)	(8.4)	(5.0)	—
Income tax expense	(3.2)	(0.1)	0.4	—	(1.4)	(0.1)	—	—
Income from discontinued operations	—	—	—	0.4	—	—	—	7.6
(Income) loss attributable to noncontrolling interests in subsidiaries:								
- Continuing operations	(0.3)	(22.6)	0.1	2.5	(0.4)	22.5	(0.5)	1.9
- Discontinued operations	—	—	—	(0.3)	—	—	—	(5.0)

Equity in earnings (losses) of unconsolidated affiliates in the Opportunity Funds increased primarily as a result of an increase in distributions in excess of basis from our Albertson's investment of \$9.5 million in 2010 and an increase in our pro-rata share of income from Mervyns in 2010. Equity in earnings (losses) in the Self Storage Portfolio represents the pro-rata share of losses from our unconsolidated investment in the newly-formed self storage management company.

The \$3.8 million impairment of investment in unconsolidated affiliate during 2009 was the result of the reduction in value of the underlying property due to the recession and the related reduction in Fund I's carrying value of this investment including a partial guarantee of the mortgage debt.

The \$33.8 million gain from bargain purchase was attributable to Fund II's purchase of an unaffiliated membership interest in CityPoint in 2010. Reference is made to Note 2 of the Notes to Consolidated Financial Statements which begin on page F-1 of this Form 10-K for a discussion of this transaction.

The gain on debt extinguishment of \$7.1 million was attributable to the purchase of our convertible debt at a discount in 2009.

Total interest expense in the Core Portfolio decreased \$1.6 million in 2010. This was the result of a \$2.5 million decrease attributable to lower average outstanding borrowings in 2010 offset by a \$0.9 million increase attributable to higher average interest rates in 2010. Interest expense in the Opportunity Funds increased \$5.0 million in 2010. This was the result of an increase of \$2.9 million due to higher average interest rates in 2010, an increase of \$1.8 million due to higher average outstanding borrowings in 2010 and \$0.3 million of lower capitalized interest in 2010. Interest expense in the Storage Portfolio decreased \$0.9 million in 2010. This was

primarily attributable to a \$1.4 million decrease due to lower average interest rates in 2010. This decrease was offset by \$0.3 million of lower capitalized interest in 2010 and an increase of \$0.2 million due to higher average outstanding borrowings in 2010.

The variance in the income tax expense in the Core Portfolio primarily related to income taxes at the TRS level for our pro-rata share of income from our Albertson's investment in 2010.

Income from discontinued operations represents activity related to property held for sale in 2010 and property sales in 2009.

(Income) loss attributable to noncontrolling interests in subsidiaries – Continuing operations and Discontinued operations primarily represents the noncontrolling interests' share of all the Opportunity Funds variances discussed above.

#### Comparison of the year ended December 31, 2009 ("2009") to the year ended December 31, 2008 ("2008")

Revenues	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Rental income	\$ 51.2	\$ 34.7	\$ 9.8	\$ —	\$ 51.0	\$ 21.4	\$ 4.7	\$ —
Mortgage interest income	—	—	—	19.7	—	—	—	11.2
Expense reimbursements	13.7	7.2	—	—	14.1	2.7	—	—
Lease termination income	2.8	—	—	—	—	24.0	—	—
Management fee income (1)	—	—	—	2.0	—	—	—	3.4
Other	1.9	1.4	1.3	—	0.3	—	0.8	—
<b>Total revenues</b>	<b>\$ 69.6</b>	<b>\$ 43.3</b>	<b>\$ 11.1</b>	<b>\$ 21.7</b>	<b>\$ 65.4</b>	<b>\$ 48.1</b>	<b>\$ 5.5</b>	<b>\$ 14.6</b>

Note:

(1) Fees earned by us as general partner/managing member of the Opportunity Funds are eliminated in consolidation and adjust the loss (income) attributable to noncontrolling interests and are not reflected above. The balance reflected in the table represents third party fees that are not eliminated in consolidation.

The increase in rental income in the Opportunity Funds primarily related to additional rents from the 2009 Fund Acquisition of \$7.5 million and certain Fund Redevelopment Properties. The increase in rental income in the Storage Portfolio related to the February 2008 acquisition of the Storage Post Portfolio ("Storage Acquisition") versus a full year of activity for 2009. In addition, the increase in minimum rents in the Storage Portfolio was also attributable to the full amortization of acquired lease intangible costs during 2009.

The increase in mortgage interest income was the result of higher interest earning assets in 2009, primarily from new notes/mezzanine financing investments originated during the second half of 2008.

Expense reimbursements in the Opportunity Funds increased for both real estate taxes and common area maintenance as a result of the 2009 Fund Acquisition as well as certain Fund Redevelopment Properties.

Lease termination income in the Core Portfolio for 2009 related to a termination fee earned from a tenant at Absecon Marketplace. Lease termination income in the Opportunity Funds for 2008 related to a termination fee earned, net of costs, from a tenant at Canarsie Plaza.

Management fee income decreased primarily as a result of lower fees earned of \$0.9 million from the CityPoint development project and lower fees from our Klaff management contracts.

Other in the Core Portfolio in 2009 included \$1.7 million resulting from a forfeited sales contract deposit.

Other in the Opportunity Funds during 2009 included \$0.9 million received by Fund II in settlement of litigation in connection with a property acquisition.

Operating Expenses	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Property operating	\$ 12.1	\$ 10.1	\$ 8.7	\$ (1.2)	\$ 12.2	\$ 6.8	\$ 5.3	\$ (0.4)
Real estate taxes	9.3	5.3	2.2	—	8.8	2.0	1.4	—
General and administrative	24.0	13.5	0.1	(15.6)	26.0	16.1	0.1	(17.7)
Depreciation and amortization	17.2	16.5	4.4	(1.5)	20.3	9.5	3.0	—
Abandonment of project costs	—	2.5	—	—	—	0.6	—	—
Reserve for notes receivable	—	—	—	1.7	—	—	—	4.4
<b>Total operating expenses</b>	<b>\$ 62.6</b>	<b>\$ 47.9</b>	<b>\$ 15.4</b>	<b>\$ (16.6)</b>	<b>\$ 67.3</b>	<b>\$ 35.0</b>	<b>\$ 9.8</b>	<b>\$ (13.7)</b>

The increase in property operating expenses in the Opportunity Funds was primarily the result of the 2009 Fund Acquisition and certain Fund Redevelopment Properties. The increase in property operating expenses in the Storage Portfolio related to the Storage Acquisition.

The increase in real estate taxes in the Opportunity Funds was primarily attributable to the 2009 Fund Acquisition.

The decrease in general and administrative expense in the Core Portfolio was primarily attributable to reduced compensation expense following staff reductions in the second half of 2008 and in the first half of 2009. The decrease in general and administrative expense in the Opportunity Funds related to the reduction in Promote expense attributable to Fund I and Mervyns I. The increase in general and administrative expense in Other primarily related to the reduction in Fund I and Mervyns I Promote expense eliminated for consolidated financial statement presentation purposes.

Depreciation expense in the Core Portfolio decreased \$2.4 million in 2009. This was principally a result of increased depreciation expense in 2008 resulting from the write-down of tenant improvements at two properties attributable to the bankruptcy of Circuit City. Amortization expense in the Core Portfolio decreased \$0.7 million primarily as a result of lower amortization expense in 2009 associated with the Klaff management contracts. Depreciation expense increased \$5.0 million and amortization expense increased \$2.0 million in the Opportunity Funds primarily due to the 2009 Fund Acquisition and certain Fund Redevelopment Properties. Depreciation expense and amortization expense increased \$1.4 million in the Storage Portfolio primarily as a result of the Storage Acquisition. Depreciation and amortization expense decreased \$1.5 million in Other as a result of depreciation associated with the elimination of capitalizable costs within the consolidated group.

The \$2.5 million abandonment of project costs in 2009 was attributable to our determination that we most likely would not participate in a specific future development project.

The reserve for notes receivable of \$1.7 million in 2009 related to the loss of an anchor tenant at the underlying collateral property. The 2008 reserve for notes receivable of \$4.4 million related to a mezzanine loan.

<i>Other</i>	2009				2008			
	<u>Core Portfolio</u>	<u>Opportunity Funds</u>	<u>Self-Storage Portfolio</u>	<u>Notes Receivable and Other</u>	<u>Core Portfolio</u>	<u>Opportunity Funds</u>	<u>Self-Storage Portfolio</u>	<u>Notes Receivable and Other</u>
(dollars in millions)								
Equity in earnings (losses) of unconsolidated affiliates	\$ 0.7	\$ (2.2)	\$ —	\$ —	\$ —	\$ 19.9	\$ —	\$ —
Impairment of investment in unconsolidated affiliate	—	(3.8)	—	—	—	—	—	—
Other interest income	—	—	—	0.6	—	—	—	3.4
Gain on debt extinguishment	7.1	—	—	—	1.5	—	—	—
Interest and other finance expense	(18.7)	(8.4)	(5.0)	—	(19.8)	(5.7)	(3.4)	—
Gain on sale of land	—	—	—	—	0.8	—	—	—
Income tax expense	(1.4)	(0.1)	—	—	(3.4)	—	—	—
Income from discontinued operations	—	—	—	7.6	—	—	—	8.9
(Income) loss attributable to noncontrolling interests in subsidiaries:								
- Continuing operations	(0.4)	22.5	(0.5)	1.9	0.2	(15.8)	0.4	3.6
- Discontinued operations	—	—	—	(5.0)	—	—	—	(0.9)

Equity in earnings (losses) of unconsolidated affiliates in the Opportunity Funds decreased primarily as a result of our pro-rata share of gains from the sale of Mervyns locations in 2008 of \$10.4 million, a decrease in distributions in excess of basis from our Albertson's investment of \$7.9 million in 2009 and our pro-rata share of gain from the sale of the Haygood Shopping Center of \$3.4 million in 2008.

The \$3.8 million impairment of investment in unconsolidated affiliate during 2009 was the result of the reduction in value of the underlying property due to the recession and the related reduction in Fund I's carrying value of this investment including a partial guarantee of the mortgage debt.

Other interest income decreased in 2009 as a result of lower cash balances during the year and lower average interest rates on cash and cash equivalents.

The gain on debt extinguishment of \$7.1 million in 2009 and \$1.5 million in 2008 was attributable to the purchase of our convertible debt at a discount.

Interest expense in the Core Portfolio decreased \$1.1 million in 2009. This was primarily the result of lower interest expense related to the purchase of the Company's convertible notes payable offset by a \$0.7 million write-off of the unamortized premium related to the repayment of a mortgage note payable during 2008. Interest expense in the Opportunity Funds increased \$2.7 million in 2009. This was primarily attributable to an increase of \$4.2 million due to higher average outstanding borrowings in 2009 and \$0.6 million of lower capitalized interest in 2009. These increases were offset by a \$2.2 million decrease related to lower average interest rates in 2009. Interest expense in the Storage Portfolio increased \$1.6 million in 2009. This was primarily due to an increase of \$0.9 million due to higher average outstanding borrowings in 2009 as well as an increase of \$0.8 million due to higher average interest rates in 2009.

The gain on sale of land of \$0.8 million in the Core Portfolio related to the sale of a land parcel at Bloomfield Town Square in 2008.

The variance in the income tax expense in the Core Portfolio primarily related to income taxes at the TRS level for our share of income/gains from our Mervyns and Albertson's investments in 2008.

Income from discontinued operations represents activity related to properties sold in 2009 and 2008.

(Income) loss attributable to noncontrolling interests in subsidiaries – Continuing operations and Discontinued operations primarily represents the noncontrolling interests' share of all the Opportunity Funds variances discussed above.

## RECONCILIATION OF NET INCOME TO FUNDS FROM OPERATIONS AND ADJUSTED FUNDS FROM OPERATIONS

(dollars in thousands)	For the Years Ended December 31,				
	2010	2009	2008	2007	2006
Net income attributable to Common Shareholders	\$ 30,057	\$ 31,133	\$ 25,068	\$ 25,346	\$ 38,920
Depreciation of real estate and amortization of leasing costs:					
Consolidated affiliates, net of noncontrolling interests' share	18,445	18,847	18,519	19,669	20,206
Unconsolidated affiliates	1,561	1,604	1,687	1,736	1,806
Income attributable to noncontrolling interests in operating partnership (1)	377	464	437	614	803
Gain on sale of properties (net of noncontrolling interests' share)					
Consolidated affiliates	—	(2,435)	(7,182)	(5,271)	(20,974)
Unconsolidated affiliates	—	—	(565)	—	(901)
Extraordinary item (net of noncontrolling interests' share and income taxes) (3)	—	—	—	(3,677)	—
Funds from operations (2)	50,440	49,613	37,964	38,417	39,860
Add back: Extraordinary item, net (3)	—	—	—	3,677	—
Funds from operations, adjusted for extraordinary item	\$ 50,440	\$ 49,613	\$ 37,964	\$ 42,094	\$ 39,860
<b>Adjusted Funds From Operations per Share - Diluted</b>					
Weighted average number of Common Shares and OP Units	40,876	38,913	34,940	34,924	35,087
Diluted funds from operations, per share	\$ 1.23	\$ 1.28	\$ 1.09	\$ 1.21	\$ 1.14



**Notes:**

- (1) Represents income attributable to Common OP Units and does not include distributions paid to Series A and B Preferred OP Unitholders.
- (2) We consider funds from operations (“FFO”) as defined by the National Association of Real Estate Investment Trusts (“NAREIT”) to be an appropriate supplemental disclosure of operating performance for an equity REIT due to its widespread acceptance and use within the REIT and analyst communities. FFO is presented to assist investors in analyzing our performance. It is helpful as it excludes various items included in net income that are not indicative of the operating performance, such as gains (losses) from sales of depreciated property and depreciation and amortization. However, our method of calculating FFO may be different from methods used by other REITs and, accordingly, may not be comparable to such other REITs. FFO does not represent cash generated from operations as defined by generally accepted accounting principles (“GAAP”) and is not indicative of cash available to fund all cash needs, including distributions. It should not be considered as an alternative to net income for the purpose of evaluating our performance or to cash flows as a measure of liquidity. Consistent with the NAREIT definition, we define FFO as net income (computed in accordance with GAAP), excluding gains (losses) from sales of depreciated property, plus depreciation and amortization, and after adjustments for unconsolidated partnerships and joint ventures.
- (3) This item represents our share of an extraordinary gain from our investment in Albertson’s, which recorded an extraordinary gain in connection with the allocation of purchase price to assets acquired. We consider this to be a private-equity style investment in an operating businesses as opposed to real estate. Accordingly, all gains and losses from this investment are included in FFO, which we believe provides a more accurate reflection of our operating performance.

**LIQUIDITY AND CAPITAL RESOURCES**

**Uses of Liquidity**

Our principal uses of liquidity are (i) distributions to our shareholders and OP unit holders, (ii) investments which include the funding of our capital committed to the Opportunity Funds and property acquisitions and redevelopment/re-tenanting activities within our Core Portfolio, and (iii) debt service and loan repayments, including the repurchase of our Convertible Notes.

**Distributions**

In order to qualify as a REIT for Federal income tax purposes, we must currently distribute at least 90% of our taxable income to our shareholders. For the year ended December 31, 2010, we paid dividends and distributions on our Common Shares and Common OP Units totaling \$29.7 million. In addition, in December of 2008, our Board of Trustees approved a special dividend of approximately \$0.55 per share, or \$18.0 million in the aggregate, which was associated with taxable gains arising from property dispositions in 2008, which was paid on January 30, 2009, to shareholders of record on December 31, 2008. Ninety percent of the special dividend was paid with the issuance of 1.3 million Common Shares and 10%, or \$1.8 million, was paid in cash.

**Investments**

**Fund I and Mervyns I**

Fund I and Mervyns I have returned all invested capital and accumulated preferred return thus triggering our Promote in all future Fund I and Mervyns I earnings and distributions. As of December 31, 2010, \$86.6 million has been invested in Fund I and Mervyns I, of which the Operating Partnership contributed \$19.2 million.

As of December 31, 2010, Fund I currently owned, or had ownership interests in 20 assets comprising approximately 0.9 million square feet as further discussed in “PROPERTY ACQUISITIONS” in Item 1 of this Form 10-K.

In addition, we, along with our Fund I investors have invested in Mervyns as discussed in Item 1. of this Form 10-K.

**Fund II and Mervyns II**

To date, Fund II’s primary investment focus has been in the New York Urban/Infill Redevelopment Initiative and the Retailer Controlled Property Venture. As of December 31, 2010, \$265.2 million has been invested in Fund II, of which the Operating Partnership contributed \$53.0 million. The remaining capital balance of \$34.8 million is expected to be utilized to complete development activities for existing Fund II investments.

Fund II has invested in the New York Urban/Infill Redevelopment and the RCP Venture initiatives and other investments as further discussed in “PROPERTY ACQUISITIONS” in Item 1, of this Form 10-K.

**New York Urban/Infill Redevelopment Initiative**

In September 2004, we, through Fund II, launched our New York Urban/Infill Redevelopment Initiative. During 2004, Fund II, together with an unaffiliated partner, P/A Associates, LLC (“P/A”), formed Acadia P/A Holding Company, LLC (“Acadia-P/A”) for the purpose of acquiring, constructing, developing, owning, operating, leasing and managing certain mixed-use real estate properties in the New York City metropolitan area which include a retail component. To date P/A has invested \$2.2 million and Fund II, the managing member, has agreed to invest the balance.

To date, Fund II has invested in nine New York Urban/Infill Redevelopment Initiative construction projects, eight of which were made through Acadia-P/A, as follows:

Property	Location	Year acquired	Costs to date	Redevelopment (dollars in millions)		
				Anticipated additional costs	Estimated construction completion	Square feet upon completion
Liberty Avenue (1)	Queens	2005	\$ 15.5	\$ —	Completed	125,000
216 <sup>th</sup> Street	Manhattan	2005	27.7	—	Completed	60,000
Fordham Place	Bronx	2004	124.5	9.8	Completed	276,000
Pelham Manor Shopping Plaza (1)	Westchester	2004	61.4	2.6	Completed	320,000
161 <sup>st</sup> Street (2)	Bronx	2005	61.6	5.1	TBD	230,000
Atlantic Avenue (3)	Brooklyn	2007	22.0	0.1	Completed	110,000
Canarsie Plaza	Brooklyn	2007	80.3	9.8	Completed	279,000
CityPoint (4)	Brooklyn	2007	81.8	118.2	TBD	550,000
Sherman Plaza	Manhattan	2005	33.4	TBD	TBD	TBD
Total			\$ 508.2	\$ 145.6		1,950,000

**Notes:**

TBD – To be determined

- (1) Acadia-P/A acquired a ground lease interest at this property.
- (2) Currently operating but redevelopment activities have commenced.
- (3) P/A is not a partner in this project.
- (4) Fund II acquired a ground lease interest at this property.

On June 30, 2010, Fund II acquired all of CUIP’s 75.25% interests in CityPoint for \$9.2 million, consisting of a current cash payment of \$2.0 million and deferred payments, potentially through 2020, aggregating \$7.2 million, as well as the assumption of CUIP’s share of the first mortgage debt representing \$19.6 million. Reference is made to Note 2 in our Consolidated Financial Statements, which begin on Page F-1 of this Form 10-K for a further discussion of this transaction.

**RCP Venture**

See “Property Acquisitions” in Item 1. of this Form 10-K for a table summarizing the RCP Venture investments from inception through December 31, 2010.

**Fund III**

During 2007, we formed Fund III with 14 institutional investors, including all of the investors from Fund I and a majority of the investors from Fund II with \$502.5 million of committed discretionary capital. As of December 31, 2010, \$96.5 million has been invested in Fund III, of which the Operating Partnership contributed \$19.2 million.

Fund III has invested in the New York Urban/Infill Redevelopment Initiatives and other investments as further discussed in “PROPERTY ACQUISITIONS” in Item 1 of this Form 10-K. The projects are as follows:

Property	Location	Year acquired	Costs to date	Anticipated additional costs	Estimated construction completion	Square feet upon completion
Sheepshead Bay	Brooklyn, NY	2007	\$ 22.8	\$ TBD	TBD	TBD
125 Main Street	Westport, CT	2007	18.7	6.7	2 <sup>nd</sup> half 2011	26,000
Total			\$ 41.5	\$ 6.7		26,000

**Notes:**

TBD – To be determined

### *Other Fund III Investments*

During February 2008, Acadia, through Fund III, and in conjunction with an unaffiliated partner, Storage Post, acquired a portfolio of eleven self-storage properties from Storage Post's institutional investors for approximately \$174.0 million. The properties are located throughout New York and New Jersey.

During January 2009, Fund III purchased Cortlandt Towne Center for \$78.0 million. The property is a 642,000 square foot shopping center located in Westchester County, NY, a trade area with high barriers to entry for regional and national retailers.

During December 2010, Fund III, in a joint venture with an unaffiliated partner, acquired the 255,200 square foot White City Shopping Center in Shrewsbury, Massachusetts for \$56.0 million.

During February 2011, Fund III, in a joint venture with an unaffiliated partner, acquired a three property portfolio (the "Portfolio") for an aggregate purchase price of \$51.9 million with \$20.6 million of in-place mortgage financing assumed at closing. The Portfolio consists of three street-retail properties, aggregating 61,000 square feet, and is located in South Miami Beach, Florida.

During February 2011, Fund III, in a joint venture with an unaffiliated partner, acquired a 64,600 square foot single tenant retail property located in Silver Springs, Maryland, for approximately \$9.8 million.

### **Notes Receivable**

At December 31, 2010, our notes receivable, net aggregated \$89.2 million, with accrued interest thereon of \$7.6 million, and were collateralized by the underlying properties, the borrower's ownership interest in the entities that own the properties and/or by the borrower's personal guarantee. Effective interest rates on our notes receivable ranged from 10.0% to 24.0% with maturities through January 2017.

During December 2009, we made a loan for \$8.6 million which bears interest at 14.5% and matures on June 30, 2011.

### **Other Investments**

Acquisitions made during 2010, 2009 and 2008 are discussed in "PROPERTY ACQUISITIONS" in Item 1 of this Form 10-K:

### **Core Portfolio Property Redevelopment and Expansion**

Our Core Portfolio redevelopment program focuses on selecting well-located neighborhood and community shopping centers and creating significant value through re-tenanting and property redevelopment. We currently have two properties in the early stages of redevelopment, Ledgewood Mall and Third Avenue.

### **Purchase of Convertible Notes**

Purchases of the Notes has been another use of our liquidity. During 2009, we purchased an additional \$57.0 million in face amount of our outstanding convertible notes for \$46.7 million.

### **Share Repurchase**

We have an existing share repurchase program that authorizes management, at its discretion, to repurchase up to \$20.0 million of our outstanding Common Shares. The program may be discontinued or extended at any time and there is no assurance that we will purchase the full amount authorized. Under this program we have repurchased 2.1 million Common Shares, none of which were repurchased after December 2001. As of December 31, 2010, management may repurchase up to approximately \$7.5 million of our outstanding Common Shares under this program.

### **SOURCES OF LIQUIDITY**

We intend on using Fund III, as well as new funds that we may establish in the future, as the primary vehicles for our future acquisitions, including potential investments in the RCP Venture and New York Urban/Infill Redevelopment Initiative. Additional sources of capital for funding property acquisitions, redevelopment, expansion and re-tenanting and RCP Venture investments, are expected to be obtained primarily from (i) the issuance of public equity or debt instruments, (ii) cash on hand and cash flow from operating activities, (iii) additional debt financings, (iv) noncontrolling interests' unfunded capital commitments of \$325.2 million for Fund III and (v) future sales of existing properties.

During 2010, Fund II received capital contributions of \$41.9 million to fund redevelopment projects and partially pay down a line of credit facility.

As of December 31, 2010, we had cash and cash equivalents on hand of \$120.6 million and \$103.9 million of additional capacity under existing debt facilities.

### Shelf Registration Statements and Issuance of Equity

During April 2009, we filed a shelf registration on Form S-3 providing for offerings of up to a total of \$500.0 million of Common Shares, Preferred Shares and debt securities. During April 2009, we issued 5.75 million Common Shares and generated net proceeds of approximately \$65.0 million. The proceeds were primarily used to purchase a portion of our outstanding convertible notes payable and pay down existing lines of credit. Following this issuance, we have remaining capacity under this registration statement to issue up to approximately \$430.0 million of these securities.

### Asset Sales

Asset sales are an additional source of liquidity for us. In March 2010, we sold the Sterling Heights Shopping Center, which was owned through Fund I, for \$2.3 million. During November 2009, we sold Blackman Plaza for \$2.5 million, which resulted in a gain on sale of \$1.5 million. During February 2009, we sold six locations in our Fund I's Kroger/Safeway Portfolio for \$14.6 million of which Fund I's share of the sales proceeds amounted to \$8.1 million after the repayment of the mortgage debt on these properties. During April 2008, we sold a residential complex located in Winston-Salem, North Carolina. These sales are discussed in "ASSET SALES AND CAPITAL/ASSET RECYCLING" in Item 1 of this Form 10-K.

### Notes Receivable and Preferred Equity Repayment

Reference is made to Note 5 in our Consolidated Financial Statements, which begin on Page F-1 of this Form 10-K, for an overview of our notes receivable and preferred equity investment. During 2010, the following payments were received on these investments:

During April 2010, we received a \$2.1 million first mortgage loan payment.

During September 2010, we received the full repayment of our \$40.0 million preferred equity investment, which was secured by a portfolio of 18 properties located in Georgetown, Washington D.C., along with \$9.4 million of preferred return.

### Financing and Debt

At December 31, 2010, mortgage and convertible notes payable aggregated \$854.9 million, net of unamortized premium of \$0.1 million, and unamortized discount of \$1.1 million, and were collateralized by 29 properties and related tenant leases. Interest rates on our outstanding indebtedness ranged from 0.86% to 7.34% with maturities that ranged from March 2011 to November 2032. Taking into consideration \$71.5 million of notional principal under variable to fixed-rate swap agreements currently in effect, \$415.0 million of the portfolio, or 49%, was fixed at a 5.7% weighted average interest rate and \$439.9 million, or 51% was floating at a 3.4% weighted average interest rate. There is \$385.7 million of debt maturing in 2011 at weighted average interest rates of 2.8%. Of this amount, \$4.8 million represents scheduled annual amortization. The loans relating to \$159.7 million of the 2011 maturities provide for extension options, which we believe we will be able to exercise. As it relates to maturities, we may not have sufficient cash on hand to repay such indebtedness and, as such, we may have to refinance this indebtedness or select other alternatives based on market conditions at that time.

The following table sets forth certain information pertaining to the Company's secured credit facilities:

(dollars in millions) Borrower	Total available credit facilities	Amount borrowed as of December 31, 2009	2010 net borrowings (repayments) during the year ended December 31, 2010	Amount borrowed as of December 31, 2010	Letters of credit outstanding as of December 31, 2010	Amount available under credit facilities as of December 31, 2010
Acadia Realty, LP	\$ 64.5	\$ 30.0	\$ (29.0)	\$ 1.0	\$ 8.6	\$ 54.9
Acadia Realty, LP	—	2.0	(2.0)	—	—	—
Fund II	40.0	48.2	(8.2)	40.0	—	—
Fund III	221.0	139.5	32.0	171.5	0.5	49.0
<b>Total</b>	<b>\$ 325.5</b>	<b>\$ 219.7</b>	<b>\$ (7.2)</b>	<b>\$ 212.5</b>	<b>\$ 9.1</b>	<b>\$ 103.9</b>

Reference is made to Note 8 and Note 9 to our Consolidated Financial Statements, which begin on Page F-1 of this Form 10-K, for a summary of the financing and refinancing transactions since December 31, 2009.

## CONTRACTUAL OBLIGATIONS AND OTHER COMMITMENTS

At December 31, 2010, maturities on our mortgage notes ranged from March 2011 to November 2032. In addition, we have non-cancelable ground leases at 24 of our shopping centers. We lease space for our White Plains corporate office for a term expiring in 2015. The following table summarizes our debt maturities, obligations under non-cancelable operating leases and construction commitments as of December 31, 2010:

Contractual obligations: (dollars in millions)	Total	Payments due by period			
		Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
Future debt maturities <sup>(1)</sup>	\$ 855.9	\$ 385.7	\$ 156.8	\$ 143.7	\$ 169.7
Interest obligations on debt	120.7	33.2	42.1	28.4	17.0
Operating lease obligations	171.6	5.4	12.0	11.0	143.2
Construction commitments <sup>(2)</sup>	31.1	31.1	—	—	—
<b>Total</b>	<b>\$ 1,179.3</b>	<b>\$ 455.4</b>	<b>\$ 210.9</b>	<b>\$ 183.1</b>	<b>\$ 329.9</b>

Notes:

<sup>(1)</sup> Includes \$1.0 million of unamortized discount related to our convertible notes payable.

<sup>(2)</sup> In conjunction with the redevelopment of our Core Portfolio and Opportunity Fund properties, we have entered into construction commitments with general contractors. We intend to fund these requirements with existing liquidity.

## OFF BALANCE SHEET ARRANGEMENTS

We have investments in the following joint ventures for the purpose of investing in operating properties. We account for these investments using the equity method of accounting as we have noncontrolling interests. As such, our financial statements reflect our share of income and loss from but not the assets and liabilities of these joint ventures.

Reference is made to Note 4 to our Consolidated Financial Statements, which begin on page F-1 of this Form 10-K, for a discussion of our unconsolidated investments. Our pro-rata share of unconsolidated debt related to those investments is as follows:

(dollars in millions)	Pro-rata share of mortgage debt Operating Partnership	Interest rate at December 31, 2010	Maturity date
Crossroads	\$ 30.1	5.37%	December 2014
Brandywine	36.9	5.99%	July 2016
White City	6.7	2.86%	December 2017
<b>Total</b>	<b>\$ 73.7</b>		

In addition, we have arranged for the provision of three separate letters of credit in connection with certain leases and investments. As of December 31, 2010 there were no outstanding balances under any of the letters of credit. If the letters of credit were fully drawn, the combined maximum amount of exposure would be \$9.1 million.

In addition to our derivative financial instruments, one of our unconsolidated affiliates, White City, was a party to an interest rate LIBOR swap with a notional value of \$20 million, which effectively fixes the interest rate at 5.5% and expires in December 2017. Our pro-rata share of the fair value of the derivative liability totaled \$0.1 million at December 31, 2010.

## HISTORICAL CASH FLOW

The following table compares the historical cash flow for the year ended December 31, 2010 ("2010") with the cash flow for the year ended December 31, 2009 ("2009").

(dollars in millions)	Years Ended December 31,		
	2010	2009	Variance
Net cash provided by operating activities	\$ 44.4	\$ 47.5	\$ (3.1)
Net cash used in investing activities	(60.7)	(123.4)	62.7
Net cash provided by financing activities	43.1	83.0	(39.9)
<b>Totals</b>	<b>\$ 26.8</b>	<b>\$ 7.1</b>	<b>\$ 19.7</b>

A discussion of the significant changes in cash flow for 2010 versus 2009 is as follows:

The decrease of \$3.1 million in net cash provided by operating activities was primarily attributable to the following:

Items which contributed to a decrease in cash from operating activities:

- Additional cash used during 2010 to fund an escrow account with the proceeds from the CityPoint bond financing

Items which contributed to an increase in cash from operating activities:

- An increase in distribution (primarily Albertson's) of operating income from unconsolidated affiliates during 2010

The decrease of \$62.7 million of net cash used in investing activities primarily resulted from the following:

Items which contributed to a decrease in cash from investing activities:

- An additional \$13.5 million in investments and advances to unconsolidated affiliates during 2010
- An additional \$12.0 million in proceeds from the sale of properties during 2009

Items which contributed to an increase in cash from investing activities:

- A decrease of \$54.3 million in expenditures for real estate, development and tenant installations during 2010
- An increase of \$28.4 million in repayments of notes receivable during 2010
- A decrease of \$9.4 million in advances of notes receivable during 2010

The \$39.9 million decrease in net cash provided by financing activities resulted primarily from the following:

Items which contributed to a decrease in cash from financing activities:

- A decrease of \$84.2 million in borrowings during 2010
- \$65.2 million of additional cash from the issuance of Common Shares, net of costs, during 2009

Items which contributed to an increase in cash from financing activities:

- A decrease of \$54.8 million in repayments of mortgage debt during 2010
- A decrease of \$46.5 million in repayments of convertible notes during 2010
- \$7.9 million of additional contributions from noncontrolling interests during 2010

## **CRITICAL ACCOUNTING POLICIES**

Management's discussion and analysis of financial condition and results of operations is based upon our Consolidated Financial Statements, which have been prepared in accordance with U.S. GAAP. The preparation of these Consolidated Financial Statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. We base our estimates on historical experience and assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe the following critical accounting policies affect the significant judgments and estimates used by us in the preparation of our Consolidated Financial Statements.

### **Valuation of Property Held for Use and Sale**

On a quarterly basis, we review the carrying value of both properties held for use and for sale. We perform the impairment analysis by calculating and reviewing net operating income on a property-by-property basis. We evaluate leasing projections and perform other analyses to conclude whether an asset is impaired. We record impairment losses and reduce the carrying value of properties when indicators of impairment are present and the expected undiscounted cash flows related to those properties are less than their carrying amounts. In cases where we do not expect to recover our carrying costs on properties held for use, we reduce our carrying cost to fair value. For properties held for sale, we reduce our carrying value to the fair value less costs to sell. For the years ended December 31, 2010, 2009 and 2008, no impairment losses on our properties were recognized. Management does not believe that the value of any properties in its portfolio was impaired as of December 31, 2010.

### **Investments in and Advances to Unconsolidated Joint Ventures**

The Company periodically reviews its investment in unconsolidated joint ventures for other than temporary declines in market value. Any decline that is not expected to be recovered in the next twelve months is considered other than temporary and an impairment charge is recorded as a reduction in the carrying value of the investment. During the year ended December 31, 2009, the Company recorded a \$3.8 million impairment reserve related to a Fund I unconsolidated joint venture. No impairment charges related to the Company's investment in unconsolidated joint ventures were recognized for the years ended December 31, 2010 and 2008.

## **Bad Debts**

We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of tenants to make payments on arrearages in billed rents, as well as the likelihood that tenants will not have the ability to make payments on unbilled rents including estimated expense recoveries. We also maintain a reserve for straight-line rent receivables. For the years ended December 31, 2010 and 2009, the allowance for doubtful accounts totaled \$7.5 million and \$7.0 million, respectively. If the financial condition of our tenants were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

## **Real Estate**

Real estate assets are stated at cost less accumulated depreciation. Expenditures for acquisition, development, construction and improvement of properties, as well as significant renovations are capitalized. Interest costs are capitalized until construction is substantially complete. Construction in progress includes costs for significant property expansion and redevelopment. Depreciation is computed on the straight-line basis over estimated useful lives of 30 to 40 years for buildings, the shorter of the useful life or lease term for tenant improvements and five years for furniture, fixtures and equipment. Expenditures for maintenance and repairs are charged to operations as incurred.

Upon acquisitions of real estate, we assess the fair value of acquired assets (including land, buildings and improvements, and identified intangibles such as above and below market leases and acquired in-place leases and customer relationships) and acquired liabilities in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 805 "Business Combinations" and ASC Topic 350 "Intangibles – Goodwill and Other," and allocate purchase price based on these assessments. We assess fair value based on estimated cash flow projections that utilize appropriate discount and capitalization rates and available market information. Estimates of future cash flows are based on a number of factors including the historical operating results, known trends, and market/economic conditions that may affect the property.

## **Revenue Recognition and Accounts Receivable**

Leases with tenants are accounted for as operating leases. Minimum rents are recognized on a straight-line basis over the term of the respective leases, beginning when the tenant takes possession of the space. Certain of these leases also provide for percentage rents based upon the level of sales achieved by the tenant. Percentage rent is recognized in the period when the tenants' sales breakpoint is met. In addition, leases typically provide for the reimbursement to us of real estate taxes, insurance and other property operating expenses. These reimbursements are recognized as revenue in the period the expenses are incurred.

We make estimates of the uncollectability of our accounts receivable related to tenant revenues. An allowance for doubtful accounts has been provided against certain tenant accounts receivable that are estimated to be uncollectible. See "Bad Debts" above. Once the amount is ultimately deemed to be uncollectible, it is written off.

## **Notes Receivable and Preferred Equity Investment**

Real estate notes receivable and preferred equity investments are intended to be held to maturity and are carried at cost. Interest income from notes receivable and preferred equity investments are recognized on the effective interest method over the expected life of the loan. Under the effective interest method, interest or fees to be collected at the origination of the loan or the payoff of the loan is recognized over the term of the loan as an adjustment to yield.

Allowances for real estate notes receivable and preferred equity investments are established based upon management's quarterly review of the investments. In performing this review, management considers the estimated net recoverable value of the loan as well as other factors, including the fair value of any collateral, the amount and status of any senior debt, and the prospects for the borrower. Because this determination is based upon projections of future economic events, which are inherently subjective, the amounts ultimately realized from the loans may differ materially from the carrying value at the balance sheet date. Interest income recognition is generally suspended for loans when, in the opinion of management, a full recovery of income and principal becomes doubtful. Income recognition is resumed when the suspended loan becomes contractually current and performance is demonstrated to be resumed.

During 2009, we provided a \$1.7 million reserve on a note receivable as a result of the loss of an anchor tenant at the underlying collateral property.

During 2008, we provided a \$4.4 million reserve on a note receivable collateralized by an interest in an entity owning retail complexes associated with seven public rest stops along the toll roads in and around Chicago, Illinois. The note and all accrued interest was subsequently cancelled during 2009.

## **INFLATION**

Our long-term leases contain provisions designed to mitigate the adverse impact of inflation on our net income. Such provisions include clauses enabling us to receive percentage rents based on tenants' gross sales, which generally increase as prices rise, and/or, in certain cases, escalation clauses, which generally increase rental rates during the terms of the leases. Such escalation clauses are often related to increases in the consumer price index or similar inflation indexes. In addition, many of our leases are for terms of less than

ten years, which permits us to seek to increase rents upon re-rental at market rates if current rents are below the then existing market rates. Most of our leases require the tenants to pay their share of operating expenses, including common area maintenance, real estate taxes, insurance and utilities, thereby reducing our exposure to increases in costs and operating expenses resulting from inflation.

## RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

Reference is made to Notes to our Consolidated Financial Statements, which begin on page F-1 of this Form 10-K.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

### Information as of December 31, 2010

Our primary market risk exposure is to changes in interest rates related to our mortgage debt. See Note 8 to our Consolidated Financial Statements, which begin on page F-1 of this Form 10-K, for certain quantitative details related to our mortgage debt.

Currently, we manage our exposure to fluctuations in interest rates primarily through the use of fixed-rate debt and interest rate swap agreements. As of December 31, 2010, we had total mortgage and convertible notes payable of \$854.9 million of which \$415.0 million, or 49% was fixed-rate, inclusive of debt with rates fixed through the use of derivative financial instruments, and \$439.9 million, or 51%, was variable-rate based upon LIBOR rates plus certain spreads. As of December 31, 2010, we were a party to seven interest rate swap transactions and one interest rate cap transaction to hedge our exposure to changes in interest rates with respect to \$71.5 million and \$28.9 million of LIBOR-based variable-rate debt, respectively. In addition, one of our unconsolidated partnerships was a party to an interest rate swap transaction with respect to \$20.0 million of LIBOR-based variable-rate debt.

The following table sets forth information as of December 31, 2010 concerning our long-term debt obligations, including principal cash flows by scheduled maturity and weighted average interest rates of maturing amounts (dollars in millions):

Consolidated mortgage debt:

Year	Scheduled amortization	Maturities	Total	Weighted average interest rate
2011	\$ 4.8	\$ 379.8	\$ 384.6	2.8%
2012	4.1	49.3	53.4	5.6%
2013	4.3	99.2	103.5	3.6%
2014	2.2	62.3	64.5	5.2%
2015	1.9	77.4	79.3	3.2%
Thereafter	7.6	162.0	169.6	5.8%
	<u>\$ 24.9</u>	<u>\$ 830.0</u>	<u>\$ 854.9</u>	

Mortgage debt in unconsolidated partnerships (at our pro-rata share):

Year	Scheduled amortization	Maturities	Total	Weighted average interest rate
2011	\$ 0.1	\$ —	\$ 0.1	n/a%
2012	0.5	—	0.5	n/a%
2013	0.5	—	0.5	n/a%
2014	0.5	—	0.5	n/a%
2015	0.5	28.0	28.5	5.4%
Thereafter	—	43.6	43.6	5.5%
	<u>\$ 2.1</u>	<u>\$ 71.6</u>	<u>\$ 73.7</u>	

\$384.6 million of our total consolidated debt and \$0.1 million of our pro-rata share of unconsolidated outstanding debt will become due in 2011. \$53.4 million of our total consolidated debt and \$0.5 million of our pro-rata share of unconsolidated debt will become due in 2012. As we intend on refinancing some or all of such debt at the then-existing market interest rates, which may be greater than the current interest rate, our interest expense would increase by approximately \$4.4 million annually if the interest rate on the refinanced debt increased by 100 basis points. After giving effect to noncontrolling interests, the Company's share of this increase would be \$1.5 million. Interest expense on our variable debt of \$439.9 million, net of variable to fixed-rate swap agreements currently in effect, as of December 31, 2010 would increase \$4.4 million if LIBOR increased by 100 basis points. After giving effect to noncontrolling interests, the Company's share of this increase would be \$0.6 million. We may seek additional variable-rate financing if and when pricing and other commercial and financial terms warrant. As such, we would consider hedging against the interest rate risk related to such additional variable-rate debt through interest rate swaps and protection agreements, or other means.

Based on our outstanding debt balances as of December 31, 2010, the fair value of our total consolidated outstanding debt would decrease by approximately \$12.6 million if interest rates increase by 1%. Conversely, if interest rates decrease by 1%, the fair value of our total outstanding debt would increase by approximately \$13.8 million.

As of December 31, 2010 and 2009, we had notes receivable and preferred equity investments of \$89.2 million and \$125.2 million, respectively. We determined the estimated fair value of our notes receivable and preferred equity investments as of December 31,



2010 and 2009 were \$90.6 million and \$126.4 million, respectively, by discounting future cash receipts utilizing a discount rate equivalent to the rate at which similar notes receivable would be originated under conditions then existing.

Based on our outstanding notes receivable and preferred equity investments balances as of December 31, 2010, the fair value of our total outstanding notes receivable and preferred equity investments would decrease by approximately \$0.5 million if interest rates increase by 1%. Conversely, if interest rates decrease by 1%, the fair value of our total outstanding notes receivable and preferred equity investments would increase by approximately \$0.5 million.

#### **Summarized Information as of December 31, 2009**

As of December 31, 2009, we had total mortgage and convertible notes payable of \$780.1 million of which \$439.0 million, or 56% was fixed-rate, inclusive of interest rate swaps, and \$341.1 million, or 44%, was variable-rate based upon LIBOR plus certain spreads. As of December 31, 2009, we were a party to eight interest rate swap transactions and one interest rate cap transaction to hedge our exposure to changes in interest rates with respect to \$83.4 million and \$30.0 million of LIBOR-based variable-rate debt, respectively.

Interest expense on our variable debt of \$341.1 million as of December 31, 2009 would have increased \$3.4 million if LIBOR increased by 100 basis points. Based on our outstanding debt balances as of December 31, 2009, the fair value of our total outstanding debt would have decreased by approximately \$18.3 million if interest rates increased by 1%. Conversely, if interest rates decreased by 1%, the fair value of our total outstanding debt would have increased by approximately \$20.5 million.

#### **Changes in Market Risk Exposures from 2009 to 2010**

Our interest rate risk exposure from December 31, 2009 to December 31, 2010 has increased, as we had \$341.1 million in variable-rate debt (or 44% of our total debt) at December 31, 2009, as compared to \$439.9 million (or 51% of our total debt) in variable-rate debt at December 31, 2010. In addition, the amount of our total debt increased from \$780.1 million at December 31, 2009 to \$854.9 million at December 31, 2010. This increased amount of debt could expose us to greater fluctuations in the fair value of our debt.

#### **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.**

The financial statements beginning on page F-1 are incorporated herein by reference.

#### **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.**

None.

#### **ITEM 9A. CONTROLS AND PROCEDURES.**

##### **(i) Disclosure Controls and Procedures**

We conducted an evaluation, under the supervision and with the participation of management including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2010 to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

##### **(ii) Internal Control Over Financial Reporting**

###### **(a) Management's Annual Report on Internal Control Over Financial Reporting**

Management of Acadia Realty Trust is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in the Securities Exchange Act of 1934 Rule 13(a)-15(f). Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2010 as required by the Securities Exchange Act of 1934 Rule 13(a)-15(c). In making this assessment, we used the criteria set forth in the framework in Internal Control–Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the “COSO criteria”). Based on our evaluation under the COSO criteria, our management concluded that our internal control over financial reporting was effective as of December 31, 2010 to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

BDO USA, LLP, an independent registered public accounting firm that audited our Financial Statements included in this Annual Report, has issued an attestation report on our internal control over financial reporting as of December 31, 2010, which appears in paragraph (b) of this Item 9A.

Acadia Realty Trust  
White Plains, New York  
February 28, 2011

**(b) Attestation report of the independent registered public accounting firm**

The Shareholders and Trustees of  
Acadia Realty Trust

We have audited Acadia Realty Trust and subsidiaries' internal control over financial reporting as of December 31, 2010, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). Acadia Realty Trust and subsidiaries' management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on a company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control, based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Acadia Realty Trust and subsidiaries maintained in all material respects effective internal control over financial reporting as of December 31, 2010, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Acadia Realty Trust and subsidiaries as of December 31, 2010 and 2009 and the related consolidated statements of income, shareholders' equity and comprehensive income, and cash flows for each of the three years in the period ended December 31, 2010 and our report dated February 28, 2011 expressed an unqualified opinion thereon.

/s/ BDO USA, LLP  
New York, New York  
February 28, 2011

**(c) Changes in internal control over financial reporting**

There was no change in our internal control over financial reporting during our fourth fiscal quarter ended December 31, 2010 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION.**

None

## PART III

In accordance with the rules of the SEC, certain information required by Part III is omitted and is incorporated by reference into this Form 10-K from our definitive proxy statement relating to our 2011 annual meeting of stockholders (our "2011 Proxy Statement") that we intend to file with the SEC no later than April 29, 2011.

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

The information under the following headings in the 2011 Proxy Statement is incorporated herein by reference:

- "PROPOSAL 1 — ELECTION OF TRUSTEES"
- "MANAGEMENT"
- "SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE"

### ITEM 11. EXECUTIVE COMPENSATION.

The information under the following headings in the 2011 Proxy Statement is incorporated herein by reference:

- "ACADIA REALTY TRUST COMPENSATION COMMITTEE REPORT"
- "COMPENSATION DISCUSSION AND ANALYSIS"
- "EXECUTIVE AND TRUSTEE COMPENSATION"
- "COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION"

### ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

The information under the heading "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT" in the 2011 Proxy Statement is incorporated herein by reference.

The information under Item 5 of this Form 10-K under the heading "(c) Securities authorized for issuance under equity compensation plans" is incorporated herein by reference.

### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.

The information under the following headings in the 2011 Proxy Statement is incorporated herein by reference:

- "CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS"
- "PROPOSAL 1 — ELECTION OF TRUSTEES—Trustee Independence"

### ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES.

The information under the heading "AUDIT COMMITTEE INFORMATION" in the 2011 Proxy Statement is incorporated herein by reference.

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

1. *Financial Statements*: See "Index to Financial Statements" at page F-1 below.
2. *Financial Statement Schedule*: See "Schedule III—Real Estate and Accumulated Depreciation" at page F-40 below.
3. *Exhibits*: The index of exhibits below is incorporated herein by reference.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereto duly authorized.

### ACADIA REALTY TRUST (Registrant)

By: /s/ Kenneth F. Bernstein  
Kenneth F. Bernstein  
Chief Executive Officer,  
President and Trustee

By: /s/ Michael Nelsen  
Michael Nelsen  
Senior Vice President and  
Chief Financial Officer

By: /s/ Jonathan W. Grisham  
Jonathan W. Grisham  
Senior Vice President and  
Chief Accounting Officer

Dated: February 28, 2011

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Kenneth F. Bernstein (Kenneth F. Bernstein)	Chief Executive Officer, President and Trustee (Principal Executive Officer)	February 28, 2011
/s/ Michael Nelsen (Michael Nelsen)	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	February 28, 2011
/s/ Jonathan W. Grisham (Jonathan W. Grisham)	Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)	February 28, 2011
/s/ Douglas Crocker II (Douglas Crocker II)	Trustee	February 28, 2011
/s/ Lorrence T. Kellar (Lorrence T. Kellar)	Trustee	February 28, 2011
/s/ Wendy Luscombe (Wendy Luscombe)	Trustee	February 28, 2011
/s/ William T. Spitz (William T. Spitz)	Trustee	February 28, 2011
/s/ Lee S. Wielansky (Lee S. Wielansky)	Trustee	February 28, 2011

## EXHIBIT INDEX

The following is an index to all exhibits filed with the Annual Report on Form 10-K other than those incorporated by reference herein:

Exhibit No.	Description
3.1	Declaration of Trust of the Company, as amended (1)
3.2	Fourth Amendment to Declaration of Trust (4)
3.3	Amended and Restated By-Laws of the Company (22)
3.4	Fifth Amendment to Declaration of Trust (32)
3.5	First Amendment the Amended and Restated Bylaws of the Company (32)
4.1	Voting Trust Agreement between the Company and Yale University dated February 27, 2002 (14)
10.1	1999 Share Option Plan (8) (21)
10.2	2003 Share Option Plan (16) (21)
10.3	Form of Share Award Agreement (17) (21)
10.4	Form of Registration Rights Agreement and Lock-Up Agreement (18)
10.5	Registration Rights and Lock-Up Agreement (RD Capital Transaction) (11)
10.6	Registration Rights and Lock-Up Agreement (Pacesetter Transaction) (11)
10.7	Contribution and Share Purchase Agreement dated as of April 15, 1998 among Mark Centers Trust, Mark Centers Limited Partnership, the Contributing Owners and Contributing Entities named therein, RD Properties, L.P. VI, RD Properties, L.P. VIA and RD Properties, L.P. VIB (9)
10.8	Agreement of Contribution among Acadia Realty Limited Partnership, Acadia Realty Trust and Klaff Realty, LP and Klaff Realty, Limited (18)
10.9	Employment agreement between the Company and Kenneth F. Bernstein dated October 1998 (6) (21)
10.11	Amendment to employment agreement between the Company and Kenneth F. Bernstein dated January 19, 2007 (26) (21)
10.12	First Amendment to Employment Agreement between the Company and Kenneth Bernstein dated as of January 1, 2001 (12) (21)
10.13	Description of Long Term Investment Alignment Program (32)
10.14	Letter of employment offer between the Company and Michael Nelsen, Sr. Vice President and Chief Financial Officer dated February 19, 2003 (15) (21)
10.15	Form of Amended and Restated Severance Agreement, dated June 12, 2008, that was entered into with each of Joel Braun, Executive Vice President and Chief Investment Officer; Michael Nelsen, Senior Vice President and Chief Financial Officer; Robert Masters, Senior Vice President, General Counsel, Chief Compliance Officer and Secretary; and Joseph Hogan, Senior Vice President and Director of Construction. (Incorporated by reference to the Exhibit 10.1 to the Company's Form 8-K filed with the SEC on June 12, 2008) (21)
10.16	Note Modification Agreement, Note, Mortgage Modification Agreement, Mortgage, Assignment of Leases and Rents and Security Agreement between Acadia-P/A Sherman Avenue LLC and Bank of America N. A. dated January 15, 2009 (32)

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Exhibit No.	Description
10.17	Mortgage, Assignment of Leases and Rents and Security Agreement from Acadia Cortlandt LLC to Bank of America, N.A. dated July 29, 2009 [Initial Advance], Note made by Acadia Cortlandt LLC in favor of Bank of America, N.A. dated July 29, 2009 [Initial Advance], Mortgage, Assignment of Leases and Rents and Security Agreement from Acadia Cortlandt LLC to Bank of America, N.A. dated July 29, 2009 [Future Advance] and Note made by Acadia Cortlandt LLC in favor of Bank of America, N.A. dated July 29, 2009 [Future Advance] (33)
10.18	Consolidated, Amended and Restated Term Loan Agreement among Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC as borrower and The lenders Party Hereto as lenders and Eurohypo AG, New York Branch as Administrative Agent; Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC in favor of Eurohypo AG, New York Branch as Administrative Agent; Replacement Note between Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC and Amalgamated Bank; Replacement Note between Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC and Deutsche Genossenschafts – Hypothekenbank AG; Replacement Note between Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC and Eurohypo AG, New York Branch; and Replacement Note between Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC and TD Bank. All dated November 4, 2009. (35)
10.19	Fifth Amendment to Employment Agreement between the Company and Kenneth F. Bernstein dated August 5, 2008 (34)
10.20	Secured Promissory Note between RD Absecon Associates, L.P. and Fleet Bank, N.A. dated February 8, 2000 (7)
10.21	Promissory Note between 239 Greenwich Associates, L.P. and Greenwich Capital Financial Products, Inc. dated May 30, 2003 (18)
10.22	Open-End Mortgage, Assignment of Leases and Rents, and Security Agreement between 239 Greenwich Associates, L.P. and Greenwich Capital Financial Products, Inc. dated May 30, 2003 (18)
10.23	Promissory Note between Merrillville Realty, L.P. and Sun America Life Insurance Company dated July 7, 1999 (7)
10.24	Secured Promissory Note between Acadia Town Line, LLC and Fleet Bank, N.A. dated March 21, 1999 (7)
10.25	Promissory Note between RD Village Associates Limited Partnership and Sun America Life Insurance Company Dated September 21, 1999 (7)
10.26	First Amendment to Severance Agreements between the Company and Joel Braun Executive Vice President and Chief Investment Officer, Michael Nelsen, Senior Vice President and Chief Financial Officer, Robert Masters, Senior Vice President, General Counsel, Chief Compliance Officer and Secretary and Joseph Hogan, Senior Vice President and Director of Construction dated January 19, 2007 (21) (26)
10.27	Mortgage Agreement, \$25.0 million Mortgage Note, \$23.0 million Mortgage Note, Building Loan Agreement and General Assignment of Rents between Manufacturers and Traders Trust Company and Capital One, N.A. (the “Lending Group”) and Canarsie Plaza, LLC, all dated January 12, 2010 (34)
10.28	Third Amended and Restated Credit Agreement and Note among Acadia Strategic Opportunity Fund II, LLC and Bank of America, N.A., dated March 3, 2010 (34)
10.29	Loan Agreement between New York City Capital Resource Corporation (the “Issuer”) and Albee Retail Development LLC (the “Company”), Copy of the Promissory Note from the Company to the Issuer and The Bank of New York Mellon, as trustee (the “Trustee”), Indenture of Trust (the “Indenture”) between the Issuer and the Trustee, Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) from the Company to the Trustee, Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) from the Company to the Trustee, Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) from the Company to the Trustee, Building Loan Agreement among the Issuer, the Trustee and the Company, Pledge and Security Agreement from the Company to the Trustee, Bond Guarantee Agreement from the Company and Acadia Strategic Opportunity Fund II LLC (the “Parent”) to the Trustee, Project Completion Guarantee Agreement from the Company and the Parent to the Trustee, all dated as of July 1, 2010 (35)
10.30	Amended and Restated Note Agreement made by Albee Development LLC in favor of Bank of America, N.A., dated August 19, 2010 (35)

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10.31	Third Loan Extension and Modification Agreement by and among Acadia-P/A 161 <sup>ST</sup> Street, LLC (Borrower), Acadia-P/A Holdings Company, LLC (Guarantor) and Bank of America, N.A., dated July 9, 2010 (35)
10.32	Fourth Amendment to Project Loan Agreement and Amendment of Certain Other Loan Documents by and between P/A-Acadia Pelham Manor, LLC and U.S. Bank National Association, Not Individually but Solely as Trustee for the Maiden Lane Commercial Mortgage-Backed Securities Trust 2008-1 dated August 26, 2010 (35)
10.33	Term Loan Agreement between Acadia Realty L.P. and The Dime Savings Bank of New York, dated March 30, 2000 (10)
10.34	Mortgage Agreement between Acadia Realty L.P. and The Dime Savings Bank of New York, dated March 30, 2000 (10)
10.35	Second Mortgage Modification Agreement by and between Acadia-P/A Liberty LLC and PNC Bank, National Association dated September 17, 2010 (35)
10.36	Amended and Restated Loan Agreement among Acadia Cortlandt LLC and Bank of America, N.A., Note between Acadia Cortlandt LLC and Bank of America, N.A., Note Consolidation and Modification Agreement between Acadia Cortlandt LLC and Bank of America, N.A., Note between Acadia Cortlandt LLC and Bank of America, N.A., Mortgage Consolidation and Modification Agreement between Acadia Cortlandt LLC and Bank of America, N.A., Mortgage Security Agreement between Acadia Cortlandt LLC and Bank of America, N.A. and Amended and Restated Guaranty Agreement between Acadia Cortlandt LLC and Bank of America, N.A., all dated October 26, 2010 (36)
10.37	Agreement of Modification of Note Consolidation and Modification Agreement between Acadia Tarrytown LLC and Anglo Irish Bank Corporation Limited dated November 5, 2010 but deemed effective as of October 30, 2010 (36)
10.38	Second Amendment to Building Loan Agreement and the Second Amendment to Project Loan Agreement and Amendment of Certain Other Loan Documents by and between Acadia Atlantic Avenue, LLC and U.S. Bank National Association, Not Individually But Solely as Trustee for the Maiden Lane Commercial Mortgage-Backed Securities Trust 2008-1, both dated October 20, 2010 (36)
10.39	Fourth Amended and Restated Credit Agreement among Acadia Strategic Opportunity Fund II, LLC and Bank of America, N.A. dated December 22, 2010 (36)
10.40	Loan Agreement among P/A-Acadia Pelham Manor, LLC and Bank of America, N.A., Note between P/A-Acadia Pelham Manor, LLC and Bank of America, N.A., Note between P/A-Acadia Pelham Manor, LLC and Bank of America, N.A., Note Consolidation and Modification Agreement between P/A-Acadia Pelham Manor, LLC and Bank of America, N.A., Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement between P/A-Acadia Pelham Manor, LLC and Bank of America, N.A., Fee and Leasehold Mortgage Consolidation and Modification Agreement between P/A-Acadia Pelham Manor, LLC and Bank of America, N.A. and Guaranty Agreement between P/A-Acadia Pelham Manor, LLC and Bank of America, N.A., all dated December 1, 2010 (36)
10.44	Prospectus Supplement Regarding Options Issued under the Acadia Realty Trust 1999 Share Incentive Plan and 2003 Share Incentive Plan (19) (21)
10.45	Acadia Realty Trust 1999 Share Incentive Plan and 2003 Share Incentive Plan Deferral and Distribution Election Form (19) (21)
10.46	Amended, Restated And Consolidated Promissory Note between Acadia New Loudon, LLC and Greenwich Capital Financial Products, Inc. dated August 13, 2004 (19)
10.47	Amended, Restated And Consolidated Mortgage, Assignment Of Leases And Rents And Security Agreement between Acadia New Loudon, LLC and Greenwich Capital Financial Products, Inc. dated August 13, 2004 (19)
10.51	Mortgage, Assignment of Leases and Rents and Security Agreement between Acadia Crescent Plaza, LLC and Greenwich Capital Financial Products, Inc. dated August 31, 2005 (22)

Exhibit No.	Description
10.52	Mortgage, Assignment of Leases and Rents and Security Agreement between Pacesetter/Ramapo Associates and Greenwich Capital Financial Products, Inc. dated October 17, 2005 (22)
10.53	Loan Agreement between RD Elmwood Associates, L.P. and Bear Stearns Commercial Finance Mortgage, Inc. dated December 9, 2005 (35)
10.54	Mortgage and Security Agreement between RD Elmwood Associates, L.P. and Bear Stearns Commercial Finance Mortgage, Inc. dated December 9, 2005 (22)
10.55	Agreement and Plan Of Merger Dated as of December 22, 2005 by and among Acadia Realty Acquisition I, LLC, Ara Btc LLC, ARA MS LLC, ARA BS LLC, ARA BC LLC and ARA BH LLC, Acadia Investors, Inc., AII BTC LLC, AII MS LLC, AII BS LLC, AII BC LLC And AII BH LLC, Samuel Ginsburg 2000 Trust Agreement #1, Martin Ginsburg 2000 Trust Agreement #1, Martin Ginsburg, Samuel Ginsburg and Adam Ginsburg, and GDC SMG, LLC, GDC Beechwood, LLC, Aspen Cove Apartments, LLC and SMG Celebration, LLC (23)
10.56	Amended and Restated Loan Agreement between Acadia Realty Limited Partnership, as lender, and Levitz SL Woodbridge, L.L.C., Levitz SL St. Paul, L.L.C., Levitz SL La Puente, L.L.C., Levitz SL Oxnard, L.L.C., Levitz SL Willowbrook, L.L.C., Levitz SL Northridge, L.L.C., Levitz SL San Leandro, L.L.C., Levitz SL Sacramento, L.L.C., HL Brea, L.L.C., HL Deptford, L.L.C., HL Hayward, L.L.C., HL San Jose, L.L.C., HL Scottsdale, L.L.C., HL Torrance, L.L.C., HL Irvine 1, L.L.C., HL West Covina, L.L.C., HL Glendale, L.L.C. and HL Northridge, L.L.C., each a Delaware limited liability company, Levitz SL Langhorne, L.P. and HL Fairless Hills, L.P., each a Delaware limited partnership (each, together with its permitted successors and assigns, a "Borrower", and collectively, together with their respective permitted successors and assigns, "Borrowers"), dated June 1, 2006 (24)
10.57	Consent and Assumption Agreement between Thor Chestnut Hill, LP, Thor Chestnut Hill II, LP, Acadia Chestnut, LLC, Acadia Realty Limited Partnership and Wells Fargo Bank, N.A. dated June 9, 2006, original Mortgage and Security Agreement between Thor Chestnut Hill, LP and Thor Chestnut Hill II, LP and Column Financial, Inc. dated June 5, 2003 and original Assignment of Leases and Rents from Thor Chestnut Hill, LP and Thor Chestnut Hill II, LP to Column Financial, Inc. dated June 2003. (24)
10.58	Loan Agreement and Promissory Note between RD Woonsocket Associates, L.P. and Merrill Lynch Mortgage Lending, Inc. dated September 8, 2006 (25)
10.59	Amended and Restated Revolving Loan Agreement dated as of December 19, 2006 by and among RD Abington Associates LP, Acadia Town Line, LLC, RD Methuen Associates LP, RD Absecon Associates, LP, RD Bloomfield Associates, LP, RD Hobson Associates, LP, and RD Village Associates LP, and Bank of America, N.A. and the First Amendment to Amended and Restated Revolving Loan Agreement dated February, 2007. (26)
10.60	Loan Agreement between Bank of America, N.A. and RD Branch Associates, LP dated December 19, 2006. (26)
10.61	Loan Agreement between 239 Greenwich Associates Limited Partnership and Wachovia Bank, National Association dated January 25, 2007. (35)
10.62	Revolving Credit Agreement between Acadia Realty Limited Partnership and Washington Mutual Bank dated March 29, 2007. (28)
10.63	Loan Agreement between Acadia Merrillville Realty, L.P. and Bear Stearns Commercial Mortgage, Inc dated July 2, 2007. (35)
10.64	Promissory Note between Acadia Merrillville Realty, L.P. and Bear Stearns Commercial Mortgage, Inc dated July 2, 2007. (29)
10.65	Loan Agreement Note between APA 216 <sup>th</sup> Street and Bank of America, N.A. dated September 11, 2007. (29)
10.66	Promissory Note between APA 216 <sup>th</sup> Street and Bank of America, N.A. dated September 11, 2007. (29)
10.67	Acquisition and Project Loan agreement between Acadia – PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch dated October 5, 2007 (35)



Exhibit No.	Description
10.68	Building Loan Agreement between Acadia – PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch dated October 5, 2007 (30)
10.69	Revolving credit agreement between Acadia Strategic Opportunity Fund III, LLC. and Bank of America, N.A. dated October 10, 2007 (35)
10.70	Mortgage Consolidation and Modification Agreement between Acadia Tarrytown LLC and Anglo Irish Bank Corporation, PLC dated October 30, 2007 (35)
10.71	Project Loan Agreement between P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007 (35)
10.72	Building Loan Agreement P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007 (35)
10.73	Project Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007 (35)
10.74	Building Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007 (35)
10.75	Certain information regarding the compensation arrangements with certain officers of registrant (Incorporated by reference to Item 5.02 of the registrant’s Form 8-K filed with the SEC on February 4, 2008)
10.76	Real Estate Purchase and Sale Agreement between Suffern Self Storage, L.L.C., Jersey City Self Storage, L.L.C., Linden Self Storage, L.L.C., Webster Self Storage, L.L.C., Bronx Self Storage, L.L.C., American Storage Properties North LLC, and The Storage Company LLC (collectively, as Seller) and Acadia Storage Post LLC, a Delaware limited liability company, as Buyer, for ten Properties and Storage Facilities located thereon (31)
10.77	Real Estate Purchase and Sale Agreement between American Storage Properties North LLC, as Seller and Acadia Storage Post Metropolitan Avenue LLC, as Buyer for 4805 Metropolitan Avenue, Unit 2, Maspeth, Queens, New York (31)
10.78	First Amendment to Real Estate Purchase and Sale Agreement between Suffern Self Storage, L.L.C., Jersey City Self Storage, L.L.C., Linden Self Storage, L.L.C., Webster Self Storage, L.L.C., Bronx Self Storage, L.L.C., American Storage Properties North LLC, and The Storage Company LLC (collectively, “Seller”) and Acadia Storage Post LLC (“Buyer”) (31)
10.79	Amended and Restated Agreement of Limited Partnership of the Operating Partnership (11)
10.80	First and Second Amendments to the Amended and Restated Agreement of Limited Partnership of the Operating Partnership (11)
10.81	Third Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (18)
10.82	Fourth Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (18)
21	List of Subsidiaries of Acadia Realty Trust (36)
23.1	Consent of Registered Public Accounting Firm to incorporation by reference its reports into Forms S-3 and Forms S-8 (36)
31.1	Certification of Chief Executive Officer pursuant to rule 13a–14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (36)
31.2	Certification of Chief Financial Officer pursuant to rule 13a–14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (36)
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (36)
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (36)

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99.1	Certificate of Designation of Series A Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (2)
99.2	Certificate of Designation of Series B Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (18)

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**Notes:**

- (1) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal Year ended December 31, 1994
- (2) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended June 30, 1997
- (3) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 1998
- (4) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 1998
- (5) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-11 (File No.33-60008)
- (6) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form10-K filed for the fiscal year ended December 31, 1998
- (7) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form10-K filed for the fiscal year ended December 31, 1999
- (8) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-8 filed September 28, 1999
- (9) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Form 8-K filed on April 20, 1998
- (10) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Form 10-K filed for the fiscal year ended December 31, 2000
- (11) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-3 filed on March 3, 2000
- (12) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 2001
- (13) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2001
- (14) Incorporated by reference to the copy thereof filed as an Exhibit to Yale University's Schedule 13D filed on September 25, 2002
- (15) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2002
- (16) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Definitive Proxy Statement on Schedule 14A filed April 29, 2003.
- (17) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Current Report on Form 8-K filed on July 2, 2003
- (18) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2003
- (19) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2004.
- (20) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2004.
- (21) Management contract or compensatory plan or arrangement.
- (22) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2005.
- (23) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Current Report on Form 8-K filed on January 4, 2006

- (24) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended June 30, 2006
- (25) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 2006
- (26) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Current Report on Form 8-K filed on January 19, 2007
- (27) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2006.
- (28) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-Q filed for the quarter ended March 31, 2007.
- (29) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 2007.
- (30) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-K filed for the year ended December 31, 2007.
- (31) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-Q filed for the quarter ended March 31, 2008.
- (32) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-Q filed for the quarter ended March 31, 2009.
- (33) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 2009.
- (34) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-Q filed for the quarter ended March 31, 2010.
- (35) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 2010.
- (36) Filed herewith.

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<a href="#">Consolidated Balance Sheets as of December 31, 2010 and 2009</a>	F-3
<a href="#">Consolidated Statements of Income for the years ended December 31, 2010, 2009 and 2008</a>	F-4
<a href="#">Consolidated Statements of Shareholders' Equity and Comprehensive Income for the years ended December 31, 2010, 2009 and 2008</a>	F-5
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## Report of Independent Registered Public Accounting Firm

The Shareholders and Trustees of  
Acadia Realty Trust

We have audited the accompanying consolidated balance sheets of Acadia Realty Trust and subsidiaries (the "Company") as of December 31, 2010 and 2009 and the related consolidated statements of income, shareholders' equity and comprehensive income, and cash flows for each of the three years in the period ended December 31, 2010. In connection with our audits of the financial statements we have also audited the accompanying financial statement schedule listed on page F-1. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements and schedules. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Acadia Realty Trust and subsidiaries at December 31, 2010, and 2009 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2010, in conformity with generally accepted accounting principles in the United States of America.

Also, in our opinion, the financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Acadia Realty Trust and subsidiaries' internal control over financial reporting as of December 31, 2010, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated February 28, 2011 expressed an unqualified opinion thereon.

/s/ BDO USA, LLP

New York, New York  
February 28, 2011

**ACADIA REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**

**December 31,**  
**2010                      2009**

(dollars in thousands)

**ASSETS**

Operating real estate		
Land	\$ 222,786	\$ 221,740
Buildings and improvements	915,221	838,828
Construction in progress	4,400	2,575
	1,142,407	1,063,143
Less: accumulated depreciation	219,920	191,307
	922,487	871,836
Net operating real estate	922,487	871,836
Real estate under development	243,892	137,340
Notes receivable and preferred equity investment, net	89,202	125,221
Investments in and advances to unconsolidated affiliates	31,036	51,712
Cash and cash equivalents	120,592	93,808
Cash in escrow	28,610	8,582
Rents receivable, net	18,044	16,713
Deferred charges, net of amortization	25,730	28,311
Acquired lease intangibles, net of amortization	18,622	22,382
Prepaid expenses and other assets	22,463	22,003
Assets of discontinued operations	4,128	4,556
	\$ 1,524,806	\$ 1,382,464
Total assets	\$ 1,524,806	\$ 1,382,464

**LIABILITIES AND SHAREHOLDERS' EQUITY**

Mortgages payable	\$ 806,212	\$ 732,287
Convertible notes payable, net of unamortized discount of \$1,063 and \$2,105, respectively	48,712	47,910
Distributions in excess of income from, and investments in, unconsolidated affiliates	20,884	20,589
Accounts payable and accrued expenses	27,691	17,548
Dividends and distributions payable	7,427	7,377
Acquired lease intangibles, net of amortization	5,737	6,753
Other liabilities	20,621	17,523
	937,284	849,987
Total liabilities	937,284	849,987

**SHAREHOLDERS' EQUITY**

Common shares, \$.001 par value, authorized 100,000,000 shares, issued and outstanding 40,254,525 and 39,787,018 shares, respectively	40	40
Additional paid-in capital	303,823	299,014
Accumulated other comprehensive loss	(2,857)	(2,994)
Retained earnings	17,206	16,125
	318,212	312,185
Total Shareholders' equity	318,212	312,185
Noncontrolling interests	269,310	220,292
	587,522	532,477
Total equity	587,522	532,477
Total liabilities and equity	\$ 1,524,806	\$ 1,382,464

The accompanying notes are an integral part of these consolidated financial statements

**ACADIA REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF INCOME**

	Years ended December 31,		
	2010	2009	2008
	(dollars in thousands except per share amounts)		
<b>Revenues</b>			
Rental income	\$ 106,913	\$ 95,716	\$ 77,120
Mortgage interest income	19,161	19,698	11,163
Expense reimbursements	22,030	20,982	16,789
Lease termination income	290	2,751	23,961
Management fee income	1,424	1,961	3,434
Other	2,140	4,595	1,099
<b>Total revenues</b>	<b>151,958</b>	<b>145,703</b>	<b>133,566</b>
<b>Operating Expenses</b>			
Property operating	30,914	29,651	23,917
Real estate taxes	18,245	16,812	12,123
General and administrative	20,220	22,013	24,545
Depreciation and amortization	40,115	36,634	32,749
Abandonment of project costs	—	2,487	630
Reserve for notes receivable	—	1,734	4,392
<b>Total operating expenses</b>	<b>109,494</b>	<b>109,331</b>	<b>98,356</b>
<b>Operating income</b>	<b>42,464</b>	<b>36,372</b>	<b>35,210</b>
Equity in earnings (losses) of unconsolidated affiliates	10,971	(1,529)	19,906
Impairment of investment in unconsolidated affiliate	—	(3,768)	—
Other interest income	408	642	3,370
Gain from bargain purchase	33,805	—	—
Gain on debt extinguishment	—	7,057	1,523
Interest and other finance expense	(34,471)	(32,154)	(28,893)
Gain on sale of land	—	—	763
<b>Income from continuing operations before income taxes</b>	<b>53,177</b>	<b>6,620</b>	<b>31,879</b>
Income tax expense	(2,890)	(1,541)	(3,362)
<b>Income from continuing operations</b>	<b>50,287</b>	<b>5,079</b>	<b>28,517</b>
<b>Discontinued operations</b>			
Operating income from discontinued operations	380	484	1,738
Gain on sale of property	—	7,143	7,182
<b>Income from discontinued operations</b>	<b>380</b>	<b>7,627</b>	<b>8,920</b>
<b>Net income</b>	<b>50,667</b>	<b>12,706</b>	<b>37,437</b>
(Income) loss attributable to noncontrolling interests in subsidiaries:			
Continuing operations	(20,307)	23,472	(11,438)
Discontinued operations	(303)	(5,045)	(931)
<b>Net (income) loss attributable to noncontrolling interests in subsidiaries</b>	<b>(20,610)</b>	<b>18,427</b>	<b>(12,369)</b>
<b>Net income attributable to Common Shareholders</b>	<b>\$ 30,057</b>	<b>\$ 31,133</b>	<b>\$ 25,068</b>
<b>Basic earnings per share</b>			
Income from continuing operations	\$ 0.75	\$ 0.75	\$ 0.51
Income from discontinued operations	—	0.07	0.23
<b>Basic earnings per share</b>	<b>\$ 0.75</b>	<b>\$ 0.82</b>	<b>\$ 0.74</b>
<b>Diluted earnings per share</b>			
Income from continuing operations	\$ 0.74	\$ 0.75	\$ 0.50
Income from discontinued operations	—	0.07	0.23
<b>Diluted earnings per share</b>	<b>\$ 0.74</b>	<b>\$ 0.82</b>	<b>\$ 0.73</b>

The accompanying notes are an integral part of these consolidated financial statements





**ACADIA REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY AND COMPREHENSIVE INCOME**

(amounts in thousands, except per share amounts)	Common Shares	Common Shares Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Common Shareholders' Equity	Noncontrolling Interests	Total Share- holders' Equity
Balance at January 1, 2008	32,184	\$ 32	\$ 236,967	\$ (953)	\$ 13,671	\$ 249,717	\$ 171,111	\$ 420,828
Employee Restricted Share awards	137	—	2,917	—	—	2,917	1,863	4,780
Dividends declared (\$1.39 per Common Share)	—	—	(20,385)	—	(25,068)	(45,453)	(1,192)	(46,645)
Employee exercise of 110,245 options to purchase Common Shares	110	—	841	—	—	841	—	841
Common Shares issued under Employee Share Purchase Plan	7	—	180	—	—	180	—	180
Issuance of Common Shares to Trustees	2	—	81	—	—	81	—	81
Employee Restricted Shares cancelled	(83)	—	(1,997)	—	—	(1,997)	—	(1,997)
Conversion options on Convertible Notes purchased (Note 9)	—	—	(77)	—	—	(77)	—	(77)
Noncontrolling interest distributions	—	—	—	—	—	—	(15,347)	(15,347)
Noncontrolling interest contributions	—	—	—	—	—	—	46,014	46,014
	32,357	32	218,527	(953)	(11,397)	206,209	202,449	408,658
Comprehensive income:								
Net income	—	—	—	—	25,068	25,068	12,369	37,437
Unrealized loss on valuation of swap agreements	—	—	—	(4,179)	—	(4,179)	(421)	(4,600)
Reclassification of realized interest on swap agreements	—	—	—	624	—	624	109	733
Total comprehensive income	—	—	—	(3,555)	25,068	21,513	12,057	33,570
Balance at December 31, 2008	32,357	\$ 32	\$ 218,527	\$ (4,508)	\$ 13,671	\$ 227,722	\$ 214,506	\$ 442,228
Conversion of 15,666 OP Units to Common Shares by limited partners of the Operating Partnership	16	—	90	—	—	90	(90)	—
Issuance of Common Shares, net of issuance costs	5,750	6	65,216	—	—	65,222	—	65,222
Issuance of Common Shares through special dividend	1,287	2	16,190	—	—	16,192	—	16,192
Employee Restricted Share awards	253	—	2,957	—	—	2,957	890	3,847
Dividends declared (\$0.75 per Common Share)	—	—	—	—	(28,679)	(28,679)	(795)	(29,474)
Employee exercise of 258,900 options to purchase Common Shares	259	—	1,556	—	—	1,556	—	1,556
Common Shares issued under Employee Share Purchase Plan	9	—	106	—	—	106	—	106
Issuance of Common Shares to Trustees	25	—	635	—	—	635	—	635
Employee Restricted Shares cancelled	(359)	—	(5,423)	—	—	(5,423)	—	(5,423)
Deferred shares converted to Common Shares	190	—	—	—	—	—	—	—
Conversion options on Convertible Notes purchased (Note 9)	—	—	(840)	—	—	(840)	—	(840)
Noncontrolling interest distributions	—	—	—	—	—	—	(1,624)	(1,624)
Noncontrolling interest contributions	—	—	—	—	—	—	25,653	25,653
	39,787	40	299,014	(4,508)	(15,008)	279,538	238,540	518,078
Comprehensive income (loss):								
Net income (loss)	—	—	—	—	31,133	31,133	(18,427)	12,706
Unrealized loss on valuation of swap agreements	—	—	—	(912)	—	(912)	(140)	(1,052)
Reclassification of realized interest on swap agreements	—	—	—	2,426	—	2,426	319	2,745
Total comprehensive income (loss)	—	—	—	1,514	31,133	32,647	(18,248)	14,399
Balance at December 31, 2009	39,787	\$ 40	\$ 299,014	\$ (2,994)	\$ 16,125	\$ 312,185	\$ 220,292	\$ 532,477

**ACADIA REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY AND COMPREHENSIVE INCOME**

(amounts in thousands, except per share amounts)	Common Shares		Additional	Accumulated	Retained	Total	Noncontrolling	Total
	Shares	Amount	Paid-in	Other	Earnings	Common	Interests	Share-
	—	—	Capital	Comprehensive	—	Shareholders'	—	holders'
	—	—	—	Loss	—	Equity	—	Equity
Conversion of 364,615 OP Units to Common Shares by limited partners of the Operating Partnership	365	—	3,240	—	—	3,240	(3,240)	—
Employee Restricted Share awards	133	—	2,060	—	—	2,060	1,778	3,838
Dividends declared (\$0.72 per Common Share)	—	—	—	—	(28,976)	(28,976)	(723)	(29,699)
Exercise of Trustees options	7	—	109	—	—	109	—	109
Common Shares issued under Employee Share Purchase Plan	6	—	100	—	—	100	—	100
Issuance of Common Shares to Trustees	13	—	266	—	—	266	—	266
Employee Restricted Shares cancelled	(57)	—	(966)	—	—	(966)	—	(966)
Noncontrolling interest distributions	—	—	—	—	—	—	(2,892)	(2,892)
Noncontrolling interest contributions	—	—	—	—	—	—	33,556	33,556
	40,254	40	303,823	(2,994)	(12,851)	288,018	248,771	536,789
<b>Comprehensive income:</b>								
Net income	—	—	—	—	30,057	30,057	20,610	50,667
Unrealized loss on valuation of swap agreements	—	—	—	(2,329)	—	(2,329)	(354)	(2,683)
Reclassification of realized interest on swap agreements	—	—	—	2,466	—	2,466	283	2,749
<b>Total comprehensive income</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>137</b>	<b>30,057</b>	<b>30,194</b>	<b>20,539</b>	<b>50,733</b>
Balance at December 31, 2010	40,254	\$ 40	\$ 303,823	\$ (2,857)	\$ 17,206	\$ 318,212	\$ 269,310	\$ 587,522

The accompanying notes are an integral part of these consolidated financial statements.

**ACADIA REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Years ended December 31,		
	2010	2009	2008
	(dollars in thousands)		
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income	\$ 50,667	\$ 12,706	\$ 37,437
<b>Adjustments to reconcile net income to net cash provided by operating activities:</b>			
Depreciation and amortization	40,553	37,242	34,908
Gain from bargain purchase	(33,805)	—	—
Gain on sale of property	—	(7,143)	(7,945)
Gain on debt extinguishment	—	(7,057)	(1,523)
Amortization of discount on convertible debt	1,042	1,280	2,101
Non-cash accretion of notes receivable	(6,164)	(5,352)	(2,367)
Share compensation expense	4,104	3,969	3,434
Equity in (earnings) losses of unconsolidated affiliates	(10,971)	1,529	(19,906)
Impairment of investment in unconsolidated affiliate	—	3,768	—
Distributions of operating income from unconsolidated affiliates	12,124	880	14,420
Reserve for notes receivable	—	1,734	4,392
Provision for bad debt	3,331	4,132	3,593
Other, net	906	7,457	6,704
<b>Changes in assets and liabilities:</b>			
Cash in escrows	(20,028)	(1,788)	(157)
Rents receivable	(4,662)	(8,370)	(2,305)
Prepaid expenses and other assets, net	1,889	8,156	(15,865)
Accounts payable and accrued expenses	1,874	(5,902)	8,368
Other liabilities	3,517	221	1,228
Net cash provided by operating activities	44,377	47,462	66,517
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Investments in real estate	(80,520)	(127,322)	(245,033)
Deferred acquisition and leasing costs	(3,904)	(11,368)	(6,068)
Investments in and advances to unconsolidated affiliates	(19,116)	(5,603)	(7,918)
Return of capital from unconsolidated affiliates	785	4,705	4,052
Repayments of notes receivable	42,010	13,614	19,922
Increase in notes receivable	—	(9,362)	(90,847)
Proceeds from sale of property	—	11,956	23,627
Net cash used in investing activities	(60,745)	(123,380)	(302,265)

**ACADIA REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Years ended December 31,		
	2010	2009	2008
	(dollars in thousands)		
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Principal payments on mortgage notes	(127,823)	(182,610)	(68,412)
Proceeds received on mortgage notes	175,793	260,065	281,192
Redemption of convertible notes payable	(240)	(46,736)	(6,042)
Increase in deferred financing and other costs	(6,830)	(1,755)	(1,763)
Capital contributions from noncontrolling interests	33,556	25,653	46,014
Distributions to noncontrolling interests	(1,638)	(2,879)	(16,183)
Dividends paid to Common Shareholders	(28,909)	(30,163)	(34,710)
Proceeds from issuance of Common Shares, net of issuance costs	—	65,222	—
Repurchase and cancellation of Common Shares	(966)	(5,424)	(2,102)
Common Shares issued under Employee Share Purchase Plan	100	106	261
Exercise of options to purchase Common Shares	109	1,556	841
<b>Net cash provided by financing activities</b>	<b>43,152</b>	<b>83,035</b>	<b>199,096</b>
Increase (decrease) in cash and cash equivalents	26,784	7,117	(36,652)
Cash and cash equivalents, beginning of period	93,808	86,691	123,343
<b>Cash and cash equivalents, end of period</b>	<b>\$ 120,592</b>	<b>\$ 93,808</b>	<b>\$ 86,691</b>
<b>Supplemental disclosure of cash flow information:</b>			
Cash paid during the period for interest, including capitalized interest of \$2,903, \$3,516, and \$6,779, respectively	\$ 34,823	\$ 33,699	\$ 33,778
Cash paid for income taxes	\$ 1,263	\$ 777	\$ 6,633
<b>Supplemental disclosure of non-cash investing and financing activities:</b>			
Acquisition of real estate through assumption of debt	\$ —	\$ —	\$ 39,967
Dividends paid through the issuance of Common Shares	\$ —	\$ 16,192	\$ —
<b>Acquisition of interest in unconsolidated affiliates:</b>			
Real Estate, net	\$ (108,000)	\$ —	\$ —
Assumption of mortgage debt	25,990	—	—
Gain from bargain purchase	33,805	—	—
Other assets and liabilities	7,532	—	—
Investment in unconsolidated affiliates	37,824	—	—
<b>Cash included in investment in real estate</b>	<b>\$ (2,849)</b>	<b>\$ —</b>	<b>\$ —</b>

The accompanying notes are an integral part of these consolidated financial statements.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**1. Organization, Basis of Presentation and Summary of Significant Accounting Policies**

Acadia Realty Trust (the “Trust”) and subsidiaries (collectively, the “Company”) is a fully integrated, self-managed and self-administered equity real estate investment trust (“REIT”) focused primarily on the ownership, acquisition, redevelopment and management of retail properties, including neighborhood and community shopping centers and mixed-use properties with retail components.

As of December 31, 2010, the Company operated 79 properties, which it owns or has an ownership interest in, principally located in the Northeast, Mid-Atlantic and Midwest regions of the United States.

All of the Company’s assets are held by, and all of its operations are conducted through, Acadia Realty Limited Partnership (the “Operating Partnership”) and entities in which the Operating Partnership owns a controlling interest. As of December 31, 2010, the Trust controlled 99% of the Operating Partnership as the sole general partner. As the general partner, the Trust is entitled to share, in proportion to its percentage interest, in the cash distributions and profits and losses of the Operating Partnership. The limited partners represent entities or individuals who contributed their interests in certain properties or entities to the Operating Partnership in exchange for common or preferred units of limited partnership interest (“Common or Preferred OP Units”). Limited partners holding Common OP Units are generally entitled to exchange their units on a one-for-one basis for common shares of beneficial interest of the Trust (“Common Shares”). This structure is referred to as an umbrella partnership REIT or “UPREIT.”

The Company formed Acadia Strategic Opportunity Fund I, LP (“Fund I”), and formed Acadia Mervyn Investors I, LLC (“Mervyns I”), with four institutional investors. The Operating Partnership committed a total of \$20.0 million to Fund I and Mervyns I, and the four institutional shareholders committed a total of \$70.0 million for the purpose of acquiring real estate investments. As of December 31, 2010, Fund I was fully invested, with the Operating Partnership having contributed \$16.5 million to Fund I and \$2.7 million to Mervyns I.

The Operating Partnership is the general partner of Fund I and sole managing member of Mervyns I, with a 22.2% interest in both Fund I and Mervyns I and is also entitled to a profit participation in excess of its invested capital based on certain investment return thresholds (“Promote”). Cash flow is distributed pro-rata to the partners and members (including the Operating Partnership) until they receive a 9% cumulative return (“Preferred Return”), and the return of all capital contributions. Thereafter, remaining cash flow (which is net of distributions and fees to the Operating Partnership for management, asset management, leasing, construction and legal services) is distributed 20% to the Operating Partnership as a Promote and 80% to the partners (including the Operating Partnership). As all contributed capital and accumulated preferred return has been distributed to investors, the Operating Partnership is currently entitled to a Promote on all earnings and distributions.

The Company formed Acadia Strategic Opportunity Fund II, LLC (“Fund II”), and formed Acadia Mervyn Investors II, LLC (“Mervyns II”), with the investors from Fund I as well as two additional institutional investors with a total of \$300.0 million of committed discretionary capital. The Operating Partnership’s share of committed capital is \$60.0 million. The Operating Partnership is the managing member with a 20% interest in both Fund II and Mervyns II. The terms and structure of Fund II and Mervyns II are substantially the same as Fund I and Mervyns I, including the Promote structure, with the exception that the Preferred Return is 8%. As of December 31, 2010, the Operating Partnership had contributed \$45.4 million to Fund II and \$7.6 million to Mervyns II.

The Company formed Acadia Strategic Opportunity Fund III LLC (“Fund III”) with fourteen institutional investors, including a majority of the investors from Fund I and Fund II with a total of \$502.5 million of committed discretionary capital. The Operating Partnership’s share of the invested capital is \$100.0 million and it is the managing member with a 19.9% interest in Fund III. The terms and structure of Fund III are substantially the same as the previous Funds I and II, including the Promote structure, with the exception that the Preferred Return is 6%. As of December 31, 2010, the Operating Partnership had contributed \$19.2 million to Fund III.

**Principles of Consolidation**

The consolidated financial statements include the consolidated accounts of the Company and its controlling investments in partnerships and limited liability companies in which the Company has control in accordance Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 810 “Consolidation” (“ASC Topic 810”). The ownership interests of other investors in these entities are recorded as noncontrolling interests. All significant intercompany balances and transactions have been eliminated in consolidation. Investments in entities for which the Company has the ability to exercise significant influence over, but does not have financial or operating control, are accounted for using the equity method of accounting. Accordingly, the Company’s share of the earnings (or losses) of these entities are included in consolidated net income.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued****Principles of Consolidation, continued**

Variable interest entities are accounted for within the scope of ASC Topic 810 and are required to be consolidated by their primary beneficiary. The primary beneficiary of a variable interest entity is the enterprise that has the power to direct the activities that most significantly impact the variable interest entity's economic performance and the obligation to absorb losses or the right to receive benefits of the variable interest entity that could be significant to the variable interest entity. Management has evaluated the applicability of ASC Topic 810 to its investments in certain joint ventures and determined that these joint ventures are not variable interest entities or that the Company is not the primary beneficiary and, therefore, consolidation of these ventures is not required. These investments are accounted for using the equity method.

**Investments in and Advances to Unconsolidated Joint Ventures**

The Company accounts for its investments in unconsolidated joint ventures using the equity method as it does not exercise control over significant asset decisions such as buying, selling or financing nor is it the primary beneficiary under ASC Topic 810, as discussed above. The Company does have significant influence over the investments which requires equity method accounting. Under the equity method, the Company increases its investment for its proportionate share of net income and contributions to the joint venture and decreases its investment balance by recording its proportionate share of net loss and distributions. The Company recognizes income for distributions in excess of its investment where there is no recourse to the Company. For investments in which there is recourse to the Company, distributions in excess of the investment are recorded as a liability. Although the Company accounts for its investment in Albertson's (Note 4) under the equity method of accounting, the Company adopted the policy of not recording its equity in earnings or losses of this unconsolidated affiliate until it receives the audited financial statements of Albertson's to support the equity earnings or losses in accordance with ASC Topic 323 "Investments – Equity Method and Joint Ventures".

The Company periodically reviews its investment in unconsolidated joint ventures for other than temporary losses in investment value. Any decline that is not expected to be recovered is considered other than temporary and an impairment charge is recorded as a reduction in the carrying value of the investment. During the years ended December 31, 2010, 2009 and 2008, impairment charges related to the Company's investment in unconsolidated joint ventures were \$0.0 million, \$3.8 million and \$0.0 million, respectively.

**Use of Estimates**

Accounting principles generally accepted in the United States of America ("GAAP") require the Company's management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. The most significant assumptions and estimates relate to the valuation of real estate, depreciable lives, revenue recognition and the collectability of trade accounts receivable. Application of these assumptions requires the exercise of judgment as to future uncertainties and, as a result, actual results could differ from these estimates.

**Real Estate**

Real estate assets are stated at cost less accumulated depreciation. Expenditures for acquisition, development, construction and improvement of properties, as well as significant renovations are capitalized. Interest costs are capitalized until construction is substantially complete and the real estate is ready for its intended use. Construction in progress includes costs for significant property expansion and redevelopment. Depreciation is computed on the straight-line basis over estimated useful lives of 30 to 40 years for buildings, the shorter of the useful life or lease term for tenant improvements and five years for furniture, fixtures and equipment. Expenditures for maintenance and repairs are charged to operations as incurred.

Upon acquisitions of real estate, the Company assesses the fair value of acquired assets (including land, buildings and improvements, and identified intangibles such as above and below market leases and acquired in-place leases and customer relationships) and acquired liabilities in accordance with ASC Topic 805 "Business Combinations" and ASC Topic 350 "Intangibles – Goodwill and

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued****Real Estate, continued**

Other”, and allocates acquisition price based on these assessments. Fixed-rate renewal options have been included in the calculation of the fair value of acquired leases. To the extent there were fixed-rate options at below-market rental rates, the Company included these along with the current term below-market rent in arriving at the fair value of the acquired leases. The discounted difference between contract and market rents is being amortized over the remaining applicable lease term, inclusive of any option periods. The Company assesses fair value based on estimated cash flow projections that utilize appropriate discount and capitalization rates and available market information. Estimates of future cash flows are based on a number of factors including the historical operating results, known trends, and market/economic conditions that may affect the property.

The Company reviews its long-lived assets used in operations for impairment when there is an event, or change in circumstances that indicates that the carrying amount may not be recoverable. The Company records impairment losses and reduces the carrying value of properties when indicators of impairment are present and the expected undiscounted cash flows related to those properties are less than their carrying amounts. In cases where the Company does not expect to recover its carrying costs on properties held for use, the Company reduces its carrying cost to fair value, and for properties held for sale, the Company reduces its carrying value to the fair value less costs to sell. During the years ended December 31, 2010, 2009 and 2008, no impairment losses were recognized. Management does not believe that the values of its properties within the portfolio are impaired as of December 31, 2010.

**Sale of Real Estate**

The Company recognizes property sales in accordance with ASC Topic 970 “Real Estate”. The Company generally records the sales of operating properties and outparcels using the full accrual method at closing when the earnings process is deemed to be complete. Sales not qualifying for full recognition at the time of sale are accounted for under other appropriate deferral methods.

**Real Estate Held for Sale**

The Company evaluates the held-for-sale classification of its real estate each quarter. Assets that are classified as held for sale are recorded at the lower of their carrying amount or fair value less cost to sell. Assets are generally classified as held for sale once management has initiated an active program to market them for sale and has received a firm purchase commitment. The results of operations of these real estate properties are reflected as discontinued operations in all periods reported.

On occasion, the Company will receive unsolicited offers from third parties to buy individual Company properties. Under these circumstances, the Company will classify the properties as held for sale when a sales contract is executed with no contingencies and the prospective buyer has funds at risk to ensure performance.

**Deferred Costs**

Fees and costs paid in the successful negotiation of leases are deferred and amortized on a straight-line basis over the terms of the respective leases. Fees and costs incurred in connection with obtaining financing are deferred and amortized over the term of the related debt obligation.

**Management Contracts**

Income from management contracts is recognized on an accrual basis as such fees are earned. The initial acquisition cost of the management contracts are amortized over the estimated lives of the contracts acquired.

**Revenue Recognition and Accounts Receivable**

Leases with tenants are accounted for as operating leases. Minimum rents are recognized on a straight-line basis over the term of the respective leases, beginning when the tenant is entitled to take possession of the space. As of December 31, 2010 and 2009, included in rents receivable, net on the accompanying consolidated balance sheets, unbilled rents receivable relating to straight-lining of rents were \$17.1 million and \$12.7 million, respectively. Certain of these leases also provide for percentage rents based upon the level of sales achieved by the tenant. Percentage rent is recognized in the period when the tenants’ sales breakpoint is met. In addition, leases typically provide for the reimbursement to the Company of real estate taxes, insurance and other property operating expenses. These reimbursements are recognized as revenue in the period the expenses are incurred.

The Company makes estimates of the uncollectability of its accounts receivable related to tenant revenues. An allowance for doubtful accounts has been provided against certain tenant accounts receivable that are estimated to be uncollectible. Once the amount is ultimately deemed to be uncollectible, it is written off. Rents receivable at December 31, 2010 and 2009 are shown net of an allowance for doubtful accounts of \$7.5 million and \$7.0 million, respectively.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued****Notes Receivable and Preferred Equity Investments**

Notes receivable and preferred equity investments are intended to be held to maturity and are carried at amortized cost. Interest income from notes receivable and preferred equity investments are recognized on the effective interest method over the expected life of the loan. Under the effective interest method, interest or fees to be collected at the origination of the loan or the payoff of the loan are recognized over the term of the loan as an adjustment to yield.

Allowances for real estate notes receivable are established based upon management's quarterly review of the investments. In performing this review, management considers the estimated net recoverable value of the loan as well as other factors, including the fair value of any collateral, the amount and status of any senior debt, and the prospects for the borrower. Because this determination is based upon projections of future economic events, which are inherently subjective, the amounts ultimately realized from the loans may differ materially from the carrying value at the balance sheet date. Interest income recognition is generally suspended for loans when, in the opinion of management, a full recovery of income and principal becomes doubtful. Income recognition is resumed when the suspended loan becomes contractually current and performance is demonstrated to be resumed.

During 2009, the Company provided a \$1.7 million reserve on a note receivable as a result of the loss of an anchor tenant at the underlying collateral property. During 2008, the Company provided a \$4.4 million reserve on a note receivable collateralized by an interest in an entity owning retail complexes associated with seven public rest stops along the toll roads in and around Chicago, Illinois. The note and all accrued interest was subsequently cancelled during 2009. Management believes that the balance of notes receivable are collectible as of December 31, 2010.

**Cash and Cash Equivalents**

The Company considers all highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents are maintained at financial institutions and, at times, balances may exceed the federally insured limit by the Federal Deposit Insurance Corporation. The Company has never experienced any losses related to these balances.

**Restricted Cash and Cash in Escrow**

Restricted cash and cash in escrow consist principally of cash held for real estate taxes, construction costs, property maintenance, insurance, minimum occupancy and property operating income requirements at specific properties as required by certain loan agreements.

**Income Taxes**

The Company has made an election to be taxed, and believes it qualifies as a REIT under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"). To maintain REIT status for Federal income tax purposes, the Company is generally required to distribute at least 90% of its REIT taxable income to its stockholders as well as comply with certain other income, asset and organizational requirements as defined in the Code. Accordingly, the Company is generally not subject to Federal corporate income tax to the extent that it distributes 100% of its REIT taxable income each year.

Although it may qualify for REIT status for Federal income tax purposes, the Company is subject to state income or franchise taxes in certain states in which some of its properties are located. In addition, taxable income from non-REIT activities managed through the Company's taxable REIT subsidiary ("TRS") is fully subject to Federal, state and local income taxes.

The Company accounts for TRS income taxes under the liability method as required by ASC Topic 740 "Income Taxes." Under the liability method, deferred income taxes are recognized for the temporary differences between GAAP basis and the tax basis of the TRS income, assets and liabilities.

In accordance with ASC Topic 740 "Income Taxes" (formerly FASB Financial Interpretation No. 48, "Accounting for Uncertainty in Income Taxes – an interpretation of SFAS No. 109"), the Company believes that it has appropriate support for the income tax positions taken and, as such, does not have any uncertain tax positions that result in a material impact on the Company's financial position or results of operation. The prior three years' income tax returns are subject to review by the Internal Revenue Service. The Company will recognize potential interest and penalties related to uncertain tax positions, if any, as a component of the provision for income taxes.



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued

## Stock-based Compensation

The Company accounts for stock-based compensation pursuant to ASC Topic 718 “Compensation – Stock Compensation”. As such, all equity based awards are reflected as compensation expense in the Company’s consolidated financial statements over their vesting period based on the fair value at the date of grant.

## Recent Accounting Pronouncements

During June 2009, the FASB issued a new accounting standard, which provided certain changes to the evaluation of a variable interest entity (“VIE”) including requiring a qualitative rather than a quantitative analysis to determine the primary beneficiary of a VIE, continuous assessments of whether an enterprise is the primary beneficiary of a VIE and enhanced disclosures about an enterprise’s involvement with a VIE. Under the new standard, the primary beneficiary has both the power to direct the activities that most significantly impact economic performance of the VIE and the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE. The adoption of the standard on January 1, 2010 did not have a material impact on the Company’s consolidated financial statements.

During January 2010, the FASB issued Accounting Standards Update (“ASU”) No. 2010-06 “Improving Disclosures about Fair Value Measurements,” which provides for new disclosures, as well as clarification of existing disclosures on fair value measurements. The adoption of the standard on January 1, 2010 did not have a material impact on the Company’s financial position and results of operations.

During February 2010, the FASB issued ASU No. 2010-09 “Subsequent Events (ASC Topic 855) Amendments to Certain Recognition and Disclosure Requirements,” which requires an entity that is an SEC filer to evaluate subsequent events through the date that the financial statements are issued and removes the requirement for an SEC filer to disclose a date through which subsequent events have been evaluated. The adoption did not have an impact on the Company’s financial position and results of operations.

During July 2010, the FASB issued ASU No. 2010-20 “Receivables (ASC Topic 310) Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses,” which requires companies to provide more information about the credit quality of their financing receivables in the disclosures to financial statements including, but not limited to, significant purchases and sales of financing receivables, aging information and credit quality indicators. The adoption of this accounting guidance did not have a significant impact on the Company’s consolidated financial statements.

## Comprehensive income

The following table sets forth comprehensive income for the years ended December 31, 2010, 2009 and 2008:

	Years ended December 31,		
	2010	2009	2008
(dollars in thousands)			
Net income attributable to Common Shareholders	\$ 30,057	\$ 31,133	\$ 25,068
Other comprehensive income (loss)	137	1,514	(3,555)
Comprehensive income attributable to Common Shareholders	\$ 30,194	\$ 32,647	\$ 21,513

Other comprehensive income relates to the changes in the fair value of derivative instruments accounted for as cash flow hedges and the amortization, which is included in interest expense, of derivative instruments.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued**

The following table sets forth the change in accumulated other comprehensive loss for the years ended December 31, 2010 and 2009:

**Accumulated other comprehensive loss**

(dollars in thousands)	Years ended December 31,	
	2010	2009
Beginning balance	\$ (2,994)	\$ (4,508)
Unrealized loss on valuation of derivative instruments and amortization of derivative	(2,329)	(912)
Reclassification of loss on derivative instruments to interest expense	2,466	2,426
Ending balance	\$ (2,857)	\$ (2,994)

**2. Acquisition and Disposition of Properties and Discontinued Operations****A. Acquisition and Disposition of Properties****Acquisitions**

On December 23, 2010, the Company, through Fund III in a joint venture with an unaffiliated partner, acquired White City Shopping Center, a 255,000 square foot center located in Shrewsbury, Massachusetts for \$56.0 million.

Prior to June 30, 2010, the Company, through Fund II in a joint venture with an unaffiliated partner, California Urban Investment Partners, LLC (“CUIP”), owned a leasehold interest in CityPoint, a mixed-use, redevelopment project located in downtown Brooklyn, New York. Fund II owned a 75% interest in the retail component, a 50% interest in the office component and no interest in the residential component of CityPoint. CUIP owned the remaining interests in the retail and office components and 100% of the residential component of the project. Accordingly, Fund II’s investment represented 24.75% of the overall original acquisition cost and subsequent carry and pre-development costs and was accounted for using the equity method.

On June 30, 2010, Fund II acquired all of CUIP’s interest in CityPoint for \$9.2 million (the “Transaction”), consisting of a current payment of \$2.0 million and deferred payments, potentially through 2020, aggregating \$7.2 million. Fund II also assumed CUIP’s share of the first mortgage debt, \$19.6 million.

The Transaction was a business combination achieved in stages, and as a result, Fund II was required to report its entire investment in CityPoint at fair market value. Based on a June 30, 2010 third-party appraisal, CityPoint was valued at \$108.0 million which resulted in Fund II recording a non-cash gain from bargain purchase of approximately \$33.8 million. A majority of the gain was attributable to the components of CityPoint that was acquired as the book value of the Company’s original investment approximated fair value. The Operating Partnership’s share of this gain, net of the noncontrolling interests’ share, totaled \$6.3 million.

As a result of the Transaction, the Company changed its method of accounting for CityPoint from the equity method and now consolidates CityPoint in its consolidated financial statements. As CityPoint is currently in the redevelopment stage, there are no revenues or earnings from CityPoint included in the Company’s Consolidated Statements of Income for the years ended December 31, 2010, 2009 and 2008.

On January 29, 2009, the Company acquired the 641,000 square foot Cortlandt Towne Center in Cortlandt, NY for \$78.0 million.

On February 29, 2008, the Company acquired a portfolio of 11 self-storage properties located throughout New York and New Jersey for approximately \$174.0 million. The portfolio totals approximately 920,000 net rentable square feet.

On April 22, 2008, the Company acquired a 20,000 square foot single tenant retail property located in Manhattan, New York for \$9.7 million.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**Dispositions**

During 2010, 2009 and 2008, the Company disposed of the following properties:

(dollars in thousands) <b>Property</b>	<b>Year Sold</b>	<b>Sales Price</b>	<b>Gain</b>	<b>GLA</b>
Blackman Plaza	2009	\$ 2,500	\$ 1,506	125,264
Six Kroger locations	2009	9,481	5,637	277,700
Village Apartments	2008	23,300	7,182	599,106
Total		<u>\$ 35,281</u>	<u>\$ 14,325</u>	<u>1,002,070</u>

Subsequent to December 31, 2010, the Company sold a property in Oakbrook, Illinois for \$8.2 million which resulted in a gain of \$3.9 million. Reference is made to Note 23 for an overview of the sale.

**B. Discontinued Operations**

The Company reports properties held-for-sale and properties sold during the periods as discontinued operations. The combined assets and liabilities and results of operations of discontinued operations are reflected as a separate component within the accompanying Consolidated Financial Statements for all periods presented.

The combined assets and liabilities as of December 31, 2010 and December 31, 2009 and results of operations of the properties classified as discontinued operations for the years ended December 31, 2010, 2009 and 2008 are summarized as follows:

**BALANCE SHEETS**

<b>ASSETS</b>	<b>December 31, 2010</b>	<b>December 31, 2009</b>
(dollars in thousands)		
Net real estate	\$ 4,046	\$ 4,485
Rents receivable, net	69	69
Prepaid expenses and other assets, net	13	2
Total assets of discontinued operations	<u>\$ 4,128</u>	<u>\$ 4,556</u>
<b>LIABILITIES</b>		
Mortgage Notes Payable	—	—
Accounts payable and accrued expenses	—	—
Other liabilities	—	—
Total liabilities of discontinued operations	<u>\$ —</u>	<u>\$ —</u>

<b>STATEMENTS OF OPERATIONS</b>	<b>Years ended December 31,</b>		
	<b>2010</b>	<b>2009</b>	<b>2008</b>
(dollars in thousands)			
Total revenues	\$ 1,000	\$ 1,644	\$ 5,136
Total expenses	620	1,160	3,398
Operating Income	380	484	1,738
Gain on sale of property	—	7,143	7,182
Income from discontinued operations	380	7,627	8,920
Income from discontinued operations attributable to noncontrolling interests in subsidiaries	(303)	(5,045)	(931)
Income from discontinued operations attributable to Common Shareholders	<u>\$ 77</u>	<u>\$ 2,582</u>	<u>\$ 7,989</u>

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 3. Segment Reporting

The Company has five reportable segments: Core Portfolio, Opportunity Funds, Self-Storage Portfolio, Notes Receivable and Other. Notes Receivable consists of the Company's notes receivable and preferred equity investment and related interest income. Other consists primarily of management fees and interest income. The accounting policies of the segments are the same as those described in the summary of significant accounting policies. The Company evaluates property performance primarily based on net operating income before depreciation, amortization and certain nonrecurring items. Investments in the Core Portfolio are typically held long-term. Given the contemplated finite life of the Opportunity Funds, these investments are typically held for shorter terms. Fees earned by the Company as the general partner/member of the Opportunity Funds are eliminated in the Company's consolidated financial statements. The following table sets forth certain segment information for the Company, reclassified for discontinued operations, as of and for the years ended December 31, 2010, 2009, and 2008 (does not include unconsolidated affiliates):

## 2010

(dollars in thousands)	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable	Other	Elimination	Total
Revenues	\$ 62,121	\$ 47,938	\$ 21,314	\$ 19,161	\$ 22,479	\$ (21,055)	\$ 151,958
Property operating expenses and real estate taxes	19,470	18,118	13,107	—	—	(1,536)	49,159
Other expenses	22,439	13,588	—	—	—	(15,807)	20,220
Income before depreciation and amortization	\$ 20,212	\$ 16,232	\$ 8,207	\$ 19,161	\$ 22,479	\$ (3,712)	\$ 82,579
Depreciation and amortization	\$ 16,251	\$ 19,423	\$ 5,083	\$ —	\$ —	\$ (642)	\$ 40,115
Interest and other finance expense	\$ 17,137	\$ 13,445	\$ 4,129	\$ —	\$ —	\$ (240)	\$ 34,471
Real estate at cost	\$ 481,130	\$ 708,501	\$ 210,017	\$ —	\$ —	\$ (13,349)	\$ 1,386,299
Total assets	\$ 574,497	\$ 772,715	\$ 194,003	\$ 89,202	\$ —	\$ (105,611)	\$ 1,524,806
Expenditures for real estate and improvements	\$ 4,137	\$ 77,309	\$ 1,376	\$ —	\$ —	\$ (2,302)	\$ 80,520

## Reconciliation to net income and net income attributable to Common Shareholders

Net property income before depreciation and amortization	\$ 82,579
Other interest income	408
Depreciation and amortization	(40,115)
Equity in earnings of unconsolidated affiliates	10,971
Interest and other finance expense	(34,471)
Income tax expense	(2,890)
Gain from bargain purchase	33,805
Income from discontinued operations	380
Net income	50,667
Net (income) attributable to noncontrolling interests	(20,610)
Net income attributable to Common Shareholders	\$ 30,057

## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 3. Segment Reporting, continued

## 2009

(dollars in thousands)	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable	Other	Elimination	Total
Revenues	\$ 69,556	\$ 43,326	\$ 11,166	\$ 19,698	\$ 23,265	\$ (21,308)	\$ 145,703
Property operating expenses and real estate taxes	21,266	15,362	10,985	—	—	(1,150)	46,463
Reserve for notes receivable	—	—	—	1,734	—	—	1,734
Abandonment of project costs	12	2,475	—	—	—	—	2,487
Other expenses	23,983	13,600	—	—	—	(15,570)	22,013
Income before depreciation and amortization	\$ 24,295	\$ 11,889	\$ 181	\$ 17,964	\$ 23,265	\$ (4,588)	\$ 73,006
Depreciation and amortization	\$ 17,201	\$ 16,466	\$ 4,437	\$ —	\$ —	\$ (1,470)	\$ 36,634
Interest and other finance expense	\$ 18,744	\$ 8,404	\$ 5,006	\$ —	\$ —	\$ —	\$ 32,154
Real estate at cost	\$ 475,486	\$ 527,342	\$ 208,702	\$ —	\$ —	\$ (11,047)	\$ 1,200,483
Total assets	\$ 558,240	\$ 607,706	\$ 196,658	\$ 125,221	\$ —	\$ (105,361)	\$ 1,382,464
Expenditures for real estate and improvements	\$ 3,161	\$ 116,734	\$ 10,996	\$ —	\$ —	\$ (3,569)	\$ 127,322

## Reconciliation to net income and net income attributable to Common Shareholders

Net property income before depreciation and amortization	\$ 73,006
Other interest income	642
Depreciation and amortization	(36,634)
Equity in losses of unconsolidated affiliates	(1,529)
Impairment of investment in unconsolidated affiliates	(3,768)
Interest and other finance expense	(32,154)
Gain on debt extinguishment	7,057
Income tax expense	(1,541)
Gain on sale of property	7,143
Income from discontinued operations	484
Net income	12,706
Net loss attributable to noncontrolling interests	18,427
Net income attributable to Common Shareholders	\$ 31,133

## 2008

	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable	Other	Elimination	Total
Revenues	\$ 65,349	\$ 47,400	\$ 5,589	\$ 11,163	\$ 27,296	\$ (23,231)	\$ 133,566
Property operating expenses and real estate taxes	20,974	8,829	6,618	—	—	(381)	36,040
Reserve for notes receivable	—	—	—	4,392	—	—	4,392
Abandonment of project costs	—	630	—	—	—	—	630
Other expenses	26,007	16,131	58	—	—	(17,651)	24,545
Income (loss) before depreciation and amortization	\$ 18,368	\$ 21,810	\$ (1,087)	\$ 6,771	\$ 27,296	\$ (5,199)	\$ 67,959
Depreciation and amortization	\$ 20,295	\$ 9,452	\$ 3,002	\$ —	\$ —	\$ —	\$ 32,749
Interest and other finance expense	\$ 19,698	\$ 5,797	\$ 3,402	\$ —	\$ —	\$ (4)	\$ 28,893

Real estate at cost	\$ 474,684	\$ 433,189	\$ 186,529	\$ —	\$ —	\$ (7,478)	\$ 1,086,924
Total assets	\$ 567,882	\$ 487,182	\$ 194,992	\$ 125,587	\$ —	\$ (84,260)	\$ 1,291,383
Expenditures for real estate and improvements	\$ 18,424	\$ 94,191	\$ 135,391	\$ —	\$ —	\$ (2,973)	\$ 245,033

Reconciliation to net income and net income attributable to Common Shareholders

Net property income before depreciation and amortization	\$ 67,959
Other interest income	3,370
Depreciation and amortization	(32,749)
Equity in earnings of unconsolidated affiliates	19,906
Interest and other finance expense	(28,893)
Gain on debt extinguishment	1,523
Income tax expense	(3,362)
Gain on sale of land	763
Gain on sale of property	7,182
Income from discontinued operations	1,738
Net income	37,437
Net income attributable to noncontrolling interests	(12,369)
Net income attributable to Common Shareholders	\$ 25,068

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**4. Investments In and Advances to Unconsolidated Affiliates****Core Portfolio**Brandywine Portfolio

The Company owns a 22.2% interest in an approximately one million square foot retail portfolio (the “Brandywine Portfolio”) located in Wilmington, Delaware that is accounted for under the equity method.

Crossroads

The Company owns a 49% interest in the Crossroads Joint Venture and Crossroads II (collectively, “Crossroads”), which own a 311,000 square foot shopping center located in White Plains, New York that is accounted for under the equity method.

**Opportunity Funds**RCP Venture

The Company along with Klaff Realty, LP (“Klaff”) and Lubert-Adler Management, Inc., formed an investment group, the RCP Venture, for the purpose of making investments in surplus or underutilized properties owned by retailers. The RCP Venture is neither a single entity nor a specific investment. Any member of this group has the option of participating, or not, in any individual investment and each individual investment has been made on a stand-alone basis through a separate limited liability company (“LLC”). These investments have been made through different investment vehicles with different affiliated and unaffiliated investors and different economics to the Company. Investments under the RCP Venture are structured as separate joint ventures as there may be other investors participating in certain investments in addition to Klaff, Lubert-Adler and Acadia. The Company has made these investments through its subsidiaries, Mervyns I, Mervyns II and Fund II, (together the “Acadia Investors”), all on a non-recourse basis. Through December 31, 2010, the Acadia Investors have made investments in Mervyns Department Stores (“Mervyns”) and Albertson’s including additional investments in locations that are separate from these original investments (“Add-On Investments”). Additionally, they have invested in Shopko, Marsh and Rex Stores Corporation (collectively “Other RCP Investments”).

*Mervyns Department Stores*

Through Mervyns I and Mervyns II, the Company invested in a consortium to acquire Mervyns consisting of 262 stores (“REALCO”) and its retail operation (“OPCO”) from Target Corporation. The Company’s share of this investment was \$23.2 million. Subsequent to the initial acquisition, the Company, through Mervyns I and Mervyns II, made additional investments of \$2.9 million. To date, REALCO has disposed of a significant portion of the portfolio. In addition, in November 2007, the Company sold its interest in OPCO and, as a result, has no further investment in OPCO. Through December 31, 2010, the Company has received distributions from this investment totaling \$46.0 million.

Through December 31, 2010, the Company, through Mervyns I and Mervyns II, made Add-On Investments in Mervyns totaling \$6.5 million and have received distributions totaling \$1.7 million.

*Albertson’s*

The RCP Venture made its second investment as part of an investment consortium, acquiring Albertson’s and Cub Foods, of which the Company’s share was \$20.7 million. Through December 31, 2010, the Company has received distributions from this investment totaling \$77.1 million, including \$11.4 million received in 2010.

Through December 31, 2010, the Company, through Mervyns II, made Add-On Investments in Albertson’s totaling \$2.4 million and received distributions totaling \$1.2 million.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 4. Investments In and Advances to Unconsolidated Affiliates, continued

## Other RCP Investments

Through December 31, 2010, the Company, through Fund II, made investments of \$1.1 million in Shopko, \$0.7 million in Marsh, and \$2.0 million in Add-On Investments in Marsh. As of December 31, 2010, the Company has received distributions totaling \$1.7 million from its Shopko investment and \$2.6 million from its Marsh and Marsh Add-On Investments.

During July of 2007, the RCP Venture acquired a portfolio of 87 retail properties from Rex Stores Corporation, which the Company invested through Mervyns II. The Company's share of this investment was \$2.7 million. As of December 31, 2010, the Company has received distributions totaling \$0.8 million.

The following table summarizes activity related to the RCP Venture investments from inception through December 31, 2010:

Investment	Year Acquired	Invested Capital and Advances	Distributions	Operating Partnership Share	
				Invested Capital and Advances	Distributions
Mervyns	2004	\$ 26,058	\$ 45,966	\$ 4,901	\$ 11,251
Mervyns Add-On Investments	2005/2008	6,517	1,703	1,046	283
Albertson's	2006	20,717	77,053	4,239	15,410
Albertson's Add-On Investments	2006/2007	2,412	1,215	387	243
Shopko	2006	1,108	1,655	222	331
Marsh and Add-on Investments	2006/2008	2,667	2,639	533	528
Rex Stores	2007	2,701	840	535	168
		\$ 62,180	\$ 131,071	\$ 11,863	\$ 28,214

The Company accounts for the original investments in Mervyns and Albertson's under the equity method of accounting as the Company has the ability to exercise significant influence, but does not have financial or operating control.

The Company accounts for the Add-On Investments and Other RCP Investments under the cost method. Due to its minor ownership interest based on the size of the investments as well as the terms of the underlying operating agreements, the Company has no influence over such entities' operating and financial policies. Other than the minority investor rights to which the Company is entitled pursuant to statute, it has no rights other than to receive its pro-rata share of cash distributions as declared by the managers. The Company has no rights with respect to the control and operation of the investment vehicles, and the formulation and execution of business and investment policies. The Acadia Investors have interests in the individual investee LLC's as follows:

Investment	Investee LLC	Acadia Investors Entity	Acadia Investors Ownership % in:	
			Investee LLC	Underlying entity(s)
Mervyns	KLA/Mervyn's, L.L.C.	Mervyns I and Mervyns II	10.5%	5.8%
Mervyns Add-On Investments	KLA/Mervyn's, L.L.C.	Mervyns I and Mervyns II	10.5%	5.8%
Albertson's	KLA A Markets, LLC	Mervyns II	18.9%	5.7%
Albertson's Add-On Investments	KLA A Markets, LLC	Mervyns II	20.0%	6.0%
Shopko	KLA-Shopko, LLC	Fund II	20.0%	2.0%
Marsh and Add-On Investments	KLA Marsh, LLC	Fund II	20.0%	3.3%
Rex stores	KLAC Rex Venture, LLC	Mervyns II	13.3%	13.3%



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 4. Investments In and Advances to Unconsolidated Affiliates continued

Other Opportunity Fund Investments*Fund I Investments*

Fund I owned a 50% interest in the Sterling Heights Shopping Center, which was accounted for under the equity method of accounting. During the year ended December 31, 2009, Fund I recorded an impairment reserve of \$3.7 million related to this investment. On March 25, 2010, the Sterling Heights Shopping Center was sold for \$2.3 million. The proceeds from this sale together with the balance of Fund I's recourse obligation of \$0.6 million were used to fully liquidate the outstanding mortgage loan obligation.

*Fund II Investments*

Fund II had a 24.75% interest in CityPoint, a redevelopment project located in downtown Brooklyn, NY, which was accounted for under the equity method. On June 30, 2010, Fund II acquired the remaining interests in the project from its unaffiliated partner, as discussed in Note 2 and, as a result, now consolidates the CityPoint investment.

*Fund III Investments*

On December 23, 2010, Fund III, in a joint venture with an unaffiliated partner, acquired the 255,200 square foot White City Shopping Center in Shrewsbury, Massachusetts for \$56.0 million. Fund III has an 84% interest in the property. The unaffiliated joint venture partner will maintain control over this entity, and as such, the Company accounts for this investment under the equity method.

During June 2010, Fund III, in a joint venture with an unaffiliated partner, invested in an entity for the purpose of providing management services to owners of self-storage properties, including the 14 locations currently owned through Fund II and Fund III. Fund III has a 50% interest in the entity. This entity was determined to be a variable interest entity for which the Company was determined not to be the primary beneficiary. As such, the Company accounts for this investment under the equity method.

**Summary of Investments in Unconsolidated Affiliates**

The following combined/condensed Balance Sheets and Statements of Operations, in each period, summarize the financial information of the Company's investments in unconsolidated affiliates.

(dollars in thousands)	December 31, 2010	December 31, 2009
<b>Combined/Condensed Balance Sheets</b>		
Assets:		
Rental property, net	\$ 186,802	\$ 142,690
Real estate under development	—	100,346
Investment in unconsolidated affiliates	192,002	209,407
Other assets	27,841	20,951
	\$ 406,645	\$ 473,394
Liabilities and partners' equity:		
Mortgage note payable	\$ 267,565	\$ 258,685
Other liabilities	13,815	12,085
Partners' equity	125,265	202,624
	\$ 406,645	\$ 473,394
Company's investment in and advances to unconsolidated affiliates	\$ 31,036	\$ 51,712
Share of distributions in excess of share of income and investments in unconsolidated affiliates	\$ (20,884)	\$ (20,589)

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 4. Investments In and Advances to Unconsolidated Affiliates, continued

## Summary of Investments in Unconsolidated Affiliates, continued

	Years Ended December 31,		
	2010	2009	2008
(dollars in thousands)			
<b>Combined/Condensed Statements of Operations</b>			
Total revenues	\$ 29,460	\$ 30,835	\$ 30,457
Operating and other expenses	10,617	9,851	11,560
Interest expense	13,525	13,786	14,133
Equity in earnings (losses) of unconsolidated affiliates	56,482	(30,568)	177,775
Depreciation and amortization	4,839	5,152	5,333
(Loss) gain on sale of property, net	(2,957)	(390)	6,838
Net income (loss)	\$ 54,004	\$ (28,912)	\$ 184,044
Company's share of net income (loss)	\$ 11,363	\$ (1,141)	\$ 20,297
Impairment reserve	—	(3,768)	—
Amortization of excess investment	(392)	(388)	(391)
Company's share of net income (loss)	\$ 10,971	\$ (5,297)	\$ 19,906

## 5. Notes Receivable and Preferred Equity Investment

At December 31, 2010, the Company's notes receivable, net aggregated \$89.2 million, and were collateralized by the underlying properties, the borrower's ownership interest in the entities that own the properties and/or by the borrower's personal guarantee. Notes receivable are as follows:

Description	Effective interest rate	Final maturity date	Periodic payment terms	Prior liens	Face amount of mortgages	Carrying amount of mortgages
(dollars in thousands)						
72nd Street	20.85%	7/18/2011	(1)	\$ 170,727	\$ 47,000	\$ 46,715
Georgetown	10.23%	11/12/2011	(3)	9,596	8,000	8,000
Mezzanine Loan	14.50%	6/30/2011	(2)	—	8,585	8,585
Zero Coupon Loan	24.00%	1/3/2016	(3)	166,200	5,644	3,225
Mezzanine Loan	13.00%	9/11/2011	(3)	—	2,980	2,980
First Mortgage Loan	10.77%	9/11/2011	(3)	—	10,000	10,000
Individually less than 3%	10.00% - 17.50%	Demand note – 1/1/2017		106,089	15,722	9,697
Total					\$ 97,931	\$ 89,202

## Notes:

- (1) Principal and interest, including a \$7.5 million exit fee, are due upon maturity.
- (2) Payable upon maturity.
- (3) Interest only payable monthly, principal due on maturity.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**5. Notes Receivable and Preferred Equity Investment, continued**

During April 2010, the Company received a payment of \$2.1 million and during December 2009 received a payment of \$4.7 million, both representing paydowns on its first mortgage loan secured by three retail properties, following the sale of two of the collateralized properties.

During December 2009, the Company made a loan of \$8.6 million which bears interest at 14.5% and matures on June 30, 2011.

During August 2009, the Company received a payment of \$2.8 million, representing the entire balance on its first mortgage loan secured by an interest in a property in Pennsylvania.

During August 2009, the Company received a payment of \$5.1 million, representing a paydown on its first mortgage loan secured by an interest in a single tenant property located in Long Island, New York.

During June 2009, the Company received a payment of \$0.7 million, representing a paydown on its loan secured by an interest in a property in South Carolina.

During March 2009, the Company received a payment of \$0.3 million, representing the entire balance on a loan secured by an interest in a property in South Carolina.

During June 2008, the Company made a \$40.0 million preferred equity investment in an entity that owns a portfolio of 18 properties located primarily in Georgetown, Washington D.C. The portfolio consists of 306,000 square feet of principally retail space. The original term of this investment was for two years, with two one year extensions, and provided a 13% preferred return. During September 2010, the Company received its entire \$40.0 million of invested equity and \$9.4 million of accrued preferred return.

During July 2008, the Company made a \$34.0 million loan, which is collateralized by an interest in a mixed-use retail and residential development at 72nd Street and Broadway on the Upper West Side of Manhattan. The term of the loan is for a period of three years, with a one year extension with an effective yield, inclusive of all fees, of 20%.

During September 2008, the Company, through Fund III, made a \$10.0 million first mortgage loan, which is collateralized by land located on Long Island, New York. The term of the loan was for a period of two years, and provides an effective yield of 13%. During September 2010, the loan was extended for one year at an effective yield of 11%.

The following table reconciles notes receivable and preferred equity investments from January 1, 2008 to December 31, 2010:

	For the years ended December 31,		
	2010	2009	2008
(dollars in thousands)			
Balance at beginning of period	\$ 125,221	\$ 125,587	\$ 57,662
Additions during period:			
New mortgage loans	—	9,362	88,480
Deductions during period:			
Collections of principal	(42,010)	(13,614)	(19,922)
Amortization of premium	6,164	5,352	2,367
Reserves	(93)	(1,466)	(3,000)
Other	(80)	—	—
Balance at close of period	\$ 89,202	\$ 125,221	\$ 125,587

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**6. Deferred Charges**

Deferred charges consist of the following as of December 31, 2010 and 2009:

(dollars in thousands)	December 31,	
	2010	2009
Deferred financing costs	\$ 29,692	\$ 22,852
Deferred leasing and other costs	32,501	33,169
	62,193	56,021
Accumulated amortization	(36,463)	(27,710)
	\$ 25,730	\$ 28,311

**7. Acquired Lease Intangibles**

Upon acquisitions of real estate, the Company assesses the fair value of acquired assets (including land, buildings and improvements, and identified intangibles such as above and below market leases, acquired in-place leases and customer relationships) and acquired liabilities in accordance with ASC Topic 805. The intangibles are amortized over the remaining non-cancelable terms of the respective leases.

The scheduled amortization of acquired lease intangible assets and liabilities as of December 31, 2010 is as follows:

(dollars in thousands)	Acquired lease intangible	
	Assets	Liabilities
2011	\$ 3,029	\$ 994
2012	2,578	923
2013	1,999	730
2014	1,631	451
2015	1,520	313
Thereafter	7,865	2,326
	\$ 18,622	\$ 5,737

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**8. Mortgages Payable**

At December 31, 2010 and 2009, mortgage notes payable, excluding the net valuation premium on the assumption of debt, aggregated \$806.1 million and \$732.2 million, respectively, and were collateralized by 29 and 28 properties and related tenant leases, respectively. Interest rates on the Company's outstanding mortgage indebtedness ranged from 0.86% to 7.34% with maturities that ranged from March 2011 to November 2032. Certain loans are cross-collateralized and contain cross-default provisions. The loan agreements contain customary representations, covenants and events of default. Certain loan agreements require the Company to comply with affirmative and negative covenants, including the maintenance of debt service coverage and leverage ratios.

The following reflects mortgage loan activity for the year ended December 31, 2010:

i) During January 2010, the Company closed on a \$48.0 million construction loan that bears interest at LIBOR plus 400 basis points, subject to an interest rate floor of 6.50% which matures on January 12, 2012. As of December 31, 2010, \$40.2 million was drawn on this facility.

ii) During March 2010, the Company extended the Fund II subscription line of credit, which was collateralized by a pledge of investors' unfunded capital commitments, from March 1, 2010 to March 1, 2011 and adjusted the interest rate from LIBOR plus 250 basis points to LIBOR plus 325 basis points. In connection with the extension, the Company made an \$8.2 million payment on the outstanding \$48.2 million line of credit and the line of credit's maximum capacity was reduced to \$40.0 million. During December 2010, the line of credit was extended further to December 22, 2014 and the interest rate reduced to LIBOR plus 290 basis points. This modification also requires principal reductions to (a) \$15.0 million on October 31, 2013, (b) \$11.3 million on February 1, 2014, (c) \$7.5 million on May 1, 2014, and (d) \$3.8 million on August 1, 2014. Additionally, a Company guarantee has replaced the unfunded capital commitments of the investors as collateral for this loan and the Company has agreed to maintain various restrictive covenants.

iii) During February of 2010, the Company paid off an outstanding line of credit balance of \$2.0 million, which was collateralized by a property and scheduled to mature on March 29, 2010 and terminated the line of credit.

iv) During 2010, the Company made payments of \$29.0 million on an outstanding \$30.0 million credit facility collateralized by six properties.

v) During 2010, the Company made draws of \$32.0 million on the Fund III subscription line of credit. As of December 31, 2010, the total outstanding amount on this line of credit was \$171.5 million.

vi) During May of 2010, the Company borrowed an additional \$2.0 million on an existing mortgage loan collateralized by a property.

vii) During July 2010, the Company amended and extended a \$30.0 million loan, collateralized by a Fund II property located on 161<sup>st</sup> Street in the Bronx, NY. The agreement required a \$1.1 million payment on the outstanding principal balance and extended the maturity date to April 1, 2013. The interest rate has been adjusted retroactively to LIBOR plus 400 basis points for the period April 1, 2010 through March 31, 2011, LIBOR plus 550 basis points for the period April 1, 2011 through March 31, 2012, and LIBOR plus 600 basis points for the period April 1, 2012 through March 31, 2013.

viii) During July of 2010, the Company closed on a \$20.0 million bond financing that bears interest at a fixed rate of 7.25% that is due November 1, 2042 and has a mandatory put date of November 1, 2014.

ix) During August of 2010, the Company amended and extended the maturity date of a \$25.9 million loan that was scheduled to mature in August of 2010. In connection with the release of a portion of the collateral for this loan, the Company was required to pay down the principal by \$5.3 million. The amendment provided for a three year extension of the loan maturity date to August 12, 2013 with two one-year extension options.

x) Also during August of 2010, the Company completed an amendment of a \$31.7 million construction loan. Previously, the servicer, on behalf of the lender of this loan, had previously alleged that non-monetary defaults had occurred, however it has subsequently agreed to dismiss all allegations of default. The loan continued to bear interest at 7.38% and had a maturity date of January 1, 2020. During December 2010, the Company closed on a new \$34.0 million loan and used the proceeds to pay off this construction loan. The loan bears interest at LIBOR plus 275 basis points and matures on December 1, 2013. \$31.6 million of the loan was funded at the closing and an additional \$2.4 million was available for tenant improvements and leasing commissions.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**8. Mortgages Payable, continued**

xi) During September of 2010, the Company amended and extended the maturity date of a \$10.5 million loan that was scheduled to mature during September 2010. The amendment required a \$0.5 million principal pay down and provided for a one year extension of the loan maturity date to September 1, 2011 with a one year extension option and bears interest at LIBOR plus 325 basis points.

xii) During June 2009, the servicer, on behalf of the lender of one of the Company's loans alleged that a non-monetary default had occurred on an \$11.5 million construction loan collateralized by Atlantic Avenue. The servicer alleged that the Company did not substantially complete the improvements in accordance with the required completion date as defined in the loan agreement and, accordingly, did not meet the requirements for the final draw. During October 2010, the Company and the servicer reached an agreement to amend the loan whereby all alleged events of default were waived.

xiii) During October 2010, the Company modified and extended the maturity date of a \$9.8 million loan that was scheduled to mature during October 2010. The amendment required a \$1.4 million principal pay down and provided for a one year extension of the loan maturity date to October 31, 2011.

xiv) During October 2010, the Company closed on a \$50.0 million loan collateralized by a property. The loan bears interest at LIBOR plus 190 basis points and matures on October 26, 2015. The proceeds of this loan were used to repay the existing \$46.6 million mortgage note payable. There is an additional \$25.0 million available, based on the property attaining certain debt service coverage ratio levels and the lender being able to syndicate the loan. The second tranche will bear interest at LIBOR plus 230 basis points.

The following table sets forth certain information pertaining to our secured credit facilities:

(dollars in thousands) Borrower	Total amount of credit facility	Amount borrowed as of December 31, 2009	Net borrowings (repayments) during the year ended December 31, 2010	Amount borrowed as of December 31, 2010	Letters of credit outstanding as of December 31, 2010	Amount available under credit facilities as of December 31, 2010
Acadia Realty, LP	\$ 64,498	\$ 30,000	\$ (29,000)	\$ 1,000	\$ 8,610	\$ 54,888
Acadia Realty, LP	—	2,000	(2,000)	—	—	—
Fund II	40,000	48,245	(8,245)	40,000	—	—
Fund III	221,000	139,450	32,000	171,450	500	49,050
<b>Total</b>	<b>\$ 325,498</b>	<b>\$ 219,695</b>	<b>\$ (7,245)</b>	<b>\$ 212,450</b>	<b>\$ 9,110</b>	<b>\$ 103,938</b>

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 8. Mortgages Payable, continued

The following table summarizes the Company's mortgage and other secured indebtedness as of December 31, 2010 and December 31, 2009:

(dollars in thousands)

Description of Debt and Collateral	December 31, 2010	December 31, 2009	Interest Rate at December 31, 2010	Maturity	Payment Terms
<b>Mortgage notes payable – variable-rate</b>					
Liberty Avenue	\$ 10,000	\$ 10,450	3.51% (LIBOR +3.25%) Greater of 1.5%+3.5% or 5.00% (LIBOR +3.5%)	9/1/2011	Interest only monthly.
Fordham Place	85,910	86,000	5.00% (LIBOR +3.5%)	10/4/2011	Interest only monthly.
Tarrytown Shopping Center	8,427	9,800	1.91% (LIBOR +1.65%)	10/30/2011	Interest only monthly.
Branch Shopping Plaza	13,932	14,179	1.56% (LIBOR +1.30%) Greater of 6.50% or 4.26% (LIBOR +4.00%)	12/1/2011	Monthly principal and interest.
Canarsie Plaza	40,243	—	4.26% (LIBOR +4.00%)	1/12/2012	Interest only monthly.
Village Commons Shopping Center	9,305	9,467	1.66% (LIBOR +1.40%)	6/29/2012	Monthly principal and interest.
161 <sup>st</sup> Street	28,900	30,000	4.26% (LIBOR +4.00%)	4/1/2013	Interest only monthly.
CityPoint	20,650	—	2.76% (LIBOR +2.50%)	8/12/2013	Interest only monthly.
Pelham Manor	31,554	—	3.01% (LIBOR +2.75%)	12/1/2013	Monthly principal and interest.
Cortlandt Towne Center	50,000	44,878	2.16% (LIBOR +1.90%)	10/26/2015	Monthly principal and interest.
Sub-total mortgage notes payable	298,921	204,774			
<b>Secured credit facilities – variable-rate:</b>					
Fund III unfunded investor capital commitments	171,450	139,450	0.86% (LIBOR +0.60%)	10/9/2011	Interest only monthly.
Six Core Portfolio properties	1,000	30,000	1.51% (LIBOR +1.25%)	12/1/2011	Annual principal and monthly interest.
Fund II	40,000	48,245	3.16% (LIBOR +2.90%)	12/22/2014	Interest only monthly.
Ledgewood Mall	—	2,000	1.51% (LIBOR +1.25%)	—	—
Sub-total secured credit facilities	212,450	219,695			
Interest rate swaps (1)	(71,535)	(83,416)			
Total variable-rate debt	439,836	341,053			
<b>Mortgage notes payable – fixed-rate</b>					
Five Self-Storage properties	41,500	41,500	5.30%	3/16/2011	Interest only monthly.
Chestnut Hill	9,338	9,481	5.45%	6/11/2013	Monthly principal and interest.
Clark Diversey	4,625	4,751	6.35%	7/1/2014	Monthly principal and interest.
New Loudon Center	14,119	14,343	5.64%	9/6/2014	Monthly principal and interest.
CityPoint	20,000	—	7.25%	11/1/2014	Interest only quarterly.
Crescent Plaza	17,539	17,600	4.98%	9/6/2015	Monthly principal and interest.
Pacesetter Park Shopping Center	12,132	12,313	5.12%	11/6/2015	Monthly principal and interest.
Elmwood Park Shopping Center	34,197	34,600	5.53%	1/1/2016	Monthly principal and interest.
The Gateway Shopping Center	20,500	20,500	5.44%	3/1/2016	Interest only monthly.
Walnut Hill Plaza	23,500	23,500	6.06%	10/1/2016	Interest only monthly until 10/11; monthly principal and interest thereafter.
239 Greenwich Avenue	26,000	26,000	5.42%	2/11/2017	Interest only monthly.
Merrillville Plaza	26,250	26,250	5.88%	8/1/2017	Interest only monthly until 7/12 monthly principal and interest thereafter.
216 <sup>th</sup> Street	25,500	25,500	5.80%	10/1/2017	Interest only monthly.
Pelham Manor Shopping Plaza	—	31,652	7.18%	—	—
Atlantic Avenue	11,540	11,543	7.34%	1/1/2020	Interest only upon drawdown on construction loan until 1/15 monthly principal and interest thereafter.
A&P Shopping Plaza	8,033	8,182	6.40%	11/1/2032	Monthly principal and interest.
Interest rate swaps (1)	71,535	83,416	5.46%		
Total fixed-rate debt	366,308	391,131			
Unamortized premium	68	103			
Total	\$ 806,212	\$ 732,287			

(1) Represents the amount of the Company's variable-rate debt that has been fixed through certain cash flow hedge transactions. (Note 10).

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**8. Mortgages Payable, continued**

The scheduled principal repayments of all indebtedness including Convertible Notes as of December 31, 2010 are as follows (does not include \$68,000 net valuation premium on assumption of debt):

(dollars in thousands)

2011	\$	384,668
2012		53,374
2013		103,443
2014		64,452
2015		79,268
Thereafter		169,651
	\$	<u>854,856</u>

**9. Convertible Notes Payable**

In December 2006 and January 2007, the Company issued a total of \$115.0 million in principal of convertible notes with a fixed interest rate of 3.75% due 2026 (the "Convertible Notes"). The Convertible Notes were issued at par and require interest payments semi-annually in arrears on June 15 and December 15 of each year. The Convertible Notes are unsecured unsubordinated obligations and rank equally with all other unsecured and unsubordinated indebtedness. The Convertible Notes have an effective interest rate of 6.03% giving effect to the accounting treatment required by ASC Topic 470-20 "Debt with Conversion and Other Options" ("ASC Topic 470-20"). The Convertible Notes had an initial conversion price of \$30.86 per share. The conversion rate may be adjusted under certain circumstances, including the payment of cash dividends in excess of the regular quarterly cash dividend in place at the time the Convertible Notes were issued. As of December 31, 2010, the adjusted conversion price is \$29.26. Upon conversion of the Convertible Notes, the Company will deliver cash and, in some circumstances, Common Shares, as specified in the indenture relating to the Convertible Notes. In general, the Convertible Notes may only be converted prior to maturity during any calendar quarter beginning after December 31, 2006 if the Company's Common Shares trade at 130% of the conversion price for at least 20 days within a consecutive 30 day trading period. Prior to December 20, 2011, the Company will not have the right to redeem Convertible Notes, except to preserve its status as a REIT. After December 20, 2011, the Company will have the right to redeem the notes, in whole or in part, at any time and from time to time, for cash equal to 100% of the principal amount of the notes plus any accrued and unpaid interest to, but not including, the redemption date. The Holders of notes may require the Company to repurchase their notes, in whole or in part, on December 20, 2011, December 15, 2016, and December 15, 2021 for cash equal to 100% of the principal amount of the notes to be repurchased plus any accrued and unpaid interest to, but not including, the repurchase date.

In general, upon a conversion of notes, the Company will deliver cash and, at the Company's election, its Common Shares, with an aggregate value, which the Company refers to as the "conversion value", equal to the conversion rate multiplied by the average price of the Company's Common Shares. The net amount may be paid, at the Company's option, in cash, its Common Shares or a combination of cash and its Common Shares.

The Convertible Notes if-converted value does not exceed its principal amount as of December 31, 2010 and there are no derivative transactions that were entered into in connection with the issuance of the Convertible Notes.

During 2010, 2009 and 2008 the Company purchased \$0.2 million, \$57.0 million and \$8.0 million in principal amount, respectively, of its convertible debt at an average discount of approximately 19%. The transactions resulted in a gain on debt extinguishment of \$7.1 million and \$1.5 million for the years ended December 31, 2009 and 2008, respectively. The outstanding Convertible Note principal amount as of December 31, 2010 and 2009 was \$49.8 million and \$50.0 million, respectively. The outstanding Convertible Note net carrying amount as of December 31, 2010 and 2009 was \$48.7 million and \$47.9 million, respectively.

Effective January 1, 2009, the Company adopted ASC Topic 470-20 which required it to retrospectively restate and reclassify previously disclosed consolidated financial statements to allocate the proceeds from the issuance of convertible debt between a debt component and an equity component. The resulting discount on the debt component is amortized over the period the convertible debt is expected to be outstanding, which is December 11, 2006 to December 20, 2011, as additional non-cash interest expense. The equity component recorded as additional paid-in capital was \$11.3 million, which represented the difference between the proceeds from the issuance of the convertible notes payable and the fair value of the liability at the time of issuance.



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**9. Convertible Notes Payable, continued**

The carrying amount of the equity component included in additional paid-in capital totaled \$1.1 million at December 31, 2010 and \$2.1 million at December 31, 2009. Interest expense relating to the contractual interest coupon recognized in the Consolidated Statements of Income was \$1.9 million, \$2.5 million and \$4.3 million for the years ended December 31, 2010, 2009, and 2008, respectively. The additional non-cash interest expense recognized in the Consolidated Statements of Income was \$1.0 million, \$1.3 million and \$2.1 million for the years ended December 31, 2010, 2009, and 2008, respectively. Accumulated amortization related to the convertible notes payable was \$1.0 million and \$0.7 million as of December 31, 2010 and December 31, 2009, respectively, after giving effect to repurchases.

The following table shows the effect of the retrospective application and reclassification of the consolidated statement of income for the year ended December 31, 2008 and consolidated statement of cash flow accounts for the year ended December 31, 2008:

(dollars in thousands, except per share amounts)

Affected Consolidated Income Statement Accounts	Year ended December 31, 2008		
	Before Adjustment	As Adjusted	Effect of Change
Depreciation and amortization	\$ 32,805	\$ 32,749	\$ 56
Interest expense	\$ 26,792	\$ 28,893	\$ (2,101)
Gain on debt extinguishment	\$ 1,958	\$ 1,523	\$ (435)
Income from continuing operations	\$ 30,997	\$ 28,517	\$ (2,480)
Net income	\$ 39,917	\$ 37,437	\$ (2,480)
Net income attributable to Common Shareholders	\$ 27,548	\$ 25,068	\$ (2,480)
Basic earnings per share	\$ 0.81	\$ 0.74	\$ (0.07)
Diluted earnings per share	\$ 0.80	\$ 0.73	\$ (0.07)
Affected Consolidated Statement of Cash Flow Accounts	Year ended December 31, 2008		
	Before Adjustment	As Adjusted	Effect of Change
Depreciation and amortization	\$ 34,964	\$ 34,908	\$ (56)
Gain on debt extinguishment	\$ (1,958)	\$ (1,523)	\$ 435
Amortization of discount on convertible debt	\$ —	\$ 2,101	\$ 2,101

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**10. Financial Instruments and Fair Value Measurements****Derivative Financial Instruments**

The FASB's derivative and hedging guidance establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. As required by the FASB guidance, the Company records all derivatives on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative and the resulting designation. Derivatives used to hedge the exposure to changes in the fair value of an asset, liability, or firm commitment attributable to a particular risk, such as interest rate risk, are considered fair value hedges. Derivatives used to hedge the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges.

For derivatives designated as fair value hedges, changes in the fair value of the derivative and the hedged item related to the hedged risk are recognized in earnings. For derivatives designated as cash flow hedges, the effective portion of changes in the fair value of the derivative is initially reported in other comprehensive income (outside of earnings) and subsequently reclassified to earnings when the hedged transaction affects earnings, and the ineffective portion of changes in the fair value of the derivative is recognized directly in earnings. The Company assesses the effectiveness of each hedging relationship by comparing the changes in fair value or cash flows of the derivative hedging instrument with the changes in fair value or cash flows of the designated hedged item or transaction. For derivatives not designated as hedges, changes in fair value are recognized in earnings.

As of December 31, 2010, the Company's derivative financial instruments consisted of seven interest rate LIBOR swaps with an aggregate notional value of \$71.5 million, which fix interest at rates from 0.5% to 5.1% and mature between September 2011 and November 2012. The Company also has one derivative financial instrument with a notional value of \$28.9 million which caps interest at 6% and matures in April 2013. The fair value of the derivative liability of these instruments, which is included in other liabilities in the Consolidated Balance Sheets, totals \$2.8 million at December 31, 2010. The notional value does not represent exposure to credit, interest rate or market risks.

These derivative instruments have been designated as cash flow hedges and hedge the future cash outflows on variable rate mortgage debt. Such instruments are reported at the fair value reflected above. As of December 31, 2010 and 2009, unrealized losses totaling \$2.8 and \$3.3 million, respectively were reflected in accumulated other comprehensive loss. It is estimated that approximately \$2.5 million included in accumulated other comprehensive loss related to derivatives will be reclassified to interest expense in the 2011 results of operations.

As of December 31, 2010 and 2009, no derivatives were designated as fair value hedges or hedges of net investments in foreign operations. Additionally, the Company does not use derivatives for trading or speculative purposes and currently does not have any derivatives that are not designated as hedges. As of December 31, 2010, none of the Company's hedges were ineffective.

The FASB's fair value measurements and disclosure guidance requires the valuation of certain of the Company's financial assets and liabilities, based on a three-level fair value hierarchy. Market participant assumptions obtained from sources independent of the Company are observable inputs that are classified within Levels 1 and 2 of the hierarchy, and the Company's own assumptions about market participant assumptions are unobservable inputs classified within Level 3 of the hierarchy.

The following table presents the Company's fair value hierarchy for those assets and liabilities measured at fair value on a recurring basis as of December 31, 2010:

(dollars in thousands)

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<u>Liabilities</u>			
Derivative financial instruments	\$ —	\$ 2,816	\$ —

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 10. Financial Instruments and Fair Value Measurements, continued

## Financial Instruments

Certain of the Company's assets and liabilities meet the definition of financial instruments. Except as disclosed below, the carrying amounts of these financial instruments approximates their fair value due to the short-term nature of such accounts.

The Company has determined the estimated fair values of the following financial instruments by discounting future cash flows utilizing a discount rate equivalent to the rate at which similar financial instruments would be originated at the reporting date:

(dollars in thousands)	December 31, 2010		December 31, 2009	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
Notes Receivable and Preferred Equity Investments	\$ 89,202	\$ 90,612	\$ 125,221	\$ 126,403
Mortgage Notes Payable and Convertible Notes Payable	\$ 854,924	\$ 863,639	\$ 780,197	\$ 751,043

## 11. Shareholders' Equity and Noncontrolling Interests

## Common Shares

During the first quarter of 2010, 57,476 employee Restricted Shares were cancelled to pay the employees' income taxes due on the value of the portion of the Restricted Shares that vested. During the year ended December 31, 2010, the Company recognized accrued Common Share and Common OP Unit-based compensation totaling \$3.8 million in connection with the vesting of Restricted Shares and Units (Note 15).

## Noncontrolling Interests

The following table summarizes the change in the noncontrolling interests since December 31, 2009:

(dollars in thousands)	Noncontrolling Interests in Operating Partnership	Noncontrolling Interests in Partially-Owned Affiliates
Balance at December 31, 2009	\$ 6,176	\$ 214,116
Distributions declared of \$0.72 per Common OP Unit	(723)	—
Net income for the period January 1 through December 31, 2010	394	20,216
Conversion of 364,615 OP Units to Common Shares by limited partners of the Operating Partnership	(3,240)	—
Other comprehensive income – unrealized loss on valuation of swap agreements	22	261
Reclassification of realized interest expense on swap agreements	2	(356)
Noncontrolling interest contributions	—	33,556
Noncontrolling interest distributions and other reductions	—	(2,892)
Employee Long-term Incentive Plan Unit Awards	1,778	—
Balance at December 31, 2010	\$ 4,409	\$ 264,901

Noncontrolling interest in the Operating Partnership represents (i) the limited partners' 281,294 and 626,606 Common OP Units at December 31, 2010 and 2009, (ii) 188 Series A Preferred OP Units at December 31, 2010 and 2009, with a stated value of \$1,000 per unit, which are entitled to a preferred quarterly distribution of the greater of (a) \$22.50 (9% annually) per Series A Preferred OP Unit or (b) the quarterly distribution attributable to a Series A Preferred OP Unit if such unit were converted into a Common OP Unit, and (iii) 641,534 and 393,909 LTIP units as of December 31, 2010 and December 31, 2009 respectively, as discussed in Share Incentive Plan (Note 15).

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**11. Shareholders' Equity and Noncontrolling Interests, continued****Noncontrolling Interests, continued**

Noncontrolling interests in partially-owned affiliates include third-party interests in Fund I, II and III, and Mervyns I and II and three other entities.

In 2005, the Company issued 250,000 Restricted Common OP Units to Klaff in consideration for an interest in certain management contract rights. During 2010, Klaff converted the 250,000 Restricted Common OP Units into Common Shares.

The Series A Preferred OP Units were issued in 1999 in connection with the acquisition of a property. Through December 31, 2010, 1,204 Series A Preferred OP Units were converted into 160,533 Common OP Units and then into Common Shares. The 188 remaining Series A Preferred OP Units are currently convertible into Common OP Units based on the stated value divided by \$7.50. Either the Company or the holders can currently call for the conversion of the Series A Preferred OP Units at the lesser of \$7.50 or the market price of the Common Shares as of the conversion date.

**12. Related Party Transactions**

During February 2010, Klaff converted all 250,000 of its Restricted Common OP Units into 250,000 Common Shares.

In 2008 and 2009 the Company earned asset management, leasing, disposition, development and construction fees for providing services to an existing portfolio of retail properties and/or leasehold interests in which Klaff had an interest. Fees earned by the Company in connection with this portfolio were \$0.0 million, \$0.4 million and \$0.8 million for the years ended December 31, 2010, 2009 and 2008 respectively.

The Company earns fees from two of its investments in unconsolidated partnerships (Note 4). The Company earned property management, construction, legal and leasing fees from the Brandywine Portfolio totaling \$0.8 million, \$0.7 million and \$1.1 million for the years ended December 31, 2010, 2009 and 2008, respectively. In addition, the Company earned property management and development fees from CityPoint totaling \$1.0 million for the year ended December 31, 2008.

Lee Wielansky, the Lead Trustee of the Company, was paid a consulting fee of \$0.1 million for each of the years ended December 31, 2010, 2009, and 2008.

**13. Tenant Leases**

Space in the shopping centers and other retail properties is leased to various tenants under operating leases that usually grant tenants renewal options and generally provide for additional rents based on certain operating expenses as well as tenants' sales volume.

Minimum future rentals to be received under non-cancelable leases for shopping centers and other retail properties as of December 31, 2010 are summarized as follows:

(dollars in thousands)

2011	\$	94,214
2012		88,108
2013		80,087
2014		68,512
2015		60,244
Thereafter		546,444
	\$	<u>937,609</u>

During the years ended December 31, 2010, 2009 and 2008, no single tenant collectively accounted for more than 10% of the Company's total revenues.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**14. Lease Obligations**

The Company leases land at 24 of its shopping centers, which are accounted for as operating leases and generally provide the Company with renewal options. Ground rent expense was \$3.7 million, \$2.5 million, and \$2.3 million (including capitalized ground rent at properties under development of \$0.5 million, \$0.6 million and \$1.1 million) for the years ended December 31, 2010, 2009 and 2008, respectively. The leases terminate at various dates between 2020 and 2078. These leases provide the Company with options to renew for additional terms aggregating from 20 to 60 years. The Company leases space for its White Plains corporate office for a term expiring in 2015. Office rent expense under this lease was \$1.5 million, \$1.5 million and \$1.2 million for the years ended December 31, 2010, 2009 and 2008, respectively. Future minimum rental payments required for leases having remaining non-cancelable lease terms are as follows:

(dollars in thousands)

2011	\$	5,372
2012		6,008
2013		6,033
2014		5,574
2015		5,375
Thereafter		143,216
	\$	<u>171,578</u>

**15. Share Incentive Plan**

During 2003, the Company adopted the 2003 Share Incentive Plan (the "2003 Plan"). The 2003 Plan authorizes the issuance of options, share appreciation rights, restricted shares ("Restricted Shares"), restricted OP Units ("LTIP Units") and performance units (collectively, "Awards") to officers, employees and trustees of the Company and consultants to the Company equal to up to four percent of the total Common Shares of the Company outstanding from time to time on a fully diluted basis. However, no participant may receive more than the equivalent of 1,000,000 Common Shares during the term of the 2003 Plan with respect to Awards. Options are granted by the Compensation Committee (the "Committee"), which currently consists of three non-employee Trustees, and will not have an exercise price less than 100% of the fair market value of the Common Shares and a term of greater than ten years at the grant date. Vesting of options is at the discretion of the Committee. Share appreciation rights provide for the participant to receive, upon exercise, cash and/or Common Shares, at the discretion of the Committee, equal to the excess of the market value of the Common Shares at the exercise date over the market value of the Common Shares at the grant date. The Committee determines the restrictions placed on Awards, including the dividends or distributions thereon and the term of such restrictions. The Committee also determines the award and vesting of performance units and performance shares based on the attainment of specified performance objectives of the Company within a specified performance period. Through December 31, 2010, no share appreciation rights or performance units/shares had been awarded. In connection with the Awards, to the extent that a portion of senior management's cash bonus is converted into elective Awards, the number of shares issued are at a 25% discount and vest over time.

During 2006, the Company adopted the 2006 Share Incentive Plan (the "2006 Plan"). The 2006 Plan is substantially similar to the 2003 Plan, except that the maximum number of Common Share equivalents that the Company may issue pursuant to the 2006 Plan is 500,000.

On March 1, 2010 and March 10, 2010, the Company issued 265,517 LTIP Units and 1,462 Restricted Shares to officers of the Company and 15,011 Restricted Shares and 1,411 LTIP Units to employees of the Company. Vesting with respect to these awards is recognized ratably over the five annual anniversaries following the issuance date. Vesting on 23% of the awards issued to officers are also generally subject to achieving certain Company performance measures. LTIP Units are similar to Restricted Shares but provide for a quarterly partnership distribution in a like amount as paid to Common OP Units. This distribution is paid on both unvested and vested LTIP Units. The LTIP Units are convertible into Common OP Units and Common Shares upon vesting and a revaluation of the book capital accounts.

These awards were measured at their fair value as if they were vested on the grant date. Fair value was established as the market price of the Company's Common Shares as of the close of trading on the day preceding the grant date.

The total value of the above Restricted Shares and LTIP Units as of the grant date was \$4.7 million. The weighted average fair value for Restricted Shares and LTIP Units granted for the years ended December 31, 2010, 2009 and 2008 were \$16.73, \$10.31 and \$24.51, respectively.

Total long-term incentive compensation expense, including the expense related to the above mentioned plans, was \$3.8 million, \$3.7 million and \$3.5 million for the years ended December 31, 2010, 2009 and 2008, respectively.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 15. Share Incentive Plan, continued

On May 10, 2010, the Company issued 4,180 unrestricted Common Shares to Trustees of the Company in connection with Trustee fees. The Company also issued 8,000 Restricted Shares to Trustees, which vest over three years with 33% vesting on each of the three anniversaries following the issuance date. The Restricted Shares do not carry voting rights or other rights of Common Shares until vesting and may not be transferred, assigned or pledged until the recipients have a vested non-forfeitable right to such shares. Dividends are not paid currently on unvested Restricted Shares, but are paid cumulatively, from the issuance date through the applicable vesting date of such Restricted Shares vesting. Trustee fee expense of \$0.1 million for the year ended December 31, 2010 has been recognized in the accompanying consolidated financial statements related to this issuance.

During 2009, the Company adopted the Long Term Investment Alignment Program (the "Program") pursuant to which the Company may award units primarily to senior executives which would entitle them to receive up to 25% of any future Fund III Promote when and if such Promote is ultimately realized. As of December 31, 2010, the Company has awarded units representing 61% of the Program, which were determined to have no value at issuance or as of December 31, 2010. In accordance with ASC Topic 718 "Compensation - Stock Compensation," compensation relating to these awards will be recorded based on the change in the estimated fair value at each reporting period.

As of December 31, 2010, the Company had 101,283 options outstanding to officers and employees all of which have vested. In addition, 58,000 options have been issued, of which all have vested, to non-employee Trustees. During 2010, 7,000 options were exercised by the Trustees at various exercise prices. As of December 31, 2010, there are 51,000 options outstanding to Trustees of the Company. These options are for ten-year terms from the grant date and vested in three equal annual installments, which began on their respective grant dates.

A summary of option activity under all option arrangements as of December 31, 2009 and 2010, and changes during the years then ended is presented below:

Options	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (dollars in thousands)
Outstanding at January 1, 2009	421,244	\$ 10.65	3.7	\$ 1,527
Granted	—	—	—	—
Exercised	(258,900)	5.99	—	2,816
Forfeited or Expired	(3,061)	19.67	—	—
Outstanding and exercisable at December 31, 2009	159,283	18.04	5.5	—
Granted	—	—	—	—
Exercised	(7,000)	14.46	—	26
Forfeited or Expired	—	—	—	—
Outstanding and exercisable at December 31, 2010	152,283	\$ 18.20	4.5	\$ 6

The total intrinsic value of options exercised during the years ended December 31, 2010, 2009 and 2008 was \$0.03 million, \$2.8 million and \$0.8 million, respectively.

A summary of the status of the Company's unvested Restricted Shares and LTIP Units as of December 31, 2009 and 2010 and changes during the years ended December 31, 2009 and 2010, is presented below:

Unvested Shares and LTIP Units	Restricted Shares	Weighted Grant-Date Fair Value	LTIP Units	Weighted Grant-Date Fair Value
Unvested at January 1, 2009	487,434	\$ 21.37	181,350	\$ 24.55
Granted	54,960	10.95	208,796	10.30
Vested	(249,825)	20.07	(25,472)	24.60
Forfeited	(20,057)	17.35	(1,841)	24.61
Unvested at December 31, 2009	272,512	20.76	362,833	16.35
Granted	24,473	17.32	266,928	16.73
Vested	(143,042)	21.26	(67,022)	15.69
Forfeited	(513)	13.74	—	—
Unvested at December 31, 2010	153,430	\$ 19.75	562,739	\$ 16.61

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**16. Employee Share Purchase and Deferred Share Plan**

As of December 31, 2010, there was \$7.4 million of total unrecognized compensation cost related to unvested share-based compensation arrangements granted under share incentive plans. That cost is expected to be recognized over a weighted-average period of 1.7 years. The total fair value of Restricted Shares that vested during the years ended December 31, 2010, 2009 and 2008 was \$3.0 million, \$5.0 million and \$2.7 million, respectively.

The Acadia Realty Trust Employee Share Purchase Plan (the "Purchase Plan"), allows eligible employees of the Company to purchase Common Shares through payroll deductions. The Purchase Plan provides for employees to purchase Common Shares on a quarterly basis at a 15% discount to the closing price of the Company's Common Shares on either the first day or the last day of the quarter, whichever is lower. A participant may not purchase more than \$25,000 in Common Shares per year. Compensation expense will be recognized by the Company to the extent of the above discount to the closing price of the Common Shares with respect to the applicable quarter. During 2010, 2009 and 2008, 6,184, 8,744 and 7,499 Common Shares, respectively, were purchased by employees under the Purchase Plan. Associated compensation expense of \$0.02 million was recorded in 2010 and 2009 and \$0.03 million was recorded in 2008.

During August of 2004, the Company adopted a Deferral and Distribution Election pursuant to the 1999 Share Incentive Plan and 2003 Share Incentive Plan, whereby the participants elected to defer receipt of 190,487 Common Shares ("Share Units") that otherwise would have been issued upon the exercise of certain options. In January 2009, these Share Units were converted to 190,487 Common Shares and issued to the recipients and 83,433 of these Common Shares were cancelled to pay for the participants income taxes.

During May of 2006, the Company adopted a Trustee Deferral and Distribution Election ("Trustee Deferral Plan") whereby the participating Trustees have deferred compensation of \$0.06 million, \$0.05 million and \$0.4 million for 2010, 2009 and 2008, respectively. During 2009, certain trustees elected to receive 14,722 Common Shares, which were previously deferred, from the Trustee Deferral Plan.

**17. Employee 401(k) Plan**

The Company maintains a 401(k) plan for employees under which the Company currently matches 50% of a plan participant's contribution up to 6% of the employee's annual salary. A plan participant may contribute up to a maximum of 15% of their compensation but not in excess of \$16,500 for the year ended December 31, 2010. The Company contributed \$0.2 million, \$0.2 million and \$0.3 million for the years ended December 31, 2010, 2009 and 2008, respectively.

**18. Dividends and Distributions Payable**

On November 9, 2010, the Board of Trustees declared a cash dividend for the quarter ended December 31, 2010, of \$0.18 per Common Share, which was paid on February 1, 2011 to holders of record as of December 31, 2010.

**19. Federal Income Taxes**

The Company has elected to qualify as a REIT in accordance with Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"), and intends at all times to qualify as a REIT under the Code. To qualify as a REIT, the Company must meet a number of organizational and operational requirements, including a requirement that it currently distribute at least 90% of its annual REIT taxable income to its shareholders. As a REIT, the Company generally will not be subject to corporate Federal income tax, provided that distributions to its shareholders equal at least the amount of its REIT taxable income as defined under the Code. As the Company distributed sufficient taxable income for the years ended December 31, 2010, 2009 and 2008, no U.S. Federal income or excise taxes were incurred. If the Company fails to qualify as a REIT in any taxable year, it will be subject to Federal income taxes at the regular corporate rates (including any applicable alternative minimum tax) and may not be able to qualify as a REIT for the four subsequent taxable years. Even though the Company qualifies for taxation as a REIT, the Company is subject to certain state and local taxes on its income and property and Federal income and excise taxes on any undistributed taxable income. In addition, taxable income from non-REIT activities managed through the Company's Taxable REIT Subsidiary ("TRS") is subject to Federal, state and local income taxes.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**19. Federal Income Taxes, continued****Characterization of Distributions:**

The Company has determined that the cash distributed to the shareholders is characterized as follows for Federal income tax purposes:

	<b>For the years ended December 31,</b>		
	<b>2010</b>	<b>2009</b>	<b>2008</b>
Ordinary income	100%	95%	54%
Capital gain	—	5%	46%
	<u>100%</u>	<u>100%</u>	<u>100%</u>

**Taxable REIT Subsidiaries**

Income taxes have been provided for using the liability method as required by ASC Topic 740 "Income Taxes." The Company's TRS income and provision for income taxes for the years ended December 31, 2010, 2009 and 2008 are summarized as follows:

(dollars in thousands)	<b>2010</b>	<b>2009</b>	<b>2008</b>
TRS income before income taxes	\$ 5,716	\$ 2,671	\$ 5,870
Provision for income taxes:			
Federal	2,164	1,025	2,441
State and local	543	292	763
TRS net income before noncontrolling interest	3,009	1,354	2,666
Noncontrolling interest	545	—	—
TRS net income	<u>\$ 2,464</u>	<u>\$ 1,354</u>	<u>\$ 2,666</u>

The income tax provision differs from the amount computed by applying the statutory federal income tax rate to income before income taxes as follows (not adjusted for temporary book/tax differences):

(dollars in thousands)	<b>2010</b>	<b>2009</b>	<b>2008</b>
Federal provision at statutory tax rate	\$ 1,943	\$ 908	\$ 1,996
State and local taxes, net of federal benefit	358	193	504
Tax effect of:			
Permanent differences, net	406	138	514
Other	—	78	190
REIT state and local income and franchise taxes	183	224	158
Total provision for income taxes	<u>\$ 2,890</u>	<u>\$ 1,541</u>	<u>\$ 3,362</u>



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 20. Earnings Per Common Share

Basic earnings per Common Share is computed using net income attributable to common shareholders and the weighted average Common Shares outstanding. Diluted earnings per Common Share reflect the conversion of obligations and the assumed exercises of securities including the effects of awards issuable under the Company's Share Incentive Plans. In accordance with GAAP, all Common Shares used to calculate earnings per Common Share have been adjusted to reflect a special dividend paid on January 30, 2009, which resulted in the issuance of approximately 1.3 million additional Common Shares. The following table sets forth the computation of basic and diluted earnings per share from continuing operations for the periods indicated:

(dollars in thousands, except per share amounts)	Years ended December 31,		
	2010	2009	2008
<b>Numerator:</b>			
Income from continuing operations attributable to Common Shareholders	\$ 29,980	\$ 28,551	\$ 17,079
<b>Effect of dilutive securities:</b>			
Preferred OP Unit distributions	18	19	—
<b>Numerator for diluted earnings per Common Share</b>	<b>29,998</b>	<b>28,570</b>	<b>17,079</b>
<b>Denominator:</b>			
Weighted average shares for basic earnings per share	40,136	38,005	33,813
<b>Effect of dilutive securities:</b>			
Employee share options	245	212	454
Convertible Preferred OP Units	25	25	—
<b>Dilutive potential Common Shares</b>	<b>270</b>	<b>237</b>	<b>454</b>
<b>Denominator for diluted earnings per share</b>	<b>40,406</b>	<b>38,242</b>	<b>34,267</b>
<b>Basic earnings per Common Share from continuing operations attributable to Common Shareholders</b>			
	\$ 0.75	\$ 0.75	\$ 0.51
<b>Diluted earnings per Common Share from continuing operations attributable to Common Shareholders</b>			
	\$ 0.74	\$ 0.75	\$ 0.50

The weighted average shares used in the computation of dilutive earnings per share include unvested restricted Common Shares ("Restricted Shares") and restricted OP Units ("LTIP Units") (Note 15) that are entitled to receive dividend equivalent payments. The effect of the conversion of Common OP Units is not reflected in the above table, as they are exchangeable for Common Shares on a one-for-one basis. The income allocable to such units is allocated on this same basis and reflected as noncontrolling interest in subsidiaries in the accompanying consolidated financial statements. As such, the assumed conversion of these units would have no net impact on the determination of diluted earnings per share. The conversion of the convertible notes payable (Note 9) is not reflected in the table above as such conversion, based on the market price of the Common Shares, would be settled with cash.

The effect of the assumed conversion of 188 Series A Preferred OP Units into 25,067 Series A Preferred OP Units for the year ended December 31, 2010 and December 31, 2009 would be dilutive and they are included in the table. The effect of the assumed conversion of 188 Series A Preferred OP Units into 25,067 Common Shares for the year ended December 31, 2008 would be anti-dilutive and they are not included in the table.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 21. Summary of Quarterly Financial Information (unaudited)

The quarterly results of operations of the Company for the years ended December 31, 2010 and 2009 are as follows:

(dollars in thousands, except per share amounts)	March 31, 2010	June 30, 2010	September 30, 2010	December 31, 2010
Revenue	\$ 37,461	\$ 36,698	\$ 39,011	\$ 38,788
Income from continuing operations attributable to Common Shareholders	\$ 5,118	\$ 12,786	\$ 5,105	\$ 6,971
Income from discontinued operations attributable to Common Shareholders	\$ 12	\$ 12	\$ 12	\$ 41
Net income attributable to Common Shareholders	\$ 5,130	\$ 12,798	\$ 5,117	\$ 7,012
Net income attributable to Common Shareholders per Common Share – basic:				
Income from continuing operations	\$ 0.13	\$ 0.32	\$ 0.13	\$ 0.17
Income from discontinued operations	—	—	—	—
Net income per share	\$ 0.13	\$ 0.32	\$ 0.13	\$ 0.17
Net income attributable to Common Shareholders per Common Share – diluted:				
Income from continuing operations	\$ 0.13	\$ 0.32	\$ 0.13	\$ 0.17
Income from discontinued operations	—	—	—	—
Net income per share	\$ 0.13	\$ 0.32	\$ 0.13	\$ 0.17
Cash dividends declared per Common Share	\$ 0.18	\$ 0.18	\$ 0.18	\$ 0.18
Weighted average Common Shares outstanding:				
Basic	39,980,646	40,134,706	40,169,141	40,257,378
Diluted	40,149,931	40,371,812	40,430,998	40,594,009
(dollars in thousands, except per share amounts)	March 31, 2009	June 30, 2009	September 30, 2009	December 31, 2009
Revenue	\$ 34,650	\$ 34,881	\$ 38,645	\$ 37,527
Income from continuing operations attributable to Common Shareholders	\$ 9,341	\$ 7,104	\$ 7,264	\$ 4,842
Income from discontinued operations attributable to Common Shareholders	\$ 958	\$ 31	\$ 43	\$ 1,550
Net income attributable to Common Shareholders	\$ 10,299	\$ 7,135	\$ 7,307	\$ 6,392
Net income attributable to Common Shareholders per Common Share – basic:				
Income from continuing operations	\$ 0.27	\$ 0.18	\$ 0.18	\$ 0.12
Income from discontinued operations	\$ 0.03	—	—	\$ 0.04
Net income per share	\$ 0.30	\$ 0.18	\$ 0.18	\$ 0.16
Net income attributable to Common Shareholders per Common Share – diluted:				
Income from continuing operations	\$ 0.27	\$ 0.18	\$ 0.18	\$ 0.12
Income from discontinued operations	\$ 0.03	—	—	\$ 0.04
Net income per share	\$ 0.30	\$ 0.18	\$ 0.18	\$ 0.16
Cash dividends declared per Common Share	\$ 0.21	\$ 0.18	\$ 0.18	\$ 0.18
Weighted average Common Shares outstanding:				
Basic	33,902,958	38,592,289	39,685,623	39,756,060
Diluted	34,050,446	38,804,108	39,967,714	40,037,555

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**22. Commitments and Contingencies**

Under various Federal, state and local laws, ordinances and regulations relating to the protection of the environment, a current or previous owner or operator of real estate may be liable for the cost of removal or remediation of certain hazardous or toxic substances disposed, stored, generated, released, manufactured or discharged from, on, at, under, or in a property. As such, the Company may be potentially liable for costs associated with any potential environmental remediation at any of its formerly or currently owned properties.

The Company conducts Phase I environmental reviews with respect to properties it acquires. These reviews include an investigation for the presence of asbestos, underground storage tanks and polychlorinated biphenyls (PCBs). Although such reviews are intended to evaluate the environmental condition of the subject property as well as surrounding properties, there can be no assurance that the review conducted by the Company will be adequate to identify environmental or other problems that may exist. Where a Phase II assessment is so recommended, a Phase II assessment is conducted to further determine the extent of possible environmental contamination. In all instances where a Phase I or II assessment has resulted in specific recommendations for remedial actions, the Company has either taken or scheduled the recommended remedial action. To mitigate unknown risks, the Company has obtained environmental insurance for most of its properties, which covers only unknown environmental risks.

The Company believes that it is in compliance in all material respects with all Federal, state and local ordinances and regulations regarding hazardous or toxic substances. Management is not aware of any environmental liability that it believes would have a material adverse impact on the Company's financial position or results of operations. Management is unaware of any instances in which the Company would incur significant environmental costs if any or all properties were sold, disposed of or abandoned. However, there can be no assurance that any such non-compliance, liability, claim or expenditure will not arise in the future.

The Company is involved in various matters of litigation arising in the normal course of business. While the Company is unable to predict with certainty the amounts involved, the Company's management and counsel are of the opinion that, when such litigation is resolved, the Company's resulting liability, if any, will not have a significant effect on the Company's consolidated financial position, results of operations, or liquidity.

In September 2008, the Company, certain of its subsidiaries, and other unrelated entities were named as defendants in an adversary proceeding brought by Mervyn's LLC ("Mervyns") in the United States Bankruptcy Court for the District of Delaware. This lawsuit involves five claims alleging fraudulent transfers. The first claim is that, at the time of the sale of Mervyns by Target Corporation to a consortium of investors including Acadia, a transfer of assets was made in an effort to defraud creditors. The Company believes this aspect of the case is without merit. There are four other claims relating to transfers of assets of Mervyns at various times. The Company believes there are substantial defenses to these claims. The matter is in the early stages of discovery and the Company believes the lawsuit will not have a material adverse effect on its results of operations, consolidated financial condition, or liquidity.

During August 2009, the Company terminated the employment of a former Senior Vice President (the "Former Employee") for engaging in conduct that fell within the definition of "cause" in his severance agreement with the Company. Had the Former Employee not been terminated for "cause," he would have been eligible to receive approximately \$0.9 million under the severance agreement. Because the Company terminated him for "cause," it did not pay the Former Employee any severance benefits under the agreement. The Former Employee has brought a lawsuit against the Company in New York State Supreme Court, alleging breach of the severance agreement. The suit is in the pre-trial discovery stage. The Company believes it has meritorious defenses to the suit.

The Company has arranged for the provision of three separate letters of credit in connection with certain leases and investments. As of December 31, 2010, there were no outstanding balances under any of the letters of credit. If the letters of credit were fully drawn, the combined maximum amount of exposure would be \$9.1 million.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**23. Subsequent Events**

During January 2011, the Company completed the sale of a Fund II leasehold interest in the Neiman Marcus location at Oakbrook Center, located in Oak Brook, Illinois, for \$8.2 million. The sale resulted in a gain of \$3.9 million.

During January 2011, the Company paid off a \$9.3 million loan secured by one of the Company's properties for \$7.5 million, resulting in a \$1.8 million gain.

During February 2011, the Company, through Fund III in a joint venture with an unaffiliated partner, acquired a three property portfolio (the "Portfolio") for an aggregate purchase price of \$51.9 million with \$20.6 million of in-place mortgage financing assumed at closing. The Portfolio consists of three street-retail properties, aggregating 61,000 square feet, and is located in South Miami Beach, Florida.

During February 2011, the Company, through Fund III in a joint venture with an unaffiliated partner, acquired a 64,600 square foot single tenant retail property located in Silver Springs, Maryland, for approximately \$9.8 million.

**ACADIA REALTY TRUST**  
**SCHEDULE III-REAL ESTATE AND ACCUMULATED DEPRECIATION**

**December 31, 2010**

Description	Encumbrances	Initial Cost to Company		Costs Capitalized Subsequent to Acquisition	Amount at which Carried at December 31, 2010			Accumulated Depreciation	Date of Acquisition (a) Construction (c)
		Land	Buildings & Improvements		Land	Buildings & Improvements	Total		
<b>Shopping Centers</b>									
Core Portfolio:									
Crescent Plaza									
Brockton, MA	\$ 17,539	\$ 1,147	\$ 7,425	\$ 1,219	\$ 1,147	\$ 8,644	\$ 9,791	\$ 5,849	1984(a)
New Loudon Center									
Latham, NY	14,119	505	4,161	11,375	505	15,536	16,041	11,266	1982(a)
Ledgewood Mall									
Ledgewood, NJ	—	619	5,434	33,199	619	38,633	39,252	34,042	1983(a)
Mark Plaza									
Edwardsville, PA	—	—	4,268	4,690	—	8,958	8,958	6,655	1968(c)
Plaza 422									
Lebanon, PA	—	190	3,004	2,192	190	5,196	5,386	3,690	1972(c)
Route 6 Mall									
Honesdale, PA	—	1,664	—	11,166	1,664	11,166	12,830	6,020	1994(c)
Bartow Avenue									
Bronx, NY	—	1,691	5,803	560	1,691	6,363	8,054	1,459	2005(c)
Amboy Rd. Shopping Ctr.									
Staten Island, NY	—	—	11,909	1,519	—	13,428	13,428	1,843	2005(a)
Abington Towne Center <sup>1</sup>									
Abington, PA	—	799	3,197	2,007	799	5,204	6,003	2,304	1998(a)
Bloomfield Town Square <sup>1</sup>									
Bloomfield Hills, MI	—	3,207	13,774	12,189	3,207	25,963	29,170	8,805	1998(a)
Walnut Hill Plaza									
Woonsocket, RI	23,500	3,122	12,488	1,840	3,122	14,328	17,450	4,963	1998(a)
Elmwood Park Plaza									
Elmwood Park, NJ	34,197	3,248	12,992	14,715	3,798	27,157	30,955	10,946	1998(a)
Merrillville Plaza									
Hobart, IN	26,250	4,288	17,152	1,653	4,288	18,805	23,093	6,579	1998(a)
Marketplace of Absecon <sup>1</sup>									
Absecon, NJ	—	2,573	10,294	3,529	2,577	13,819	16,396	4,628	1998(a)
Clark Diversey									
Chicago, IL	4,625	10,061	2,773	83	10,061	2,856	12,917	360	2006(a)
Boonton									
Boonton, NJ	8,033	1,328	7,188	—	1,328	7,188	8,516	883	2006(a)
Chestnut Hill									
Philadelphia, PA	9,338	8,289	5,691	44	8,289	5,735	14,024	650	2006(a)
Third Avenue									
Bronx, NY	—	11,108	8,038	440	11,855	7,731	19,586	—	2006(a)
Hobson West Plaza <sup>1</sup>									
Naperville, IL	—	1,793	7,172	1,567	1,793	8,739	10,532	2,943	1998(a)
Village Commons Shopping Center									
Smithtown, NY	9,305	3,229	12,917	2,462	3,229	15,379	18,608	5,632	1998(a)
Town Line Plaza <sup>1</sup>									
Rocky Hill, CT	—	878	3,510	7,303	907	10,784	11,691	7,668	1998(a)
Branch Shopping Center									
Village of the Branch, NY	13,932	3,156	12,545	865	3,156	13,410	16,566	4,454	1998(a)
The Methuen Shopping Center <sup>1</sup>									
Methuen, MA	—	956	3,826	594	961	4,415	5,376	1,510	1998(a)
Gateway Shopping Center									
Burlington, VT	20,500	1,273	5,091	11,536	1,273	16,627	17,900	4,947	1999(a)
Mad River Station									
Dayton, OH	—	2,350	9,404	1,046	2,350	10,450	12,800	3,215	1999(a)
Pacesetter Park Shopping Center									
Ramapo, NY	12,132	1,475	5,899	1,121	1,475	7,020	8,495	2,544	1999(a)
239 Greenwich									
Greenwich, CT	26,000	1,817	15,846	549	1,817	16,395	18,212	4,852	1998(a)
West Shore Expressway									
Staten Island, NY	—	3,380	13,554	10	3,380	13,564	16,944	1,429	2007(a)
West 54th Street									
Manhattan, NY	—	16,699	18,704	28	16,699	18,732	35,431	1,751	2007(a)
Acadia 5-7 East 17th Street									
Manhattan, NY	—	3,048	7,281	—	3,048	7,281	10,329	540	2008(a)

**ACADIA REALTY TRUST**  
**SCHEDULE III-REAL ESTATE AND ACCUMULATED DEPRECIATION**

**December 31, 2010**

Description	Encumbrances	Initial Cost to Company		Costs Capitalized Subsequent to Acquisition	Amount at which Carried at December 31, 2010			Accumulated Depreciation	Date of Acquisition (a) Construction (c)
		Land	Buildings & Improvements		Land	Buildings & Improvements	Total		
<b>Fund I:</b>									
Tarrytown Centre Westchester, NY	\$ 8,427	\$ 2,323	\$ 7,396	\$ 359	\$ 2,323	\$ 7,755	\$ 10,078	\$ 1,379	2004(a)
Granville Center Columbus, OH	—	2,186	8,744	71	2,186	8,815	11,001	1,864	2002(a)
Kroger/Safeway Various	—	—	34,586	—	—	34,586	34,586	31,926	2003(a)
<b>Fund II:</b>									
Liberty Avenue New York, NY	10,000	—	12,627	540	—	13,167	13,167	1,372	2005(a)
Pelham Manor Westchester, NY	31,554	—	—	61,648	—	61,648	61,648	3,639	2004(a)
400 E. Fordham Road Bronx, NY	85,910	11,144	18,010	93,356	16,254	106,256	122,510	6,327	2004(a)
4650 Broadway/Sherman Ave New York, NY	—	25,267	—	7,744	25,267	7,744	33,011	—	2005(a)
216th Street New York, NY	25,500	7,261	—	19,146	7,261	19,146	26,407	1,882	2005(a)
161st Street Bronx, NY	28,900	16,679	28,410	10,574	16,679	38,984	55,663	3,914	2005(a)
Atlantic Avenue Brooklyn, NY	11,540	5,322	—	15,176	5,322	15,176	20,498	553	2007(a)
Canarsie Plaza Brooklyn, NY	40,243	32,543	—	80,036	32,543	80,036	112,579	287	2007(a)
CityPoint Brooklyn, NY	40,650	—	2,564	112,047	—	114,611	114,611	—	—
ASOF II, LLC	40,000	—	—	—	—	—	—	—	—
<b>Fund III:</b>									
125 Main Street Assoc. Westport, CT	—	12,993	4,316	2,598	12,993	6,914	19,907	91	2007(a)
Sheepshead Bay Brooklyn, NY	—	20,391	—	4,257	20,391	4,257	24,648	—	2007(a)
Suffern Self Storage Suffern, NY	—	4,561	7,484	11	4,561	7,495	12,056	597	2008(a)
Linden Self Storage <sup>2</sup> Linden, NJ	—	3,515	6,139	15	3,515	6,154	9,669	528	2008(a)
Webster Self Storage <sup>2</sup> Bronx, NY	—	959	5,506	27	959	5,533	6,492	431	2008(a)
Jersey City Self Storage <sup>2</sup> Jersey City, NJ	—	2,377	9,654	12	2,377	9,666	12,043	779	2008(a)
Bronx Self Storage <sup>2</sup> Bronx, NY	—	10,835	5,936	22	10,835	5,958	16,793	502	2008(a)
Lawrence Self Storage <sup>2</sup> Lawrence, NY	—	6,977	12,688	6	6,977	12,694	19,671	938	2008(a)
Starr Avenue Self Storage Queens, NY	—	7,597	22,391	189	7,597	22,580	30,177	1,768	2008(a)
New Rochelle Self Storage Westchester, NY	—	1,977	4,769	339	1,977	5,108	7,085	391	2008(a)
Yonkers Self Storage Westchester, NY	—	3,121	17,457	93	3,121	17,550	20,671	1,295	2008(a)
Bruckner Blvd. Self Storage Bronx, NY	—	6,244	10,551	38	6,244	10,589	16,833	806	2008(a)
Ridgewood Self Storage Queens, NY	—	8,000	—	13,859	8,000	13,859	21,859	589	2008(c)
Document Storage New York City, NY	—	—	—	1,080	—	1,080	1,080	134	2008(a)
Cortlandt Towne Center Cortlandt, NY	50,000	7,293	—	64,878	7,293	64,878	72,171	5,501	2009(a)
ASOF III, LLC	171,450	—	—	—	—	—	—	—	—
Undeveloped land	—	251	—	—	251	—	251	—	—
Properties under development	—	—	—	—	—	4,400	4,400	—	—
<b>Total</b>	<b>\$ 806,144</b>	<b>\$ 293,709</b>	<b>\$ 470,568</b>	<b>\$ 617,622</b>	<b>\$ 300,154</b>	<b>\$ 1,086,145</b>	<b>\$ 1,386,299</b>	<b>\$ 219,920</b>	

Notes:  
(1) These properties serve as collateral for the financing with Bank of America, N.A. in the amount of \$1,000  
(2) These properties serve as collateral for the financing with GEMSA, in the amount of \$41,500

**ACADIA REALTY TRUST**  
**SCHEDULE III-REAL ESTATE AND ACCUMULATED DEPRECIATION**

**December 31, 2010**

1. Depreciation on buildings and improvements reflected in the statements of income is calculated over the estimated useful life of the assets as follows:

Buildings: 30 to 40 years

Improvements: Shorter of lease term or useful life

2. The aggregate gross cost of property included above for Federal income tax purposes was \$1,292.0 million as of December 31, 2010

3. (a) Reconciliation of Real Estate Properties:

The following table reconciles the real estate properties from January 1, 2008 to December 31, 2010:

<b>(dollars in thousands)</b>	<b>For the years ended December 31,</b>		
	<b>2010</b>	<b>2009</b>	<b>2008</b>
Balance at beginning of year	\$ 1,200,483	\$ 1,085,072	\$ 811,893
Other improvements	185,816	46,723	103,476
Property Acquired	—	68,688	169,703
Balance at end of year	<u>\$ 1,386,299</u>	<u>\$ 1,200,483</u>	<u>\$ 1,085,072</u>

3. (b) Reconciliation of Accumulated Depreciation:

The following table reconciles accumulated depreciation from January 1, 2008 to December 31, 2010:

<b>(dollars in thousands)</b>	<b>For the years ended December 31,</b>		
	<b>2010</b>	<b>2009</b>	<b>2008</b>
Balance at beginning of year	\$ 191,307	\$ 163,214	\$ 141,044
Depreciation related to real estate	28,613	28,093	22,170
Balance at end of year	<u>\$ 219,920</u>	<u>\$ 191,307</u>	<u>\$ 163,214</u>



AMENDED AND RESTATED LOAN AGREEMENT

among

ACADIA CORTLANDT LLC,  
as Borrower

and

BANK OF AMERICA, N.A.,  
a national banking association,  
as Administrative Agent

and

THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO

Dated as of October 26, 2010

BANC OF AMERICA SECURITIES LLC,  
as Sole Arranger and Sole Book Manager

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EXHIBITS

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EXHIBIT "N"	Schedule of Lenders and Other Parties
	EXHIBIT "O" Swap Contracts

AMENDED AND RESTATED LOAN AGREEMENT

THIS AMENDED AND RESTATED LOAN AGREEMENT (this "Agreement") dated as of October 26, 2010 is made by and among each lender from time to time a party hereto (individually, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., a national banking association ("BofA") as Administrative Agent, and ACADIA CORTLANDT LLC, a Delaware limited liability company ("Borrower").

WHEREAS, BofA, People's United Bank ("People's"), Borrower and Administrative Agent are parties to that certain Loan Agreement dated as of July 29, 2009 (the "Original Loan Agreement");

WHEREAS, pursuant to an Assignment and Assumption Agreement dated as of the date hereof by and between People's, as assignor, and BofA, as assignee, People's assigned all of its interest under the Original Agreement to BofA and, following such assignment, BofA was the only Lender; and

WHEREAS, BofA, Administrative Agent and Borrower have agreed that the Loan Agreement be modified, amended and restated in its entirety in the manner hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, Borrower, Administrative Agent and Lenders hereby agree that the terms, conditions and provisions of the Original Loan Agreement are hereby amended and restated in their entirety as follows:

ARTICLE 1  
THE LOAN

1.1. General Information and Exhibits. This Agreement includes the Exhibits listed below which are marked by an "X", all of which Exhibits are attached hereto and made a part hereof for all purposes. Borrower and Lenders agree that if any Exhibit to be attached to this Agreement contains blanks, the same shall be completed correctly and in accordance with this Agreement prior to or at the time of the execution and delivery thereof.

<u>X</u> _____	Exhibit "A"	-	Legal Description of the Land
<u>X</u> _____	Exhibit "B"	-	Definitions and Financial Statements
<u>X</u> _____	Exhibit "C"	-	Conditions Precedent to the Advance
<u>X</u> _____	Exhibit "C-1"	-	Conditions Precedent to Advances in Excess of the Initial Advance
<u>X</u> _____	Exhibit "D"	-	Monthly Amortization Schedule
_____	Exhibit "E"	-	Intentionally Omitted
<u>X</u> _____	Exhibit "F"	-	Advances
<u>X</u> _____	Exhibit "F-1"	-	Draw Request
<u>X</u> _____	Exhibit "G"	-	Survey Requirements

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<u>      </u>	Exhibit "H"	- Intentionally Omitted
<u>X</u>	Exhibit "I"	- Leasing and Tenant Matters
<u>      </u>	Exhibit "J"	- Intentionally Omitted
<u>      </u>	Exhibit "K"	- Intentionally Omitted
<u>X</u>	Exhibit "L"	- Assignment and Assumption
<u>X</u>	Exhibit "M"	- Loan Note
<u>X</u>	Exhibit "N"	- Schedule of Lenders and Other Parties
<u>X</u>	Exhibit "O"	- Swap Contracts

The Exhibits contain other terms, provisions and conditions applicable to the Loan. Capitalized terms used in this Agreement shall have the meanings assigned to them in Exhibit "B". This Agreement and the other Loan Documents, which must be in form, detail and substance satisfactory to Lenders, evidence the agreements of Borrower and Lenders with respect to the Loan. Borrower shall comply with all of the Loan Documents.

1.2. Purpose. The proceeds of the Loan shall only be used by Borrower to (i) refinance a portion of the acquisition cost of the Land and the Improvements, (ii) fund other costs related to the Land and the Improvements and (iii) fund closing costs in connection with the Loan.

1.3. Commitment to Lend. Borrower agrees to borrow from each Lender, and each Lender severally agrees to make advances of its Pro Rata Share of the Loan proceeds to Borrower in amounts at any one time outstanding not to exceed such Lender's Pro Rata Share of the Loan and (except for Administrative Agent with respect to Administrative Agent Advances), on the terms and subject to the conditions set forth in this Agreement, including, without limitation, Section 1.4, and Exhibit "C", Exhibit "C-1" and Exhibit "F" attached to this Agreement. Lender's commitment to lend shall expire and terminate automatically if the Loan is prepaid in full. The Loan is not revolving. Any amount repaid may not be reborrowed.

1.4. Syndication/Special Condition to Future Advances. Notwithstanding anything to the contrary contained herein, Lenders shall have no obligation whatsoever to make the Future Advance unless, within thirty (30) months of the date hereof, one or more Eligible Assignees, acceptable to Administrative Agent in Administrative Agent's sole and absolute discretion, become Lenders with Commitments which will result in a positive Syndication Increase Amount (as hereinafter defined). The Loan Amount on the date hereof is the Initial Advance Amount. Administrative Agent shall endeavor to locate one or more Eligible Assignees, acceptable to Administrative Agent in its sole and absolute discretion, which are willing to become Lenders hereunder with Commitments of up to an aggregate amount equal to the sum of (x) the Future Advance Amount and (y) \$10,000,000. The first \$10,000,000 of Commitments taken by new Lenders after the date hereof, if any, shall be applied to reduce the Commitment of BofA to \$40,000,000. To the extent that, within thirty (30) months after the date hereof, new Lenders enter into Assignment and Assumption Agreements to accept commitments in the aggregate amount in excess of \$10,000,000 (the amount of such excess, the "Syndication Increase Amount"), such occurrence shall constitute a "Successful Syndication". BofA shall have no liability to Borrower or any other Person if, for any reason whatsoever, Eligible Assignees acceptable to BofA, in its sole and absolute discretion, do not become Lenders within thirty (30) months of the date hereof in such manner as to allow for the Future Advance to be available to Borrower in accordance with the terms hereof. If a Successful Syndication does not, for any reason whatsoever, occur within six (6) months of the date hereof, then Borrower shall, on the date following the six (6) month anniversary of the date hereof, be required to make a mandatory principal payment in the amount (the "Lump Sum Amortization Payment") sufficient to reduce the Principal Debt to the sum of (x) \$40,000,000 plus (y) the Commitment of any Lender other than BofA. It shall be a condition to any Syndication Increase Amount taking effect that (i) Borrower and all Lenders enter into an agreement modifying or supplementing this Agreement, in form and substance acceptable to Administrative Agent, setting forth the

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Commitment and Pro Rata Share of each Lender, the Syndication Increase Amount and Future Advance Amount as of such date (subject to adjustment in accordance with the definition of Future Advance Amount) and (ii) Borrower shall execute such Future Advance Notes and replacement initial Advance Notes as Administrative Agent shall reasonably request to effectuate the syndication of Commitments contemplated hereby. If a Successful Syndication does not, for any reason whatsoever, occur within thirty (30) months of the date hereof, then the commitment to lend the Future Advance shall terminate and the Lenders shall have no obligation to make, and Borrower shall not be entitled to receive, any Future Advance.

1.5. Intentionally Omitted.

1.6. Evidence of Debt. Amounts of the Loan made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loan made by Lenders to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Indebtedness. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

1.7. Interest Rates.

1.7.1. Interest Rate.

(a) The unpaid principal balance of this Loan from day to day outstanding which is not past due, shall bear interest at a fluctuating rate of interest equal to the BBA LIBOR Daily Floating Rate plus the LIBOR Margin. The "BBA LIBOR Daily Floating Rate" shall mean a fluctuating rate of interest equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by Administrative Agent from time to time) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in Administrative Agent's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternative method as reasonably selected by Administrative Agent. A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars. Interest shall be computed for the actual number of days which have elapsed, on the basis of a 360-day year.

(b) If Administrative Agent determines that no adequate basis exists for determining the BBA LIBOR Daily Floating Rate or that the BBA LIBOR Daily Floating Rate will not adequately and fairly reflect the cost to Lenders of funding the Loan, or that any applicable law or regulation or compliance therewith by any Lender prohibits or restricts or makes impossible the charging of interest based on the BBA LIBOR Daily Floating Rate and

such Lender so notifies Administrative Agent and Borrower, then until Administrative Agent notifies Borrower that the circumstances giving rise to such suspension no longer exist, interest shall accrue and be payable on the unpaid principal balance of this Loan from the date Administrative Agent so notifies Borrower until the Maturity Date of this Loan (whether by acceleration, declaration, extension or otherwise) at a fluctuating rate of interest equal to the Base Rate. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

1.7.2. Past Due Rate. If any amount payable by Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Past Due Rate to the fullest extent permitted by applicable law. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable on demand, at a rate per annum (the "Past Due Rate") equal to the BBA LIBOR Daily Floating Rate (or, if unavailable pursuant to Section 1.7.1, the Prime Rate) plus 6.2%.

1.8. Prepayment. Borrower may prepay the principal balance of this Loan, in full at any time or in part from time to time, without fee, premium or penalty, provided that: (a) Administrative Agent shall have actually received from Borrower prior written notice of (i) Borrower's intent to prepay, (ii) the amount of principal which will be prepaid (the "Prepaid Principal"), and (iii) the date on which the prepayment will be made; (b) each prepayment shall be in a minimum amount of \$1,000 or more (unless the prepayment retires the outstanding balance of this Loan in full); and (c) each prepayment shall be in the amount of 100% of the Prepaid Principal, plus accrued unpaid interest thereon to the date of prepayment, plus any other sums which have become due to Administrative Agent and Lenders under the Loan Documents on or before the date of prepayment but have not been paid. If this Loan is prepaid in full, any commitment of Lenders for further advances shall automatically terminate.

1.9. Required Swap Transaction. If at any time when there is not a Swap Transaction approved by Administrative Agent in effect with respect to the entire Principal Debt, the BBA LIBOR Daily Floating Rate equals or exceeds 3.0% per annum, Borrower shall, within five (5) Business Days of notice from Administrative Agent to Borrower of such event, purchase an interest rate cap or swap with respect to the Loan (including the Future Advance Amount, unless Lenders' commitment with respect thereto has been terminated) for the period remaining through the Maturity Date, or such lesser period as Administrative Agent may approve in its discretion, with a BBA LIBOR Daily Floating Rate maximum rate (in the case of an interest rate cap) or a swapped rate (in the case of an interest rate swap) specified by Administrative Agent. The Swap Counterparty providing the Required Swap Transaction shall either be BofA or have a long-term unsecured debt credit rating from the Rating Agencies of A- (or its equivalent) or better. Borrower shall afford Administrative Agent a right of first opportunity to provide all Required Swap Transactions but shall not be required to purchase such Required Swap Transactions from Administrative Agent or any Lender, provided that any Required Swap Transaction shall be collaterally assigned to Administrative Agent as security for the Loan with an acknowledgment of such assignment by the Swap Counterparty thereunder and evidence of the due authorization, execution and delivery thereof, all in form and substance reasonably acceptable to Administrative Agent. In the event that (a) BofA is not the Swap Counterparty, if



the long-term unsecured debt obligations of the Swap Counterparty are downgraded by the Rating Agency below “BBB+” or its equivalent or (b) the Swap Counterparty shall default in any of its obligations under a Required Swap Transaction and such default shall remain uncured for more than five (5) Business Days after Administrative Agent sends notice to Borrower of such default (provided, however, that, if a default by the Counterparty results in an Event of Default, the foregoing five (5) Business Day cure period shall not apply with respect to such other default), Borrower shall, at the request of Administrative Agent, promptly but in all events within five (5) Business Days of Administrative Agent’s request, (x) replace the Required Swap Transaction with an agreement having identical payment terms and maturity and which is otherwise in form and substance substantially similar to the initial Required Swap Transaction and otherwise reasonably acceptable to Lender with a cap provider, the long-term unsecured debt of which is rated at least “A-” (or its equivalent) by each Rating Agency or (y) cause the Swap Counterparty to provide collateral reasonably acceptable to Administrative Agent. In the event that Borrower fails to maintain the Required Swap Transaction as provided in this Section 1.9, Administrative Agent may purchase the Required Swap Transactions and the cost incurred by Administrative Agent in connection therewith shall be paid by Borrower to Administrative Agent with interest thereon at the Past Due Rate from the date which is five (5) days after demand until such cost is paid by Borrower to Administrative Agent.

1.10. Late Charge. If Borrower shall fail to make any payment due hereunder or under the terms of any Note within fifteen (15) days after the date such payment is due, Borrower shall pay to the applicable Lender or Lenders on demand a late charge equal to 4% of such payment. Such fifteen (15) day period shall not be construed as in any way extending the due date of any payment. The “late charge” is imposed for the purpose of defraying the expenses of a Lender incident to handling such defaulting payment. This charge shall be in addition to, and not in lieu of, any other remedy Lenders may have and is in addition to any fees and charges of any agents or attorneys which Administrative Agent or Lenders may employ upon the occurrence of a Default, whether authorized herein or by Law.

1.11. Taxes.

(a) Any and all payments by Borrower to or for the account of Administrative Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the case of Administrative Agent and any Lender, taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which Administrative Agent or such Lender, as the case may be, is organized or maintains a lending office (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and liabilities being hereinafter referred to as “Taxes”). If Borrower shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), Administrative Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, (iii) Borrower shall pay the full amount deducted to the relevant taxation authority or other authority

in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment, Borrower shall furnish to Administrative Agent (which shall forward the same to such Lender) the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise or property taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (hereinafter referred to as "Other Taxes").

(c) If Borrower shall be required by the Laws of any jurisdiction outside the United States to deduct any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Lender, Borrower shall also pay to Administrative Agent (for the account of such Lender) or to such Lender, at the time interest is paid, such additional amount that such Lender specifies is necessary to preserve the after-tax yield (after factoring in United States (federal and state) taxes imposed on or measured by net income) Lender would have received if such deductions (including deductions applicable to additional sums payable under this Section) had not been made.

(d) Borrower agrees to indemnify Administrative Agent and each Lender for the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section) paid by Administrative Agent and such Lender and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Tribunal. Payment under this subsection (d) shall be made within thirty (30) days after the date Lender or Administrative Agent makes a demand therefor.

(e) Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section shall survive the termination of the Commitments and the payment in full of all the other Indebtedness.

#### 1.12. Payment Schedule and Maturity Date.

(a) The principal of the Loan shall be due and payable in monthly installments equal to the amount for the applicable month (by specific calendar months) set forth on Exhibit "D" (each such monthly amount, a "Monthly Principal Amount"), which principal amortization payments shall be applied first to the principal evidenced by the Future Advance Notes, if any, and then to the principal evidenced by the Initial Advance Notes. Such principal amortization payments shall be due and payable on December 1, 2010 and on the first day of each succeeding month thereafter until the Loan shall have been fully paid and satisfied; and accrued unpaid interest on the Loan shall be due and payable on November 1, 2010 and on the first day of each succeeding month thereafter until all principal and accrued interest owing on the Loan shall have been fully paid and satisfied; provided, that on the Maturity Date the entire principal balance of the Loan then unpaid and all accrued interest then unpaid shall be finally due and payable.

(b) Notwithstanding anything to the contrary in Section 1.12(a), (i) until the Future Advance Determination Date, in lieu of principal amortization, on the first day of each month the maximum Future Advance Amount shall be permanently reduced by the amount of the Monthly Principal Amount and (ii) if Borrower is required to make the Lump Sum Amortization Payment in accordance with Section 1.4, then no monthly principal amortization payments shall be required under Section 1.12(b) unless and until the Future Advance is made, but in any event on the Maturity Date the entire principal balance of the Loan then unpaid and all accrued interest then unpaid shall be finally due and payable. Nothing contained in this Section 1.12(b) shall limit or reduce Borrower's obligation to make payments in respect of the principal amount of the Loan pursuant to any provision of this Agreement (other than Section 1.12(a)) or any other Loan Documents, including, without limitation, Section 1.4.

### 1.13. Advances and Payments.

(a) The Loan shall be advanced as follows: (i) subject to Borrower's satisfaction of the conditions set forth in this Agreement including, without limitation, Exhibit "C", Exhibit "C-1" and Exhibit "F" hereto, the Initial Advance in the Initial Advance Amount shall be advanced as a single, lump sum advance and (ii) subject to the occurrence of a Successful Syndication prior to the thirty (30) month anniversary of the date hereof and Borrower's satisfaction of the other conditions set forth in this Agreement including, without limitation, Exhibit "C", Exhibit "C-1" and Exhibit "F" hereto, a single Future Advance in the Future Advance Amount shall be advanced as a single, lump sum advance. Following receipt of a Draw Request, Administrative Agent shall promptly provide each Lender with a copy of the Draw Request. Administrative Agent shall notify each Lender telephonically (with confirmation by facsimile) or by facsimile (with confirmation by telephone) not later than 1:00 p.m. Administrative Agent's Time two (2) Business Days prior to the advance Funding Date for LIBOR Rate Principal advances, and one (1) Business Day prior to the advance Funding Date for all other advances, of its Pro Rata Share of the amount Administrative Agent has determined shall be advanced in connection therewith ("Advance Amount"). In the case of an advance of the Loan, each Lender shall make the funds for its Pro Rata Share of the Advance Amount available to Administrative Agent not later than 11:00 a.m. Administrative Agent's Time on the Funding Date thereof. After Administrative Agent's receipt of the Advance Amount from Lenders, Administrative Agent shall make proceeds of the Loan in an amount equal to the Advance Amount (or, if less, such portion of the Advance Amount that shall have been paid to Administrative Agent by Lenders in accordance with the terms hereof) available to Borrower on the applicable Funding Date by advancing such funds to Borrower in accordance with the provisions of Exhibit "F".

(b) All payments by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Borrower hereunder shall be made to Administrative Agent not later than 12:00 p.m. (Administrative Agent's Time) on the date specified herein. Administrative Agent shall distribute to each Lender such funds as such Lender may be entitled to receive hereunder (i) on or before 3:00 p.m. (Administrative Agent's Time) on the day Administrative Agent receives such funds, if Administrative Agent has received such funds on or before 12:00 p.m. (Administrative Agent's Time), or (ii) on or before 12:00 p.m. (Administrative Agent's Time) on the Business Day following the day Administrative Agent receives such funds, if Administrative

Agent receives such funds after 12:00 p.m. (Administrative Agent's Time). If Administrative Agent fails to timely pay any amount to any Lender in accordance with this subsection, Administrative Agent shall pay to such Lender interest at the Federal Funds Rate on such amount, for each day from the day such amount was to be paid until it is paid to such Lender.

(c) Except as otherwise provided herein, all payments by Borrower or any Lender shall be made to Administrative Agent at Administrative Agent's Office not later than the time for such type of payment specified in this Agreement. All payments received after such time shall be deemed received on the next succeeding Business Day. All payments shall be made in immediately available funds in lawful money of the United States of America. Whenever any payment falls due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

(d) Upon satisfaction of any applicable terms and conditions set forth herein, Administrative Agent shall promptly make any amounts received in accordance with the prior subsection available in like funds received as follows: (i) if payable to Borrower, in accordance with Exhibit "F", except as otherwise specified herein, and (ii) if payable to any Lender, by wire transfer to such Lender at the address specified in the Schedule of Lenders.

(e) Unless Borrower or any Lender has notified Administrative Agent, prior to the date any payment is required to be made by it to Administrative Agent, that Borrower or such Lender, as the case may be, will not make such payment, Administrative Agent may assume that Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be required to do so) in reliance thereon, make available a corresponding amount to the person or entity entitled thereto. If and to the extent that such payment was not in fact made to Administrative Agent in immediately available funds, then:

(i) if Borrower failed to make such payment, each Lender shall forthwith on demand repay to Administrative Agent the portion of such assumed payment that was made available to such Lender in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by Administrative Agent to such Lender to the date such amount is repaid to Administrative Agent in immediately available funds at the Federal Funds Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender or, if applicable, Electing Lender or Lenders shall forthwith on demand pay to Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by Administrative Agent to Borrower to the date such amount is recovered by Administrative Agent (the "Compensation Period") at a rate per annum equal to the interest rate applicable to such amount under the Loan. If such Lender pays such amount to Administrative Agent, then such amount shall constitute such Lender's Pro Rata Share, included in the applicable Loan advance. If such Lender does not pay such amount forthwith upon Administrative Agent's demand therefor, Administrative Agent may make a demand therefor upon Borrower, and Borrower shall pay such amount to Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of

interest applicable to such amount under the Loan. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which Administrative Agent or Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of Administrative Agent to any Lender or to Borrower with respect to any amount owing under this subsection shall be conclusive, absent manifest error.

(f) If any Lender makes available to Administrative Agent funds for the Loan advance to be made by such Lender as provided in the foregoing provisions of this Section, and the funds are not advanced to Borrower or otherwise used to satisfy any Obligations of such Lender hereunder, Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(g) Nothing herein shall be deemed to obligate any Lender to obtain the funds for the Loan advance in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for the Loan advance in any particular place or manner.

#### 1.14. Administrative Agent Advances.

(a) Administrative Agent is authorized, from time to time, in Administrative Agent's sole discretion to make, authorize or determine advances of the Loan, or otherwise expend funds, on behalf of Lenders ("Administrative Agent Advances"), (i) to pay any costs, fees and expenses as described in Section 6.10 herein, (ii) when the applicable conditions precedent set forth in Exhibit "C" and Exhibit "F" have been satisfied to the extent required by Administrative Agent, and (iii) when Administrative Agent deems necessary or desirable to preserve or protect the Loan collateral or any portion thereof (including those with respect to property taxes, insurance premiums, completion of construction, operation, management, improvements, maintenance, repair, sale and disposition) (A) subject to Section 5.5, after the occurrence of a Default, and (B) subject to Section 5.10, after acquisition of all or a portion of the Loan collateral by foreclosure or otherwise.

(b) Administrative Agent Advances shall constitute obligatory advances of Lenders under this Agreement, shall be repayable on demand and secured by the Loan collateral, and if unpaid by Lenders as set forth below shall bear interest at the rate applicable to such amount under the Loan or if no longer applicable, at the Base Rate. Administrative Agent shall notify each Lender in writing of each Administrative Agent Advance. Upon receipt of notice from Administrative Agent of its making of an Administrative Agent Advance, each Lender shall make the amount of such Lender's Pro Rata Share of the outstanding principal amount of Administrative Agent Advance available to Administrative Agent, in same day funds, to such account of Administrative Agent as Administrative Agent may designate, (i) on or before 3:00 p.m. (Administrative Agent's Time) on the day Administrative Agent provides Lenders with notice of the making of such Administrative Agent Advance if Administrative Agent provides such notice on or before 12:00 p.m. (Administrative Agent's Time), or (ii) on or before 12:00 p.m. on the Business Day immediately following the day Administrative Agent provides Lenders

with notice of the making of such advance if Administrative Agent provides notice after 12:00 p.m. (Administrative Agent's Time).

1.15. Defaulting Lender.

1.15.1. Notice and Cure of Lender Default; Election Period; Electing Lenders. Administrative Agent shall notify (such notice being referred to as the "Default Notice") Borrower (for Loan advances) and each non-Defaulting Lender if any Lender is a Defaulting Lender. Each non-Defaulting Lender shall have the right, but in no event or under any circumstance the obligation, to fund such Defaulting Lender Amount, provided that within twenty (20) days after the date of the Default Notice (the "Election Period"), such non-Defaulting Lender or Lenders (each such Lender, an "Electing Lender") irrevocably commit(s) by notice in writing (an "Election Notice") to Administrative Agent, the other Lenders and Borrower to fund the Defaulting Lender Amount. If Administrative Agent receives more than one Election Notice within the Election Period, then the commitment to fund the Defaulting Lender Amount shall be apportioned pro rata among the Electing Lenders in the proportion that the amount of each such Electing Lender's Commitment bears to the total Commitments of all Electing Lenders. If the Defaulting Lender fails to pay the Defaulting Lender Payment Amount within the Election Period, the Electing Lender or Lenders, as applicable, shall be automatically obligated to fund the Defaulting Lender Amount (and Defaulting Lender shall no longer be entitled to fund such Defaulting Lender Amount) within three (3) Business Days following the expiration of the Election Period to reimburse Administrative Agent or make payment to Borrower, as applicable. Notwithstanding anything to the contrary contained herein, if Administrative Agent has funded the Defaulting Lender Amount, Administrative Agent shall be entitled to reimbursement for its portion of the Defaulting Lender Payment Amount pursuant to Section 5.11.

1.15.2. Removal of Rights; Indemnity. Administrative Agent shall not be obligated to transfer to a Defaulting Lender any payments made by or on behalf of Borrower to Administrative Agent for the Defaulting Lender's benefit; nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder or under any Note until all Defaulting Lender Payment Amounts are paid in full. Amounts payable to a Defaulting Lender shall be paid by Administrative Agent to reimburse Administrative Agent and any Electing Lender pro rata for all Defaulting Lender Payment Amounts. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents, a Defaulting Lender shall be deemed not to be a "Lender" and such Defaulting Lender's Commitment shall be deemed to be zero. A Defaulting Lender shall have no right to participate in any discussions among and/or decisions by Lenders hereunder and/or under the other Loan Documents. Further, any Defaulting Lender shall be bound by any amendment to, or waiver of, any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the non-Defaulting Lenders under, any Loan Document which is made subsequent to the Defaulting Lender's becoming a Defaulting Lender. This Section shall remain effective with respect to a Defaulting Lender until such time as the Defaulting Lender shall no longer be in default of any of its obligations under this Agreement by curing such default by payment of all Defaulting Lender Payment Amounts (i) within the Election Period, or (ii) after the Election Period with the consent of the non-Defaulting Lenders. Such Defaulting Lender nonetheless shall be bound by any amendment to or waiver of any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the non-Defaulting Lenders under any Loan Document which is made subsequent to that Lender's

becoming a Defaulting Lender and prior to such cure or waiver. The operation of this subsection or the subsection above alone shall not be construed to increase or otherwise affect the Commitment of any non-Defaulting Lender, or relieve or excuse the performance by Borrower of their duties and obligations hereunder or under any of the other Loan Documents. Furthermore, nothing contained in this Section shall release or in any way limit a Defaulting Lender's obligations as a Lender hereunder and/or under any other of the Loan Documents. Further, a Defaulting Lender shall indemnify and hold harmless Administrative Agent and each of the non-Defaulting Lenders from any claim, loss, or costs incurred by Administrative Agent and/or the non-Defaulting Lenders as a result of a Defaulting Lender's failure to comply with the requirements of this Agreement, including, without limitation, any and all additional losses, damages, costs and expenses (including, without limitation, attorneys' fees) incurred by Administrative Agent and any non-Defaulting Lender as a result of and/or in connection with (i) a non-Defaulting Lender's acting as an Electing Lender, (ii) any enforcement action brought by Administrative Agent against a Defaulting Lender, and (iii) any action brought against Administrative Agent and/or Lenders. The indemnification provided above shall survive any termination of this Agreement.

1.15.3. Commitment Adjustments. In connection with the adjustment of the amounts of the Loan Commitments of the Defaulting Lender and Electing Lender(s) upon the expiration of the Election Period as aforesaid, Borrower, Administrative Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with the adjustment of the amounts of Commitments in accordance with the foregoing provisions of this Section. For the purpose of voting or consenting to matters with respect to the Loan Documents such modifications shall also reflect the removal of voting rights of the Defaulting Lender and increase in voting rights of Electing Lenders to the extent an Electing Lender has funded the Defaulting Lender Amount. In connection with such adjustments, Defaulting Lenders shall execute and deliver an Assignment and Assumption covering that Lender's Commitment and otherwise comply with Section 6.5. If a Lender refuses to execute and deliver such Assignment and Assumption or otherwise comply with Section 6.5, such Lender hereby appoints Administrative Agent to do so on such Lender's behalf. Administrative Agent shall distribute an amended Schedule of Lenders, which shall thereafter be incorporated into this Agreement, to reflect such adjustments. However, all such Defaulting Lender Amounts funded by Administrative Agent or Electing Lenders shall continue to be Defaulting Lender Amounts of the Defaulting Lender pursuant to its obligations under this Agreement.

1.15.4. No Election. In the event that no Lender elects to commit to fund the Defaulting Lender Amount within the Election Period, Administrative Agent shall, upon the expiration of the Election Period, so notify Borrower and each Lender.

1.16. Several Obligations; No Liability, No Release. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Administrative Agent in its capacity as such, and not by or in favor of Lenders, any and all obligations on the part of Administrative Agent (if any) to make any advances of the Loan or reimbursements for other Payment Amounts shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Pro Rata Shares. Except as may be specifically provided in this Agreement, no Lender shall have any

liability for the acts of any other Lender. No Lender shall be responsible to Borrower or any other person for any failure by any other Lender to fulfill its obligations to make advances of the Loan or reimbursements for other Payment Amounts, nor to take any other action on its behalf hereunder or in connection with the financing contemplated herein. The failure of any Lender to pay to Administrative Agent its Pro Rata Share of a Payment Amount shall not relieve any other Lender of any obligation hereunder to pay to Administrative Agent its Pro Rata Share of such Payment Amounts as and when required herein, but no Lender shall be responsible for the failure of any other Lender to so fund its Pro Rata Share of the Payment Amount. In furtherance of the foregoing, Lenders shall comply with their obligation to pay Administrative Agent their Pro Rata Share of such Payment Amounts regardless of (i) the occurrence of any Default hereunder or under any Loan Document; (ii) any failure of consideration, absence of consideration, misrepresentation, fraud, or any other event, failure, deficiency, breach or irregularity of any nature whatsoever in the Loan Documents; or (iii) any bankruptcy, insolvency or other like event with regard to any Borrower or Guarantor. The obligation of Lenders to pay to such Payment Amounts are in all regards independent of any claims between Administrative Agent and any Lender.

ARTICLE 2  
ADDITIONAL COVENANTS AND AGREEMENTS

2.1. Bank Accounts. Borrower shall maintain all security deposits collected from tenants or others with respect to the Property in one or more accounts with Administrative Agent in accordance with all applicable legal requirements. Borrower shall maintain all bank accounts used by Borrower in connection with the operation of the Property with Administrative Agent.

2.2. Intentionally Omitted.

2.3. Contracts. Without Administrative Agent's prior written approval as to parties, terms, and all other matters, Borrower shall not (a) enter into any Material Contract, (b) enter into any management, leasing, maintenance or other contract pertaining to the Property not described in clause (a) that is not unconditionally terminable by Borrower or any successor owner without penalty or payment on not more than thirty (30) days' notice to the other party thereunder, or (c) modify, amend, or terminate any such contracts. All such contracts shall provide that all rights and liens of the applicable contractor, architect, engineer, supplier, surveyor or other party and any right to remove removable Improvements are subordinate to Lender's rights and liens, shall require all subcontracts and purchase orders to contain a provision subordinating the subcontractors' and mechanics' and materialmen's liens and any right to remove removable Improvements to Lender's rights and liens. Borrower shall not default under any contract, Borrower shall not permit any contract to terminate by reason of any failure of Borrower to perform thereunder, and Borrower shall promptly notify Administrative Agent of any default thereunder. Borrower will deliver to Administrative Agent, upon request of Administrative Agent, the names and addresses of all persons or entities with whom each contractor has contracted or intends to contract for the construction of the Improvements or for the furnishing of labor or materials therefor.



2.4. Assignment of Contracts. As additional security for the Obligations, Borrower hereby transfers and assigns to Administrative Agent for the ratable benefit of Administrative Agent and Lenders and grants a security interest in all of Borrower's right, title and interest, but not its liability, in, under, and to all construction, architectural and design contracts, and agrees that all of the same are covered by the security agreement provisions of the Mortgage. Borrower agrees to deliver to Administrative Agent from time to time upon Administrative Agent's request such consents to the foregoing assignment from parties contracting with Borrower as Administrative Agent may require. Neither this assignment nor any action by Administrative Agent or Lenders shall constitute an assumption by Administrative Agent or Lenders of any obligation under any contract, Borrower hereby agrees to perform all of its obligations under any contract, and Borrower shall continue to be liable for all obligations of Borrower with respect thereto. Administrative Agent shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower such action as Administrative Agent may determine to be necessary to cure any default under any contract or to protect the rights of Borrower, Administrative Agent or Lenders with respect thereto. Borrower irrevocably constitutes and appoints Administrative Agent as Borrower's attorney-in-fact, which power of attorney is coupled with an interest and irrevocable, to enforce in Borrower's name or in Administrative Agent's and Lender's name all rights of Borrower under any contract. Administrative Agent shall incur no liability if any action so taken by it or on its behalf shall prove to be inadequate or invalid. Borrower indemnifies and holds Administrative Agent and Lenders harmless against and from any loss, cost, liability or expense (including, but not limited to, consultants' fees and expenses and attorneys' fees and expenses) incurred in connection with Borrower's failure to perform such contracts or any such action taken by Administrative Agent or Lenders. Borrower represents and warrants to Administrative Agent and Lenders that the copy of any contract furnished or to be furnished to Administrative Agent is and shall be a true and complete copy thereof, that there have been no modifications thereof which are not fully set forth in the copies delivered, and that Borrower's interest therein is not subject to any claim, setoff, or encumbrance.

2.5. Financial Covenants.

(a) Loan to Value Ratio. The Property shall have a "Loan to Value Ratio" of not greater than the Maximum Loan to Value, which Loan to Value Ratio shall be calculated, and defined, as follows: the sum of (x) the Principal Debt, (y) prior to the Future Advance Determination Date, the Future Advance Amount and (z) accrued but unpaid interest on the Loan, all as of the date of the determination of the ratio shall be divided by the appraised "As-Is" value of the Property. The appraised "As-Is" value of the Property shall be based upon the most recent appraisal performed pursuant to Section 2.13, as reviewed, adjusted and approved by Administrative Agent. The Loan to Value Ratio requirement shall be tested no more often than once per calendar year, unless one or more events have occurred which have, alone or in the aggregate, a Material Adverse Effect. In the event the Loan to Value Ratio covenant is not met, Administrative Agent shall notify Borrower of such condition and Borrower may satisfy the Loan to Value Ratio covenant by, within thirty (30) days of such notice, either (A) making a principal curtailment on the Loan (which shall not be credited towards future principal amortization required under the Loan Documents) in an amount sufficient to bring this Loan to Value Ratio into compliance and/or (B) provide additional collateral acceptable to Administrative Agent, which shall have value (as determined by Administrative Agent) which

when added to the Property value is sufficient to satisfy the Loan to Value Ratio covenant. If Borrower fails to satisfy the Loan to Value Ratio covenant within such thirty (30) day period, such condition shall constitute an immediate Default.

(b) Debt Service Coverage Ratio. Borrower shall at all times have a Debt Service Coverage Ratio of at least the Minimum DSCR. In the event the Debt Service Coverage Ratio covenant is not met, Administrative Agent shall notify Borrower of such condition and Borrower may satisfy the Debt Service Coverage Ratio covenant by, within thirty (30) days of such notice, either (A) making a principal curtailment on the Loan (which shall not be credited towards future principal amortization required under the Loan Documents) in an amount sufficient to bring this Debt Service Coverage Ratio into compliance and/or (B) provide additional collateral acceptable to Administrative Agent, which shall have value (as determined by Administrative Agent) which would, assuming such collateral were liquidated and applied to reduce the outstanding principal amount of the Loan, be sufficient to satisfy the Debt Service Coverage Ratio covenant. If Borrower fails to satisfy the Debt Service Coverage Ratio covenant within such thirty (30) day period, such condition shall constitute an immediate Default.

2.6. Limitation on Debt. Borrower will not incur, create, assume directly or indirectly, or suffer to exist any Debt or encumber any of its assets nor form or own any subsidiaries, nor acquire or hold a direct or indirect equity investments in any other Person without in each such instance the prior written consent of Administrative Agent, except for:

- (a) Debt incurred pursuant to this Agreement and the other Loan Documents;
- (b) Debt of Borrower under a Swap Contract;
- (c) Debt constituting a trade payable which is payable in the ordinary course of business and is not past due;
- (d) obligations to pay brokerage commissions in connection with executed leases so long as such commissions are at market rates; and
- (e) amounts payable under leases in connection with build-out allowances or tenant improvement reimbursements (but only to the extent approved by Administrative Agent in its reasonable discretion to the extent Administrative Agent's consent is required hereunder).

2.7. Inspection. Administrative Agent and its agents may enter upon the Property to inspect the Property at any reasonable time, unless Administrative Agent deems such inspection is of an emergency nature, in which event Borrower shall provide Administrative Agent with immediate access to the Property. Borrower will furnish to Administrative Agent and its agents for inspection and copying, all books and records, and other documents and information that Administrative Agent may request from time to time.

2.8. Notice to Lenders. Borrower shall promptly within ten (10) days after the occurrence of any of the following events, notify each Lender in writing thereof, specifying in each case the action Borrower has taken or will take with respect thereto: (a) any violation of any Law or governmental requirement; (b) any litigation, arbitration or governmental

investigation or proceeding instituted or threatened against Borrower or any Guarantor or the Property, and any material development therein; (c) any actual or threatened condemnation of any portion of the Property, any negotiations with respect to any such taking, or any loss of or substantial damage to the Property; (d) any labor controversy pending or threatened against Borrower or any contractor, and any material development in any labor controversy; (e) any notice received by Borrower with respect to the cancellation, alteration or non-renewal of any insurance coverage maintained with respect to the Property; (f) Borrower receiving notice or otherwise having knowledge of any lien in excess of \$50,000 filed against the Property or any stop notice served on Borrower in connection with construction of any alterations or renovations of the Improvements; or (g) any required permit, license, certificate or approval with respect to the Property lapses or ceases to be in full force and effect.

2.9. Financial Statements. Borrower shall deliver to Administrative Agent with sufficient copies for each Lender the Financial Statements and other statements and information at the times and for the periods described in (a) Exhibit "B" and (b) any other Loan Document, and Borrower shall deliver to Administrative Agent with sufficient copies for each Lender from time to time such additional financial statements and information as Administrative Agent may at any time request. Borrower will make all of its books, records and accounts available to Administrative Agent and its representatives at the Property upon request and will permit them to review and copy the same. Borrower shall promptly notify Administrative Agent of any event or condition that could reasonably be expected to have a Material Adverse Effect in the financial condition of Borrower. Administrative Agent shall provide a copy of such Financial Statements to each Lender upon receipt.

2.10. Other Information. Borrower shall furnish to Administrative Agent from time to time upon Administrative Agent's request budgets of Borrower and revisions thereof showing the estimated costs and expenses to be incurred in connection with the completion of construction of the Improvements; (v) current or updated detailed Project schedules or construction schedules; and (vi) such other information relating to Borrower, Guarantor, the Improvements, the Property, or any indemnitor or other person or party connected with Borrower, the Loan or any security for the Loan.

2.11. Administrative Agent Fee. Borrower shall pay to Administrative Agent, for Administrative Agent's own account, an administrative agent fee of \$1,667 per month (or partial month, without apportioning, in the event the Initial Advance is made or the Loan repaid, on a day other than the last day of a month) payable monthly in arrears commencing on November 1, 2010 and on the first day of each month hereafter.

2.12. Unused Fee. Borrower shall pay to Administrative Agent, for the pro rata account of Lenders, an unused fee (the "Unused Fee") computed daily on the Future Advance Amount at a rate per annum equal to 0.40%, calculated on the basis of a year of 360 days for the actual number of days elapsed. Effective on the date which is the first to occur of (x) the date on which Lenders advance the Future Advance to Borrower or (y) the date on which the Commitment to lend the Future Advance terminates in accordance with Section 1.4, no further Unused Fee shall accrue. The accrued Unused Fee shall be due and payable in arrears on the first day of each January, April, July and October of each year, commencing on January 1, 2011, and upon the Maturity Date.

2.13. Appraisal. Administrative Agent may obtain from time to time, an appraisal of all or any part of the Property prepared in accordance with written instructions from Administrative Agent by a third-party appraiser engaged directly by Administrative Agent. Each such appraiser and appraisal shall be satisfactory to Administrative Agent (including satisfaction of applicable regulatory requirements). The cost of any such appraisal shall be borne by Borrower if such appraisal is the first appraisal in any calendar year and in all events if Administrative Agent obtains such appraisal after the occurrence of a Default, and such cost is due and payable by Borrower on demand and shall be secured by the Loan Documents. Administrative Agent shall provide a copy of such appraisal to each Lender upon receipt. Provided no Default exists and Borrower has paid the cost of such appraisal as aforesaid, Administrative Agent shall provide a copy of such appraisal to Borrower upon request.

2.14. Payment of Withholding Taxes. Borrower shall not use, or permit the property manager of the Property to use, any portion of the proceeds of any Loan advance to pay the wages of employees unless a portion of the proceeds or other funds are also used to make timely payment to or deposit with (a) the United States of all amounts of tax required to be deducted and withheld with respect to such wages under the Code, and (b) any state and/or local Tribunal or agency having jurisdiction of all amounts of tax required to be deducted and withheld with respect to such wages under any applicable state and/or local Laws.

2.15. ERISA and Prohibited Transaction Taxes. As of the date hereof and throughout the term of this Loan Agreement, (a) Borrower is not and will not be (i) an “employee benefit plan”, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”); or (ii) a “plan” within the meaning of Section 4975(e) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”); (b) the assets of Borrower do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101; (c) Borrower is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA; (d) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans; and (e) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Administrative Agent of any of Lender’s rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code. Borrower further agrees to deliver to Administrative Agent such certifications or other evidence of compliance with the provisions of this Section 2.15 as Administrative Agent may from time to time request.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

To induce Lenders to make the Loan, Borrower hereby represents and warrants to Administrative Agent and Lenders that except as otherwise disclosed to Administrative Agent in writing (a) Borrower has complied with any and all Laws and regulations concerning its organization, existence and the transaction of its business, and has the right and power to own the Property and to develop the Improvements as contemplated in this Agreement and the other Loan

Documents; (b) Borrower is authorized to execute, deliver and perform all of its obligations under the Loan Documents; (c) the Loan Documents are valid and binding obligations of Borrower; (d) Borrower is not in violation of any Law, regulation or ordinance, or any order of any court or Tribunal, and no provision of the Loan Documents violates any applicable Law, any covenants or restrictions affecting the Property, any order of any court or Tribunal or any contract or agreement binding on Borrower or the Property; (e) to the extent required by applicable Law, Borrower and Guarantor have filed all necessary tax returns and reports and have paid all taxes and governmental charges thereby shown to be owing; (f) the Land is not part of a larger tract of land owned by Borrower or any of its affiliates or any Guarantor, is not otherwise included under any unity of title or similar covenant with other lands not encumbered by the Mortgage, and constitutes a separate tax lot or lots with a separate tax assessment or assessments for the Land and Improvements, independent of those for any other lands or improvements; (g) the Land and Improvements comply with all Laws and governmental requirements, including all subdivision and platting requirements, without reliance on any adjoining or neighboring property; (h) the Improvements comply with all legal requirements regarding access and facilities for handicapped or disabled persons; (i) Borrower has not directly or indirectly conveyed, assigned or otherwise disposed of or transferred (or agreed to do so) any development rights, air rights or other similar rights, privileges or attributes with respect to the Property, including those arising under any zoning or land use ordinance or other Law or governmental requirement; (j) the Financial Statements delivered to Administrative Agent are true, correct, and complete in all material respects, and there has been no event or condition that could reasonably be expected to have a Material Adverse Effect in Borrower's or Guarantor's financial condition from the financial condition of Borrower or Guarantor (as the case may be) indicated in such Financial Statements; (k) all utility services necessary for operation of the Improvements for their intended purpose are available at the boundaries of the Land, including electric and natural gas facilities, telephone service, water supply, storm and sanitary sewer facilities; (l) except as otherwise provided for in the Loan Documents, Borrower has made no contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Property; and (m) the current and anticipated use of the Property complies with all applicable zoning ordinances, regulations and restrictive covenants affecting the Land without the existence of any variance, non-complying use, nonconforming use or other special exception, all use restrictions of any Tribunal having jurisdiction have been satisfied, and no violation of any Law or regulation exists with respect thereto.

#### ARTICLE 4 DEFAULT AND REMEDIES

4.1. Events of Default. The occurrence of any one of the following shall be a default under this Agreement ("Default"): (a) any of the Indebtedness is not paid when due, whether on the scheduled due date or upon acceleration, maturity or otherwise and such default shall have continued for a period of ten (10) days; (b) any covenant, agreement, condition, representation or warranty in this Agreement (other than covenants to pay the Indebtedness and other than Defaults expressly listed in this Section) is not fully and timely performed, observed or kept and except with respect to provisions which are specified to be immediate Defaults such default shall have continued for a period of thirty (30) days after notice thereof shall have been

given to Borrower by Administrative Agent (or such other grace period as may be specified elsewhere in this Agreement with respect to specific provisions), provided, however, if such default is not susceptible of being cured within such thirty (30) day period and Borrower has commenced such cure within such thirty (30) day period and is diligently pursuing such cure to Administrative Agent's satisfaction, such thirty (30) day cure period shall be extended, but in no event shall such cure period exceed sixty (60) days, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein; (c) the occurrence of a Default under any other Loan Document (taking into account any applicable notice and cure period set forth in such Loan Document); (d) any required permit, license, certificate or approval with respect to the Property lapses or ceases to be in full force and effect and Borrower fails to have such required permit, license, certificate or approval renewed or reinstated within thirty (30) days; (e) Borrower, Administrative Agent or any Lender is enjoined or prohibited from performing any of its respective obligations under any of the Loan Documents; (f) the owner of the Property enters into any lease of part or all of the Property which does not comply with the Loan Documents; (g) a lien for the performance of work or the supply of materials which is established against the Property remains unsatisfied or unbonded for a period of twenty (20) days after Borrower's receipt of notice or otherwise obtaining knowledge of the date of filing or service; (h) the entry of a judgment against Borrower or any Guarantor for an amount in excess of \$500,000 and Borrower shall not discharge the same or cause it to be discharged within sixty (60) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution or bond over such judgment by a commercially acceptable bonding company pending such appeal; (i) the issuance of any attachment, sequestration, or similar writ levied upon any of Borrower's or Guarantor's property which is not discharged within a period of ten (10) days; (j) Administrative Agent determines that an event or condition that could reasonably be expected to have a Material Adverse Effect has occurred in the financial condition of Borrower or any Guarantor or in the condition of the Property; (k) the death, incompetency, dissolution or insolvency of Borrower or any Guarantor; (l) a Default as specified in Section 6.26; and (m) a default occurs under any other Loan Document which is not cured within any applicable notice and cure period provided therein.

4.2. Remedies. Upon a Default, Administrative Agent may with the consent of, and shall at the direction of the Required Lenders, without notice, exercise any and all rights and remedies afforded by this Agreement, the other Loan Documents, Law, equity or otherwise, including (a) declaring any and all Indebtedness immediately due and payable; (b) reducing any claim to judgment; or (c) obtaining appointment of a receiver (to which Borrower hereby consents) and/or judicial or nonjudicial foreclosure under the Mortgage; provided, however, that upon a Default, Administrative Agent at its election may (but shall not be obligated to) without the consent of and shall at the direction of the Required Lenders, without notice, do any one or more of the following: set-off and apply, to the extent thereof and to the maximum extent permitted by Law, any and all deposits, funds, or assets at any time held and any and all other indebtedness at any time owing by Administrative Agent or any Lender to or for the credit or account of Borrower against any Indebtedness.

Borrower hereby appoints Administrative Agent as Borrower's attorney-in-fact, which power of attorney is irrevocable and coupled with an interest, with full power of substitution if Administrative Agent so elects, to do any of the following in Borrower's name

upon the occurrence of a Default: (i) endorse the name of Borrower on any checks or drafts representing proceeds of any insurance policies, or other checks or instruments payable to Borrower with respect to the Property; (ii) prosecute or defend any action or proceeding incident to the Property, (iii) pay, settle, or compromise all bills and claims so as to clear title to the Property; and (iv) take over and use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the Improvements. Any amounts expended by Administrative Agent itself or on behalf of Lenders in connection with the exercise of its remedies herein shall be deemed to have been advanced to Borrower hereunder as a demand obligation owing by Borrower to Administrative Agent or Lenders as applicable and shall constitute a portion of the Indebtedness, regardless of whether such amounts exceed any limits for Indebtedness otherwise set forth herein. Neither Administrative Agent nor Lenders shall have any liability to Borrower for the sufficiency or adequacy of any such actions taken by Administrative Agent.

No delay or omission of Administrative Agent or Lenders to exercise any right, power or remedy accruing upon the happening of a Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Default or any acquiescence therein. No delay or omission on the part of Administrative Agent or Lenders to exercise any option for acceleration of the maturity of the Indebtedness, or for foreclosure of the Mortgage following any Default as aforesaid, or any other option granted to Administrative Agent and Lenders hereunder in any one or more instances, or the acceptances by Administrative Agent or Lenders of any partial payment on account of the Indebtedness, shall constitute a waiver of any such Default, and each such option shall remain continuously in full force and effect. No remedy herein conferred upon or reserved to Administrative Agent and/or Lenders is intended to be exclusive of any other remedies provided for in any Note or any of the other Loan Documents, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under any Note or any of the other Loan Documents, or now or hereafter existing at Law or in equity or by statute. Every right, power and remedy given to Administrative Agent and Lenders by this Agreement, any Note or any of the other Loan Documents shall be concurrent, and may be pursued separately, successively or together against Borrower, or the Property or any part thereof, or any personal property granted as security under the Loan Documents, and every right, power and remedy given by this Agreement, any Note or any of the other Loan Documents may be exercised from time to time as often as may be deemed expedient by the Required Lenders.

Regardless of how a Lender may treat payments received from the exercise of remedies under the Loan Documents for the purpose of its own accounting, for the purpose of computing the Indebtedness, payments shall be applied as elected by Lenders. No application of payments will cure any event of Default, or prevent acceleration, or continued acceleration, of amounts payable under the Loan Documents, or prevent the exercise, or continued exercise, of rights or remedies of Administrative Agent and Lenders hereunder or thereunder or at Law or in equity.

5.1. Appointment and Authorization of Administrative Agent.

(a) Each Lender hereby irrevocably (subject to Section 5.9) appoints, designates and authorizes Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Administrative Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) No individual Lender or group of Lenders shall have any right to amend or waive, or consent to the departure of any party from any provision of any Loan Document, or secure or enforce the obligations of Borrower or any other party pursuant to the Loan Documents, or otherwise. All such rights, on behalf of Administrative Agent or any Lender or Lenders, shall be held and exercised solely by and at the option of Administrative Agent for the pro rata benefit of Lenders. Such rights, however, are subject to the rights of a Lender or Lenders, as expressly set forth in this Agreement, to approve matters or direct Administrative Agent to take or refrain from taking action as set forth in this Agreement. Except as expressly otherwise provided in this Agreement or the other Loan Documents, Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights, or taking or refraining from taking any actions which Administrative Agent is expressly entitled to exercise or take under this Agreement and the other Loan Documents, including, without limitation, (i) the determination if and to what extent matters or items subject to Administrative Agent's satisfaction are acceptable or otherwise within its discretion, (ii) the making of Administrative Agent Advances, and (iii) the exercise of remedies pursuant to, but subject to, Article 4 or pursuant to any other Loan Document and any action so taken or not taken shall be deemed consented to by Lenders.

(c) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower or Guarantor, no individual Lender or group of Lenders shall have the right, and Administrative Agent (irrespective of whether the principal of the Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be exclusively entitled and empowered on behalf of itself and Lenders, by intervention in such proceeding or otherwise:



(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and Administrative Agent and their respective agents and counsel and all other amounts due Lenders and Administrative Agent under Section 6.10 and Exhibit "K" allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Section 6.10.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of Lenders except as approved by Required Lenders or to authorize Administrative Agent to vote in respect of the claims of Lenders except as approved by Required Lenders in any such proceeding.

5.2. Delegation of Duties. Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultant experts concerning all matters pertaining to such duties. Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

5.3. Liability of Administrative Agent. No Agent-Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (ii) be responsible in any manner to any of Lenders for any recital, statement, representation or warranty made by Borrower or any subsidiary or Affiliate of Borrower, or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of Borrower, Guarantor or any of their Affiliates.

5.4. Reliance by Administrative Agent. Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon advice and statements of legal counsel (including counsel to any party to the Loan Documents), independent accountants and other experts selected by Administrative Agent. Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders or all Lenders if required hereunder as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders or such greater number of Lenders as may be expressly required hereby in any instance, and such request and any action taken or failure to act pursuant thereto shall be binding upon all Lenders. In the absence of written instructions from the Required Lenders or such greater number of Lenders, as expressly required hereunder, Administrative Agent may take or not take any action, at its discretion, unless this Agreement specifically requires the consent of the Required Lenders or such greater number of Lenders.

5.5. Notice of Default. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, unless Administrative Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default that Administrative Agent determines will have a Material Adverse Effect. Administrative Agent will notify Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to such Default as may be requested by the Required Lenders in accordance with Article 4; provided, however, that unless and until Administrative Agent has received any such request, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable or in the best interest of Lenders.

5.6. Credit Decision; Disclosure of Information by Administrative Agent.

(a) Each Lender acknowledges that none of Agent-Related Persons has made any representation or warranty to it, and that no act by Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of Borrower and Guarantor, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lenders as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to Administrative Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and Guarantor, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower and Guarantor hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and

based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and Guarantor.

(b) Administrative Agent upon its receipt shall provide each Lender such notices, reports and other documents expressly required to be furnished to Lenders by Administrative Agent herein. To the extent not already available to a Lender, Administrative Agent shall also provide Lender and/or make available for Lender's inspection during reasonable business hours and at Lender's expense, upon Lender's written request therefor: (i) copies of the Loan Documents; (ii) such information as is then in Administrative Agent's possession in respect of the current status of principal and interest payments and accruals in respect of the Loan; (iii) copies of all current financial statements in respect of Borrower, any Guarantor or other person liable for payment or performance by Borrower of any obligations under the Loan Documents, then in Administrative Agent's possession with respect to the Loan; and (iv) other current factual information then in Administrative Agent's possession with respect to the Loan and bearing on the continuing creditworthiness of Borrower or any Guarantor, or any of their respective Affiliates; provided that nothing contained in this Section shall impose any liability upon Administrative Agent for its failure to provide a Lender any of such Loan Documents, information, or financial statements, unless such failure constitutes willful misconduct or gross negligence on Administrative Agent's part; and provided further that Administrative Agent shall not be obligated to provide any Lender with any information in violation of Law or any contractual restrictions on the disclosure thereof (provided such contractual restrictions shall not apply to distributing to a Lender factual and financial information expressly required to be provided herein). Except as set forth above, Administrative Agent shall not have any duty or responsibility to provide any Lenders with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or Guarantor or any of their respective Affiliates which may come into the possession of any of Agent-Related Persons.

5.7. Indemnification of Administrative Agent. Whether or not the transactions contemplated hereby are consummated, Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, to the extent that Administrative Agent is not reimbursed by or on behalf of Borrower, each Lender shall reimburse Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorney fees) incurred by Administrative Agent as described in Section 6.10. The undertaking in this Section shall survive the payment of all Indebtedness hereunder and the resignation or replacement of Administrative Agent.

5.8. Administrative Agent in Individual Capacity. Administrative Agent, in its individual capacity, and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any party to the Loan Documents and their respective Affiliates as though Administrative Agent were not Administrative Agent hereunder and without notice to or consent of Lenders. Lenders acknowledge that Borrower and Bank of America, N.A. or its Affiliate have entered or may enter into Swap Transactions. A portion of the Loan may be funded to honor Borrower's payment obligations under the terms of such Swap Transactions, and Lenders shall have no right to share in any portion of such payments. Lenders acknowledge that, pursuant to such activities, Bank of America, N.A. or its Affiliates may receive information regarding any party to the Loan Documents, or their respective Affiliates (including information that may be subject to confidentiality obligations in favor of such parties or such parties' Affiliates) and acknowledge that Administrative Agent shall be under no obligation to provide such information to them. With respect to its Pro Rata Share of the Loan, Bank of America, N.A. shall have the same rights and powers under this Agreement as any other Lenders and may exercise such rights and powers as though it were not Administrative Agent or party to Swap Transactions, and the terms "Lender" and "Lenders" include Bank of America, N.A. in its individual capacity.

5.9. Successor Administrative Agent. Administrative Agent may, and at the request of the Required Lenders as a result of Administrative Agent's gross negligence or willful misconduct in performing its duties under this Agreement shall, resign as Administrative Agent upon thirty (30) days' notice to Lenders. If Administrative Agent resigns under this Agreement, the Required Lenders shall appoint from among Lenders a successor administrative agent for Lenders, which successor administrative agent shall be consented to by Borrower at all times other than during the existence of a Default (which consent of Borrower shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed prior to the effective date of the resignation of Administrative Agent, Administrative Agent may appoint, after consulting with Lenders and Borrower, a successor administrative agent from among Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder, such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor administrative agent, and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article and other applicable Sections of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

5.10. Releases; Acquisition and Transfers of Collateral.

(a) Lenders hereby irrevocably authorize Administrative Agent to transfer or release any lien on, or after foreclosure or other acquisition of title by Administrative Agent on

behalf of Lenders to transfer or sell, any Loan collateral (i) upon the termination of the Commitments and payment and satisfaction in full of all Indebtedness, (ii) constituting a release, transfer or sale of a lien or Loan collateral if Borrower will certify to Administrative Agent that the release, transfer or sale is permitted under this Agreement or the other Loan Documents (and Administrative Agent may rely conclusively on any such certificate, without further inquiry); or (iv) after foreclosure or other acquisition of title (1) for a purchase price of at least 90% of the value indicated in the most recent appraisal of the collateral obtained by Administrative Agent made in accordance with regulations governing Administrative Agent, less any reduction indicated in the appraisal estimated by experts in such areas; or (2) if approved by the Required Lenders.

(b) If all or any portion of the Loan collateral is acquired by foreclosure or by deed in lieu of foreclosure, Administrative Agent shall take title to the collateral in its name or by an Affiliate of Administrative Agent, but for the benefit of all Lenders in their Pro Rata Shares on the date of the foreclosure sale or recordation of the deed in lieu of foreclosure (the "Acquisition Date"). Administrative Agent and all Lenders hereby expressly waive and relinquish any right of partition with respect to any collateral so acquired. After any collateral is acquired, Administrative Agent shall appoint and retain one or more persons (individually and collectively, "Property Manager") experienced in the management, leasing, sale and/or dispositions of similar properties.

After consulting with the Property Manager, Administrative Agent shall prepare a written plan for completion of construction (if required), operation, management, improvement, maintenance, repair, sale and disposition of the Loan collateral and a budget for the aforesaid, which may include a reasonable management fee payable to Administrative Agent (the "Business Plan"). Administrative Agent will deliver the Business Plan not later than the sixtieth (60th) day after the Acquisition Date to each Lender with a written request for approval of the Business Plan. If the Business Plan is approved by the Required Lenders, Administrative Agent and the Property Manager shall adhere to the Business Plan until a different Business Plan is approved by the Required Lenders. Administrative Agent may propose an amendment to the Business Plan as it deems appropriate, which shall also be subject to Required Lender approval. If the Business Plan (as may be amended) proposed by Administrative Agent is not approved by the Required Lenders, (or if sixty (60) days have elapsed following the Acquisition Date without a Business Plan being proposed by Administrative Agent), any Lender may propose an alternative Business Plan, which Administrative Agent shall submit to all Lenders for their approval. If an alternative Business Plan is approved by the Required Lenders, Administrative Agent may appoint one of the approving Lenders to implement the alternative Business Plan. Notwithstanding any other provision of this Agreement, unless in violation of an approved Business Plan or otherwise in an emergency situation, Administrative Agent shall, subject to subsection (a) of this Section, have the right but not the obligation to take any action in connection with the Loan collateral (including those with respect to property taxes, insurance premiums, completion of construction, operation, management, improvement, maintenance, repair, sale and disposition), or any portion thereof.

(c) Upon request by Administrative Agent or Borrower at any time, Lenders will confirm in writing Administrative Agent's authority to sell, transfer or release any such liens of particular types or items of Loan collateral pursuant to this Section; provided, however, that

(i) Administrative Agent shall not be required to execute any document necessary to evidence such release, transfer or sale on terms that, in Administrative Agent's opinion, would expose Administrative Agent to liability or create any obligation or entail any consequence other than the transfer, release or sale without recourse, representation or warranty, and (ii) such transfer, release or sale shall not in any manner discharge, affect or impair the obligations of Borrower other than those expressly being released.

(d) If only two (2) Lenders exist at the time Administrative Agent receives a purchase offer for Loan collateral for which one of Lenders does not consent within ten (10) Business Days after notification from Administrative Agent, the consenting Lender may offer ("Purchase Offer") to purchase all of non-consenting Lender's right, title and interest in the collateral for a purchase price equal to non-consenting Lender's Pro Rata Share of the net proceeds anticipated from such sale of such collateral (as reasonably determined by Administrative Agent, including the undiscounted face principal amount of any purchase money obligation not payable at closing) ("Net Proceeds"). Within ten (10) Business Days thereafter the non-consenting Lender shall be deemed to have accepted such Purchase Offer unless the non-consenting Lender notifies Administrative Agent that it elects to purchase all of the consenting Lender's right, title and interest in the collateral for a purchase price payable by the non-consenting Lender in an amount equal to the consenting Lender's Pro Rata Share of the Net Proceeds. Any amount payable hereunder by a Lender shall be due on the earlier to occur of the closing of the sale of the collateral or ninety (90) days after the Purchase Offer, regardless of whether the collateral has been sold.

5.11. Application of Payments. Except as otherwise provided below with respect to Defaulting Lenders, aggregate principal and interest payments, payments for Indemnified Liabilities and/or foreclosure or sale of the collateral, and net operating income from the collateral during any period it is owned by Administrative Agent on behalf of Lenders ("Payments") shall be apportioned pro rata among Lenders and payments of any fees (other than fees designated for Administrative Agent's separate account) shall, as applicable, be apportioned pro rata among Lenders. Notwithstanding anything to the contrary in this Agreement, all Payments due and payable to Defaulting Lenders shall be due and payable to and be apportioned pro rata among Administrative Agent and Electing Lenders. Such apportionment shall be in the proportion that the Defaulting Lender Payment Amounts paid by them bears to the total Defaulting Lender Payment Amounts of such Defaulting Lender. Such apportionment shall be made until Administrative Agent and Lenders have been paid in full for the Defaulting Lender Payment Amounts. All pro rata Payments shall be remitted to Administrative Agent and all such payments not constituting payment of specific fees, and all proceeds of the Loan collateral received by Administrative Agent, shall be applied first, to pay any fees, indemnities, costs, expenses (including those in Section 5.7) and reimbursements then due to Administrative Agent from Borrower; second, to pay any fees, costs, expenses and reimbursements then due to Lenders from Borrower; third, to pay pro rata interest and late charges due in respect of the Indebtedness and Administrative Agent Advances; fourth, to pay or prepay pro rata principal of the Indebtedness and Administrative Agent Advances; fifth, to pay any indebtedness of Borrower under Swap Transactions; and last, to Borrower, if required by law, or Lenders in Pro Rata Share percentages equal to their percentages at the termination of the Aggregate Commitments.

5.12. Benefit. The terms and conditions of this Article are inserted for the sole benefit of Administrative Agent and Lenders; the same may be waived in whole or in part, with or without terms or conditions, without prejudicing Administrative Agent's or Lenders' rights to later assert them in whole or in part.

ARTICLE 6  
GENERAL TERMS AND CONDITIONS

6.1. Consents; Borrower's Indemnity. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Administrative Agent's or Lenders' judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (a) within the sole discretion of Administrative Agent or Lenders; (b) deemed to have been given only by a specific writing intended for the purpose given and executed by Administrative Agent or Lenders; and (c) free from any limitation or requirement of reasonableness. Notwithstanding any approvals or consents by Administrative Agent or Lenders, neither Administrative Agent nor any Lender has any obligation or responsibility whatsoever for the adequacy, form or content of any appraisal, any contract, any lease, or any other matter incident to the Property. Any inspection, appraisal or audit of the Property or the books and records of Borrower, or the procuring of documents and financial and other information, by or on behalf of Administrative Agent shall be for Administrative Agent's and Lenders' protection only, and shall not constitute an assumption of responsibility to Borrower or anyone else with regard to the condition, value, construction, maintenance or operation of the Property, or relieve Borrower of any of Borrower's obligations. Borrower has selected all surveyors, architects, engineers, contractors, materialmen and all other persons or entities furnishing services or materials to the Project. Neither Administrative Agent nor any Lender has any duty to supervise or to inspect the Property or the construction of the Improvements nor any duty of care to Borrower or any other person to protect against, or inform Borrower or any other person of the existence of, negligent, faulty, inadequate or defective design or construction of the Improvements. Neither Administrative Agent nor any Lender shall be liable or responsible for, and Borrower shall indemnify each Agent-Related Person and each Lender and their respective Affiliates, directors, officers, agents, attorneys and employees (collectively, the "Indemnitees") from and against: (a) any claim, action, loss or cost (including attorney's fees and costs) arising from or relating to (i) any defect in the Property or the Improvements, (ii) the performance or default of Borrower, Borrower's surveyors, architects, engineers, contractors or any other person, (iii) any failure to construct, complete, protect or insure the Improvements, (iv) the payment of costs of labor, materials, or services supplied for the construction, alteration or renovation of the Improvements, including, without limitation, tenant improvements, (v) in connection with the protection and preservation of the Loan collateral (including those with respect to property taxes, insurance premiums, completion of construction, operation, management, improvements, maintenance, repair, sale and disposition), or (vi) the performance of any obligation of Borrower whatsoever; (b) any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorney fees and costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery,

enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Commitment or Loan, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto; (c) any and all claims, demands, actions or causes of action arising out of or relating to the use of Information (as defined in Section 6.6) or other materials obtained through internet, Intralinks or other similar information transmission systems in connection with this Agreement; and (d) any and all liabilities, losses, costs or expenses (including attorney fees and costs) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action, cause of action or proceeding, or as a result of the preparation of any defense in connection with any foregoing claim, demand, action, cause of action or proceeding, in all cases, whether or not an Indemnitee is a party to such claim, demand, action, cause of action or proceeding and whether it is defeated, successful or withdrawn, (all the foregoing, collectively, the "Indemnified Liabilities"); provided, however, that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. Nothing, including any advance or acceptance of any document or instrument, shall be construed as a representation or warranty, express or implied, to any party by Administrative Agent or Lenders. Inspection, whether or not followed by notice of Default, shall not constitute a waiver of any Default then existing, or a waiver of Administrative Agent's and Lenders' right thereafter to insist that the Improvements be in compliance with the Loan Documents, and all applicable Laws, governmental requirements and restrictive covenants. Administrative Agent's failure to inspect shall not constitute a waiver of any of Administrative Agent's or Lenders' rights under the Loan Documents or at Law or in equity.

6.2. Miscellaneous. This Agreement may be executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons, entities or circumstances. Time shall be of the essence with respect to obligations under the Loan Documents. This Agreement, and its validity, enforcement and interpretation, shall be governed by New York law (without regard to any conflict of Laws principles) and applicable United States federal Law.

### 6.3. Notices.

6.3.1. Modes of Delivery; Changes. Except as otherwise provided herein, all notices, and other communications required or which any party desires to give under this Agreement or any other Loan Document shall be in writing. Unless otherwise specifically provided in such other Loan Document, all such notices and other communications shall be



deemed sufficiently given or furnished if delivered by personal delivery, by courier (including overnight delivery services such as FedEx), by registered or certified United States mail, postage prepaid, or by facsimile (with, subject to Subsection 6.3.2 below, a confirmatory duplicate copy sent by first class United States mail), addressed to the party to whom directed or by (subject to Subsection 6.3.3 below) electronic mail address to Borrower, at the addresses set forth at the end of this Agreement or to Administrative Agent or Lenders at the addresses specified for notices on the Schedule of Lenders (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided, however, that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

6.3.2. Effectiveness of Facsimile Documents and Signatures. Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually-signed originals and shall be binding on all parties to the Loan Documents. Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

6.3.3. Limited Use of Electronic Mail. Electronic mail and internet and intranet websites may be used only to distribute routine communications, such as financial statements and other information, and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose.

6.3.4. Reliance by Administrative Agent and Lenders. Administrative Agent and Lenders shall be entitled to rely and act upon any notices (including telephonic Loan advance notices) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such person on each notice purportedly given by or on behalf of Borrower. All telephonic notices to and other communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording. If a Lender does not notify or inform Administrative Agent of whether or not it consents to, or approves of or agrees to any matter of any nature whatsoever with respect to which its consent, approval or agreement is required under the express provisions of this Agreement or with respect to which its consent, approval or agreement is otherwise requested by Administrative Agent, in connection with the Loan or any matter pertaining to the Loan, within ten (10) Business Days (or such longer period as may be specified by Administrative Agent) after such consent, approval or agreement is

requested by Administrative Agent, Lender shall be deemed to have given its consent, approval or agreement, as the case may be, with respect to the matter in question.

6.4. Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to Administrative Agent or any Lender, or Administrative Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law, to a depository (including Administrative Agent, any Lender or its or their Affiliates) for returned items or insufficient collected funds, or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

6.5. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and Pro Rata Share of the Loan at the time owing to it); provided that:

(i) so long as no Default has occurred and is continuing the assigning Lender's Commitment after the assignment must be at least \$10,000,000.00, and except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and Pro Rata Share of the Loan at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund as defined in subsection (h) of this Section with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes its Pro Rata Share of the Loan outstanding) subject to each such assignment, determined as of the date the Assignment and

Assumption with respect to such assignment is delivered to Administrative Agent, shall not be less than \$10,000,000 unless each of Administrative Agent and, so long as no Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to its Pro Rata Share of the Loan, the Initial Advance, the Future Advance and the Commitment assigned;

(iii) any assignment of a Commitment must be approved by Administrative Agent, unless the person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(iv) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500.

Subject to acceptance and recording thereof by Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of this Agreement with respect to Borrower's obligations surviving termination of this Agreement). Upon request, Administrative Agent shall prepare and Borrower shall execute and deliver one or more Notes (each, a "Replacement Note") to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Administrative Agent, acting solely for this purpose as an agent of Borrower shall maintain at Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amount of each Lender's Pro Rata Share of the Loan owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Borrower, Administrative Agent and Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may, without the consent of, but with prior notice to Administrative Agent, sell participations to one or more banks or other entities (a "Participant")

in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or its Pro Rata Share of the Loan owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) Borrower, Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (iv) except to the extent consented to by Administrative Agent in its sole discretion with respect to each participation, any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement.

(e) A Participant shall not be entitled to receive any greater payment under Sections 1.7, 1.8, 1.12 or any other provision of this Agreement than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) If the consent of Borrower to an assignment or to an assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment threshold specified in clause (i) of the provision to the first sentence of subsection (b) above), Borrower shall be deemed to have given its consent five (5) Business Days after the date notice thereof has been delivered by the assigning Lender (through Administrative Agent) unless such consent is expressly refused by Borrower prior to such fifth Business Day.

(h) As used herein, the following terms have the following meanings:

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Eligible Assignee" means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other person (other than a natural person) approved by Administrative Agent, and, unless a Default has occurred and is continuing, Borrower (each such approval not to be unreasonably withheld or delayed).

"Fund" means any person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial real estate loans and similar extensions of credit in the ordinary course of its business.

6.6. Confidentiality. Each of Administrative Agent and Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including

accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any Swap Transaction or credit derivative transaction relating to obligations of Borrower and Guarantor; (g) with the consent of Borrower; or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Borrower; or (i) to the National Association of Insurance Commissioners or any other similar organization. For the purposes of this Section, "Information" means all information received from Borrower or Guarantor relating to Borrower or Guarantor or their business, other than any such information that is available to Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower or Guarantor; provided that in the case of information received from Borrower or Guarantor after the date hereof, such information is clearly identified in writing at the time of delivery as confidential. Any person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information. Administrative Agent and Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to Administrative Agent and Lenders in connection with the administration and management of this Agreement, the Loan and Loan Documents.

6.7. Set-off. In addition to any rights and remedies of Administrative Agent and Lenders provided by Law, upon the occurrence and during the continuance of any Default, Administrative Agent and each Lender is authorized at any time and from time to time, without prior notice to Borrower or any other party to the Loan Documents, any such notice being waived by Borrower (on its own behalf and on behalf of each party to the Loan Documents to the fullest extent permitted by Law), to set-off and apply any and all deposits, general or special, time or demand, provisional or final, any time owing by Administrative Agent or such Lender hereunder or under any other Loan Document to or for the credit or the account of such parties to the Loan Documents against any and all Indebtedness, irrespective of whether or not Administrative Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Indebtedness may be contingent or unmatured or denominated in a currency different from that of the applicable depositor indebtedness. Each Lender agrees promptly to notify Borrower and Administrative Agent after any such set-off and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application.

6.8. Sharing of Payments. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the portions of the Loan advanced by it, any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the portions of the Loan made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such portions of the Loan or such participations, as the case may be, pro rata with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 6.4 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered without further interest thereon. Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by Law, exercise all its rights of payment (including the right of set-off), but subject to Section 6.7 with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

6.9. Amendments; Survival. Administrative Agent and Lenders shall be entitled to amend (whether pursuant to a separate intercreditor agreement or otherwise) any of the terms, conditions or agreements set forth in Article 5 or as to any other matter in the Loan Documents respecting payments to Administrative Agent or Lenders or the required number of Lenders to approve or disapprove any matter or to take or refrain from taking any action, without the consent of Borrower or any other person or the execution by Borrower or any other person of any such amendment or intercreditor agreement. Subject to the foregoing, Administrative Agent may amend or waive any provision of this Agreement or any other Loan Document, or consent to any departure by any party to the Loan Documents therefrom which amendment, waiver or consent is intended to be within Administrative Agent's discretion or determination, or otherwise if such amendment, waiver or consent does not constitute a material change to the Loan Documents; provided, however, that otherwise no such amendment, waiver or consent shall be effective unless in writing, signed by the Required Lenders and Borrower or the applicable party to the Loan Documents, as the case may be, and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; and provided further that no such amendment, waiver or consent shall:

- (a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 4.2), without the written consent of such

Lender (it being understood that a waiver of a Default shall not constitute an extension or increase in any Lender's Commitment);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to Lenders (or any of them) hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any portion of the Loan or any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; provided, however, that Administrative Agent may waive any obligation of Borrower to pay interest at the Past Due Rate and/or late charges for periods of up to thirty (30) days, and only the consent of the Required Lenders shall be necessary to waive any obligation of Borrower to pay interest at the Past Due Rate or late charges thereafter, or to amend the definition of "Past Due Rate" or "late charges";

(d) change the percentage of the combined Commitments or of the aggregate unpaid principal amount of the Loan which is required for Lenders or any of them to take any action hereunder, without the written consent of each Lender;

(e) change the definition of "Pro Rata Share" or "Required Lender" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(f) amend this Section, or Section 6.8, without the written consent of each Lender;

(g) release the liability of Borrower or any existing Guarantor without the written consent of each Lender;

(h) permit the sale, transfer, pledge, mortgage or assignment of any Loan collateral or any direct or indirect interest in Borrower, except as expressly permitted under the Loan Documents, without the written consent of each Lender; or

(i) transfer or release any lien on, or after foreclosure or other acquisition of title by Administrative Agent on behalf of Lenders transfer or sell, any Loan collateral except as permitted in Section 5.10, without the written consent of each Lender,

and provided further that no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased without the consent of such Lender. Notwithstanding anything to the contrary herein, Administrative Agent is hereby authorized, without the consent of Lenders,

to enter into subordination, non-disturbance and attornment agreements with tenants on reasonable and customary terms, as determined by Administrative Agent.

This Agreement shall continue in full force and effect until the Indebtedness is paid in full and all of Administrative Agent's and Lenders' obligations under this Agreement are terminated; and all representations and warranties and all provisions herein for indemnity of the Indemnitees, Administrative Agent and Lenders (and any other provisions herein specified to survive) shall survive payment in full, satisfaction or discharge of the Indebtedness, the resignation or removal of Administrative Agent or replacement of any Lender, and any release or termination of this Agreement or of any other Loan Documents."

6.10. Costs and Expenses. Without limiting any Loan Document and to the extent not prohibited by applicable Laws, Borrower shall pay when due, shall reimburse to Administrative Agent for the benefit of itself and Lenders on demand and shall indemnify Administrative Agent and Lenders from, all reasonable out-of-pocket fees, costs, and expenses paid or incurred by Administrative Agent in connection with the negotiation, preparation and execution of this Agreement and the other Loan Documents (and any amendments, approvals, consents, waivers and releases requested, required, proposed or done from time to time), or in connection with the disbursement, administration or collection of the Loan or the enforcement of the obligations of Borrower or the exercise of any right or remedy of Administrative Agent, including (a) all reasonable fees and expenses of Administrative Agent's counsel; (b) reasonable fees and charges of each inspector and engineer retained by Administrative Agent for purposes specified in this Agreement; (c) appraisal, re-appraisal and survey costs; (d) title insurance charges and premiums; (e) title search or examination costs, including abstracts, abstractors' certificates and uniform commercial code searches; (f) judgment and tax lien searches for Borrower and each Guarantor; (g) escrow fees; (h) fees and costs of environmental investigations, site assessments and remediations; (i) recordation taxes, documentary taxes, transfer taxes and mortgage taxes; (j) filing and recording fees; and (k) loan brokerage fees. Borrower shall pay all costs and expenses incurred by Administrative Agent, including attorneys' fees, if the obligations or any part thereof are sought to be collected by or through an attorney at law, whether or not involving probate, appellate, administrative or bankruptcy proceedings. Borrower shall pay all costs and expenses of complying with the Loan Documents, whether or not such costs and expenses are included in any budget related to the Property. Borrower's obligations under this Section shall survive the delivery of the Loan Documents, the making of advances, the payment in full of the Indebtedness, the release or reconveyance of any of the Loan Documents, the foreclosure of the Mortgage or conveyance in lieu of foreclosure, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

#### 6.11. Tax Forms.

(a) (i) Each Lender, and each holder of a participation interest herein, that is not a "United States person" (a "Foreign Lender") within the meaning of Section 7701(a)(30) of the Code shall deliver to Administrative Agent, prior to receipt of any payment subject to withholding (or upon accepting an assignment or receiving a participation interest herein), two duly signed completed copies of either Form W-8BEN or any successor thereto (relating to such Foreign Lender and entitling it to a complete exemption from withholding on all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement) or Form W-8ECI or any



successor thereto (relating to all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement) of the United States Internal Revenue Service or such other evidence satisfactory to Borrower and Administrative Agent that such Foreign Lender is entitled to an exemption from or reduction of, United States withholding tax, including any exemption pursuant to Section 881(c) of the Code. Thereafter and from time to time, each such Foreign Lender shall (A) promptly submit to Administrative Agent such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States Laws and regulations to avoid, or such evidence as is satisfactory to Borrower and Administrative Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Foreign Lender by Borrower pursuant to the Loan Documents, (B) promptly notify Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (C) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lenders, and as may be reasonably necessary (including the re-designation of its lending office, if any) to avoid any requirement of applicable Laws that Borrower make any deduction or withholding for taxes from amounts payable to such Foreign Lender.

(ii) Each Foreign Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents (for example, in the case of a typical participation by such Lender), shall deliver to Administrative Agent on the date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of Administrative Agent (in the reasonable exercise of its discretion), (A) two duly signed completed copies of the forms or statements required to be provided by such Lender as set forth above, to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account that is not subject to U.S. withholding tax, and (B) two duly signed completed copies of United States Internal Revenue Service Form W-8IMY (or any successor thereto), together with any information such Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Code, to establish that such Lender is not acting for its own account with respect to a portion of any such sums payable to such Lender.

(iii) Borrower shall not be required to pay any additional amount to any Foreign Lender under Section 1.11, (A) with respect to any Taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption such Lender transmits with an United States Internal Revenue Service Form W-8IMY pursuant to this subsection (a) of this Section, or (B) if such Lender shall have failed to satisfy the foregoing provisions of this subsection (a); provided that if such Lender shall have satisfied the requirement of this subsection (a) on the date such Lender became a Lender or ceased to act for its own account with respect to any payment under any of the Loan Documents, nothing in this subsection (a) shall relieve Borrower of its obligation to pay any amounts pursuant to Section 1.11 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender or other person for the account of

which such Lender receives any sums payable under any of the Loan Documents is not subject to withholding or is subject to withholding at a reduced rate.

(iv) Administrative Agent may, without reduction, withhold any Taxes required to be deducted and withheld from any payment under any of the Loan Documents with respect to which Borrower is not required to pay additional amounts under this subsection (a).

(b) Upon the request of Administrative Agent, each Lender that is a “United States person” within the meaning of Section 7701(a)(30) of the Code shall deliver to Administrative Agent two duly signed completed copies of United States Internal Revenue Service Form W-9. If such Lender fails to deliver such forms, then Administrative Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable back-up withholding tax imposed by the Code, without reduction.

(c) If any Tribunal asserts that Administrative Agent did not properly withhold or backup withhold, as the case may be, any tax or other amount from payments made to or for the account of any Lender, such Lender shall indemnify Administrative Agent therefor, including all penalties and interest and costs and expenses (including attorney fees) of Administrative Agent. The obligation of Lenders under this subsection shall survive the removal or replacement of a Lender, the payment of all Indebtedness and the resignation or replacement of Administrative Agent.

6.12. Further Assurances. Borrower will, upon Administrative Agent’s request, (a) promptly correct any defect, error or omission in any Loan Document; (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts as Administrative Agent deems reasonably necessary, desirable or proper to carry out the purposes of the Loan Documents and to identify and subject to the liens and security interest of the Loan Documents any property intended to be covered thereby, including any renewals, additions, substitutions, replacements, or appurtenances to the Property; (c) execute, acknowledge, deliver, procure, file or record any document or instrument Administrative Agent deems necessary, desirable, or proper to protect the liens or the security interest under the Loan Documents against the rights or interests of third persons; and (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by Administrative Agent to comply with the requirements of any agency having jurisdiction over Administrative Agent. In addition, at any time, and from time to time, upon request by Administrative Agent or any Lender, Borrower will, at Borrower’s expense, provide any and all further instruments, certificates and other documents as may, in the opinion of Administrative Agent or such Lender, be necessary or desirable in order to verify Borrower’s identity and background in a manner satisfactory to Administrative Agent or such Lender.

6.13. Inducement to Lenders. The representations and warranties contained in this Agreement and the other Loan Documents (a) are made to induce Lenders to make the Loan and extend any other credit to or for the account of Borrower pursuant hereto, and Administrative Agent and Lenders are relying thereon, and will continue to rely thereon, and (b) shall survive any bankruptcy proceedings involving Borrower, Guarantor or the Property, foreclosure, or conveyance in lieu of foreclosure.

6.14. Forum. Each party to this Agreement hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court, or any United States federal court, sitting in the State specified in Section 6.2 of this Agreement and to the jurisdiction of any state court or any United States federal court, sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Agreement or the Indebtedness. Each party to this Agreement hereby irrevocably waives, to the fullest extent permitted by Law, any objection that they may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Each party to this Agreement hereby agrees and consents that, in addition to any methods of service of process provided for under applicable Law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified in Section 6.2 may be made by certified or registered mail, return receipt requested, directed to such party at its address for notice stated in the Loan Documents, or at a subsequent address of which Administrative Agent received actual notice from such party in accordance with the Loan Documents, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Administrative Agent to serve process in any manner permitted by Law or limit the right of Administrative Agent to bring proceedings against any party in any other court or jurisdiction.

6.15. Interpretation. References to “Dollars”, “\$”, “money”, “payments” or other similar financial or monetary terms are references to lawful money of the United States of America. References to Articles, Sections, and Exhibits are, unless specified otherwise, references to articles, sections and exhibits of this Agreement. Words of any gender shall include each other gender. Words in the singular shall include the plural and words in the plural shall include the singular. References to Borrower or Guarantor shall mean, each person comprising same, jointly and severally. References to “persons” shall include both natural persons and any legal entities, including public or governmental bodies, agencies or instrumentalities. The words “include” and “including” shall be interpreted as if followed by the words “without limitation”. Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents.

6.16. No Partnership, etc. The relationship between Lenders (including Administrative Agent) and Borrower is solely that of lender and borrower. Neither Administrative Agent nor any Lender has any fiduciary or other special relationship with or duty to Borrower and none is created by the Loan Documents. Nothing contained in the Loan Documents, and no action taken or omitted pursuant to the Loan Documents, is intended or shall be construed to create any partnership, joint venture, association, or special relationship between Borrower and Administrative Agent or any Lender or in any way make Administrative Agent or any Lender a co-principal with Borrower with reference to the Project, the Property or otherwise. In no event shall Administrative Agent’s or Lenders’ rights and interests under the Loan Documents be construed to give Administrative Agent or any Lender the right to control, or be deemed to indicate that Administrative Agent or any Lender is in control of, the business, properties, management or operations of Borrower.

6.17. Records. The unpaid amount of the Loan and the amount of any other credit extended by Administrative Agent or Lenders to or for the account of Borrower set forth on the books and records of Administrative Agent shall be presumptive evidence of the amount

thereof owing and unpaid, but failure to record any such amount on Administrative Agent's books and records shall not limit or affect the obligations of Borrower under the Loan Documents to make payments on the Loan when due.

6.18. Commercial Purpose. Borrower warrants that the Loan is being made solely to acquire or carry on a business or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of this Loan shall be used for commercial purposes and stipulates that the Loan shall be construed for all purposes as a commercial loan, and is made for other than personal, family, household or agricultural purposes.

6.19. WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THEY MAY BE A PARTY, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, ANY NOTE, THE LOAN AGREEMENT, THE MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO ANY NOTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY EACH PARTY TO THIS AGREEMENT, AND THEY HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH PARTY FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE EXECUTION OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

6.20. Service of Process. Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Loan by (a) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower and (b) serving a copy thereof upon Robert Masters, the agent hereby designated and appointed by Borrower as Borrower's agent for service of process. Borrower irrevocably agrees that such service shall be deemed to be service of process upon Borrower in any such suit, action, or proceeding. Nothing in any Note shall affect the right of Administrative Agent to serve process in any manner otherwise permitted by Law and nothing in any Note will limit the right of Administrative Agent on behalf of Lenders otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions.

6.21. USA Patriot Act Notice. Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the Act.

6.22. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Borrower, Administrative Agent and Lenders with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Borrower, Administrative Agent and Lenders with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment letter, letter of intent or quote letter by Administrative Agent or any Lender to make the Loan are merged into the Loan Documents. Neither Administrative Agent nor any Lender has made any commitments to extend the term of the Loan past its stated maturity date or to provide Borrower with financing except as set forth in the Loan Documents. Except as incorporated in writing into the Loan Documents, there are not, and were not, and no persons are or were authorized by Administrative Agent or any Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

BORROWER FURTHER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF ADMINISTRATIVE AGENT OR LENDERS WITH RESPECT TO THIS AGREEMENT, THE NOTES OR OTHERWISE IN RESPECT OF THE LOAN, ANY AND EVERY RIGHT BORROWER MAY HAVE TO (X) INJUNCTIVE RELIEF, (Y) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM, AND (Z) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST LENDER WITH RESPECT TO ANY ASSERTED CLAIM.

6.23. Limitation on Liability. Borrower waives any right to assert or make any claim against Administrative Agent or any Lender (or to sue Administrative Agent or any Lender upon any claim for) any special, indirect, incidental, punitive or consequential damages in respect of any breach or wrongful conduct (whether the claim is based on contract, tort or duty imposed by law) in connection with, arising out of or in any way related to this Agreement, the other Loan Documents or the transactions contemplated hereby and/or thereby, or any act, omission or event in connection therewith.

6.24. Third Parties; Benefit. All conditions to the obligation of Lenders or Administrative Agent to make advances hereunder are imposed solely and exclusively for the benefit of Lenders, Administrative Agent and their assigns and no other persons shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lenders or Administrative Agent will refuse to make advances in the absence of strict compliance with any or all thereof and no other person shall, under any circumstances, be deemed to be the beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lenders or Administrative Agent at any time in the sole and absolute exercise of their discretion. The terms and provisions of this Agreement and the other Loan Documents are for the benefit of the parties hereto and, except as herein specifically provided, no other person shall have any right or cause of action on account thereof.

6.25. Rules of Construction. The words “hereof”, “herein”, “hereunder”, “hereto”, and other words of similar import refer to this Agreement in its entirety. The terms “agree” and “agreements” mean and include “covenant” and “covenants”. The words “include” and “including” shall be interpreted as if followed by the words “without limitation”. The captions and headings contained in this Agreement are included herein for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, the Improvements or the Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles, Sections and Schedules are to the respective Articles, Sections and Schedules contained in this Agreement unless expressly indicated otherwise.

6.26. Cross-Default. This Loan shall be cross-defaulted with (i) any and all other loans which Borrower (or any entity included within Borrower shall have from any Lender (or any subsidiary or affiliated entity of Lender) during the term of this Loan, whether existing as of the date of this Agreement or subsequently made and (ii) the credit facility provided by Bank of America, N.A. (“BofA”) and certain other lenders to Guarantor pursuant to that certain Revolving Credit Agreement dated October 10, 2007 by and between Guarantor, BofA and certain other lenders, as the same may be modified, amended, restated or replaced from time to time. A default under any of the above-described loans or credit facilities shall constitute a Default under this Loan; however, a Default under this Loan shall not in itself constitute a Default under the above-described other loans unless and to the extent expressly set forth in the agreements and instruments governing such other loans.

6.27. Lien Law. This Agreement is subject to the trust fund provision of the Lien Law including, without limitation, Section 13 thereof.

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BORROWER:

ACADIA CORTLANDT LLC, a Delaware limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

Borrower's Address for Notices:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605  
Telephone: 914-288-8100  
Telefax: 914-428-3646  
Email: rmasters@acadiarealty.com

Borrower's Federal Tax Identification Number:  
26-4114099

BANK OF AMERICA, N.A., a national banking association,  
individually as Administrative Agent and a Lender

By /s/ Gregory Egli

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Gregory Egli  
Senior Vice President

Lender's Address for Notices:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

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Legal Description of Land

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN THE TOWN OF CORTLANDT, COUNTY OF WESTCHESTER AND STATE OF NEW YORK THAT IS A PORTION OF THOSE LANDS DESIGNATED PARCEL 1, PARCEL 2A AND PARCEL 2B ON THAT CERTAIN "RESUBDIVISION PLAT OF FILED MAP NO. 17837 SECTION 1 MID-WESTCHESTER INDUSTRIAL PARK, INC.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 15, 1984 AS MAP NO. 21741 THAT IS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 (AKA 5 MILE TURNPIKE AND/OR EAST MAIN STREET AND/OR STATE HIGHWAY 1309) WHERE IT IS MET BY THE LINE DIVIDING THE LANDS HEREIN DESCRIBED ON THE NORTHEAST FROM LANDS DESIGNATED LOT NO. 21 ON THAT CERTAIN "MAP NO. 1 GULL MANOR.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON MARCH 25, 1954 AS MAP NO. 8930, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,045.23 (Y)  
E 625,146.49 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE FROM THE SAID POINT OF BEGINNING NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 NORTH 31° 31' 51" EAST 202.41 FEET AND TO A POINT AT THE SOUTHWESTERLY LINE OF LOT NO. 4 SHOWN ON THAT CERTAIN MAP ENTITLED "SECTION NO. 1 MID-WESTCHESTER INDUSTRIAL PARK" WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 16, 1972 AS MAP NO. 17837;

THENCE ALONG THE SOUTHWESTERLY, SOUTHEASTERLY AND NORTHEASTERLY LINES OF LOT NO. 4 SHOWN ON FILED MAP NO. 17837 THE FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 400.00 FEET;  
NORTH 35° 15' 51" EAST 200.00 FEET;  
NORTH 54° 41' 49" WEST 201.75 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF MOBIL CENTERS, INC;

THENCE ALONG THE SAID MOBIL CENTERS, INC. LANDS:

NORTH 35° 15' 51" EAST 150.02 FEET AND;  
NORTH 54° 41' 49" WEST 174.98 FEET TO A POINT;

THENCE STILL ALONG THE SAID LANDS OF MOBIL CENTERS, INC. WESTERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 90° 02' 20",

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THE RADIUS OF WHICH 25.00 FEET FOR 39.29 FEET TO ANOTHER POINT ON THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 35° 15' 51" EAST 103.05 FEET AND;

NORTH 34° 16' 11" EAST 16.52 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF W.W. GEIS, JR.;

THENCE ALONG AND AROUND THE SAID W.W. GEIS, JR. LANDS THE FOLLOWING, FIRST TURNING ABOUT AND SOUTHERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 88° 58' 00", THE RADIUS OF WHICH IS 25.00 FEET FOR 38.82 FEET AND THEN FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 187.41 FEET;

SOUTH 87° 58' 31" EAST 50.19 FEET;

NORTH 34° 14' 31" EAST 293.26 FEET AND;

NORTH 55° 45' 29" WEST 248.82 FEET TO STILL ANOTHER POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 38° 26' 11" EAST 91.89 FEET AND;

NORTH 36° 40' 11" EAST 175.50 FEET TO A POINT AT THE LINE LAND NOW OR FORMERLY OF HOME DEPOT U.S.A., INC. LANDS, THE FOLLOWING FIRST

SOUTH 53° 24' 23" EAST 28.04 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 44° 59' 45", THE RADIUS OF WHICH IS 100.00 FEET FOR 78.53 FEET,

THEN SOUTH 08° 24' 38" EAST 170.39 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 42° 53' 52", THE RADIUS OF WHICH IS 330.00 FEET FOR 245.35 FEET, AND THEN THE FOLLOWING COURSES:

SOUTH 34° 11' 14" WEST 7.14 FEET;

SOUTH 42° 10' 35" EAST 571.35 FEET;

NORTH 81° 40' 00" EAST 752.50 FEET;

NORTH 42° 10' 35" WEST 546.00 FEET;

SOUTH 47° 49' 25" WEST 12.00 FEET;

NORTH 42° 10' 35" WEST 334.49 FEET;

NORTH 47° 49' 25" EAST 64.36 FEET;

NORTH 42° 10' 35" WEST 551.64 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 43° 07' 31" EAST 240.77 FEET;  
NORTH 46° 43' 08" EAST 200.86 FEET;  
NORTH 47° 51' 46" EAST 169.07 FEET;  
NORTH 54° 16' 42" EAST 77.64 FEET;  
NORTH 43° 47' 18" EAST 103.43 FEET;  
NORTH 06° 57' 25" EAST 7.49 FEET;  
NORTH 44° 52' 56" EAST 141.98 FEET;  
NORTH 56° 38' 06" EAST 194.10 FEET;  
NORTH 47° 40' 06" EAST 31.98 FEET TO A POINT AT THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO. 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP NO. 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,107.32 (Y)  
E 626,930.25 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE STILL ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 47° 40' 06" EAST 15.49 FEET;  
NORTH 57° 07' 47" EAST 41.34 FEET;  
NORTH 46° 37' 24" EAST 65.92 FEET;  
NORTH 60° 47' 16" EAST 135.27 FEET;  
NORTH 58° 29' 38" EAST 200.48 FEET;  
NORTH 76° 26' 07" EAST 65.57 FEET;  
NORTH 53° 06' 18" EAST 114.53 FEET;  
NORTH 59° 20' 46" EAST 157.01 FEET;  
NORTH 67° 37' 05" EAST 102.26 FEET;  
NORTH 39° 31' 22" EAST 47.05 FEET;  
NORTH 62° 09' 00" EAST 123.28 FEET;  
NORTH 59° 26' 00" EAST 57.40 FEET;  
NORTH 58° 13' 00" EAST 81.60 FEET;  
NORTH 61° 59' 00" EAST 41.60 FEET;  
NORTH 38° 58' 00" EAST 17.42 FEET;  
NORTH 61° 26' 39" EAST 147.75 FEET;  
NORTH 57° 24' 50" EAST 100.18 FEET;  
NORTH 63° 24' 40" EAST 64.74 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF BERKO, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,912.07 (Y)  
E 628,275.78 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE SOUTHERLY ALONG THE SAID BERKO LANDS AND CONTINUING ALONG LANDS NOW OR FORMERLY OF FELDMAN, NOW OR FORMERLY OF BERTINO, AND LANDS NOW OR FORMERLY OF MOHEGAN REALTY CO., THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

SOUTH 8° 21' 49" EAST 184.14 FEET;  
SOUTH 7° 23' 59" EAST 204.45 FEET;  
SOUTH 8° 27' 49" EAST 457.05 FEET;  
SOUTH 7° 57' 49" EAST 226.72 FEET;  
SOUTH 8° 03' 49" EAST 841.87 FEET TO LANDS NOW OR FORMERLY OF BOGIN, WHICH POINT OCCUPIES COORDINATE POSITION

N 477,016.99 (Y)  
E 628,545.67 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE ALONG SAID LANDS ON A COURSE OF SOUTH 84° 45' 51" WEST FOR A DISTANCE OF 565.62 FEET TO A POINT THAT IS A CORNER THEREOF, WHICH POINT IS AT THE SOUTHEASTERLY END OF THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,965.38 (Y)  
E 627,982.41 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE CONTINUING ALONG LANDS NOW OR FORMERLY OF BOGIN AND DEANIN ON A COURSE OF SOUTH 8° 44' 49" EAST FOR A DISTANCE OF 775.84 FEET TO LANDS NOW OR FORMERLY OF MCKEEL;

THENCE ALONG THE SAID MCKEEL LANDS AND IN PART ALONG THE ORIGINAL CENTER LINE OF A BROOK AS THE SAID CENTER LINE APPEARS ON THAT CERTAIN MAP ENTITLED "SURVEY... MIDWESTCHESTER INDUSTRIAL PARK INC...," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON JANUARY 24, 1969 ON MAP NO. 16581 THE FOLLOWING COURSES AND DISTANCES:

SOUTH 83° 29' 51" WEST 1204.04 FEET;  
SOUTH 64° 31' 01" WEST 35.43 FEET;  
SOUTH 87° 29' 41" WEST 100.66 FEET;  
SOUTH 79° 30' 01" WEST 100.04 FEET;  
SOUTH 80° 21' 21" WEST 99.99 FEET;  
SOUTH 82° 37' 11" WEST 219.69 FEET;  
SOUTH 81° 10' 01" WEST 102.96 FEET;  
SOUTH 74° 14' 51" WEST 99.92 FEET;  
SOUTH 75° 42' 31" WEST 81.58 FEET;  
SOUTH 73° 18' 21" WEST 101.89 FEET;  
SOUTH 87° 12' 21" WEST 100.12 FEET;  
SOUTH 89° 38' 51" WEST 100.44 FEET;  
SOUTH 84° 23' 51" WEST 107.95 FEET;

SOUTH 81° 42' 51" WEST 119.29 FEET;  
SOUTH 58° 38' 31" WEST 47.83 FEET;  
SOUTH 48° 18' 59" WEST 109.79 FEET AND;  
NORTH 68° 22' 19" WEST 32.81 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF SHELBY-COLERIDGE HOLDING CORP;

THENCE ALONG THE SAID SHELBY-COLERIDGE HOLDING CORP. LANDS AND ALONG THE NORTHEASTERLY LINES OF LOT NO. 19 AND LOT 21 AS SHOWN ON THE AFOREMENTIONED "MAP NO. 1 GULL MANOR..." FILED MAP NO. 8930, THE FOLLOWING COURSES:

NORTH 68° 14' 09" WEST 17.28 FEET;  
SOUTH 89° 44' 51" WEST 61.00 FEET;  
NORTH 46° 00' 09" WEST 54.45 FEET;  
NORTH 61° 11' 09" WEST 72.08 FEET;  
NORTH 55° 43' 09" WEST 93.25 FEET TO THE AFOREMENTIONED SOUTHEASTERLY LINE OF U.S. ROUTE 6 AND THE POINT OR PLACE OF BEGINNING.

TOGETHER WITH THE BENEFITS AND SUBJECT TO THE BURDENS OF THE GRANT OF SANITARY SEWER EASEMENT MADE BY AND BETWEEN HARDEE'S AND MID-WESTCHESTER INDUSTRIAL PARK, INC. RECORDED IN LIBER 7137 PAGE 92.

TOGETHER WITH THE BENEFITS OF THE EASEMENT RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 7099 OF DEEDS AT PAGE 228 AND REPEATED IN LIBER 7143 OF DEEDS AT PAGE 449 AND LIBER 7235 OF DEEDS AT PAGE 88.

TOGETHER WITH THE BENEFITS OF THE DECLARATION AND GRANT OF RECIPROCAL EASEMENTS MADE BY CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11673 OF DEEDS AT PAGE 78.

TOGETHER WITH THE BENEFITS OF THE RECIPROCAL EASEMENT AND OPERATION AGREEMENT MADE BY BETWEEN CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND HOME DEPOT U.S.A. INC. AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11618 OF DEEDS AT PAGE 1.

Definitions and Financial Statements

1. Definitions: As used in this Agreement and the attached exhibits, the following terms shall have the following meanings:

"Acadia Realty Trust" means Acadia Realty Trust, a Maryland real estate investment trust, which is an indirect principal in Borrower and Guarantor.

"Additional Interest" means all payments required to be made by Borrower under a Swap Contract.

"Adjusted Net Operating Income" means Operating Income less the sum of (i) Adjusted Operating Expenses plus (ii) the Vacancy Loss Factor.

"Adjusted Operating Expenses" means 100% of the aggregate amount of all actual operating expenses of the Property paid by Borrower in the most recently ended six (6) month period for which Borrower has delivered financial statements to Administrative Agent, , annualized (i.e., doubled) and provided that the amount of management fees included in Adjusted Operating Expenses shall be equal to the greater of (x) actual management fees paid by Borrower with respect to such period or (y) 3.0% of the operating income received by Borrower during such period. Adjusted Operating Expenses shall exclude from expenses payments of principal and interest under the Loan Documents and other expenses payable to Administrative Agent and Lenders pursuant to the Loan Documents, capital expenditures and leasing commissions and extraordinary items of expense.

"Administrative Agent" means Bank of America, N.A., in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent Advances" has the meaning set forth in Section 1.14.

"Administrative Agent's Office" means Administrative Agent's address and, as appropriate, account as set forth on the Schedule of Lenders, or such other address or account as Administrative Agent hereafter may from time to time notify Borrower and Lenders.

"Administrative Agent's Time" means the time of day observed in the city where Administrative Agent's Office is located.

"Advance Amount" has the meaning set forth in Section 1.13.

"Affiliate" means any person directly or indirectly through one or more intermediaries controlling, controlled by, or under direct or indirect common control with, such person. A person shall be deemed to be "controlled by" any other person if such other person possesses, directly or indirectly, power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general

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partners or the equivalent; or (b) to direct or cause the direction of the management and policies of such person whether by contract or otherwise.

“Agent-Related Persons” means Administrative Agent, together with its Affiliates (including Arranger), and the officers, directors, employees, agents and attorneys-in-fact of such persons and Affiliates.

“Aggregate Commitments” means the Commitments of all Lenders.

“Agreement” has the meaning set forth in the introductory paragraph of this Agreement, and includes all exhibits attached hereto and referenced in Section 1.1.

“Appraised Value” means the value shown on the appraisal of the Property delivered to Administrative Agent prior to the date hereof.

“Arranger” means Banc of America Securities LLC, in its capacity as sole arranger and sole book manager.

“Assignment and Assumption” means an Assignment and Assumption substantially in the form of Exhibit “L”.

“Base Rate” means, on any day, a simple rate per annum equal to the sum of the Prime Rate for that day plus the Base Rate Margin. Without notice to Borrower or anyone else, the Base Rate shall automatically fluctuate upward and downward as and in the amount by which the Prime Rate fluctuates.

“Base Rate Margin” means (x) 1.9% per annum with respect to the Initial Advance and the Initial Advance Notes and (y) 2.3% per annum with respect to the Future Advance and the Future Advance Note.

“Base Rate Principal” means, at any time, the Principal Debt minus the portion, if any, of such Principal Debt which is LIBOR Rate Principal.

“BBA LIBOR” has the meaning set forth in Section 1.7.1.

“BBA LIBOR Daily Floating Rate” has the meaning set forth in Section 1.7.1.

“Borrower” has the meaning set forth in the introductory paragraph of this Agreement.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where Administrative Agent’s Office is located.

“Closing Checklist” means that certain Closing Requirements and Checklist setting forth the conditions for closing the Loan and recording the Mortgage.

“Code” has the meaning set forth in Section 2.15.

“Commitment” means, as to each Lender, its obligation to advance its Pro Rata Share of the Loan in an aggregate principal amount not exceeding the amount set forth opposite such Lender’s name on the Schedule of Lenders at any one time outstanding, as such amount may be adjusted from time to time in accordance with this Agreement.

“Debt” means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any capital stock of or other ownership or profit interest in such Person or any other Person or any warrants, rights or options to acquire such capital stock, (h) all obligations of such Person in respect of interest rate hedge agreements, (i) all debt of others referred to in clauses (a) through (h) above or clause (j) below guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such debt or to fund or supply monies for the payment or purchase of such debt, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such debt or to assure the holder of such debt against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss, and (j) all debt referred to in clauses (a) through (h) above of another Person secured by (or for which the holder of such debt has an existing right, contingent or otherwise, to be secured by) any lien on property (including, without limitation, accounts, contract rights or inventory) owned by such Person, even though such Person has not assumed or become liable for the payment of such debt.

“Debt Service Coverage Ratio” means the ratio, as of any date of calculation, of (a) the Adjusted Net Operating Income to (b) the annual Debt Service Payments.

“Debt Service Payments” means the annual amount of principal and interest payments that would be payable on the Loan based upon a thirty (30) year self liquidating mortgage amortization schedule at an annual assumed interest rate equal to the greatest of (i) 7.5%, (ii) the “Ten Year Treasury Rate Obligation” (as hereinafter defined) as of any date of calculation plus 2.5% and (iii) the highest of the actual interest rates applicable to the Loan as of any date of calculation. The “Ten Year Treasury Rate Obligation” shall mean the rate determined by Administrative Agent to be the week ending yield on United States treasury securities, adjusted to a constant maturity of ten years, as published by the United States Federal Reserve Board in the then most currently available Statistical Release H.15 (519) (or, if not published at such time, such other comparable statistical release then published by the United States Federal Reserve Board) rounded to the next highest 1/8 of 1%.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” has the meaning set forth in Section 4.1 of this Agreement.

“Defaulting Lender” means a Lender that fails to pay its Pro Rata Share of a Payment Amount within five (5) Business Days after notice from Administrative Agent, until such Lender cures such failure as permitted in this Agreement.

“Defaulting Lender Amount” means the Defaulting Lender’s Pro Rata Share of a Payment Amount.

“Defaulting Lender Payment Amounts” means a Defaulting Lender Amount plus interest from the date such Defaulting Lender Amount was funded by Administrative Agent and/or an Electing Lender, as applicable, to the date such amount is repaid to Administrative Agent and/or such Electing Lender, as applicable, at the rate per annum applicable to such Defaulting Lender Amount under the Loan or otherwise at the Base Rate.

“Draw Request” has the meaning set forth in Section 1 of Exhibit “F”.

“Eligible Assignee” has the meaning set forth in Section 6.5.

“Environmental Agreement” means the Environmental Indemnity Agreement of even date herewith by and among Borrower, Guarantor and Administrative Agent for the benefit of Lenders.

“Excusable Delay” means a delay, not to exceed a total of thirty (30) days, caused by unusually adverse weather conditions which have not been taken into account in the construction schedule, fire, earthquake or other acts of God, strikes, lockouts, acts of public enemy, riots or insurrections or any other unforeseen circumstances or events beyond the control of Borrower (except financial circumstances or events or matters which may be resolved by the payment of money), and as to which Borrower notifies Administrative Agent in writing within five (5) days after such occurrence; provided, however, no Excusable Delay shall extend the Maturity Date or suspend or abate any obligation of Borrower or any Guarantor or any other person to pay any money.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upwards to the next higher 1/100 of



1%) charged to Bank of America on such day on such transactions as determined by Administrative Agent.

“Financial Statements” means (i) for each reporting party other than an individual, a balance sheet, income statement, statements of cash flow and amounts and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and unless Administrative Agent otherwise consents, consolidated statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities, sources and uses of cash and liquidity verification and, unless Administrative Agent otherwise consents, Financial Statements for each entity owned or jointly owned by the reporting party. For purposes of this definition and any covenant requiring the delivery of Financial Statements, each party for whom Financial Statements are required is a “reporting party” and a specified period to which the required Financial Statements relate is a “reporting period”.

“Funding Date” means the date on which an advance of Loan proceeds shall occur.

“Future Advance Amount” means an amount equal to the least of (x) \$25,000,000, (y) the Syndication Increase Amount (which shall be deemed to be zero if no Syndication Increase Amount has been determined pursuant to Section 1.4) and (z) the maximum amount, as determined by Administrative Agent, which, when added to the Initial Advance Amount portion of the Principal Debt, would not result in a breach of the Loan to Value Ratio covenant in Section 2.5(a) or a breach of the Debt Service Coverage Ratio in Section 2.5(b), provided, however, that (i) the amount set forth in clause (x) above shall be reduced monthly as set forth in Section 1.12, (ii) Borrower may further reduce the Future Advance Amount by specifying the amount of such reduction in a notice from Borrower to Lender given prior to the completion of a Successful Syndication and (iii) upon Lenders making the Future Advance to Borrower, the Future Advance Amount shall not be further adjusted.

“Future Advance Determination Date” means either (i) if a Successful Syndication occurs on or before the thirty (30) month anniversary of the date hereof, the date upon which the Future Advance is funded or (ii) if a Successful Syndication does not occur on or before the thirty (30) month anniversary of the date hereof, the date which is thirty (30) months after the date hereof.

“Future Advance Mortgage” means a Mortgage, Assignment and Security Agreement in the amount of the Future Advance Amount from Borrower to Administrative Agent in substantially the same form as the Initial Advance Mortgage, to be executed and delivered as a condition to the Future Advance, securing repayment of the Indebtedness (excluding the Initial Advance) and Borrower’s performance of its other obligations to Administrative Agent and Lenders under the Loan Documents, as amended, modified, supplemented, restated and replaced from time to time.

“Future Advance Notes” means the Loan Notes in the aggregate amount of the Future Advance Amount each executed by Borrower and payable to the order of each Lender in

the amount of each Lender's Pro Rata Share of the Future Advance, substantially in the form of Exhibit "M" as amended, modified, replaced, restated, extended or renewed from time to time.

"Future Advance" means the portion of the Loan in the amount of up to the Future Advance Amount to be advanced, subject to the terms and conditions hereof, subsequent to the Initial Advance.

"Guarantor" means Acadia Strategic Opportunity Fund III LLC, a Delaware limited liability company, whether one or more, and if more than one, each one individually or all collectively.

"Improvements" means all buildings and other improvements constructed on the Land, together with all fixtures, tenant improvements, and appurtenances now or later to be located on the Land and/or in such improvements.

"Indebtedness" means any and all indebtedness to Administrative Agent or Lenders evidenced, governed or secured by, or arising under, any of the Loan Documents, including the Loan.

"Indemnified Liabilities" has the meaning set forth in Section 6.1.

"Initial Advance" means the advance of a portion of the Loan in the amount of the Initial Advance Amount on or about the date hereof.

"Initial Advance Amount" means \$50,000,000.

"Initial Advance Mortgage" means the mortgages described in, and consolidated and modified by, that certain Mortgage Consolidation and Modification Agreement dated as of the date hereof in the amount of the Initial Advance Amount from Borrower to Administrative Agent, securing repayment of the Indebtedness (excluding the Future Advances) and Borrower's performance of its other obligations to Administrative Agent and Lenders under the Loan Documents, as amended, modified, supplemented, restated and replaced from time to time.

"Initial Advance Notes" means the Loan Notes in the aggregate amount of the Initial Advance Amount each dated as of the date hereof executed by Borrower and payable to the order of each Lender in the amount of each Lender's Pro Rata Share of the Initial Advance, substantially in the form of Exhibit "M" as amended, modified, replaced, restated, extended or renewed from time to time.

"Land" means the real property described in Exhibit "A".

"Laws" means all constitutions, treaties, statutes, laws, ordinances, regulations, rules, orders, writs, injunctions, or decrees of the United States of America, any state or commonwealth, any municipality, any foreign country, any territory or possession, or any Tribunal.

"Leasing Commissions" means any commissions payable by Borrower in connection with any leases of space in the Improvements executed after the date hereof and/or

extensions or renewals of existing leases of space in the Improvements not to exceed such commissions as are reasonable and customary for properties in Westchester County, New York similar to the Property as determined by Administrative Agent.

“Lender” means each lender from time to time party to this Agreement.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such on the Schedule of Lenders, or such other office or offices as such Lender may from time to time notify Borrower and Administrative Agent.

“LIBOR Business Day” means a Business Day which is also a London Banking Day.

“LIBOR Margin” means (x) 1.9% per annum with respect to the Initial Advance and the Initial Advance Notes and (y) 2.3% with respect to the Future Advance and the Future Advance Notes.

“LIBOR Rate Principal” means any portion of the Principal Debt which bears interest at an applicable BBA LIBOR Daily Floating Rate at the time in question.

“Lien Law” means the Lien Law of the State of New York.

“Loan” means the loan by Lenders to Borrower, in the maximum amount of the Loan Amount.

“Loan Amount” means the sum of (x) the Initial Advance Amount plus (y) upon the completion of a Successful Syndication only, the Future Advance Amount.

“Loan Documents” means this Agreement (including all exhibits), the Mortgage, any Note, the Environmental Agreement, any guaranty, financing statements and such other documents evidencing, securing or pertaining to the Loan as shall, from time to time, be executed and/or delivered by Borrower, Guarantor, or any other party to Administrative Agent or any Lender pursuant to this Agreement, as they may be amended, modified, restated, replaced and supplemented from time to time.

“Loan to Value Ratio” is defined in Section 2.5.

“London Banking Day” means a day on which dealings in dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Lump Sum Amortization Payment” has the meaning set forth in Section 1.4.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the Project, or the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of Borrower or Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any party to the Loan Documents to perform its obligations under any Loan Document to which it is a party; or (c) a

material adverse effect upon the legality, validity, binding effect or enforceability against any party to the Loan Documents of any Loan Document to which it is a party.

“Material Contract” means any contract for the performance of any work or the supplying of any labor, materials or services which exceeds \$100,000 per annum.

“Maturity Date” means October 26, 2015, as it may be earlier terminated or extended in accordance with the terms hereof.

“Maximum Loan to Value” means (x) for purposes of determining the Future Advance Amount and at all times after the Future Advance has been made, 70% and (y) at all other times, 60%.

“Minimum DSCR” means (x) for purposes of determining the Future Advance Amount and at all times after the Future Advance has been made, 1.30 to 1.00 and (y) at all other times, 1.50 to 1.00.

“Mortgage” means, collectively, the Initial Advance Mortgage and the Future Advance Mortgage, securing repayment of the Indebtedness and Borrower’s performance of its other obligations to Administrative Agent and Lenders under the Loan Documents, as amended, modified, supplemented, restated and replaced from time to time.

“Notes” means, collectively, the Initial Advance Notes and the Future Advance Notes in the maximum principal amount of the Loan, substantially in the form of Exhibit “M” as amended, modified, replaced, restated, extended or renewed from time to time.

“Obligations” means all liabilities, obligations, covenants and duties (including, without limitation, paying all Additional Interest) of, any party to a Loan Document arising under or otherwise with respect to any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any party to a Loan Document or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceedings.

“Operating Income” means the sum of (x) the aggregate rentals and all other revenue (unless excluded pursuant hereto) of the Property actually received from only executed bona fide leases, licenses and other occupancy agreements of the Property which are in full force and effect as to which the tenant thereunder is not the subject of any bankruptcy proceeding and is not in default under its lease, beyond any applicable notice or cure periods set forth therein for the six (6) months preceding the date of calculation and (y) the aggregate rentals and all other revenue (unless excluded pursuant hereto) of the Property as projected by Borrower and approved by Administrative Agent from only executed bona fide leases, licenses and other occupancy agreements of the Property which are in full force and effect as to which the tenant thereunder is not the subject of any bankruptcy proceeding and is not in default under its lease (including tenants who have not commenced payment of full base rent but who are obligated to do so within six (6) months), beyond any applicable notice or cure periods set forth therein for the six (6) months following the date of calculation as projected by Administrative Agent.

Operating Income shall exclude all extraordinary items of income, all amounts paid to Borrower for tenant alterations in connection with the leasing of space at the Property, all amounts payable to Borrower under leases with affiliates of Borrower, as tenant, or with Borrower, as tenant (unless Administrative Agent otherwise agrees) and, with respect to any lease providing for a reduction in the rentals payable under such lease at any time during the term thereof, base rentals in excess of the lowest base rentals payable under such lease (other than during any period of rent concessions made with respect to consecutive monthly periods commencing with the first month of the term of such lease), but notwithstanding the preceding, including reimbursements for operating expenses and percentage rent pursuant to executed leases, provided a sales report is provided by the applicable tenant.

“Past Due Rate” has the meaning set forth in Section 1.7.2.

“Payment Amount” means an advance of the Loan, an unreimbursed Administrative Agent Advance, an unreimbursed Indemnified Liability or any other amount that a Lender is required to fund under this Agreement.

“Person” means an individual, partnership, limited liability company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture or other entity of whatever nature.

“Potential Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become a Default.

“Prime Rate” means, on any day, the rate of interest per annum then most recently established by Administrative Agent as its “prime rate”, it being understood and agreed that such rate is set by Administrative Agent as a general reference rate of interest, taking into account such factors as Administrative Agent may deem appropriate, that it is not necessarily the lowest or best rate actually charged to any customer or a favored rate, that it may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that Administrative Agent may make various business or other loans at rates of interest having no relationship to such rate. If Administrative Agent (including any subsequent Administrative Agent) ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

“Principal Debt” means the aggregate unpaid principal balance of the Loan at the time in question.

“Pro Rata Share” means, with respect to each Lender at any time, a fraction expressed as a percentage, the numerator of which is the amount of the Commitment of such Lender at such time and the denominator of which is the amount of the Aggregate Commitments at such time or, if the Aggregate Commitments have been terminated, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the total outstanding amount of all Indebtedness held by such Lender at such time and the denominator of

which is the total outstanding amount of all Indebtedness at such time. The initial Pro Rata Share of each Lender named on the signature pages hereto is set forth opposite the name of that Lender on the Schedule of Lenders.

“Project” means the acquisition of the Land and the Improvements, and if applicable, the leasing and operation of the Improvements.

“Property” means the Land, the Improvements and all other property constituting the “Mortgage Property”, as described in the Mortgage, or subject to a right, lien or security interest to secure the Loan pursuant to any other Loan Document.

“Rating Agencies” means Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc. (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) and Fitch Inc. (“Fitch”).

“Required Lenders” means as of any date of determination at least two Lenders having more than 50% of the Aggregate Commitments or, if the Aggregate Commitments have been terminated, at least two Lenders holding in the aggregate more than 50% of the total outstanding amount of all Indebtedness; provided that the Commitment of, and the portion of the total outstanding amount of all Indebtedness held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Schedule of Lenders” means the schedule of Lenders party to this Agreement as set forth on Exhibit “N”, as it may be modified from time to time in accordance with this Agreement.

“Subsidiary” means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries.

“Successful Syndication” has the meaning set forth in Section 1.4.

“Survey” means a survey prepared in accordance with Exhibit “G” or as otherwise approved by Administrative Agent in its sole discretion.

“Swap Contract” means any agreement, whether or not in writing, relating to any Swap Transaction, including, unless the context otherwise clearly requires, any form of master agreement (the “Master Agreement”) published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into prior to the date hereof or any time after the date hereof, between Swap Counterparty and Borrower (or its Affiliate), together with any related schedule and confirmation, as amended, supplemented, superseded or replaced from time to time.

“Swap Counterparty” means Lender or its Affiliate, in its capacity as counterparty under any Swap Contract.

“Swap Transaction” means any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, note or bill option, interest rate option, forward foreign exchange transaction, cap transaction, collar transaction, floor transaction, currency swap transaction, cross-currency rate swap transaction, swap option, currency option, credit swap or default transaction, T-lock, or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, entered into prior to the date hereof or anytime after the date hereof between Swap Counterparty and Borrower (or its Affiliate) so long as a writing, such as a Swap Contract, evidences the parties’ intent that such obligations shall be secured by the Mortgage.

“Syndication Increase Amount” has the meaning set forth in Section 1.4.

“Taxes” has the meaning set forth in Section 1.11.

“Title Company” means First American Title Insurance Company of New York as lead co-insurer and Commonwealth Land Title Insurance Company as co-insurer.

“Title Insurance” means the loan policy or policies of title insurance issued to Administrative Agent for the benefit of Lenders by the Title Company, in an amount equal to the maximum principal amount of the Loan, insuring the validity and priority of the Mortgage encumbering the Land and Improvements for the benefit of Administrative Agent and Lenders.

“Tribunal” means any state, commonwealth, federal, foreign, territorial or other court or governmental department, commission, board, bureau, district, authority, agency, central bank, or instrumentality, or any arbitration authority.

“Unused Fee” has the meaning set forth in Section 2.12.

“Vacancy and Credit Loss Factor” means an amount (which amount can be \$0 but cannot be less than \$0) determined by multiplying Operating Income by the lesser of (i) 6% or (ii) the amount, stated as a percentage of total rentable retail area, by which total rented retail area at the time of calculation exceeds 94% of total rentable retail area.

## 2. Financial Statements:

Borrower shall provide or cause to be provided to Administrative Agent with a copy for each Lender all of the following:

(a) Financial Statements of Borrower: (i) for each fiscal year of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year; and (ii) for each fiscal quarter of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal quarter.

(b) Financial Statements of each Guarantor: (i) for each fiscal year of such Guarantor, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year, and for Acadia Realty Trust, as soon as

reasonably practicable and in any event within one hundred twenty (120) days after the close of each such reporting period; or (ii) for each fiscal quarter of such Guarantor, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal quarter, and for Acadia Realty Trust, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each such reporting period; upon proper filing of the applicable annual form 10K and quarterly form 10Q by Guarantor with the Securities and Exchange Commission, such statements shall be deemed delivered to Administrative Agent and Lenders hereunder.

(c) (i) Prior to the beginning of each fiscal year of Borrower, a capital and operating budget for the Property and (ii) for each calendar quarter (and for the fiscal year through the end of that month) (A) a statement of all income and expenses in connection with the Property and (B) a current leasing status report (including tenants' names, occupied tenant space, lease terms, rents, vacant space and proposed rents), including in each case a comparison to the budget, as soon as reasonably practicable but in any event within fifteen (15) days after the end of each such quarter, certified in writing as true and correct by a representative of Borrower satisfactory to Administrative Agent. Items provided under this paragraph shall be in form and detail satisfactory to Administrative Agent.

(d) At the time of submitting, and together with, Borrower's quarterly financial statements, Borrower shall submit a certificate representing and warranting that no Default or Potential Default exists, or specifying any and all Defaults or Potential Defaults which do exist at the time. At the time of submitting, and together with, Guarantor's quarterly financial statements, Guarantor shall submit a detailed certificate of the Available Capital Commitments of Guarantor.

(e) From time to time promptly after Administrative Agent's request, such additional information, reports and statements respecting the Property and the Improvements, or the business operations and financial condition of each reporting party, as Administrative Agent may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Administrative Agent and shall contain or be attached to the signed and dated written certification of the reporting party in form specified by Administrative Agent to certify that the Financial Statements are furnished to Administrative Agent in connection with the extension of credit by Lenders and constitute a true and correct statement of the reporting party's financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the reporting party satisfactory to Administrative Agent. All Financial Statements for a reporting party who is an individual shall be on Administrative Agent's then-current personal financial statement form or in another form satisfactory to Administrative Agent. All fiscal year-end Financial Statements of Borrower, Guarantor and Acadia Realty Trust shall be audited and certified, without any qualification or exception not acceptable to Administrative Agent, by independent certified public accountants acceptable to Administrative Agent, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation. All quarterly Financial Statements shall be compiled or reviewed by independent



certified public accountants acceptable to Administrative Agent, or may be prepared by the reporting party.

CONDITIONS PRECEDENT TO THE INITIAL ADVANCE

As conditions precedent to the Initial Advance, if and to the extent required by Administrative Agent, Administrative Agent shall have received and approved the following:

1. Fees and Expenses. Any and all required commitment and other fees, and evidence satisfactory to Administrative Agent that Borrower has paid all other fees, costs and expenses (including the fees and costs of Administrative Agent's counsel) then required to be paid pursuant to this Agreement and all other Loan Documents, including, without limitation, all fees, costs and expenses that Borrower is required to pay pursuant to any loan application or commitment.

2. Financial Statements. The Financial Statements of Borrower and Guarantor or any other party required by any loan application or commitment or otherwise required by Administrative Agent.

3. Appraisal. A market value appraisal of the Property made within one hundred eighty (180) days prior to the date of this Agreement, which appraises the Property on a "completed value" basis at not less than the Appraised Value. The appraiser and appraisal must be satisfactory to Administrative Agent (including satisfaction of applicable regulatory requirements) and the appraiser must be engaged directly by Administrative Agent.

4. Authorization. Evidence Administrative Agent requires of the existence, good standing, authority and capacity of Borrower, each Guarantor, and their respective constituent partners, members, managers and owners (however remote) to execute, deliver and perform their respective obligations to Administrative Agent and Lenders under the Loan Documents, including:

(a) For each partnership (including a joint venture or limited partnership): (i) a true and complete copy of an executed partnership agreement or limited partnership agreement, and all amendments thereto; (ii) for each limited partnership, a copy of the certificate of limited partnership and all amendments thereto accompanied by a certificate issued by the appropriate governmental official of the jurisdiction of formation that the copy is true and complete, and evidence Administrative Agent requires of registration or qualification to do business in the state where Borrower's principal place of business is located and the state where the Project is located, and (iii) a partnership affidavit certifying who will be authorized to execute or attest any of the Loan Documents, and a true and complete copy of the partnership resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents.

(b) For each corporation: (i) a true and complete copy of its articles of incorporation and by-laws, and all amendments thereto, a certificate of incumbency of all of its officers who are authorized to execute or attest to any of the Loan Documents, and

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a true and complete copy of resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents; and (ii) certificates of existence, good standing and qualification to do business issued by the appropriate governmental officials in the state of its formation and, if different, the state in which the Project is located.

(c) For each limited liability company or limited liability partnership: (i) a true and complete copy of the articles of organization and operating agreement, and all amendments thereto, a certificate of incumbency of all of its members who are authorized to execute or attest to any of the Loan Documents, and a true and complete copy of resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents; and (ii) certificates of existence, good standing and qualification to do business issued by appropriate governmental officials in the state of its formation and, if different, the state in which the Property is located.

(d) For each entity or organization that is not a corporation, partnership, limited partnership, joint venture, limited liability company or limited liability partnership, a copy of each document creating it or governing the existence, operation, power or authority of it or its representatives.

(e) All certificates, resolutions, and consents required by Administrative Agent applicable to the foregoing.

5. Loan Documents. From Borrower, Guarantor and each other person required by Administrative Agent, duly executed, acknowledged and/or sworn to as required, and delivered to Administrative Agent (with a copy for each Lender) all Loan Documents then required by Administrative Agent, dated the date of this Agreement, each in form and content satisfactory to Administrative Agent, and evidence Administrative Agent requires that the Mortgage has been recorded in the official records of the city or county in which the Property is located and UCC-1 financing statements have been filed in all filing offices that Administrative Agent may require.

6. Opinions. The written opinion of counsel satisfactory to Administrative Agent for Borrower, each Guarantor, and any other persons or entities addressed to Administrative Agent for the benefit of Lenders, dated the date of this Agreement.

7. Survey; No Special Flood Hazard. (a) two (2) prints of an original survey (with a copy for each Lender) of the Land and improvements thereon dated not more than sixty (60) days prior to the date of this Agreement (or dated such earlier date, if any, as is satisfactory to the Title Company, but in any event not more than one hundred eighty (180) days prior to the date of this Agreement) satisfactory to Administrative Agent and the Title Company and otherwise, to the extent required by Administrative Agent, complying with Exhibit "G", and (b) a flood insurance policy (with a copy for each Lender) in an amount equal to the lesser of the maximum Loan amount or the maximum amount of flood insurance available under the Flood Disaster Protection Act of 1973, as amended, and otherwise in compliance with the requirements of the Loan Documents, or evidence satisfactory to Administrative Agent that none of the Land is located in a flood hazard area.

8. Title Insurance. An ALTA title insurance policy, issued by the Title Company (which shall be approved by Administrative Agent) in the maximum amount of the Loan plus any other amount secured by the Mortgage, on a coinsurance and/or reinsurance basis if and as required by Administrative Agent, insuring without exclusion or exception for creditors' rights that the Mortgage constitutes a valid lien covering the Land and all Improvements thereon, having the priority required by Administrative Agent and subject only to those exceptions and encumbrances (regardless of rank or priority) Administrative Agent approves, in a form acceptable to Administrative Agent, and with all "standard" exceptions which can be deleted, including the exception for matters which a current survey would show, deleted to the fullest extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor permitted; containing no exception for standby fees or real estate taxes or assessments other than those for the year in which the closing occurs to the extent the same are not then due and payable and endorsed "not yet due and payable" and no exception for subsequent assessments for prior years; providing full coverage against mechanics' and materialmen's liens to the extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; insuring that no restrictive covenants shown in the Title Insurance have been violated, and that no violation of the restrictions will result in a reversion or forfeiture of title; insuring all appurtenant easements; insuring that fee simple indefeasible or marketable (as coverage is available) fee simple title to the Land and Improvements is vested in Borrower; containing such affirmative coverage and endorsements (including the standard New York endorsements) as Administrative Agent may require and are available under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; insuring any easements, leasehold estates or other matters appurtenant to or benefiting the Land and/or the Improvements as part of the insured estate; insuring the right of access to the Land to the extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; and containing provisions acceptable to Administrative Agent regarding advances and/or readvances of Loan funds after closing. Borrower and Borrower's counsel shall not have any interest, direct or indirect, in the Title Company (or its agent) or any portion of the premium paid for the Title Insurance. The policy shall contain a pending disbursement clause in Lender's standard form or such other form approved by Lender.

9. Insurance Policies. The insurance policies initially required by Administrative Agent, pursuant to the Loan Documents, together with evidence satisfactory to Administrative Agent that all premiums therefor have been paid for a period of not less than one (1) year from the date of this Agreement and that the policies are in full force and effect.

10. Leases. If Exhibit "I" is attached hereto, (i) true and correct copies of all leases and subleases, and guarantees thereof; (ii) estoppel certificates and subordination and attornment agreements (including nondisturbance agreements if and to the extent agreed by Administrative Agent in its discretion), dated within thirty (30) days prior to this Agreement and in the respective forms attached as exhibits to the Closing Checklist, or otherwise in form and content satisfactory to Administrative Agent, from the tenants and subtenants as Administrative Agent requires; (iii) evidence satisfactory to Administrative Agent of Borrower's compliance with the leases; and (iv) evidence satisfactory to Administrative Agent of the tenants' approval of all matters requiring their approval.

11. Environmental Compliance/Report. Evidence satisfactory to Administrative Agent that no portion of the Land is “wetlands” under any applicable Law and that the Land does not contain and is not within or near any area designated as a hazardous waste site by any Tribunal, that neither the Property nor any adjoining property contains or has ever contained any substance classified as hazardous or toxic (or otherwise regulated, such as, without limitation, asbestos, radon and/or petroleum products) under any Law or governmental requirement pertaining to health or the environment, and that neither the Property nor any use or activity thereon violates or is or could be subject to any response, remediation, clean-up or other obligation under any Law or governmental requirement pertaining to health or the environment including without limitation, a written report of an environmental assessment of the Property, made within twelve (12) months prior to the date of this Agreement, by an engineering firm, and of a scope and in form and content satisfactory to Administrative Agent, complying with Administrative Agent’s established guidelines, showing that there is no evidence of any such substance which has been generated, treated, stored, released or disposed of in the Property, and such additional evidence as may be required by Administrative Agent. All reports, drafts of reports, and recommendations, whether written or oral, from such engineering firm shall be made available and communicated to Administrative Agent.

12. Laws. (a) Evidence satisfactory to Administrative Agent that all applicable zoning ordinances, restrictive covenants and governmental requirements affecting the Property permit the use for which the Property is intended and have been or will be complied with without the existence of any variance, non-complying use, nonconforming use or other special exception; (b) evidence satisfactory to Administrative Agent that the Land and Improvements comply and will comply with all Laws and governmental requirements regarding subdivision and platting and would so comply if the Land and the Improvements thereon were conveyed as a separate parcel; (c) a true and correct copy of valid certificates of occupancy for the Improvements, together with all other consents, licenses, permits and approvals necessary for operation of the Improvements, all in assignable form (to the extent appropriate) and in full force and effect; (d) evidence satisfactory to Administrative Agent of compliance by Borrower and the Property, use and occupancy of the Improvements, with such other applicable Laws and governmental requirements as Administrative Agent may request, including all Laws and governmental requirements regarding access and facilities for handicapped or disabled persons including, without limitation and to the extent applicable, The Federal Architectural Barriers Act (42 U.S.C. § 4151 et seq.), The Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 et seq.), The Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), The Rehabilitation Act of 1973 (29 U.S.C. § 794), and any applicable state requirements; and (e) written evidence satisfactory to Administrative Agent that construction of the Improvements on the Land is permissible under all federal, state and local statutes, regulations and rulings protecting tidal and non-tidal wetlands and other environmentally protected areas.

13. Priority. (a) evidence satisfactory to Administrative Agent that prior to and as of the time the Mortgage was filed for record no mechanic’s or materialman’s lien claim or notice, lis pendens, judgment, or other claim or encumbrance against the Property has been filed for record in the county where the Property is located or in any other public record which by Law provides notice of claims or encumbrances regarding the Property; (b) a certificate or certificates of a reporting service acceptable to Administrative Agent, reflecting the results of searches made not earlier than ten (10) days prior to the date of this Agreement, (i) of the central and local

Uniform Commercial Code records, showing no filings against any of the collateral for the Loan or against Borrower otherwise except as consented to by Administrative Agent; and (ii) if required by Administrative Agent, of the appropriate judgment and tax lien records, showing no outstanding judgment or tax lien against Borrower or any Guarantor.

14. Tax and Standby Fee Certificates. Evidence satisfactory to Administrative Agent (a) of the identity of all taxing authorities and utility districts (or similar authorities) having jurisdiction over the Property or any portion thereof; (b) that all taxes, standby fees and any other similar charges have been paid, including copies of receipts or statements marked "paid" by the appropriate authority; and (c) that the Land is a separate tax lot or lots with separate assessment or assessments of the Land and Improvements, independent of any other land or improvements and that the Land is a separate legally subdivided parcel.

15. Other Documents. Such other documents and certificates as Administrative Agent may reasonably request from Borrower, any Guarantor, and any other person or entity, in form and content satisfactory to Administrative Agent.

16. Borrower Identification Due Diligence. Administrative Agent and each Lender shall have received all due diligence materials they deem necessary with respect to verifying Borrower's identity and background information in a manner satisfactory to each of them.

CONDITIONS PRECEDENT TO THE FUTURE ADVANCE

Lenders and Administrative Agent have agreed that the Future Advance Mortgage does not need to be executed, delivered and recorded by Borrower to Administrative Agent until a Successful Syndication has occurred. The following are conditions precedent to the Future Advance:

- (a) Lenders shall not be obligated to make the Future Advance, unless prior thereto (i) the Future Advance Mortgage shall have been delivered to the Title Company for recording with the Office of the Westchester County Clerk and all mortgage recording taxes and fees, Title Insurance premiums and charges shall have been duly paid by Borrower and the Title Company shall have issued for the benefit of Administrative Agent a Title Insurance policy insuring the Future Advance Mortgage, which policy shall be in the same form as the Title Insurance policy insuring the Initial Advance Mortgage, with the Initial Advance Mortgage as a permitted title exception and only such other exceptions as Administrative Agent approves, (ii) Borrower shall have executed such Future Advance Notes, in the aggregate amount of the Future Advance Amount, as Administrative Agent shall reasonably require, (iii) Administrative Agent shall have received (1) an opinion of counsel to such effects as are reasonably required by Administrative Agent with respect to the Future Advance, the Future Advance Notes, the Future Advance Mortgage and such other documents as executed by Borrower and/or Guarantor as Administrative Agent shall reasonably require, (2) resolutions, consents or authorizations from Borrower with respect to the Future Advance, which shall be reasonably satisfactory in form and substance to Administrative Agent, (3) a reaffirmation and modification by Guarantor of its obligations under those of the Loan Documents to which it is a party, which shall be reasonably satisfactory in form and substance to Administrative Agent and (4) such additional documents or instruments as are reasonably requested by Administrative Agent in connection with the Future Advance and (iv) Borrower shall have paid all of Administrative Agent's costs and expenses in connection with the Future Advance, including, without limitation, reasonable attorney's fees and expenses;
  - (b) if and to the extent required by Administrative Agent, Administrative Agent shall have received and approved the items under Exhibit "C" and Exhibit "F"; and
  - (c) a Successful Syndication shall have occurred on or before the date which is thirty (30) months from the date hereof.
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## EXHIBIT "D"

MONTHLY AMORTIZATION SCHEDULE**Loan summary**

Loan amount	\$ 75,000,000.00
Annual interest rate	7.5%
Loan period in years	30
Number of payments per year	12
Start date of loan	10/26/2010

<b>Principal Payment Number</b>	<b>Principal Payment Date</b>	<b>Beginning Balance</b>	<b>Principal Payment</b>
1	12/1/2010	\$ 75,000,000.00	\$ 55,660.88
2	1/1/2011	74,944,339.12	56,008.76
3	2/1/2011	74,888,330.36	56,358.82
4	3/1/2011	74,831,971.54	56,711.06
5	4/1/2011	74,775,260.48	57,065.50
6	5/1/2011	74,718,194.98	57,422.16
7	6/1/2011	74,660,772.81	57,781.05
8	7/1/2011	74,602,991.76	58,142.18
9	8/1/2011	74,544,849.58	58,505.57
10	9/1/2011	74,486,344.01	58,871.23
11	10/1/2011	74,427,472.78	59,239.18
12	11/1/2011	74,368,233.60	59,609.42
13	12/1/2011	74,308,624.18	59,981.98
14	1/1/2012	74,248,642.20	60,356.87
15	2/1/2012	74,188,285.33	60,734.10
16	3/1/2012	74,127,551.23	61,113.69
17	4/1/2012	74,066,437.55	61,495.65
18	5/1/2012	74,004,941.90	61,879.99
19	6/1/2012	73,943,061.91	62,266.74
20	7/1/2012	73,880,795.16	62,655.91
21	8/1/2012	73,818,139.25	63,047.51
22	9/1/2012	73,755,091.74	63,441.56
23	10/1/2012	73,691,650.18	63,838.07
24	11/1/2012	73,627,812.11	64,237.06
25	12/1/2012	73,563,575.06	64,638.54
26	1/1/2013	73,498,936.52	65,042.53
27	2/1/2013	73,433,893.99	65,449.04
28	3/1/2013	73,368,444.95	65,858.10
29	4/1/2013	73,302,586.85	66,269.71
30	5/1/2013	73,236,317.13	66,683.90
31	6/1/2013	73,169,633.23	67,100.67
32	7/1/2013	73,102,532.56	67,520.05



<b>Principal Payment Number</b>	<b>Principal Payment Date</b>	<b>Beginning Balance</b>	<b>Principal Payment</b>
33	8/1/2013	73,035,012.51	67,942.05
34	9/1/2013	72,967,070.45	68,366.69
35	10/1/2013	72,898,703.76	68,793.98
36	11/1/2013	72,829,909.78	69,223.95
37	12/1/2013	72,760,685.84	69,656.59
38	1/1/2014	72,691,029.24	70,091.95
39	2/1/2014	72,620,937.29	70,530.02
40	3/1/2014	72,550,407.27	70,970.84
41	4/1/2014	72,479,436.43	71,414.40
42	5/1/2014	72,408,022.03	71,860.74
43	6/1/2014	72,336,161.28	72,309.87
44	7/1/2014	72,263,851.41	72,761.81
45	8/1/2014	72,191,089.60	73,216.57
46	9/1/2014	72,117,873.03	73,674.17
47	10/1/2014	72,044,198.85	74,134.64
48	11/1/2014	71,970,064.22	74,597.98
49	12/1/2014	71,895,466.24	75,064.22
50	1/1/2015	71,820,402.02	75,533.37
51	2/1/2015	71,744,868.65	76,005.45
52	3/1/2015	71,668,863.20	76,480.49
53	4/1/2015	71,592,382.71	76,958.49
54	5/1/2015	71,515,424.22	77,439.48
55	6/1/2015	71,437,984.74	77,923.48
56	7/1/2015	71,360,061.26	78,410.50
57	8/1/2015	71,281,650.77	78,900.56
58	9/1/2015	71,202,750.20	79,393.69
59	10/1/2015	71,123,356.51	79,889.90
60	11/1/2015	71,043,466.61	80,389.22

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ADVANCES

1. Draw Request. A "Draw Request" means a properly completed and executed written application by Borrower to Administrative Agent in the form of Exhibit "F-1" (or in another form satisfactory to Administrative Agent) setting forth the amount of the Future Advance.

2. Limit on Advances. No more than two advances shall be made by Lenders under this Agreement, such advances to be subject to satisfaction of the conditions described in this Agreement and to be made as follows:

(a) An initial advance in the amount of the Initial Advance to reimburse Borrower for a portion of the acquisition cost of the Property. The Initial Advance shall be evidenced by the Initial Advance Notes and secured by, among other things, the Initial Advance Mortgage.

(b) Notwithstanding anything to the contrary contained herein, there shall be only one Future Advance, to be advanced, if at all, in a single lump sum. The Future Advance shall be evidenced by the Future Advance Notes and secured by, among other things, the Future Advance Mortgage.

3. Conditions to the Initial Advance. As conditions precedent to the Initial Advance hereunder, if and to the extent required by Administrative Agent, to Administrative Agent's satisfaction, Borrower must have satisfied the conditions required under this Agreement, including all of those conditions set forth in Exhibit "C" and Section 4 below.

4. Conditions to All Advances. As conditions precedent to each advance, in addition to all other requirements contained in this Agreement, if and to the extent required by Administrative Agent, Administrative Agent shall have received and approved the following:

(i) Evidence satisfactory to Administrative Agent of the continued satisfaction of all conditions to the Initial Advance and, as to the Future Advance, Exhibit "C-1".

(ii) A Draw Request.

(iii) Evidence satisfactory to Administrative Agent that no Default or any event which, with the giving of notice or the lapse of time, or both, could become a Default, exists.

(iv) Evidence satisfactory to Administrative Agent that the representations and warranties made in the Loan Documents must be true and correct on and as of the date of each advance and no event shall have occurred or condition or circumstance shall exist which, if known to Borrower, would render any such representation or warranty incorrect or misleading.

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(v) To the extent requested by Administrative Agent, a true and complete copy of each contract to which Borrower is a party, if applicable, for labor, materials, services and/or other work included in a Draw Request duly executed and delivered by all parties thereto and effective, and a true and complete copy of a fully executed copy of each such subcontract or other contract as Administrative Agent may have requested.

(vi) Evidence satisfactory to Administrative Agent that no mechanic's or materialmen's lien or other encumbrance has been filed and remain in effect against the Property, no stop notices shall have been served on Lenders that have not been bonded by Borrower in a manner and amount satisfactory to Administrative Agent, and releases or waivers of mechanics' liens and receipted bills showing payment of all amounts due to all parties who have furnished materials or services or performed labor of any kind in connection with the Property.

(vii) Evidence satisfactory to Administrative Agent that the Title Insurance has been endorsed and brought to date in a manner satisfactory to Administrative Agent to increase the coverage by the amount of each advance through the date of each such advance with no additional title change or exception not approved by Administrative Agent.

(viii) Evidence satisfactory to Administrative Agent that the Improvements shall not have been damaged and not repaired and shall not be the subject of any pending or threatened condemnation or adverse zoning proceeding.

5. Conditions and Waivers. All conditions precedent to the obligation of Lenders to make any advance are imposed hereby solely for the benefit of Administrative Agent and Lenders, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Lenders will refuse to make any advance in the absence of strict compliance with such conditions precedent. No advance shall constitute an approval or acceptance by Administrative Agent of any construction work, or a waiver of any condition precedent to any further advance, or preclude Administrative Agent from thereafter declaring the failure of Borrower to satisfy such condition precedent to be a Default. No waiver by Administrative Agent of any condition precedent or obligation shall preclude Administrative Agent from requiring such condition or obligation to be met prior to making any other advance or from thereafter declaring the failure to satisfy such condition or obligation to be a Default.

DRAW REQUEST

[BORROWER'S LETTERHEAD]

TO: BANK OF AMERICA, N.A. ("Administrative Agent")

LOAN NO. \_\_\_\_\_ DATE: \_\_\_\_\_

PROJECT: Cortlandt Towne Center

LOCATION: Cortlandt, New York

BORROWER: Acadia Cortlandt LLC

FOR PERIOD ENDING: \_\_\_\_\_

In accordance with the Amended and Restated Loan Agreement dated October 26, 2010 between Borrower, Administrative Agent and Lenders, Borrower requests that the Future Advance be advanced. The proceeds should be credited to the account of \_\_\_\_\_, Account No. \_\_\_\_\_, at \_\_\_\_\_.

AUTHORIZED SIGNER:

\_\_\_\_\_ Dated: \_\_\_\_\_

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SURVEY REQUIREMENTS

1. Requirements. The Survey shall be made in accordance with, and meet the requirements of, the certification below by a registered professional engineer or registered professional land surveyor. The description shall be a single metes and bounds perimeter description of the entire Land, and a separate metes and bounds description of the perimeter of each constituent tract or parcel out of the Land. The total acreage and square footage of the Land and each constituent tract or parcel of the Land shall be certified. If the Land has been recorded on a map or plat as part of an abstract or subdivision, all survey lines must be shown, and all lot and block lines (with distances and bearings) and numbers, must be shown. The date of any revisions subsequent to the initial survey prepared pursuant to these requirements must also be shown.

2. Certification. The certification for the property description and the map or plat shall be addressed to Administrative Agent for Lenders, Borrower and the Title Company, signed by the surveyor (a registered professional land surveyor or registered professional engineer), bearing current date, registration number, and seal, and shall be in the following form or its substantial equivalent:

This is to certify to Bank of America, N.A., as Administrative Agent for certain Lenders, \_\_\_\_\_, as Borrower and \_\_\_\_\_, as the Title Company that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA and NSPS in 2005, and include optional items 1, 2, 4 (in square feet or acres), 6, 8, 10, 11(b), 16, 17, 18, and if buildings are located on the land, optional items 7(a), 7(b)(1), 7(b)(2) and 9 of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, the undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of \_\_\_\_\_, the maximum Relative Positional Accuracy resulting from the measurements made on the survey does not exceed the Allowable Relative Positional Accuracy for Measurements Controlling Land Boundaries on ALTA/ACSM Land Title Surveys (0.07 feet or 20 mm + 50 ppm). The undersigned additionally certifies that (a) this survey was made on the ground under my supervision; (b) I have received and examined a copy of the Title Insurance Commitment No. \_\_\_\_\_ issued by the Title Company as well as a copy of each instrument listed therein, and the subject land and each tract or parcel thereof described in this survey is the same land as described in the Title Commitment; (c) if the subject land consists of two or more tracts or parcels having common boundaries, those tracts and parcels are contiguous along the common boundaries; (d) the subject land and each tract or parcel thereof has a tax map designation separate and distinct from that of any other land and the subject land and each tract or parcel thereof is a separate, legally subdivided parcel; (e) this survey correctly shows all matters of record, (and to the extent they can be located, their location and dimensions) of which I have been advised affecting the subject land according to the legal description in such matters (with instrument, book,

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and page number indicated); (f) except as shown on this survey, no part of the subject land is located in a 100-year Flood Plain or in an identified “flood prone area”, as defined pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map Panel #\_\_\_\_\_ dated \_\_\_\_\_, which such map panel covers the area in which the Property is situated and this survey correctly indicates the zone designation of any area as being in the 100-year Flood Plain or “flood prone area”; (g) to the best of my knowledge, this survey shows the relation of and distance of all substantial, visible buildings, sidewalks and other improvements to easements and setback lines; and (h) to the best of my knowledge, except as shown on this survey, neither the subject land nor any tract or parcel thereof serves any adjoining land for drainage, utilities, or ingress or egress.

EXHIBIT "H"

INTENTIONALLY OMITTED

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LEASING AND TENANT MATTERS

Borrower and Lenders agree as follows:

1. Approved Leases. Borrower shall not enter into any tenant lease of space in the Improvements unless satisfactory to or deemed satisfactory to Administrative Agent prior to execution. Borrower's standard form of tenant lease, and any revisions thereto, must have the prior written approval of Administrative Agent. Any tenant lease shall be "deemed" satisfactory to Administrative Agent that (a) is either on the standard form lease approved by Administrative Agent, with no material deviations except as satisfactory to Administrative Agent or on the standard lease form of a national retailer which contains no provisions materially more adverse to landlord than the provisions of the lease form approved by Administrative Agent; (b) is entered into in the ordinary course of business with a bona fide unrelated third party tenant, and Borrower, acting in good faith and exercising due diligence, has determined that the tenant is financially capable of performing its obligations under the lease; (c) is received by Administrative Agent (together with each guarantee thereof (if any) and financial information regarding the tenant and each guarantor (if any) received by Borrower) within fifteen (15) days after execution; (d) reflects an arms-length transaction at then current market rate for comparable space; (e) contains no right to purchase the Property, or any present or future interest therein; (f) does not cover in excess of 15,000 square feet of net rentable area of the Improvements; and (g) is expressly subordinate to the Mortgage. Borrower shall provide to Administrative Agent a correct and complete copy of each tenant lease, including any exhibits, and each guarantee thereof (if any), prior to execution unless the lease in question is reasonably satisfactory to Administrative Agent under the foregoing requirements. Borrower shall, throughout the term of this Agreement, pay all reasonable costs incurred by Administrative Agent in connection with Administrative Agent's review and approval of tenant leases and each guarantee thereof (if any), including reasonable attorneys' fees and costs.

2. Effect of Lease Approval. No approval of any lease by Administrative Agent shall be for any purpose other than to protect Lenders' security, and to preserve Lenders' rights under the Loan Documents. No approval by Administrative Agent shall result in a waiver of any default of Borrower. In no event shall any approval by Administrative Agent of a lease be a representation of any kind, with regard to the lease or its adequacy or enforceability, or the financial capacity of any tenant or guarantor.

3. Representations Concerning Leases. Borrower represents and warrants to Administrative Agent and Lenders that Borrower has delivered to Administrative Agent a true and correct copy of all tenant leases and each guarantee thereof (if any), affecting any part of the Improvements, together with an accurate and complete rent roll for the Project, and no such lease or guarantee contains any option to purchase all or any portion of the Property or any interest therein or contains any right of first refusal relating to any sale of the Property or any portion thereof or interest therein.

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4. Delivery of Leasing Information and Documents. Borrower shall promptly (a) deliver to Administrative Agent such quarterly rent rolls, leasing schedules and reports, operating statements, financial statements for tenants other than residential tenants with a lease term for less than one year and other information regarding tenants and prospective tenants or other leasing information as Administrative Agent from time to time may request, and (b) obtain and deliver to Administrative Agent such estoppel certificates and subordination and attornment agreements executed by such tenants (and guarantors, if any) in the respective forms attached as exhibits to the Closing Checklist, or otherwise in such forms as Administrative Agent from time to time may reasonably require.

5. Income from the Property. Borrower shall first apply all income from leases, and all other income derived from the Property, to pay costs and expenses associated with the ownership, maintenance, development, operating, and marketing of the Land and Improvements, including all amounts then required to be paid under the Loan Documents, before using or applying such income for any other purpose.

6. Compliance and Default. As additional conditions to Lenders' obligations under this Agreement, all tenants having the right to do so must approve all plans and all changes thereto, the construction of the Improvements, and all other aspects of the Project requiring tenants' approval. A default by Borrower under or any failure by Borrower to satisfy any of the conditions of a lease shall constitute a Default under this Agreement. Borrower shall promptly notify Administrative Agent in writing of any failure by any party to perform any material obligation under any lease, any event or condition which would permit a tenant to terminate or cancel a lease, or any notice given by a tenant with respect to the foregoing, specifying in each case the action Borrower has taken or will take with respect thereto.

EXHIBIT "J"

INTENTIONALLY OMITTED

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EXHIBIT "K"

INTENTIONALLY OMITTED

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ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment") is dated as of the Effective Date set forth below and is entered into by and between \_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (the "Loan Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below, (i) all of the Assignor's rights and obligations as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including, without limitation [Letters of Credit and] Guarantees), and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or in any way based on or related to any of the foregoing, including, but not limited to contract claims, tort claims, malpractice claims, statutory claims and all other claims at Law or in equity, related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
  2. Assignee: \_\_\_\_\_ [, an Affiliate/Approved Fund of \_\_\_\_\_]
  3. Borrower(s): \_\_\_\_\_
  4. Administrative Agent: \_\_\_\_\_, as administrative agent under the Loan Agreement
  5. Loan Agreement: The Amended and Restated Loan Agreement, dated as of \_\_\_\_\_, among \_\_\_\_\_, Lenders parties thereto, [**and**] Bank of America, N.A., as Administrative Agent[, **and the other agents parties thereto**]
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6. Assigned Interest:

Aggregate Amount of Commitment/ Loans for all Lenders	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/Loans
\$ _____ 1	\$ _____ 2	_____ %

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR:

\_\_\_\_\_

By

\_\_\_\_\_

Name:

Title:

ASSIGNEE:

\_\_\_\_\_

By

\_\_\_\_\_

Name:

Title:

\_\_\_\_\_

<sup>1</sup> Comprised of the Initial Advance of \$50,000,000 and the Future Advance of \$ \_\_\_\_\_

<sup>2</sup> Comprised of \$ \_\_\_\_\_ of the Initial Advance and \$ \_\_\_\_\_ of the Future Advance

**[CONSENTED TO AND] ACCEPTED:**

BANK OF AMERICA, N.A., as Administrative Agent

By \_\_\_\_\_

Name:

Title:

**[CONSENTED TO]:**

\_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

STANDARD TERMS AND CONDITIONS  
FOR ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, or any collateral thereunder, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other person obligated in respect of any Loan Document or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all requirements of an Eligible Assignee under the Loan Agreement (subject to receipt of such consents as may be required under the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to Section \_\_\_ thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision independently and without reliance on Administrative Agent or any other Lender to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision, and (v) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

1.3 Assignee's Address for Notices, etc. Attached hereto as Schedule 1 is all contact information, address, account and other administrative information relating to the Assignee.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest,

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fees and other amounts) to the Assignee whether such amounts have accrued prior to or on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by Administrative Agent for periods prior to the Effective Date or with respect to the making of this Assignment directly between themselves.

3. **General Provisions.** This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment. This Assignment shall be governed by, and construed in accordance with, the Law of the State of \_\_\_\_\_ [**confirm that choice of law provision parallels the Loan Agreement**].

ADMINISTRATIVE DETAILS

(Assignee to list names of credit contacts, addresses, phone and facsimile numbers, electronic mail addresses and account and payment information)

(a) LIBOR Lending Office:

Assignee name: Bank of America, N.A.  
Address: One Bryant Park, 35th Floor  
New York, New York 10036  
Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Electronic Mail: gregory.w.egli@baml.com

(b) Domestic Lending Office:

Assignee name: Bank of America, N.A.  
Address: One Bryant Park, 35th Floor  
New York, New York 10036  
Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Electronic Mail: gregory.w.egli@baml.com

(c) Notice Address:

Assignee name: Bank of America, N.A.  
Address: One Bryant Park, 35th Floor  
New York, New York 10036  
Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Electronic Mail: gregory.w.egli@baml.com

(d) Payment Instructions:

Account No. \_\_\_\_\_  
Attention: \_\_\_\_\_  
Reference: \_\_\_\_\_

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EXHIBIT "M"

NOTE

\$ \_\_\_\_\_

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, \_\_\_\_\_ ("Borrower", whether one or more) hereby promises to pay to the order of [ \_\_\_\_\_ ("Lender") under that certain Loan Agreement (defined below) among Borrower,] Bank of America N.A., a national banking association and administrative agent (together with any and all of its successors and assigns, "Administrative Agent") for the benefit of Lenders from time to time a party to that certain Amended and Restated Loan Agreement (the "Loan Agreement") [dated \_\_\_\_\_, 20\_\_] of even date herewith, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent's Office as defined in the Loan Agreement, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the [Initial Advance] [Future Advance] Notes referred to in Loan Agreement and is entitled to the benefits thereof. The entire principal balance of this Note then unpaid shall be due and payable at the times as set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate as set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and if applicable a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$[ \_\_\_\_\_] (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Mortgage") dated \_\_\_\_\_, 20\_\_ from Borrower to Administrative Agent covering certain property in Cortlandt, Westchester County, New York described therein (the "Property"). This Note, the Mortgage, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), are, as the same have been or may be amended, restated, modified or supplemented from time to time, herein sometimes called individually a "Loan Document" and together the "Loan Documents".

3. Defaults.

(a) It shall be a default ("Default") under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full when due, regardless of how such amount may have become due; (ii) any covenant, agreement, condition, representation or warranty herein or in any other Loan Documents is not fully and timely performed, observed or kept; or (iii) there shall occur any default or event of

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default under the Mortgage or any other Loan Document. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lenders hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Mortgage and the other Loan Documents, as set forth in the Loan Agreement.

5. **General Provisions.** Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in the first paragraph of Page 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. **Notices.** Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

7. **No Usury.** It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and all Lenders at all times to comply with applicable state Law or applicable United States federal Law (to the extent that it permits a Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state Law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal Law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan

Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Administrative Agent's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable Law, then it is Administrative Agent's and each Lender's express intent that all excess amounts theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of this Note and all other indebtedness and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lenders for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has duly executed this Note under seal as of the date first above written.

ACADIA CORTLANDT LLC, a Delaware limited liability company

By

\_\_\_\_\_  
Name:

Title:

SCHEDULE OF LENDERS AND OTHER PARTIES

BANK OF AMERICA, N.A., as Administrative Agent:

Notices:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Email: gregory.w.egli@baml.com

Payment Instructions:

ABA No.: 026009593  
Account No.: 1366211723000  
Attention: GCIB Credit Services - Keva Russell  
Reference: Cortlandt Towne Center, LLC #1158129

BANK OF AMERICA, N.A., as Lender:

Commitment Amount: \$50,000,000  
Pro Rata Share: 100%

Domestic and LIBOR Lending Office:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Email: gregory.w.egli@baml.com

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Notices:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Email: gregory.w.egli@baml.com

Payment Instructions:

ABA No.: 026009593  
Account No.: 1366211723000  
Attention: GCIB Credit Services - Keva Russell  
Reference: Cortlandt Towne Center, LLC #1158129

SWAP CONTRACTS

1. Swap Documentation. Within the timeframes required by Lender and Swap Counterparty, Borrower shall deliver to Swap Counterparty the following documents and other items, executed and acknowledged as appropriate, all in form and substance satisfactory to Lender and Swap Counterparty: (a) Master Agreement in the form published by the International Swaps and Derivatives Association, Inc. and related schedule in the form agreed upon between Borrower (or its Affiliate) and Swap Counterparty; (b) a confirmation under the foregoing, if applicable; (c) a Guaranty; (d) if Borrower (or its Affiliate) is anything other than a natural person, evidence of due authorization to enter into transactions under the foregoing Swap Contract with Swap Counterparty, together with evidence of due authorization and execution of any Swap Contract; and such other title endorsements, documents, instruments and agreements as Lender and Swap Counterparty may require to evidence satisfaction of the conditions set forth in this Section, including a swap endorsement to Lender's title policy in form and substance satisfactory to Lender.

2. Conveyance and Security Interest. To secure Borrower's Obligations, Borrower hereby transfers, assigns and transfers to Lender, and grants to Lender a security interest in, all of Borrower's right, title and interest, but not its obligations, duties or liabilities for any breach, in, under and to the Swap Contract, any and all amounts received by Borrower in connection therewith or to which Borrower is entitled thereunder, and all proceeds of the foregoing. All amounts payable to Borrower under the Swap Contract shall be paid to Lender and shall be applied to pay interest or other amounts under the Loan.

3. Intentionally Omitted.

4. Cross-Default. It shall be a Default under this Agreement if any default (beyond any applicable notice or cure periods) occurs as defined under any Swap Contract as to which Borrower (or its Affiliate) is the Defaulting Party, or if any Termination Event occurs under any Swap Contract as to which Borrower (or its Affiliate) is an Affected Party. As used in this Section, the terms "Defaulting Party", "Termination Event" and "Affected Party" have the meanings ascribed to them in the Swap Contract.

5. Remedies; Cure Rights. In addition to any and all other remedies to which Lender and Swap Counterparty are entitled at law or in equity, Swap Counterparty shall have the right, to the extent so provided in any Swap Contract or any Master Agreement relating thereto, (a) to declare an event of default, termination event or other similar event thereunder and to designate an Early Termination Date as defined under the Master Agreement, and (b) to determine net termination amounts in accordance with the Swap Contract and to setoff amounts between Swap Contracts. Lender shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower (or its Affiliate) such action as Lender may at any time determine to be necessary or advisable to cure any default under any Swap Contract or to protect the rights of Borrower (or its Affiliate) or Swap Counterparty thereunder; provided, however, that before the occurrence of a Default under this Agreement, Lender shall give prior

written notice to Borrower before taking any such action. For this purpose, Borrower hereby constitutes Lender its true and lawful attorney-in-fact with full power of substitution, which power of attorney is coupled with an interest and irrevocable, to exercise, at the election of Lender, any and all rights and remedies of Borrower (or its Affiliate) under the Swap Contract, including making any payments thereunder and consummating any transactions contemplated thereby, and to take any action that Lender may deem proper in order to collect, assert or enforce any claim, right or title, in and to the Swap Contract hereby assigned and conveyed, and generally to take any and all such action in relation thereto as Lender shall deem advisable. Lender shall not incur any liability if any action so taken by Lender or on its behalf shall prove to be inadequate or invalid. Borrower expressly understands and agrees that Lender is not hereby assuming any duties or obligations of Borrower (or its Affiliate) to make payments to Swap Counterparty under any Swap Contract or under any other Loan Document. Such payment duties and obligations remain the responsibility of Borrower (or its Affiliate) notwithstanding any language in this Agreement.

FOR VALUE RECEIVED, ACADIA CORTLANDT LLC (“Borrower”, whether one or more) hereby promises to pay to the order of Bank of America, N.A. (“Lender”) under that certain Loan Agreement (defined below) among Borrower, Bank of America N.A., a national banking association and administrative agent (together with any and all of its successors and assigns, “Administrative Agent”) for the benefit of Lenders from time to time a party to that certain Amended and Restated Loan Agreement (the “Loan Agreement”) dated October 26, 2010 of even date herewith, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent’s Office as defined in the Loan Agreement, the principal sum of Fifty Million Dollars (\$50,000,000) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Initial Advance Notes referred to in Loan Agreement and is entitled to the benefits thereof. The entire principal balance of this Note then unpaid shall be due and payable at the times as set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate as set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and if applicable a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$50,000,000 (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the “Mortgage”) dated October 26, 2010 from Borrower to Administrative Agent covering certain property in Cortlandt, Westchester County, New York described therein (the “Property”). This Note, the Mortgage, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the “Loan”), are, as the same have been or may be amended, restated, modified or supplemented from time to time, herein sometimes called individually a “Loan Document” and together the “Loan Documents”.

3. Defaults.

(a) It shall be a default (“Default”) under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full when due, regardless of how such amount may have become due; (ii) any covenant, agreement, condition, representation or warranty herein or in any other Loan Documents is not fully and timely performed, observed or kept; or (iii) there shall occur any default or event of default under the Mortgage or any other Loan Document. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and

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under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lenders hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Mortgage and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for

the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in the first paragraph of Page 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

7. No Usury. It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and all Lenders at all times to comply with applicable state Law or applicable United States federal Law (to the extent that it permits a Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state Law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal Law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Administrative Agent's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable Law, then it is Administrative Agent's and each Lender's express intent that all

excess amounts theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of this Note and all other indebtedness and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lenders for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has duly executed this Note under seal as of the date first above written.

ACADIA CORTLANDT LLC, a Delaware limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

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NOTE CONSOLIDATION AND MODIFICATION AGREEMENT

NOTE CONSOLIDATION AND MODIFICATION AGREEMENT made as of the 26th day of October, 2010 by and between BANK OF AMERICA, N.A., as Administrative Agent (“Administrative Agent”), pursuant to the Loan Agreement defined below, having an office at One Bryant Park, 35th Floor, New York, New York 10036 (“Lender”), and ACADIA CORTLANDT LLC, a Delaware limited liability company having an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 (“Mortgagor”).

Administrative Agent, on behalf of Lenders (as defined below), is now the present owner and holder of certain note(s) (as the same may have been modified, collectively the “Notes”) secured by the mortgages more particularly described on Exhibit A hereto (collectively, the “Mortgages”). The Note evidences up to an aggregate maximum outstanding principal indebtedness of \$50,000,000.

Administrative Agent, on behalf of Lender, acquired the Notes pursuant to that certain Amended and Restated Loan Agreement dated as of the date hereof (the “Loan Agreement”) by and between Administrative Agent, Borrower, Bank of America, N.A., as Lender (“BofA”; BofA, together with each other entity which may become a Lender pursuant to the Loan Agreement, collectively, “Lenders”).

Administrative Agent, on behalf of Lenders, the holder of the Notes, and Borrower, the owner of the premises encumbered by the Mortgage, have agreed to consolidated, modify and restate the terms of the Note in the manner hereinafter set forth.

NOW, THEREFORE, in consideration of mutual promises and agreements contained herein, the parties hereto covenant and agree as follows:

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1. Borrower hereby acknowledges that on the date hereof the outstanding principal balance of the Notes is \$50,000,000 (the "Indebtedness").

2. All of the terms, covenants and conditions of the Notes are hereby consolidated, modified and restated in their entirety on the terms and conditions set forth in the Loan Agreement; and the Notes as consolidated, modified and restated in their entirety shall be evidenced by one or more replacement notes in the aggregate principal amount of \$50,000,000, issued as an "Initial Note" under the Loan Agreement (collectively, the "Replacement Note").

3. Borrower acknowledges that it is indebted to Lender in accordance with the Replacement Note and assumes, covenants and agrees to pay the Indebtedness in accordance with the terms, covenants and conditions of the Loan Agreement and the Replacement Note.

4. Borrower warrants and represents that as of the date hereof there exist no counterclaims, offsets or defenses with respect to its obligations under the Replacement Note.

5. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their heirs, representatives, successors and assigns.

6. This Agreement and the rights and obligations of the parties hereto shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York.

7. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BANK OF AMERICA, N.A.

By /s/ Gregory Egli

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Gregory Egli  
Senior Vice President

ACADIA CORTLANDT LLC, a Delaware limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

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EXHIBIT A

Mortgage Schedule

1. Mortgage, Assignment of Leases and Rents and Security Agreement dated as of July 29, 2009 from Acadia Cortlandt LLC to Bank of America, N.A., as Administrative Agent, in the amount of \$45,000,000, which was recorded on August 28, 2009 in the office of the Westchester County Clerk, New York (the "Office") under Serial Number DA12794 (Control Number 492240207) and upon which a mortgage recording tax of \$585,000 was paid (current outstanding principal \$44,558,467.91).
  2. Mortgage, Assignment of Leases and Rents and Security Agreement dated as of July 29, 2009 from Acadia Cortlandt LLC to Bank of America, N.A., as Administrative Agent, in the amount of \$2,000,000, which was recorded in the Office on August 28, 2009 in under Serial Number DA12797 (Control Number 492240215) and upon which a mortgage recording tax of \$26,000 was paid (current outstanding principal \$1,994,569.13).
  3. Mortgage and Security Agreement dated as of the date hereof from Acadia Cortlandt LLC to Bank of America, N.A., as Administrative Agent, in the amount of \$3,446,962.96 to be recorded in the Office immediately prior hereto and upon which a mortgage recording tax will be duly paid.
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NOTE

\$3,446,962.96

As of October 26, 2010

FOR VALUE RECEIVED, the undersigned, ACADIA CORTLANDT LLC, a Delaware limited liability company ("Maker"), promises to pay to the order of BANK OF AMERICA, N.A. ("Lender"), at its office located at One Bryant Park, 35th Floor, New York, New York 10036, or at such other place as may be designated in writing by Lender, the principal sum of Three Million Four Hundred Forty-Six Thousand Nine Hundred Sixty-Two and 96/100 Dollars (\$3,446,962.96), in lawful money of the United States of America, with interest thereon to be computed from the date hereof at a rate of six percent (6%) per annum.

IT IS HEREBY EXPRESSLY AGREED, that the said principal sum secured by this Note shall become due at the option of the holder thereof ON DEMAND; also, that all of the covenants, conditions and agreements contained in the mortgage securing this Note are hereby made part of this instrument.

Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived.

This Note is secured by that certain Mortgage dated of even date herewith (the "Mortgage"), given by Maker, as mortgagor, to Lender, as mortgagee, on property situated in the State of New York, County of New York as more particularly described therein.

This Note may not be changed or terminated orally.

Maker (and the undersigned representative of Maker, if any) represents that Maker has full power, authority and legal right to execute and deliver this Note and the Mortgage and that this Note and the Mortgage constitute valid and binding obligations of Maker.

This Note is secured by, among other things, a Mortgage and Security Agreement dated as of the date hereof from Maker to Lender, which specifies various defaults upon the happening of which all sums owing on this Note may be declared immediately due and payable.

This Note shall be governed and construed in accordance with the laws of the State of New York and the applicable laws of the United States of America.

[Remainder of page intentionally left blank]

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Maker has duly executed this Note as of the day and year first above written.

MAKER:

ACADIA CORTLANDT LLC, a Delaware limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

Location of Premises:

Cortlandt Towne Center Shopping Center,  
Town of Cortlandt, New York

Address of Maker:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260,  
White Plains, New York 10605

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SECTION: 24.10  
BLOCK: 1  
LOTS: 1, 1.2, 2 and 3  
Premises: Cortlandt Towne Center Shopping Center, Town of Cortlandt

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As of October 26, 2010

MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT

by and between

ACADIA CORTLANDT LLC,  
as Mortgagor

and

BANK OF AMERICA, N.A.,  
a national banking association, as Administrative Agent,  
as Mortgagee

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This instrument prepared by, and after recording please return to:

Schiff Hardin LLP  
900 Third Avenue, 23rd Floor  
New York, New York 10022  
Attention: Paul G. Mackey, Esq.

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MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT

MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT (this "Agreement") made as of the 26th day of October, 2010 by and between BANK OF AMERICA, N.A., as Administrative Agent, having an office at One Bryant Park, 35th Floor, New York, New York 10036 ("Mortgagee"), and ACADIA CORTLANDT LLC, a Delaware limited liability company having an address c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 ("Mortgagor").

WITNESSETH:

WHEREAS, Mortgagee is now the lawful owner and holder of the mortgages (collectively, the "Mortgage") more particularly described in Exhibit A attached hereto and made a part hereof, and of the notes (collectively, the "Note") and other obligations secured thereby;

WHEREAS, the maximum outstanding principal amount which is or under any contingency may be secured by the Mortgage is \$50,000,000 (the "Indebtedness"), plus interest thereon and all additional interest and late payment and prepayment charges in respect thereof, plus all amounts expended by Mortgagee following a default thereunder in respect of insurance premiums and real estate taxes, and all legal costs or expenses of collection of the note(s) secured thereby or of the defense or prosecution of the rights and lien created thereby;

WHEREAS, the Mortgage is presently a valid lien on all of the real property described in Schedule A attached hereto and made a part hereof (the "Premises");

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WHEREAS, Mortgagor is the lawful owner of the Premises; and

WHEREAS, Mortgagee and Mortgagor have agreed to consolidate, modify, amend and restate the Mortgage as a single first lien on the entire Premises and to modify the terms of the Mortgage in the manner hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein expressed, the parties hereto covenant and agree as follows:

1. Mortgagor hereby assumes the payment and performance of all obligations, conditions and covenants under, and agrees to be bound by all of the terms of, the Mortgage, as herein modified. The lien of the Mortgage is hereby consolidated and modified to encumber all of the "Mortgaged Property" (as such term is defined in the Mortgage, as modified hereby), so that together they shall hereafter constitute in law but one first mortgage, a valid and enforceable single lien upon the Premises, securing the Indebtedness, together with interest accrued and to accrue thereon and all other sums secured thereby.

2. Mortgagor hereby assumes and agrees to pay the Indebtedness and interest thereon at the rate(s) of interest and on the terms provided for the payment of principal and interest in the Note, as consolidated and modified by that certain note consolidation and modification agreement, dated the date hereof, between Mortgagee and Mortgagor (the "Note Agreement").

3. The Mortgage is hereby consolidated, amended and restated in its entirety by Exhibit B attached hereto and made a part hereof including any exculpatory provisions contained in said Exhibit B, and Mortgagor hereby agrees to comply with and be bound by all of the terms, covenants and conditions set forth in said Exhibit B.

4. Mortgagor hereby certifies that this Agreement secures the same indebtedness evidenced by the Note, as consolidated and modified by the Note Agreement, and secured by the Mortgage, as consolidated and modified hereby, and secures no new or further indebtedness or obligation.

5. Mortgagor represents and warrants that there exist no defenses, offsets or counterclaims with respect to its obligations under the Mortgage, as consolidated and modified hereby, or under the Note, as consolidated and modified by the Note Agreement, including its obligation for the payment of the Indebtedness.

6. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, representatives, successors and assigns.

7. This Agreement and the rights and obligations of the parties hereto shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to New York's choice of law principles).

8. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and together which shall constitute but one and the same instrument.

9. The information set forth on the cover hereof is incorporated herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by each of the parties hereto as of the day and year first above written.

BANK OF AMERICA, N.A.  
(as a Lender and as Administrative Agent)

By /s/ Gregory Egli

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Gregory Egli  
Senior Vice President

ACADIA CORTLANDT LLC, a Delaware  
limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

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STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF NEW YORK        )

On the 25th day of October in the year 2010, before me, the undersigned, a notary public in and for said state, personally appeared Gregory Egli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/ Elizabeth R. Cava

Notary Public

My Commission Expires:  
\_\_\_\_\_

Elizabeth R. Cava  
Notary Public, State of New York  
No. 30-01CA4712233  
Qualified in Nassau County  
Certified Filed in New York County  
Commission Expires February 28, 2011



STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF WESTCHESTER    )

On the 22nd day of October in the year 2010, before me, the undersigned, a notary public in and for said state, personally appeared Robert Masters, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/ Debra Leibler Jones

\_\_\_\_\_  
Notary Public

My Commission Expires:

Debra Leibler Jones  
Notary Public, State of New York  
No. 01LE6005994  
Qualified in Dutchess County  
Commission Expires April 20, 2014

\_\_\_\_\_



SCHEDULE A

Property Description

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN THE TOWN OF CORTLANDT, COUNTY OF WESTCHESTER AND STATE OF NEW YORK THAT IS A PORTION OF THOSE LANDS DESIGNATED PARCEL 1, PARCEL 2A AND PARCEL 2B ON THAT CERTAIN "RESUBDIVISION PLAT OF FILED MAP NO. 17837 SECTION 1 MID-WESTCHESTER INDUSTRIAL PARK, INC.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 15, 1984 AS MAP NO. 21741 THAT IS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 (AKA 5 MILE TURNPIKE AND/OR EAST MAIN STREET AND/OR STATE HIGHWAY 1309) WHERE IT IS MET BY THE LINE DIVIDING THE LANDS HEREIN DESCRIBED ON THE NORTHEAST FROM LANDS DESIGNATED LOT NO. 21 ON THAT CERTAIN "MAP NO. 1 GULL MANOR...," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON MARCH 25, 1954 AS MAP NO. 8930, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,045.23 (Y)

E 625,146.49 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE FROM THE SAID POINT OF BEGINNING NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 NORTH 31° 31' 51" EAST 202.41 FEET AND TO A POINT AT THE SOUTHWESTERLY LINE OF LOT NO. 4 SHOWN ON THAT CERTAIN MAP ENTITLED "SECTION NO. 1 MID-WESTCHESTER INDUSTRIAL PARK" WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 16, 1972 AS MAP NO. 17837;

THENCE ALONG THE SOUTHWESTERLY, SOUTHEASTERLY AND NORTHEASTERLY LINES OF LOT NO. 4 SHOWN ON FILED MAP NO. 17837 THE FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 400.00 FEET;

NORTH 35° 15' 51" EAST 200.00 FEET;

NORTH 54° 41' 49" WEST 201.75 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF MOBIL CENTERS, INC.;

THENCE ALONG THE SAID MOBIL CENTERS, INC. LANDS:

NORTH 35° 15' 51" EAST 150.02 FEET AND;

NORTH 54° 41' 49" WEST 174.98 FEET TO A POINT;

THENCE STILL ALONG THE SAID LANDS OF MOBIL CENTERS, INC. WESTERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF

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WHICH IS 90° 02' 20", THE RADIUS OF WHICH 25.00 FEET FOR 39.29 FEET TO ANOTHER POINT ON THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 35° 15' 51" EAST 103.05 FEET AND;

NORTH 34° 16' 11" EAST 16.52 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF W.W. GEIS, JR.;

THENCE ALONG AND AROUND THE SAID W.W. GEIS, JR. LANDS THE FOLLOWING, FIRST TURNING ABOUT AND SOUTHERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 88° 58' 00", THE RADIUS OF WHICH IS 25.00 FEET FOR 38.82 FEET AND THEN FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 187.41 FEET;

SOUTH 87° 58' 31" EAST 50.19 FEET;

NORTH 34° 14' 31" EAST 293.26 FEET AND;

NORTH 55° 45' 29" WEST 248.82 FEET TO STILL ANOTHER POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 38° 26' 11" EAST 91.89 FEET AND;

NORTH 36° 40' 11" EAST 175.50 FEET TO A POINT AT THE LINE LAND NOW OR FORMERLY OF HOME DEPOT U.S.A., INC. LANDS, THE FOLLOWING FIRST

SOUTH 53° 24' 23" EAST 28.04 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 44° 59' 45", THE RADIUS OF WHICH IS 100.00 FEET FOR 78.53 FEET,

THEN SOUTH 08° 24' 38" EAST 170.39 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 42° 53' 52", THE RADIUS OF WHICH IS 330.00 FEET FOR 245.35 FEET, AND THEN THE FOLLOWING COURSES:

SOUTH 34° 11' 14" WEST 7.14 FEET;

SOUTH 42° 10' 35" EAST 571.35 FEET;

NORTH 81° 40' 00" EAST 752.50 FEET;

NORTH 42° 10' 35" WEST 546.00 FEET;

SOUTH 47° 49' 25" WEST 12.00 FEET;

NORTH 42° 10' 35" WEST 334.49 FEET;

NORTH 47° 49' 25" EAST 64.36 FEET;

NORTH 42° 10' 35" WEST 551.64 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 43° 07' 31" EAST 240.77 FEET;  
NORTH 46° 43' 08" EAST 200.86 FEET;  
NORTH 47° 51' 46" EAST 169.07 FEET;  
NORTH 54° 16' 42" EAST 77.64 FEET;  
NORTH 43° 47' 18" EAST 103.43 FEET;  
NORTH 06° 57' 25" EAST 7.49 FEET;  
NORTH 44° 52' 56" EAST 141.98 FEET;  
NORTH 56° 38' 06" EAST 194.10 FEET;  
NORTH 47° 40' 06" EAST 31.98 FEET TO A POINT AT THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO. 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP NO. 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,107.32 (Y)  
E 626,930.25 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE STILL ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 47° 40' 06" EAST 15.49 FEET;  
NORTH 57° 07' 47" EAST 41.34 FEET;  
NORTH 46° 37' 24" EAST 65.92 FEET;  
NORTH 60° 47' 16" EAST 135.27 FEET;  
NORTH 58° 29' 38" EAST 200.48 FEET;  
NORTH 76° 26' 07" EAST 65.57 FEET;  
NORTH 53° 06' 18" EAST 114.53 FEET;  
NORTH 59° 20' 46" EAST 157.01 FEET;  
NORTH 67° 37' 05" EAST 102.26 FEET;  
NORTH 39° 31' 22" EAST 47.05 FEET;  
NORTH 62° 09' 00" EAST 123.28 FEET;  
NORTH 59° 26' 00" EAST 57.40 FEET;  
NORTH 58° 13' 00" EAST 81.60 FEET;  
NORTH 61° 59' 00" EAST 41.60 FEET;  
NORTH 38° 58' 00" EAST 17.42 FEET;  
NORTH 61° 26' 39" EAST 147.75 FEET;  
NORTH 57° 24' 50" EAST 100.18 FEET;  
NORTH 63° 24' 40" EAST 64.74 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF BERKO, WHICH POINT OCCUPIES COORDINATE POSITION

N 478.912.07 (Y)



E 628,275.78 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE SOUTHERLY ALONG THE SAID BERKO LANDS AND CONTINUING ALONG LANDS NOW OR FORMERLY OF FELDMAN, NOW OR FORMERLY OF BERTINO, AND LANDS NOW OR FORMERLY OF MOHEGAN REALTY CO., THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

SOUTH 8° 21' 49" EAST 184.14 FEET;

SOUTH 7° 23' 59" EAST 204.45 FEET;

SOUTH 8° 27' 49" EAST 457.05 FEET;

SOUTH 7° 57' 49" EAST 226.72 FEET;

SOUTH 8° 03' 49" EAST 841.87 FEET TO LANDS NOW OR FORMERLY OF BOGIN, WHICH POINT OCCUPIES COORDINATE POSITION

N 477,016.99 (Y)

E 628,545.67 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE ALONG SAID LANDS ON A COURSE OF SOUTH 84° 45' 51" WEST FOR A DISTANCE OF 565.62 FEET TO A POINT THAT IS A CORNER THEREOF, WHICH POINT IS AT THE SOUTHEASTERLY END OF THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,965.38 (Y)

E 627,982.41 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE CONTINUING ALONG LANDS NOW OR FORMERLY OF BOGIN AND DEANIN ON A COURSE OF SOUTH 8° 44' 49" EAST FOR A DISTANCE OF 775.84 FEET TO LANDS NOW OR FORMERLY OF MCKEEL;

THENCE ALONG THE SAID MCKEEL LANDS AND IN PART ALONG THE ORIGINAL CENTER LINE OF A BROOK AS THE SAID CENTER LINE APPEARS ON THAT CERTAIN MAP ENTITLED "SURVEY... MIDWESTCHESTER INDUSTRIAL PARK INC...," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON JANUARY 24, 1969 ON MAP NO. 16581 THE FOLLOWING COURSES AND DISTANCES:

SOUTH 83° 29' 51" WEST 1204.04 FEET;

SOUTH 64° 31' 01" WEST 35.43 FEET;

SOUTH 87° 29' 41" WEST 100.66 FEET;

SOUTH 79° 30' 01" WEST 100.04 FEET;

SOUTH 80° 21' 21" WEST 99.99 FEET;

SOUTH 82° 37' 11" WEST 219.69 FEET;

SOUTH 81° 10' 01" WEST 102.96 FEET;

SOUTH 74° 14' 51" WEST 99.92 FEET;

SOUTH 75° 42' 31" WEST 81.58 FEET;  
SOUTH 73° 18' 21" WEST 101.89 FEET;  
SOUTH 87° 12' 21" WEST 100.12 FEET;  
SOUTH 89° 38' 51" WEST 100.44 FEET;  
SOUTH 84° 23' 51" WEST 107.95 FEET;  
SOUTH 81° 42' 51" WEST 119.29 FEET;  
SOUTH 58° 38' 31" WEST 47.83 FEET;  
SOUTH 48° 18' 59" WEST 109.79 FEET AND;  
NORTH 68° 22' 19" WEST 32.81 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF SHELBY-COLERIDGE HOLDING CORP;

THENCE ALONG THE SAID SHELBY-COLERIDGE HOLDING CORP. LANDS AND ALONG THE NORTHEASTERLY LINES OF LOT NO. 19 AND LOT 21 AS SHOWN ON THE AFOREMENTIONED "MAP NO. 1 GULL MANOR..." FILED MAP NO. 8930, THE FOLLOWING COURSES:

NORTH 68° 14' 09" WEST 17.28 FEET;  
SOUTH 89° 44' 51" WEST 61.00 FEET;  
NORTH 46° 00' 09" WEST 54.45 FEET;  
NORTH 61° 11' 09" WEST 72.08 FEET;  
NORTH 55° 43' 09" WEST 93.25 FEET TO THE AFOREMENTIONED SOUTHEASTERLY LINE OF U.S. ROUTE 6 AND THE POINT OR PLACE OF BEGINNING.

TOGETHER WITH THE BENEFITS AND SUBJECT TO THE BURDENS OF THE GRANT OF SANITARY SEWER EASEMENT MADE BY AND BETWEEN HARDEE'S AND MID-WESTCHESTER INDUSTRIAL PARK, INC. RECORDED IN LIBER 7137 PAGE 92.

TOGETHER WITH THE BENEFITS OF THE EASEMENT RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 7099 OF DEEDS AT PAGE 228 AND REPEATED IN LIBER 7143 OF DEEDS AT PAGE 449 AND LIBER 7235 OF DEEDS AT PAGE 88.

TOGETHER WITH THE BENEFITS OF THE DECLARATION AND GRANT OF RECIPROCAL EASEMENTS MADE BY CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11673 OF DEEDS AT PAGE 78.

TOGETHER WITH THE BENEFITS OF THE RECIPROCAL EASEMENT AND OPERATION AGREEMENT MADE BY BETWEEN CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND HOME DEPOT U.S.A. INC. AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11618 OF DEEDS AT PAGE 1.

EXHIBIT A

Mortgage

1. Mortgage, Assignment of Leases and Rents and Security Agreement dated as of July 29, 2009 from Acadia Cortlandt LLC to Bank of America, N.A., as Administrative Agent, in the amount of \$45,000,000, which was recorded on August 28, 2009 in the office of the Westchester County Clerk, New York (the "Office") as Control Number 492240207 and upon which a mortgage recording tax of \$585,000 was paid (current outstanding principal \$44,558,467.91).
  2. Mortgage, Assignment of Leases and Rents and Security Agreement dated as of July 29, 2009 from Acadia Cortlandt LLC to Bank of America, N.A., as Administrative Agent, in the amount of \$2,000,000, which was recorded in the Office on August 28, 2009 as Control Number 492240215 and upon which a mortgage recording tax of \$26,000 was paid (current outstanding principal \$1,994,569.13).
  3. Mortgage and Security Agreement dated as of the date hereof from Acadia Cortlandt LLC to Bank of America, N.A., as Administrative Agent, in the amount of \$3,446,962.96 to be recorded in the Office immediately prior hereto and upon which a mortgage recording tax in the amount of \$44,811.00 will be duly paid.
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Form of Amended and Restated Consolidated Mortgage

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EXHIBIT B

SECTION: 24.10  
BLOCK: 1  
LOTS: 1, 1.2, 2 and 3  
Premises: Cortlandt Towne Center Shopping Center, Town of Cortlandt

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Date: As of October 26, 2010

MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS AND SECURITY AGREEMENT  
("this Mortgage")

FROM

ACADIA CORTLANDT LLC,  
a limited liability company organized and existing under the laws of Delaware  
("Mortgagor")

Address and Chief  
Executive Office of Mortgagor:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605

TO

BANK OF AMERICA, N.A.,  
a national banking association,  
as Administrative Agent  
("Mortgagee")

Address of Mortgagee:

One Bryant Park, 35th Floor  
New York, New York 10036

Mortgage Amount: \$50,000,000

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This instrument prepared by, and after recording please return to:

Schiff Hardin LLP  
900 Third Avenue, 23rd Floor  
New York, New York 10022  
Attention: Paul G. Mackey, Esq.

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THE AMOUNT OF THIS MORTGAGE IS \$50,000,000.

MORTGAGE, ASSIGNMENT OF  
LEASES AND RENTS, AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Mortgage") is made as of the 26th day of October, 2010, by ACADIA CORTLANDT LLC, a Delaware limited liability company, ("Mortgagor"), in favor of and for the benefit of BANK OF AMERICA, N.A., a national banking association, as Administrative Agent (together with its successors and assigns, "Mortgagee").

ARTICLE 1

Definitions; Granting Clauses; Secured Indebtedness

Section 1.1. Principal Secured. This Mortgage secures the aggregate principal amount of up to \$50,000,000 plus such additional amounts as Mortgagee may from time to time advance subsequent to a default by Mortgagor pursuant to the terms and conditions of this Mortgage, with respect to an obligation secured by a lien or encumbrance prior to the lien of this Mortgage or for the protection of the lien of this Mortgage, together with interest thereon. In the event that all or any part of the Premises is located in the State of New York, then, notwithstanding the language in the Granting Clause and Section 2.2 or anything else contained herein to the contrary, the maximum amount secured hereby at execution or which under any contingency may become secured hereby at any time hereafter is the Mortgage Amount and all interest, additional interest and late payment and prepayment charges in respect thereof, plus all amounts expended by Mortgagee following a default hereunder in respect of insurance premiums and real estate taxes, and all legal costs or expenses of collection of the debt secured hereby or of the defense or prosecution of the rights and lien created hereby.

Section 1.2. Definitions.

(a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

"Additional Interest": Additional Interest as defined in the Loan Agreement.

"Loan Agreement": Amended and Restated Loan Agreement dated of even date herewith between Mortgagor and Mortgagee, as it may be from time to time amended, restated, modified, extended or supplemented.

"Mortgagor": Acadia Cortlandt LLC, a Delaware limited liability company, whose address is c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and its permitted successors and assigns.

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“Promissory Note”: Collectively, the Initial Advance Notes, as defined in the Loan Agreement.

Capitalized terms used herein which are not otherwise defined but which are defined in the Loan Agreement shall have the meaning ascribed to them in the Loan Agreement.

Section 1.3. Granting Clause. In consideration of the provisions of this Mortgage and of the sum of \$10.00 cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, Mortgagor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN, MORTGAGE, HYPOTHECATE, PLEDGE, DEPOSIT and SET OVER to Mortgagee, with all estate, right, title and interest of Mortgagor in and to the Property (as hereinafter defined), whether now owned or held or hereafter acquired by Mortgagor, to have and hold the Property unto Mortgagee, its successors and assigns forever; and to hold the Property unto Mortgagee in fee simple forever; provided that Mortgagor may retain possession of the Property until the occurrence of an Event of Default; (a) the real property described in Exhibit A which is attached hereto and incorporated herein by reference (the “Land”) together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the “Improvements”); and (ii) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase or lease the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the “Premises”); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the “Accessories,” all of which are hereby declared to be permanent accessions to the Land); (c) all (i) plans and specifications for the Improvements; (ii) Mortgagor’s rights, but not liability for any breach by Mortgagor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), Swap Transactions (as hereinafter defined), contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or

related to any transactions related to the Premises or the Accessories (including but not limited to Mortgagor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (hereinafter defined) for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan or any Swap Transaction, all rights to the payment of money from Mortgagee under any Swap Transaction, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Transaction; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest; and (d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; (iii) all commercial tort claims Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Mortgagor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the lease creating the leasehold estate; TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Mortgagee, its successors and assigns, in trust, in fee simple forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Mortgagor under the Note and Loan Documents (as hereinafter defined) and all other indebtedness and matters defined as



“Secured Indebtedness” in Section 1.5 of this Mortgage; PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee (as hereinafter defined) the principal sum, including all additional advances and all other sums payable by Mortgagor to Mortgagee under the terms of the Loan Documents and shall perform or cause to be performed all the other terms, conditions, agreements and provisions contained in the Loan Documents, all without fraud or delay or deduction or abatement of anything or for any reason, then this Mortgage and the estate hereby granted shall cease, terminate and become void..

Section 1.4. Security Interest. Mortgagor hereby grants to Mortgagee a security interest in all of the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the “Collateral”) to secure the obligations of Mortgagor under the Note and Loan Documents and all other indebtedness and matters defined as Secured Indebtedness in Section 1.5 of this Mortgage. In addition to its rights hereunder or otherwise, Mortgagee shall have all of the rights of a secured party under the New York Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law.

Section 1.5. Secured Indebtedness, Note, Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively the “Secured Indebtedness”): (a) the Promissory Note and all other promissory notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part (such promissory note or promissory notes, whether one or more, as from time to time renewed, extended, supplemented, increased or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the “Note”, and Mortgagee, or the subsequent Mortgagee at the time in question of the Note or any of the Secured Indebtedness, as hereinafter defined, such Mortgagee continuing to be defined herein as “Mortgagee”); and (b) all interest, Additional Interest, indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Mortgagor to Mortgagee now or hereafter incurred or arising pursuant to or permitted by the provisions of the Note, this Mortgage, the Loan Agreement or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the loan evidenced by the Note, including but not limited to any loan or credit agreement, letter of credit or reimbursement agreement, tri-party financing agreement, Master Agreement relating to any Swap Transactions or other agreement between Mortgagor and Mortgagee, or among Mortgagor, Mortgagee and any other party or parties, pertaining to the repayment or use of the proceeds of the loan evidenced by the Note (the Note, the Mortgage, the Loan Agreement, any Master Agreement relating to any Swap Transactions and any such documents as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the “Loan Documents”). “Swap Transaction” means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor

transaction, currency swap, cross-currency rate swap, swap option currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement (the "Master Agreement") published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Mortgagee (or its affiliates) and Mortgagor (or its affiliates), together with any related schedules, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.

ARTICLE 2

Representations, Warranties and Covenants

Section 2.1. Mortgagor represents, warrants, and covenants as follows:

(a) Payment and Performance. Mortgagor will make due and punctual payment of the Secured Indebtedness. Mortgagor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Mortgage and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this Mortgage.

(b) Title and Permitted Encumbrances. Mortgagor has, in Mortgagor's own right, and Mortgagor covenants to maintain, lawful, good and marketable title to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any, set forth under the heading "Permitted Encumbrances" in Exhibit B hereto, which are Permitted Encumbrances only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of Mortgagee (the matters described in the foregoing clauses (i), (ii), (iii) and (iv) being herein called the "Permitted Encumbrances"). Mortgagor, and Mortgagor's successors and assigns, will warrant generally and forever defend title to the Property, subject as aforesaid, to Mortgagee and his successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Mortgagor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Mortgagee. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Mortgagee of any existing or future violation or other breach thereof by Mortgagor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Mortgagor if Mortgagor is an individual. If any right or interest of Mortgagee in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Mortgagee and Mortgagee, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Mortgagee, including but not limited to the employment of independent

counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee or Mortgagee (as the case may be), and the party (Mortgagee or Mortgagee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions. Mortgagor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all real estate taxes assessed against the Property or any part thereof, and shall deliver promptly to Mortgagee such evidence of the payment thereof as Mortgagee may require.

(d) Insurance. Mortgagor shall obtain and maintain at Mortgagor's sole expense: (1) mortgagee title insurance issued to Mortgagee covering the Premises as required by Mortgagee, without exception for mechanics' liens; (2) property insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against any and all acts of terrorism and such other insurable hazards as Mortgagee may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Mortgagor and Mortgagee from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non-reporting) form during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises; (3) if and to the extent any portion of the Improvements is, under the Flood Disaster Protection Act of 1973 ("FDPA"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by Mortgagee, but in no event less than the amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; (4) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of Mortgagor as named insured and Mortgagee as additional insured; (5) statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of Mortgagor and any contractor; (6) if there is a general contractor, during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in clause (4) above, for the benefit of the general contractor as named insured and Mortgagor and Mortgagee as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of the general contractor any contractor; and (7) such other insurance on the Property and endorsements as may from time to time be required by Mortgagee (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance, wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due

regard being given to the height, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to Mortgagee, and shall require not less than ten (10) days' prior written notice to Mortgagee of any cancellation for nonpayment of premiums, and not less than thirty (30) days' prior written notice to Mortgagee of any other cancellation or any change of coverage. All insurance companies must be licensed to do business in the state in which the Property is located and must have an A.M. Best Company financial and performance ratings of A-:IX or better. All insurance policies maintained, or caused to be maintained, by Mortgagor with respect to the Property, except for general liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Mortgagor or Mortgagee and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Mortgage or any other Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any Debtor Relief Law, or if in Mortgagee's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Mortgagor shall, in each instance promptly upon its discovery thereof or upon the request of Mortgagee therefor, and at Mortgagor's expense, promptly obtain and deliver to Mortgagee a like policy (or, if and to the extent permitted by Mortgagee, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this Mortgage or such other Loan Document, as the case may be. Without limiting the discretion of Mortgagee with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Mortgagee as mortgagee with loss proceeds payable to Mortgagee notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named or additional insured; (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Mortgagee under the Loan Documents; or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. The originals of each initial insurance policy (or to the extent permitted by Mortgagee, a copy of the original policy and such evidence of insurance acceptable to Mortgagee) shall be delivered to Mortgagee at the time of execution of this Mortgage, with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to Mortgagee, with all premiums fully paid current, at least ten (10) days before the termination of the policy it renews or replaces. Mortgagor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Mortgagee evidence satisfactory to Mortgagee of the timely payment thereof. If any loss occurs at any time when Mortgagor has failed to perform Mortgagor's covenants and agreements in this paragraph with respect to any insurance payable because of loss sustained to any part of the Property whether or not such insurance is required by Mortgagee, Mortgagee shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Mortgagor, to the same extent as if it had been made payable to Mortgagee. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Secured Indebtedness, all of Mortgagor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the

extent permissible under such policies. Mortgagee shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property where the loss is estimated by Mortgagee to be \$1,000,000 or more, regardless of whether or not such insurance policies are required by Mortgagee, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be a part of the Secured Indebtedness and shall be due and payable to Mortgagee on demand. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Mortgagor. Any such proceeds received by Mortgagee shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration, either partly or entirely, of the Property so damaged, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(e) Application of Insurance Proceeds. Notwithstanding anything to the contrary set forth in the preceding Section 2.1(d), if the Property is damaged or destroyed and Mortgagee determines that all of the conditions specified hereinafter in this Section have been satisfied, then Mortgagee shall apply the proceeds of insurance (i) first to reimbursing itself for all costs incurred by it in the collection of such proceeds and (ii) second to reimbursing Mortgagor for such actual costs as shall have been incurred by Mortgagor in restoring the Property and shall be approved by Mortgagee. Insurance proceeds shall be applied to such restoration solely if (A) Mortgagee determines that: (i) the Property is capable of being suitably restored in accordance with applicable Legal Requirements to the value, condition, character and general utility existing prior to such damage or destruction, and, in any event, to a Loan to Value Ratio of not greater than 70%, provided that this clause (i) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (ii) sufficient funds are unconditionally available (from proceeds of insurance and/or from funds of Mortgagor) to enable Mortgagor promptly to commence, and thereafter diligently to prosecute to completion, such restoration, provided that this clause (ii) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (iii) Mortgagor is not in default or in breach of any obligations under any Loan Document, no uncured Default exists under any Loan Document and no facts or circumstances exist that would constitute a Default with the passage of time or the giving of notice or both; and (iv) neither the validity, enforceability nor priority of the lien of this Mortgage shall be adversely affected; (B) Mortgagor has entered into a written agreement, satisfactory in form and substance to Mortgagee, containing such conditions to disbursements as are employed at the time by Mortgagee for construction loans; (C) Mortgagor has delivered to Mortgagee such security as Mortgagee might have reasonably required to assure completion of restoration in accordance with the standards specified above; and (D) Mortgagor has complied with such further reasonable requirements as Mortgagee might have specified.

(f) Reserve for Insurance, Taxes and Assessments. Upon request of Mortgagee, to secure the payment and performance of the Secured Indebtedness, but not in lieu of such payment and performance, Mortgagor will deposit with Mortgagee a sum equal to real estate taxes, assessments and charges (which charges for the purposes of this paragraph shall include without limitation any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Mortgagee and prorated to the end of the calendar month following the month during which Mortgagee's request is made, and thereafter will deposit with Mortgagee, on each date when an installment of principal and/or interest is due on the Note, sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay at least fifteen (15) days prior to the due date thereof, the next maturing real estate taxes, assessments and charges and premiums for such policies of insurance. Mortgagee shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Mortgagee for future use, applied to any Secured Indebtedness or refunded to Mortgagor, at Mortgagee's option, and any deficiency in such funds so deposited shall be made up by Mortgagor upon demand of Mortgagee. All such funds so deposited shall bear no interest, may be commingled with the general funds of Mortgagee and shall be applied by Mortgagee toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Mortgagee by Mortgagor (which statements shall be presented by Mortgagor to Mortgagee a reasonable time before the applicable amount is due); provided, however, that, if a Default shall have occurred hereunder, such funds may at Mortgagee's option be applied to the payment of the Secured Indebtedness in the order determined by Mortgagee in its sole discretion, and that Mortgagee may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Mortgagor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Mortgagor's interest in and rights to such funds held by Mortgagee under this paragraph but subject to the rights of Mortgagee hereunder.

(g) Condemnation. Mortgagor shall notify Mortgagee immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Mortgagor shall, at Mortgagor's expense, diligently prosecute any such proceedings. Mortgagee shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Mortgagee shall be entitled to receive all sums which may be awarded or become payable to Mortgagor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for injury or damage to the Property. Mortgagor shall, promptly upon request of Mortgagee, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Mortgagee to collect and receipt for any such sums. All such sums are hereby assigned to Mortgagee, and shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration of the Property so affected, or (3) applied to

the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Mortgagor. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All costs and expenses (including but not limited to attorneys' fees) incurred by Mortgagee in connection with any condemnation shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(h) Compliance with Legal Requirements. The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Legal Requirements (hereinafter defined). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Mortgagor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Mortgage to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. No improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Mortgagor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property.

If Mortgagor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Mortgagor will promptly furnish a copy of such notice or claim to Mortgagee. Mortgagor has received no notice and has no knowledge of any such noncompliance. As used in this Mortgage: (i) the term "Legal Requirement" means any Law (hereinafter defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(i) Maintenance, Repair and Restoration. Mortgagor will keep the Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Mortgagor will not, without the prior written consent of Mortgagee, (i) remove from the Property any fixtures or personal property covered by this Mortgage except such as is replaced by Mortgagor by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest (except that created by this Mortgage), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Mortgagor shall give prompt notice thereof to Mortgagee and Mortgagor shall promptly, at Mortgagor's sole cost and expense and regardless of whether insurance or

condemnation proceeds (if any) shall be available or sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(j) No Other Liens. Mortgagor will not, without the prior written consent of Mortgagee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Mortgagee, Mortgagor will cause the same to be promptly discharged and released. Mortgagor will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Mortgagee. If Mortgagee consents to the voluntary grant by Mortgagor of any mortgage, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Mortgage and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Mortgagee; (3) Rents (hereinafter defined), if collected by or for the Mortgagee of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Mortgagee may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Mortgagee with or immediately after the occurrence of any such default or commencement; and (5) neither the Mortgagee of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Mortgagor's rights hereunder without the prior written consent of Mortgagee.

(k) Operation of Property. Mortgagor will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Mortgagor will keep the Property occupied so as not to impair the insurance carried thereon. Mortgagor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Mortgagor will not initiate or permit any zoning



reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Mortgagor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Mortgagee. Mortgagor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened. Mortgagor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Mortgagee, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Mortgagor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid.

(l) Financial Matters. Mortgagor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law (hereinafter defined) is pending (or, to Mortgagor's knowledge, threatened) by or against Mortgagor, or any affiliate of Mortgagor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Mortgagor to Mortgagee in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Mortgagor or, to Mortgagor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Mortgagor" shall also include any person liable directly or indirectly for the Secured Indebtedness or any part thereof and any joint venturer or general partner of Mortgagor.

(m) Status of Mortgagor; Suits and Claims; Loan Documents. If Mortgagor is a corporation, partnership, limited liability company, or other legal entity, Mortgagor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Mortgagor has been duly authorized, executed and delivered by Mortgagor, and the obligations thereunder and the performance thereof by Mortgagor in accordance with their terms are and will continue to be within Mortgagor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement or any other document or agreement to which Mortgagor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Mortgagor, or any other person liable, directly or indirectly, for any of the Secured Indebtedness, except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation,

inquiry, proceeding or demand pending (or, to Mortgagor's knowledge, threatened) against Mortgagor or against any other person liable directly or indirectly for the Secured Indebtedness or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Mortgagor's title to the Property) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Mortgagor's knowledge, threatened) against Mortgagor, or against any other person liable directly or indirectly for the Secured Indebtedness, except as has been disclosed in writing to Mortgagee in connection with the loan evidenced by the Note. The Loan Documents constitute legal, valid and binding obligations of Mortgagor enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws (hereinafter defined) and except as the availability of certain remedies may be limited by general principles of equity. Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Mortgagor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The loan evidenced by the Note is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Mortgagor further warrants that the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan. Mortgagor's exact legal name is correctly set forth at the end of this Mortgage. If Mortgagor is not an individual, Mortgagor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Mortgage. If Mortgagor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the introductory paragraph of this Mortgage. Mortgagor will not cause or permit any change to be made in its name, identity (including its trade name or names), or corporate or partnership structure, unless Mortgagor shall have notified Mortgagee in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Mortgagee for the purpose of further perfecting or protecting the lien and security interest of Mortgagee in the Property. In addition, Mortgagor shall not change its corporate or partnership structure without first obtaining the prior written consent of Mortgagee. Mortgagor's principal place of business and chief executive office, and the place where Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Mortgagor) been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of Mortgagor set forth at the end of this Mortgage. If Mortgagor is an individual, Mortgagor's principal residence has for the preceding four months been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of the principal residence of Mortgagor set forth at the end of this Mortgage. Mortgagor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage. Mortgagor shall promptly notify Mortgagee (i) of any change of its organizational identification number, or (ii) if Mortgagor does not now have an organization identification number and later obtains one, of such organizational identification number.

(n) Certain Environmental Matters. Mortgagor shall comply with the terms and covenants of that certain Environmental Indemnity Agreement dated of even date herewith (the "Environmental Agreement").

(o) Further Assurances. Mortgagor will, promptly on request of Mortgagee, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further mortgages of trust, security agreements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Mortgagee to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Mortgagee to enable Mortgagee to comply with the requirements or requests of any agency having jurisdiction over Mortgagee or any examiners of such agencies with respect to the indebtedness secured hereby, Mortgagor or the Property. Mortgagor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(p) Fees and Expenses. Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Mortgagee and/or Mortgagee on demand to the extent paid by Mortgagee and/or Mortgagee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, reasonable attorneys' fees, reasonable architect fees, reasonable engineer fees, reasonable construction consultant fees, reasonable environmental inspection fees, survey fees, and all other reasonable costs and expenses of every character incurred by Mortgagor or Mortgagee and/or Mortgagee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all amendments and supplements to this Mortgage, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Mortgagor as owner of the Property; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Mortgagor, hereunder or under any other Loan Document.

(q) Indemnification.

(i) Mortgagor will indemnify and hold harmless Mortgagee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (p), the term "Mortgagee" shall include and any

persons owned or controlled by, owning or controlling, or under common control or affiliated with Mortgagee. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this paragraph (p) by Mortgagor to Mortgagee shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Mortgagee (including without limitation any rights of contribution or indemnification) against Mortgagor or any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Mortgagee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date (hereinafter defined), any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Mortgagor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein, any claim under or with respect to any Lease (hereinafter defined) or arising under the Environmental Agreement. The term "Release Date" as used herein means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Mortgage has been released, or (ii) the date on which the lien of this Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Mortgagor and Mortgagor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (p) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness, the

termination of any and all Swap Transactions, the discharge and release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(r) Records and Financial Reports. Mortgagor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Property and the operation thereof, and will permit all such books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics to be inspected and copied, and the Property to be inspected and photographed, by Mortgagee and its representatives during normal business hours and at any other reasonable times. Without limitation of other or additional requirements in any of the other Loan Documents, Mortgagor will furnish to Mortgagee the financial statements required under the Loan Agreement. Mortgagor will furnish to Mortgagee at Mortgagor's expense all evidence which Mortgagee may from time to time reasonably request as to compliance with all provisions of the Loan Documents. Any inspection or audit of the Property or the books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics of Mortgagor, or the procuring of documents and financial and other information, by or on behalf of Mortgagee shall be for Mortgagee's protection only, and shall not constitute any assumption of responsibility to Mortgagor or anyone else with regard to the condition, construction, maintenance or operation of the Property nor Mortgagee's approval of any certification given to Mortgagee nor relieve Mortgagor of any of Mortgagor's obligations. Mortgagee may from time to time assign or grant participations in the Secured Indebtedness and Mortgagor consents to the delivery by Mortgagee to any acquirer or prospective acquirer of any interest or participation in or with respect to all or part of the Secured Indebtedness such information as Mortgagee now or hereafter has relating to the Property, Mortgagor, any party obligated for payment of any part of the Secured Indebtedness, any tenant or guarantor under any lease affecting any part of the Property and any agent or guarantor under any management agreement affecting any part of the Property.

(s) Taxes on Note or Mortgage. Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Mortgagor is prohibited by law) which may be required to be paid with respect to the Note, this Mortgage or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Mortgagee, the Note, the Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the Secured Indebtedness or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount

permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Secured Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

(t) Statement Concerning Note or Mortgage. Mortgagor shall at any time and from time to time furnish within seven (7) days of request by Mortgagee a written statement in such form as may be required by Mortgagee stating that (i) the Note, this Mortgage and the other Loan Documents are valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms; (ii) the unpaid principal balance of the Note; (iii) the date to which interest on the Note is paid; (iv) the Note, this Mortgage and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other Loan Document. If any of the foregoing statements are untrue, Mortgagor shall, alternatively, specify the reasons therefor. Mortgagee shall at any time and from time to time furnish within seven (7) days of request by Mortgagor a written statement stating (i) the unpaid principal balance of the Note and (ii) the date to which interest on the Note is paid.

(u) Trust Fund; Lien Laws. Mortgagor will receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the "cost of improvement", as such quoted term is defined in the New York Lien Law) and will apply the same first to the payment of such costs before using any part of the total of the same for any other purpose and, will comply with Section 13 of the New York Lien Law. Mortgagor will indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, reasonable attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagor of any applicable lien law including, without limitation, any section of Article 3-A of the New York Lien Law.

Section 2.2. Performance by Mortgagee on Mortgagor's Behalf. Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which under any Loan Document Mortgagor is required to perform or take, or to pay any money which under any Loan Document Mortgagor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the Secured Indebtedness has been accelerated, Mortgagee, in Mortgagor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Mortgagee, with interest thereon at the Past Due Rate set forth in the Note, and any money so paid by Mortgagee shall be a demand obligation owing by Mortgagor to Mortgagee (which obligation Mortgagor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Mortgagee and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Mortgagee shall waive or cure any default or waive any right, remedy or recourse of Mortgagee. Any such payment may be made by Mortgagee in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Mortgagor to Mortgagee pursuant to this Mortgage shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Note for interest on past due principal owed

on the Note but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Mortgagee on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Mortgagee hereunder and the time when paid shall be fully established by the certificate of Mortgagee or any of Mortgagee's officers or agents.

Section 2.3. Absence of Obligations of Mortgagee with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Mortgagor's rights, title and interests therein but not Mortgagor's obligations, duties or liabilities pertaining thereto, (ii) Mortgagee neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Mortgagee may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Mortgagee's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Mortgagee shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Mortgagee elects otherwise by written notification.

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, required by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. For purposes of such filings, Mortgagor agrees to furnish any information requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Mortgage. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Mortgagor's authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorney-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

Assignment of Rents and Leases

Section 3.1. Assignment. Mortgagor hereby assigns to Mortgagee all Rents (hereinafter defined) and all of Mortgagor's rights in and under all Leases (hereinafter defined). So long as no Default (hereinafter defined) has occurred, Mortgagor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of a Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Mortgagee, and to otherwise deal with all Leases as permitted by this Mortgage. Each month, provided no Default has occurred, Mortgagor may retain such Rents as were collected that month and held in trust for Mortgagee; provided, however, that all Rents collected by Mortgagor shall be applied solely to the ordinary and necessary expenses of owning and operating the Property or paid to Mortgagee. Upon the revocation of such license, all Rents shall be paid directly to Mortgagee and not through the Mortgagor, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payments to Mortgagee shall constitute payments to Mortgagor under the Leases, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to do all things, after a Default, which Mortgagor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Mortgagee, all in such manner as may be determined by Mortgagee, or at the option of Mortgagee, holding the same as security for the payment of the Secured Indebtedness, (ii) leasing, in the name of Mortgagor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Default, unless other Defaults also then exist, shall entitle Mortgagor to recover its aforesaid license to do any such things which Mortgagor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Mortgagee to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Mortgagee for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this Mortgage. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Mortgagor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease,



sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by damage to any part of the Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents. Mortgagor covenants, represents and warrants that: (a) Mortgagor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) neither Mortgagor nor any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Mortgagor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Mortgagor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (h) Mortgagor will not without the prior written consent of Mortgagee, enter into any Lease after the date hereof except in accordance with the terms of Exhibit I to the Loan Agreement, or waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant (except in accordance with the terms of Exhibit I to the Loan Agreement), reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with the terms of Exhibit I to the Loan Agreement or in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease (except with respect to leases of 15,000 square feet of rentable space or less), or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise (except with respect to leases of 15,000 square feet of rentable space or less); (i) Mortgagor will not, without the prior written consent of Mortgagee, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more unless promptly after the cancellation or surrender a new Lease of such premises is made with a new tenant having a credit standing that is satisfactory to Mortgagee, in Mortgagee's judgment, on terms not materially less favorable to lessor than the terms of the terminated or cancelled Lease; (j)

Mortgagor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (k) Mortgagor shall give prompt notice to Mortgagee, as soon as Mortgagor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Mortgagor shall defend, at Mortgagor's expense, any proceeding pertaining to any Lease, including, if Mortgagee so requests, any such proceeding to which Mortgagee is a party; (l) Mortgagor shall as often as requested by Mortgagee, within ten (10) days of each request, deliver to Mortgagee a complete rent roll of the Property in such detail as Mortgagee may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Mortgagor, and deliver to such of the tenants and others obligated under the Leases specified by Mortgagee written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Mortgagee; (m) promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee executed originals of all Leases and copies of all records in its possession or control relating thereto; (n) there shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Mortgagee; and (o) Mortgagee may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lien Mortgagee; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

Section 3.3. Estoppel Certificates. All Leases executed after the date hereof shall require the tenant to execute and deliver to Mortgagee an estoppel certificate in form and substance acceptable to Mortgagee not more than thirty (30) days after notice from the Mortgagee.

Section 3.4. No Liability of Mortgagee. Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate Mortgagee to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Property, or for Mortgagee's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Mortgagee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the same), shall render Mortgagee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Mortgagee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with

respect to any Lease. The rights of Mortgagee under this Article 3 shall be cumulative of all other rights of Mortgagee under the Loan Documents or otherwise.

Reference is hereby made to Section 291-f of the Real Property Law of the State of New York for the purpose of obtaining for Mortgagee the benefits of said Section in connection herewith.

#### ARTICLE 4

##### Default

Section 4.1. Events of Default. The occurrence of any one of the following shall be a default under this Mortgage (“default” or “Default”):

(a) Failure to Pay Indebtedness. Any of the Secured Indebtedness or any indebtedness evidenced by the other “Notes” (as defined in the Loan Agreement) is not paid when due, regardless of how such amount may have become due and such default shall have continued for a period of ten (10) days.

(b) Nonperformance of Covenants. Any covenant, agreement or condition herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept and such failure shall have continued for a period of thirty (30) days after notice thereof shall have been given to Mortgagor by Mortgagee (or such other cure period as may be specified elsewhere in this Mortgage or the other Loan Documents with respect to specific provisions), provided, however, if such default is not susceptible of being cured within such thirty (30) day period and Mortgagor has commenced such cure within such thirty (30) day period and is diligently pursuing such cure to Mortgagee’s satisfaction, such thirty (30) day cure period shall be extended, but in no event shall such cure period exceed sixty (60) days, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein.

(c) Default under other Loan Documents. The occurrence of a Default under any other Loan Document, including an Early Termination Event as defined in any Master Agreement relating to any Swap Transaction.

(d) Representations. Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Mortgagee in connection with the Secured Indebtedness is false, misleading or erroneous in any material respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(e) Bankruptcy or Insolvency. The owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness (or any general partner or joint venturer of such owner or other person):

(i) (A) Executes an assignment for the benefit of creditors, or takes any action in furtherance thereof; or (B) admits in writing its inability to pay, or fails to pay, its debts generally as they become due; or (C) as a debtor, files a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, Title 11 of the United States Code as now or hereafter in effect or any other federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors (Title 11 of the United States Code and such other laws being herein called "Debtor Relief Laws"), or takes any action in furtherance thereof; or (D) seeks the appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property; or

(ii) Suffers the filing of a petition, case, proceeding or other action against it as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property, and (A) admits, acquiesces in or fails to contest diligently the material allegations thereof, or (B) the petition, case, proceeding or other action results in entry of any order for relief or order granting relief sought against it, or (C) in a proceeding under Debtor Relief Laws, the case is converted from one chapter to another, or (D) fails to have the petition, case, proceeding or other action permanently dismissed or discharged on or before the earlier of trial thereon or ninety (90) days next following the date of its filing; or

(iii) Conceals, removes, or permits to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or makes any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffers or permits, while insolvent, any creditor to obtain a lien (other than as described in subparagraph (iv) below) upon any of its property through legal proceedings which are not vacated and such lien discharged prior to enforcement thereof and in any event within sixty (60) days from the date thereof; or

(iv) Fails to have discharged within a period of thirty (30) days any attachment, sequestration, or similar writ levied upon any of its property; or

(v) Fails to pay immediately any final money judgment against it.

(f) Transfer of the Property. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Mortgagor, having a value equal to or greater than the replaced items when new; and (ii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Mortgage or of any other Loan

Document. Mortgagee may, in its sole discretion, waive a default under this paragraph, but it shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which Mortgagee may require: the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Mortgagee in its sole judgment and grantee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Mortgagee may require, a principal paydown on the Note, an increase in the rate of interest payable under the Note, a transfer fee, a modification of the term of the Note, and any other modification of the Loan Documents which Mortgagee may require. : NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL AND ANY AND ALL SWAP TRANSACTIONS ARE SUBJECT TO TERMINATION, OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

(g) Transfer of Assets. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the other assets of Mortgagor, excluding the Property, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers in the ordinary course of Mortgagor's business; and (ii) sales or transfers for which Mortgagor receives consideration substantially equivalent to the fair market value of the transferred asset.

(h) Transfer of Ownership of Mortgagor. Any of the following:

(i) the sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Mortgagor (if Mortgagor is not a natural person but is a corporation, partnership, limited liability company, trust or other legal entity), without the prior written consent of Mortgagee (including, without limitation, if Mortgagor is a partnership or joint venture, the withdrawal from or admission into it of any general partner or joint venturer); or

(ii) if Mortgagor or Guarantor (or a general partner, member or co-venturer of either of them) is a partnership, joint venture, limited liability company, trust or closely-held corporation, any sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of any class of the issued and outstanding capital stock of such closely-held corporation or of the beneficial interest of such partnership, venture, limited liability company or trust, or a change of any general partner, joint venturer, member or beneficiary, as the case may be, or, in the event Mortgagor or Guarantor (or a general partner, co-venturer, member or beneficiary, as the case may be, of either of them) is a publicly-held corporation, the sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of the stock-holdings of any of the five (5) individuals or entities that own the greatest number of shares of each class of issued and outstanding stock, or effectuates or permits a reduction in the aggregate direct and indirect ownership interests of Guarantor in Mortgagor below 50.1%, or effectuates or causes Acadia Realty Trust to fail to control the management of Guarantor and Mortgagor.

(i) Grant of Easement, Etc. Without the prior written consent of Mortgagee, Mortgagor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification

or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(j) Abandonment. The owner of the Property abandons any of the Property.

(k) Default Under Other Lien. A default or event of default occurs under any lien, security interest or assignment covering the Property or any part thereof (whether or not Mortgagee has consented, and without hereby implying Mortgagee's consent, to any such lien, security interest or assignment not created hereunder), or the Mortgagee of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) Destruction. The Property is so demolished, destroyed or damaged that, in the reasonable opinion of Mortgagee, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time and in any event, prior to the final maturity date of the Note.

(m) Condemnation. (i) Any governmental authority shall require, or commence any proceeding for, the demolition of any building or structure comprising a part of the Premises, or (ii) there is commenced any proceeding to condemn or otherwise take pursuant to the power of eminent domain, or a contract for sale or a conveyance in lieu of such a taking is executed which provides for the transfer of, a material portion of the Premises, including but not limited to the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement.

(n) Liquidation, Etc. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of New York and/or the state of incorporation or organization, if different (or in the case of an individual, the death or legal incapacity) of the Mortgagor, any owner of the Property or any person obligated to pay any part of the Secured Indebtedness.

(o) Material, Adverse Change. In Mortgagee's reasonable opinion, the prospect of payment of all or any part of the Secured Indebtedness has been impaired because of a material, adverse change in the financial condition, results of operations, business or properties of the Mortgagor, any owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness, or of any general partner or joint venturer thereof (if such owner or other person is a partnership or joint venture).

(p) Enforceability; Priority. Any Loan Document shall for any reason without Mortgagee's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by any party thereto other than Mortgagee; or the liens, mortgages or security interests of Mortgagee in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Mortgagor or any person obligated to pay any part of the Secured Indebtedness.

(q) Other Indebtedness. A default or event of default occurs under any document executed and delivered in connection with any other indebtedness (to Mortgagee or any other person or entity) of Mortgagor, the owner of the Property, any person obligated to pay any part of the Secured Indebtedness, or any person or entity which guarantees such other indebtedness.

Section 4.2. Notice and Cure. If any provision of this Mortgage or any other Loan Document provides for Mortgagee to give to Mortgagor any notice regarding a default or incipient default, then if Mortgagee shall fail to give such notice to Mortgagor as provided, the sole and exclusive remedy of Mortgagor for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Note and the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such default in the manner and during the period of time permitted by such agreement, if any, and Mortgagor shall have no right to damages or any other type of relief not herein specifically set out against Mortgagee, all of which damages or other relief are hereby waived by Mortgagor. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

## ARTICLE 5

### Remedies

Section 5.1. Certain Remedies. If a Default shall occur, Mortgagee may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration. Mortgagee may at any time and from time to time declare any or all of the Secured Indebtedness immediately due and payable and may terminate any and all Swap Transactions. Upon any such declaration, such Secured Indebtedness shall thereupon be immediately due and payable, and such Swap Transactions shall immediately terminate, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Mortgagor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (A), (C) or (D) of subparagraph (i) of paragraph (d) of Section 4.1, hereof, all of the Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Mortgagor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Mortgagee under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Mortgagee may: (1) collect and/or sue for the Rents in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the Secured Indebtedness in such manner and order as Mortgagee may elect and/or to the operation and management of the Property, including the payment of management, brokerage

and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.

(c) Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(i) Mortgagee may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession to Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents.

(iii) Mortgagee may from time to time: (A) continue and complete construction of, hold, store, use, operate, manage and control the Property and conduct the business thereof; (B) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional personal property; (C) insure or keep the Property insured; (D) exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; and (E) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.

(d) Uniform Commercial Code. Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code as adopted by the State of New York as in effect from time to time, (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law) or other applicable law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Property or other place where the collateral may be located without legal process, and to take possession of such personal property without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State of New York. Upon demand by Mortgagee, Mortgagor shall make such personal property available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may proceed under the Uniform Commercial Code as to all or any part of such personal property, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of such



personal property. Mortgagee may choose to dispose of some or all of the property, in any combination consisting of both personal property and Property, in one or more public or private sales to be held in accordance with the Law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Mortgagor agrees that such a sale of such personal property together with Property constitutes a commercially reasonable sale of such personal property.

(e) Lawsuits. Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction. Mortgagor hereby assents to the passage of a decree for the sale of the Property by any equity court having jurisdiction.

(f) Foreclosure. Mortgagee may:

(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law (including, without limitation, in accordance with Article 14 of the New York Real Property Actions and Proceedings Law, regarding which Mortgagor hereby consents and agrees that notices thereunder (including notices of sale) may be given to Mortgagor in any of the manners specified for the giving of notices set forth in Section 6.13, and all estate, right, title and interest, claim and demand thereof, at one (1) or more sales as an entity or in parcels or parts, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(2) institute proceedings for the complete or partial foreclosure hereof; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, the Loan Agreement or herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

Any sale made hereunder may be as an entirety or in such parcels as Mortgagee may request. To the extent permitted by applicable law, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. If the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Secured Indebtedness, this Mortgage and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made and the rights of Mortgagee to foreclose hereunder shall also apply to any future sales. A sale may cover not only the Property but also personal property and other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or the sale may be of any part of the Property separately from the remainder of the Property. After each sale, the Mortgagee shall make to the purchaser or purchasers at such sale good and sufficient conveyances, conveying the property so sold to the purchaser or purchasers in fee simple, subject to the Permitted Encumbrances (and to such leases and other matters, if any), and shall receive the proceeds of said sale or sales and apply the same as herein provided. In the event any sale

hereunder is not completed or is defective in the opinion of Mortgagee, such sale shall not exhaust the rights hereunder and Mortgagee shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds or other conveyances given by the Mortgagee as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Mortgagee's having declared all of said indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee shall be taken as prima facie evidence of the truth of the facts so stated and recited.

(g) Receiver. Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State of New York. To the extent permitted by law, the right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate under the Note, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Mortgage to the Mortgagee, and the Mortgagee shall have the right to offset the unpaid Secured Indebtedness against any such cash or deposits in such order as Mortgagee may elect.

(h) Termination of Commitment to Lend. Mortgagee may terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement to or for the benefit of Mortgagor.

(i) Other Rights and Remedies. Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. Application of Proceeds. Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article 5 and any other proceeds received by Mortgagee from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Secured Indebtedness, in such manner and order as Mortgagee may elect.

Section 5.3. Remedies Cumulative and Concurrent. No right, power or remedy of Mortgagee as provided in the Note, this Mortgage, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, or any endorser, co-maker, surety or guarantor of the Secured Indebtedness, or the Property or any part thereof, or any one

or more of them, at the sole discretion of Mortgagee. The failure of Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

Section 5.4. Waiver, Delay or Omission. No waiver of any Default hereunder shall extend to or affect any subsequent or any other Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Default or to constitute acquiescence therein.

Section 5.5. Credit of Mortgagee. To the maximum extent permitted by the laws of the State of New York, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Secured Indebtedness in such order as Mortgagee may elect.

Section 5.6. Sale. Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor and all persons, except tenants pursuant to Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others.

Section 5.7. Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting the Mortgagor, any endorser, co-maker, surety, or guarantor of the Secured Indebtedness, or any of their respective properties, the Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Secured Indebtedness at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

Section 5.8. Waiver of Redemption, Notice, Marshalling, Etc. Mortgagor hereby waives and releases, for itself and anyone claiming through, by, or under it, to the maximum extent permitted by the laws of the State of New York:

- (i) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment,
- (ii) unless specifically required herein, all notices of default, or Mortgagee's actual exercise of any option or remedy under the Loan Documents, or otherwise, and
- (iii) any right to have the Property marshaled.

Section 5.9. Discontinuance of Proceedings. If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between

Mortgagor and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

Section 5.10. Mortgagee's Actions. Mortgagee may, at any time without notice to any person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, any endorser, co-maker, surety or guarantor of the Secured Indebtedness, nor any other person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Secured Indebtedness shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew, extend or modify the terms of the Note, this Mortgage and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Secured Indebtedness; (c) apply payments by any Obligor to the reduction of the unpaid Secured Indebtedness in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Secured Indebtedness without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage upon the Property which is not released or substituted, or the validity and priority of any security interest of the Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Mortgage or the lien of any other security interest in any other collateral now or hereafter held as security for the Secured Indebtedness; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee will join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any obligor or any other party as Mortgagee may see fit.

Section 5.11. Other Remedies. Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws.

## ARTICLE 6

### Miscellaneous

Section 6.1. Scope of Mortgage. This Mortgage is a Mortgage of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general

intangibles under the New York Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Mortgage shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor and the Mortgagee are set forth in the preamble of this Mortgage and the address of Mortgagee from which information concerning the security interests hereunder may be obtained is the address of Mortgagee set forth at the end of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Mortgagee may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Mortgagee directly.

Section 6.4. Waiver by Mortgagee. Mortgagee may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing; (b) consent to Mortgagor's doing any act which hereunder Mortgagor is prohibited from doing, or to Mortgagor's failing to do any act which hereunder Mortgagor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Mortgage, without the joinder of Mortgagee; or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Mortgagee or Mortgagee hereunder except to the extent specifically agreed to by Mortgagee in such writing.

Section 6.5. No Impairment of Security. The lien, security interest and other security rights of Mortgagee hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Mortgagee including, but not limited to, any renewal, extension or modification which Mortgagee may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Mortgagee shall not release or impair the lien, security interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any junior lien Mortgagee in the Property (without implying hereby Mortgagee's consent to any junior lien).

Section 6.6. Acts Not Constituting Waiver by Mortgagee. Mortgagee may waive any default without waiving any other prior or subsequent default. Mortgagee may remedy any default without waiving the default remedied. Neither failure by Mortgagee to exercise, nor delay by Mortgagee in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured

Indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Mortgagor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Secured Indebtedness in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Secured Indebtedness given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Mortgagee and any subsequent owner of the Property, with or without notice to such Mortgagor, and no such modifications shall impair the obligations of such Mortgagor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Mortgagee's consent to any transfer of the Property.

Section 6.8. Place of Payment. All Secured Indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place designated in the Note (or if no such designation is made, at the address of Mortgagee indicated at the end of this Mortgage).

Section 6.9. Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or Mortgagee of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security

interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Mortgagee is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loan evidenced by the Note or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's lien is waived; and Mortgagee shall have, and is hereby granted, a vendor's lien on the Property as cumulative additional security for the secured indebtedness. Mortgagee may foreclose under this Mortgage or under the vendor's lien without waiving the other or may foreclose under both.

Section 6.10. Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 6.11. Nature of Loan; Compliance with Usury Laws. The loan evidenced by the Note is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Mortgagor and Mortgagee and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Mortgagee and Mortgagor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Mortgagee shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Mortgagor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law,

be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of New York or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12. Releases.

(a) Release of Mortgage. If all of the Secured Indebtedness is paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all Swap Transactions and all other obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Mortgagee in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Mortgagee or Mortgagee shall survive discharge of the Secured Indebtedness, the termination of any and all Swap Transactions and any foreclosure, release or termination of this Mortgage.

(b) Partial Releases; No Release in Default. Partial releases of the lien of this Mortgage shall be made in accordance with the terms and provisions of Exhibit C attached hereto and by this reference made a part hereof, or in accordance with such other terms and conditions as may subsequently be agreed to by Mortgagee. If no such Exhibit C is attached hereto, then there are no terms and provisions for partial releases, to which Mortgagee and Mortgagor have agreed at this time. In any event, no partial release shall be sought, requested or required if any Default has occurred which has not been cured.

(c) Effect of Partial Release. Mortgagee may, regardless of consideration, cause the release of any part of the Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Property.

(d) Release Fee. If permitted by applicable law Mortgagor shall pay to Mortgagee, at the time of each partial or complete release of the lien of this Mortgage, a release fee in the amount of \$25.00 if the release instrument is delivered to Mortgagee for execution or \$50.00, if Mortgagee is required to prepare the release instrument. In addition, Mortgagor shall pay to Mortgagee a fee in the amount of \$25.00 for each other document or instrument which Mortgagor requires the Mortgagee to execute.

Section 6.13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this



Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.14. Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.15. Gender; Titles; Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.16. Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Mortgagee to furnish Mortgagee with evidence of such compliance.

Section 6.17. Mortgagee's Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Mortgagee is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Mortgagee's judgment, and (b) no approval or consent of Mortgagee shall be deemed to have been given

except by a specific writing intended for the purpose and executed by an authorized representative of Mortgagee.

Section 6.18. Mortgagor. Unless the context clearly indicates otherwise, as used in this Mortgage, "Mortgagor" means the Mortgagors named in Section 1.1 hereof or any of them. The obligations of Mortgagor hereunder shall be joint and several. If any Mortgagor, or any signatory who signs on behalf of any Mortgagor, is a corporation, partnership or other legal entity, Mortgagor and any such signatory, and the person or persons signing for it, represent and warrant to Mortgagee that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives. If Mortgagor is an individual, no power of attorney granted by Mortgagor herein shall terminate on Mortgagor's disability.

Section 6.19. Execution; Recording. This Mortgage has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refilled in such manner and in such places as or Mortgagee shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.20. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the heirs, devisees, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee and shall constitute covenants running with the Land. All references in this Mortgage to Mortgagor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagor.

Section 6.21. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.22. No Partnership, Etc. The relationship between Mortgagee and Mortgagor is solely that of mortgagee and mortgagor. Mortgagee has no fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Mortgagee or in any way make Mortgagee a co-principal with Mortgagor with reference to the Property. All agreed contractual duties between or among Mortgagee and Mortgagor and are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.23. Intentionally Omitted.

Section 6.24. Applicable Law. THIS MORTGAGE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 6.25. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.26. Forum. Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State of New York and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located, over any Dispute. Mortgagor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the State of New York may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address for notice set forth in this Mortgage, or at a subsequent address of which Mortgagee received actual notice from Mortgagor in accordance with the notice section of this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by Law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction.

Section 6.27. **WAIVER OF JURY TRIAL**. **WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY DISPUTE AS SET FORTH IN THIS MORTGAGE, TO THE EXTENT ANY DISPUTE IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, MORTGAGOR AND MORTGAGEE WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGEE, AND MORTGAGOR AND MORTGAGEE HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON**

**OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

Section 6.28. Cross-Default. The Loan shall be cross-defaulted with all other loans which Mortgagor shall have from Lenders during the term of the Loan, whether existing as of the date of this Agreement subsequently made. A default under any of the above-described loans shall constitute a Default under the Loan. A Default under the Loan shall constitute a Default under the above-described other loans. To the extent not prohibited by applicable law, if Mortgagee, at its option, avails itself of this cross-default provision, Mortgagee shall have the option to pursue its remedies in any combinations and against any or all of Mortgagee's security for the aforesaid loans, whether successively, concurrently or otherwise.

Section 6.29. Substitute Mortgages. Mortgagor and Mortgagee shall, upon their mutual agreement to do so, execute such documents as may be necessary in order to effectuate the modification hereof, including the execution of substitute mortgages, so as to create two (2) or more liens on the Mortgaged Property in such amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the Mortgage Amount; in such event, Mortgagor covenants and agrees to pay the reasonable fees and expenses of Mortgagee and its counsel in connection with any such modification.

Section 6.30. Satisfaction or Assignment of Mortgage. Upon payment in full of all sums, and the performance of all obligations, secured hereby in accordance with the terms and conditions of this Mortgage and the other Loan documents, Mortgagee shall deliver a satisfaction or release of this Mortgage or, at Mortgagor's option to be exercised in writing, an assignment hereof, in either case in proper form of recording. As a condition to any such satisfaction or assignment, Mortgagor covenants and agrees to pay Mortgagee's reasonable fees and expenses (including attorneys' fees and expenses) in connection therewith. Upon any such satisfaction or assignment, Mortgagee shall, automatically and without the need for any other further documentation, be absolutely and unconditionally released from any and all claims or liabilities in connection with the Loan. In addition, Mortgagor hereby indemnifies and agrees to hold Mortgagee harmless from and against any and all claims and liabilities arising out of the satisfaction or assignment hereof, such indemnification to survive any such satisfaction or assignment.

Section 6.31. New York Provisions. (a) Mortgagor hereby makes the following statement: "This Mortgage does not cover real property principally improved or to be improved by one (1) or more structures containing in the aggregate not more than six (6) residential

dwelling, each having its own separate cooking facilities.” and (b) the covenants and conditions contained herein, other than those included in the New York Statutory Short Form of Mortgage, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of Section 254 of the Real Property Law of the State of New York.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as an instrument under seal as of the date first written on page 1 hereof.

ACADIA CORTLANDT LLC, a Delaware limited liability company

By

---

Robert Masters  
Senior Vice President

---

STATE OF NEW YORK            )  
  ): ss.:  
COUNTY OF NEW YORK        )

On the \_\_\_\_\_ day of October in the year 2010, before me, the undersigned, a notary public in and for said state, personally appeared Robert Masters, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

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EXHIBIT A

Land

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN THE TOWN OF CORTLANDT, COUNTY OF WESTCHESTER AND STATE OF NEW YORK THAT IS A PORTION OF THOSE LANDS DESIGNATED PARCEL 1, PARCEL 2A AND PARCEL 2B ON THAT CERTAIN "RESUBDIVISION PLAT OF FILED MAP NO. 17837 SECTION 1 MID-WESTCHESTER INDUSTRIAL PARK, INC.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 15, 1984 AS MAP NO. 21741 THAT IS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 (AKA 5 MILE TURNPIKE AND/OR EAST MAIN STREET AND/OR STATE HIGHWAY 1309) WHERE IT IS MET BY THE LINE DIVIDING THE LANDS HEREIN DESCRIBED ON THE NORTHEAST FROM LANDS DESIGNATED LOT NO. 21 ON THAT CERTAIN "MAP NO. 1 GULL MANOR.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON MARCH 25, 1954 AS MAP NO. 8930, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,045.23 (Y)  
E 625,146.49 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE FROM THE SAID POINT OF BEGINNING NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 NORTH 31° 31' 51" EAST 202.41 FEET AND TO A POINT AT THE SOUTHWESTERLY LINE OF LOT NO. 4 SHOWN ON THAT CERTAIN MAP ENTITLED "SECTION NO. 1 MID-WESTCHESTER INDUSTRIAL PARK" WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 16, 1972 AS MAP NO. 17837;

THENCE ALONG THE SOUTHWESTERLY, SOUTHEASTERLY AND NORTHEASTERLY LINES OF LOT NO. 4 SHOWN ON FILED MAP NO. 17837 THE FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 400.00 FEET;  
NORTH 35° 15' 51" EAST 200.00 FEET;  
NORTH 54° 41' 49" WEST 201.75 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF MOBIL CENTERS, INC;

THENCE ALONG THE SAID MOBIL CENTERS, INC. LANDS:

NORTH 35° 15' 51" EAST 150.02 FEET AND;  
NORTH 54° 41' 49" WEST 174.98 FEET TO A POINT;

THENCE STILL ALONG THE SAID LANDS OF MOBIL CENTERS, INC. WESTERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 90° 02' 20",

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THE RADIUS OF WHICH 25.00 FEET FOR 39.29 FEET TO ANOTHER POINT ON THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 35° 15' 51" EAST 103.05 FEET AND;

NORTH 34° 16' 11" EAST 16.52 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF W.W. GEIS, JR.;

THENCE ALONG AND AROUND THE SAID W.W. GEIS, JR. LANDS THE FOLLOWING, FIRST TURNING ABOUT AND SOUTHERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 88° 58' 00", THE RADIUS OF WHICH IS 25.00 FEET FOR 38.82 FEET AND THEN FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 187.41 FEET;

SOUTH 87° 58' 31" EAST 50.19 FEET;

NORTH 34° 14' 31" EAST 293.26 FEET AND;

NORTH 55° 45' 29" WEST 248.82 FEET TO STILL ANOTHER POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 38° 26' 11" EAST 91.89 FEET AND;

NORTH 36° 40' 11" EAST 175.50 FEET TO A POINT AT THE LINE LAND NOW OR FORMERLY OF HOME DEPOT U.S.A., INC. LANDS, THE FOLLOWING FIRST

SOUTH 53° 24' 23" EAST 28.04 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 44° 59' 45", THE RADIUS OF WHICH IS 100.00 FEET FOR 78.53 FEET,

THEN SOUTH 08° 24' 38" EAST 170.39 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 42° 53' 52", THE RADIUS OF WHICH IS 330.00 FEET FOR 245.35 FEET, AND THEN THE FOLLOWING COURSES:

SOUTH 34° 11' 14" WEST 7.14 FEET;

SOUTH 42° 10' 35" EAST 571.35 FEET;

NORTH 81° 40' 00" EAST 752.50 FEET;

NORTH 42° 10' 35" WEST 546.00 FEET;

SOUTH 47° 49' 25" WEST 12.00 FEET;

NORTH 42° 10' 35" WEST 334.49 FEET;

NORTH 47° 49' 25" EAST 64.36 FEET;

NORTH 42° 10' 35" WEST 551.64 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 43° 07' 31" EAST 240.77 FEET;  
NORTH 46° 43' 08" EAST 200.86 FEET;  
NORTH 47° 51' 46" EAST 169.07 FEET;  
NORTH 54° 16' 42" EAST 77.64 FEET;  
NORTH 43° 47' 18" EAST 103.43 FEET;  
NORTH 06° 57' 25" EAST 7.49 FEET;  
NORTH 44° 52' 56" EAST 141.98 FEET;  
NORTH 56° 38' 06" EAST 194.10 FEET;  
NORTH 47° 40' 06" EAST 31.98 FEET TO A POINT AT THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO. 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP NO. 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,107.32 (Y)  
E 626,930.25 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE STILL ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 47° 40' 06" EAST 15.49 FEET;  
NORTH 57° 07' 47" EAST 41.34 FEET;  
NORTH 46° 37' 24" EAST 65.92 FEET;  
NORTH 60° 47' 16" EAST 135.27 FEET;  
NORTH 58° 29' 38" EAST 200.48 FEET;  
NORTH 76° 26' 07" EAST 65.57 FEET;  
NORTH 53° 06' 18" EAST 114.53 FEET;  
NORTH 59° 20' 46" EAST 157.01 FEET;  
NORTH 67° 37' 05" EAST 102.26 FEET;  
NORTH 39° 31' 22" EAST 47.05 FEET;  
NORTH 62° 09' 00" EAST 123.28 FEET;  
NORTH 59° 26' 00" EAST 57.40 FEET;  
NORTH 58° 13' 00" EAST 81.60 FEET;  
NORTH 61° 59' 00" EAST 41.60 FEET;  
NORTH 38° 58' 00" EAST 17.42 FEET;  
NORTH 61° 26' 39" EAST 147.75 FEET;  
NORTH 57° 24' 50" EAST 100.18 FEET;  
NORTH 63° 24' 40" EAST 64.74 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF BERKO, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,912.07 (Y)  
E 628,275.78 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE SOUTHERLY ALONG THE SAID BERKO LANDS AND CONTINUING ALONG LANDS NOW OR FORMERLY OF FELDMAN, NOW OR FORMERLY OF BERTINO, AND LANDS NOW OR FORMERLY OF MOHEGAN REALTY CO., THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

SOUTH 8° 21' 49" EAST 184.14 FEET;

SOUTH 7° 23' 59" EAST 204.45 FEET;

SOUTH 8° 27' 49" EAST 457.05 FEET;

SOUTH 7° 57' 49" EAST 226.72 FEET;

SOUTH 8° 03' 49" EAST 841.87 FEET TO LANDS NOW OR FORMERLY OF BOGIN, WHICH POINT OCCUPIES COORDINATE POSITION

N 477,016.99 (Y)

E 628,545.67 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE ALONG SAID LANDS ON A COURSE OF SOUTH 84° 45' 51" WEST FOR A DISTANCE OF 565.62 FEET TO A POINT THAT IS A CORNER THEREOF, WHICH POINT IS AT THE SOUTHEASTERLY END OF THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,965.38 (Y)

E 627,982.41 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE CONTINUING ALONG LANDS NOW OR FORMERLY OF BOGIN AND DEANIN ON A COURSE OF SOUTH 8° 44' 49" EAST FOR A DISTANCE OF 775.84 FEET TO LANDS NOW OR FORMERLY OF MCKEEL;

THENCE ALONG THE SAID MCKEEL LANDS AND IN PART ALONG THE ORIGINAL CENTER LINE OF A BROOK AS THE SAID CENTER LINE APPEARS ON THAT CERTAIN MAP ENTITLED "SURVEY... MIDWESTCHESTER INDUSTRIAL PARK INC...," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON JANUARY 24, 1969 ON MAP NO. 16581 THE FOLLOWING COURSES AND DISTANCES:

SOUTH 83° 29' 51" WEST 1204.04 FEET;

SOUTH 64° 31' 01" WEST 35.43 FEET;

SOUTH 87° 29' 41" WEST 100.66 FEET;

SOUTH 79° 30' 01" WEST 100.04 FEET;

SOUTH 80° 21' 21" WEST 99.99 FEET;

SOUTH 82° 37' 11" WEST 219.69 FEET;

SOUTH 81° 10' 01" WEST 102.96 FEET;

SOUTH 74° 14' 51" WEST 99.92 FEET;

SOUTH 75° 42' 31" WEST 81.58 FEET;

SOUTH 73° 18' 21" WEST 101.89 FEET;

SOUTH 87° 12' 21" WEST 100.12 FEET;

SOUTH 89° 38' 51" WEST 100.44 FEET;

SOUTH 84° 23' 51" WEST 107.95 FEET;

SOUTH 81° 42' 51" WEST 119.29 FEET;  
SOUTH 58° 38' 31" WEST 47.83 FEET;  
SOUTH 48° 18' 59" WEST 109.79 FEET AND;  
NORTH 68° 22' 19" WEST 32.81 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF SHELBY-COLERIDGE HOLDING CORP;

THENCE ALONG THE SAID SHELBY-COLERIDGE HOLDING CORP. LANDS AND ALONG THE NORTHEASTERLY LINES OF LOT NO. 19 AND LOT 21 AS SHOWN ON THE AFOREMENTIONED "MAP NO. 1 GULL MANOR..." FILED MAP NO. 8930, THE FOLLOWING COURSES:

NORTH 68° 14' 09" WEST 17.28 FEET;  
SOUTH 89° 44' 51" WEST 61.00 FEET;  
NORTH 46° 00' 09" WEST 54.45 FEET;  
NORTH 61° 11' 09" WEST 72.08 FEET;  
NORTH 55° 43' 09" WEST 93.25 FEET TO THE AFOREMENTIONED SOUTHEASTERLY LINE OF U.S. ROUTE 6 AND THE POINT OR PLACE OF BEGINNING.

TOGETHER WITH THE BENEFITS AND SUBJECT TO THE BURDENS OF THE GRANT OF SANITARY SEWER EASEMENT MADE BY AND BETWEEN HARDEE'S AND MID-WESTCHESTER INDUSTRIAL PARK, INC. RECORDED IN LIBER 7137 PAGE 92.

TOGETHER WITH THE BENEFITS OF THE EASEMENT RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 7099 OF DEEDS AT PAGE 228 AND REPEATED IN LIBER 7143 OF DEEDS AT PAGE 449 AND LIBER 7235 OF DEEDS AT PAGE 88.

TOGETHER WITH THE BENEFITS OF THE DECLARATION AND GRANT OF RECIPROCAL EASEMENTS MADE BY CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11673 OF DEEDS AT PAGE 78.

TOGETHER WITH THE BENEFITS OF THE RECIPROCAL EASEMENT AND OPERATION AGREEMENT MADE BY BETWEEN CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND HOME DEPOT U.S.A. INC. AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11618 OF DEEDS AT PAGE 1.

EXHIBIT B

Permitted Encumbrances

Those exceptions set forth in Schedule B of that certain title insurance policy issued by First American Title Insurance Company of New York under their title no. 3008-272268 insuring the lien of this Mortgage.

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EXHIBIT C

Partial Release

NONE

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SECTION 255 AFFIDAVIT

Robert Masters, being duly sworn, deposes and says that:

1. He is a Senior Vice President of Acadia Cortlandt LLC, a Delaware limited liability company ("Mortgagor"), which is the owner of certain premises encumbered by the mortgages (collectively, the "Mortgage") described in Exhibit A attached hereto and made a part hereof, and is familiar with the facts set forth herein.
2. BANK OF AMERICA, N.A., as Administrative Agent ("Mortgagee") is now the lawful owner and holder of the Mortgage and the obligations secured thereby.
3. The mortgage recording tax recited in Exhibit A with respect to the Mortgage was duly paid.
4. The maximum aggregate principal amount which is or under any contingency may be secured by the Mortgage is \$50,000,000.00.
5. There have been no reloans or readvances under the Mortgage.
6. In order to modify the liens, terms and conditions of the Mortgage, Mortgagor has executed and delivered to Mortgagee a certain mortgage consolidation and modification agreement (the "Agreement") of even date herewith.
7. The Agreement is given solely for the purpose of consolidating and modifying the liens, terms and conditions of the Mortgage and secures the same principal indebtedness which is or under any contingency may be secured by the Mortgage, and the Agreement does not create or secure any new or further indebtedness or obligation other than the principal indebtedness or obligations secured by or which under any contingency may be secured by the Mortgage.

[Remainder of page intentionally left blank]

WHEREFORE, deponent respectfully requests that the Agreement be declared exempt from taxation pursuant to the provisions of Section 255 of Article XI of the Tax Law of the State of New York.

/s/ Robert Masters  
ROBERT MASTERS

Sworn to before me this  
22nd day of October, 2010.

/s/ Debra Leibler Jones  
Notary Public

My commission expires:

No. 01LE6005994  
Qualified in Dutchess County  
Commission Expires 04/20/2014

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EXHIBIT A

Mortgage(s)

1. Mortgage, Assignment of Leases and Rents and Security Agreement dated as of July 29, 2009 from Acadia Cortlandt LLC to Bank of America, N.A., as Administrative Agent, in the amount of \$45,000,000, which was recorded on August 28, 2009 in the office of the Westchester County Clerk, New York (the "Office") as Control Number 492240207 and upon which a mortgage recording tax of \$585,000 was paid (current outstanding principal \$44,558,467.91).
  2. Mortgage, Assignment of Leases and Rents and Security Agreement dated as of July 29, 2009 from Acadia Cortlandt LLC to Bank of America, N.A., as Administrative Agent, in the amount of \$2,000,000, which was recorded in the Office on August 28, 2009 as Control Number 492240215 and upon which a mortgage recording tax of \$26,000 was paid (current outstanding principal \$1,994,569.13).
  3. Mortgage and Security Agreement dated as of the date hereof from Acadia Cortlandt LLC to Bank of America, N.A., as Administrative Agent, in the amount of \$3,446,962.96 to be recorded in the Office immediately prior hereto and upon which a mortgage recording tax in the amount of \$44,811.00 will be duly paid.
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ACADIA CORTLANDT LLC,  
a Delaware limited liability company  
as Mortgagor

TO

BANK OF AMERICA, N.A.,  
as Administrative Agent  
as Mortgagee

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MORTGAGE AND SECURITY AGREEMENT

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Dated: As of October 26, 2010

Section: 24.10  
Block: 1  
Lots: 1, 1.2, 2 and 3  
County: Westchester  
Address: Cortlandt Towne Center Shopping Center,  
Town of Cortlandt

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RECORD AND RETURN TO:

Schiff Hardin LLP  
900 Third Avenue, 23rd Floor  
New York, New York 10022  
Attention: Paul G. Mackey, Esq.

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") made the 26th day of October, 2010, by ACADIA CORTLANDT LLC, a Delaware limited liability company, having its office and principal place of business at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 (hereinafter referred to as "Mortgagor" or "Borrower"), to BANK OF AMERICA, N.A., as Administrative Agent, having an address at One Bryant Park, 35th Floor, New York, New York 10036 (hereinafter referred to as "Mortgagee");

WITNESSETH:

To secure the payment of an indebtedness in the principal sum of Three Million Four Hundred Forty-Six Thousand Nine Hundred Sixty-Two and 96/100 Dollars (\$3,446,962.96), in lawful money of the United States of America, to be paid with interest (said indebtedness, interest and all other sums which may or shall become due hereunder being hereinafter collectively referred to as the "Debt") according to a certain note dated the date hereof given by Mortgagor to Mortgagee (hereinafter referred to as the "Note"), Mortgagor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed and assigned, and by these presents does mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign unto Mortgagee all right, title and interest of Mortgagor now owned, or hereafter acquired, in and to the property described in Schedule A attached hereto (hereinafter referred to as the "Premises");

TOGETHER WITH all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises together with such property, rights, interests and estates being hereinafter collectively referred to as the "Mortgaged Property"):

(a) (i) all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located on the Premises (hereinafter referred to as the "Improvements"); and (ii) to the extent permitted by law, the name or names, if any, as may now or hereafter be used for each Improvement, and the goodwill associated therewith.

(b) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises or the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of Mortgagor of, in and to the Premises or the Improvements and every part and parcel thereof, with the appurtenances thereto;

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(c) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the land or related to the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises or the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises or the Improvements (hereinafter collectively called the "Equipment"), and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security agreements (as defined in the Uniform Commercial Code), superior in lien to the lien of the Mortgage;

(d) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Premises, the Improvements or the Equipment, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Premises, the Improvements or the Equipment;

(e) all leases and other agreements affecting the use, enjoyment or occupancy of the Premises, the Improvements or the Equipment now or hereafter entered into (the "Leases") and all oil and gas or other mineral royalties, bonuses and rents, issues and profits from the Premises, the Improvements or the Equipment (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(f) all proceeds of and any unearned premiums on any insurance policies covering the Premises, the Improvements or the Equipment, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Premises, the Improvements or the Equipment;

(g) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Premises, the Improvements or the Equipment and to commence any action or proceeding to protect the interest of Mortgagee in the Premises, the Improvements or the Equipment; and

(h) all right, title and interest of every nature of the Mortgagor in all monies deposited or to be deposited in any funds or account maintained or deposited with Mortgagee, or its assigns, in connection herewith.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the proper use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever.

PROVIDED, ALWAYS, and these presents are upon this express condition, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage, then these presents and the estate hereby granted shall cease, determine and be void.

AND Mortgagor covenants with and represents and warrants to Mortgagee as follows:

1. Payment of Debt. Mortgagor will pay the Debt at the time and in the manner provided for its payment in the Note.

2. Warranty of Title. Mortgagor warrants that Mortgagor has good, marketable and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to deed, encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses a fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except those which are approved by Mortgagee given by Mortgagor to Mortgagee covering the Mortgaged Property (the "Permitted Exceptions") and that this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Mortgaged Property, subject only to said exceptions. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Sale of Mortgaged Property. If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the discretion of Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner.

4. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the taxes assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Debt.

5. Documentary Stamps. If at any time the United States of America, any state thereof or any governmental subdivision of any such state shall require revenue or other stamps to be affixed to the Note or this Mortgage, Mortgagor will pay for the same, with interest and penalties thereon, if any.

6. Appointment of Receiver. Mortgagee, in any action to foreclose this Mortgage or upon the actual or threatened waste to any part of the Mortgaged Property or upon the occurrence of any default hereunder, shall be at liberty, without notice, to apply for the appointment of a receiver of the Rents, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person then liable for the payment of the Debt.

7. Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

8. Construction. The terms of this Mortgage shall be governed by and construed in accordance with the laws of the State of New York.

9. Security Agreement. This Mortgage constitutes both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code, and the Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor, by executing and delivering this Mortgage, has granted to Mortgagee, as security for the Debt, a security interest in the Equipment. If Mortgagor shall default under the Note or this Mortgage, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise, immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code.

10. Headings, etc. The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

11. Filing of Mortgage, etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property, to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage and any security instrument with respect to the Mortgaged Property, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges (excluding Mortgagee’s income taxes) arising out of or in connection with the execution and delivery of this Mortgage or any security instrument with respect to the Mortgaged Property. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax (excluding Mortgagee’s income taxes) on the making and recording of this Mortgage.

12. Marshalling. Mortgagor waives and releases any right to have the Mortgaged Property marshaled.

13. Authority. Mortgagor (and the undersigned representative of Mortgagor) has full power, authority and legal right to execute this Mortgage and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor’s part to be performed.

14. Inapplicable Provisions. If any term, covenant or condition of the Mortgage shall be held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

15. No Oral Change. This Mortgage may only be modified or amended by an agreement in writing signed by Mortgagor and Mortgagee, and may only be released, discharged or satisfied of record by an agreement in writing signed by Mortgagee.

16. Trust Fund. Pursuant to Section 13 of the Lien Law of New York, Mortgagor shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of the cost of any such improvement on the Mortgaged Property before using any part of the total of the same for any other purpose.

17. Commercial Property. This Agreement does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six (6) residential dwelling units.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage the day and year first above written.

MORTGAGOR:

ACADIA CORTLANDT LLC, a Delaware limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

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STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF WESTCHESTER    )

On the 22nd day of October in the year 2010, before me, the undersigned, a notary public in and for said state, personally appeared Robert Masters, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/ Debra Leibler-Jones

\_\_\_\_\_  
Notary Public

My Commission Expires:

Debra Leibler-Jones  
No. 01LE6005994  
Qualified in Dutchess County  
Commission Expires: April 20, 2014

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SCHEDULE A

Property Description

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN THE TOWN OF CORTLANDT, COUNTY OF WESTCHESTER AND STATE OF NEW YORK THAT IS A PORTION OF THOSE LANDS DESIGNATED PARCEL 1, PARCEL 2A AND PARCEL 2B ON THAT CERTAIN "RESUBDIVISION PLAT OF FILED MAP NO. 17837 SECTION 1 MID-WESTCHESTER INDUSTRIAL PARK, INC.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 15, 1984 AS MAP NO. 21741 THAT IS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 (AKA 5 MILE TURNPIKE AND/OR EAST MAIN STREET AND/OR STATE HIGHWAY 1309) WHERE IT IS MET BY THE LINE DIVIDING THE LANDS HEREIN DESCRIBED ON THE NORTHEAST FROM LANDS DESIGNATED LOT NO. 21 ON THAT CERTAIN "MAP NO. 1 GULL MANOR.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON MARCH 25, 1954 AS MAP NO. 8930, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,045.23 (Y)  
E 625,146.49 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE FROM THE SAID POINT OF BEGINNING NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 NORTH 31° 31' 51" EAST 202.41 FEET AND TO A POINT AT THE SOUTHWESTERLY LINE OF LOT NO. 4 SHOWN ON THAT CERTAIN MAP ENTITLED "SECTION NO. 1 MID-WESTCHESTER INDUSTRIAL PARK" WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 16, 1972 AS MAP NO. 17837;

THENCE ALONG THE SOUTHWESTERLY, SOUTHEASTERLY AND NORTHEASTERLY LINES OF LOT NO. 4 SHOWN ON FILED MAP NO. 17837 THE FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 400.00 FEET;  
NORTH 35° 15' 51" EAST 200.00 FEET;  
NORTH 54° 41' 49" WEST 201.75 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF MOBIL CENTERS, INC;

THENCE ALONG THE SAID MOBIL CENTERS, INC. LANDS:

NORTH 35° 15' 51" EAST 150.02 FEET AND;  
NORTH 54° 41' 49" WEST 174.98 FEET TO A POINT;

THENCE STILL ALONG THE SAID LANDS OF MOBIL CENTERS, INC. WESTERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 90° 02' 20",

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THE RADIUS OF WHICH 25.00 FEET FOR 39.29 FEET TO ANOTHER POINT ON THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 35° 15' 51" EAST 103.05 FEET AND;

NORTH 34° 16' 11" EAST 16.52 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF W.W. GEIS, JR.;

THENCE ALONG AND AROUND THE SAID W.W. GEIS, JR. LANDS THE FOLLOWING, FIRST TURNING ABOUT AND SOUTHERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 88° 58' 00", THE RADIUS OF WHICH IS 25.00 FEET FOR 38.82 FEET AND THEN FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 187.41 FEET;

SOUTH 87° 58' 31" EAST 50.19 FEET;

NORTH 34° 14' 31" EAST 293.26 FEET AND;

NORTH 55° 45' 29" WEST 248.82 FEET TO STILL ANOTHER POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 38° 26' 11" EAST 91.89 FEET AND;

NORTH 36° 40' 11" EAST 175.50 FEET TO A POINT AT THE LINE LAND NOW OR FORMERLY OF HOME DEPOT U.S.A., INC. LANDS, THE FOLLOWING FIRST

SOUTH 53° 24' 23" EAST 28.04 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 44° 59' 45", THE RADIUS OF WHICH IS 100.00 FEET FOR 78.53 FEET,

THEN SOUTH 08° 24' 38" EAST 170.39 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 42° 53' 52", THE RADIUS OF WHICH IS 330.00 FEET FOR 245.35 FEET, AND THEN THE FOLLOWING COURSES:

SOUTH 34° 11' 14" WEST 7.14 FEET;

SOUTH 42° 10' 35" EAST 571.35 FEET;

NORTH 81° 40' 00" EAST 752.50 FEET;

NORTH 42° 10' 35" WEST 546.00 FEET;

SOUTH 47° 49' 25" WEST 12.00 FEET;

NORTH 42° 10' 35" WEST 334.49 FEET;

NORTH 47° 49' 25" EAST 64.36 FEET;

NORTH 42° 10' 35" WEST 551.64 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 43° 07' 31" EAST 240.77 FEET;  
NORTH 46° 43' 08" EAST 200.86 FEET;  
NORTH 47° 51' 46" EAST 169.07 FEET;  
NORTH 54° 16' 42" EAST 77.64 FEET;  
NORTH 43° 47' 18" EAST 103.43 FEET;  
NORTH 06° 57' 25" EAST 7.49 FEET;  
NORTH 44° 52' 56" EAST 141.98 FEET;  
NORTH 56° 38' 06" EAST 194.10 FEET;  
NORTH 47° 40' 06" EAST 31.98 FEET TO A POINT AT THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO. 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP NO. 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,107.32 (Y)  
E 626,930.25 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE STILL ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 47° 40' 06" EAST 15.49 FEET;  
NORTH 57° 07' 47" EAST 41.34 FEET;  
NORTH 46° 37' 24" EAST 65.92 FEET;  
NORTH 60° 47' 16" EAST 135.27 FEET;  
NORTH 58° 29' 38" EAST 200.48 FEET;  
NORTH 76° 26' 07" EAST 65.57 FEET;  
NORTH 53° 06' 18" EAST 114.53 FEET;  
NORTH 59° 20' 46" EAST 157.01 FEET;  
NORTH 67° 37' 05" EAST 102.26 FEET;  
NORTH 39° 31' 22" EAST 47.05 FEET;  
NORTH 62° 09' 00" EAST 123.28 FEET;  
NORTH 59° 26' 00" EAST 57.40 FEET;  
NORTH 58° 13' 00" EAST 81.60 FEET;  
NORTH 61° 59' 00" EAST 41.60 FEET;  
NORTH 38° 58' 00" EAST 17.42 FEET;  
NORTH 61° 26' 39" EAST 147.75 FEET;  
NORTH 57° 24' 50" EAST 100.18 FEET;  
NORTH 63° 24' 40" EAST 64.74 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF BERKO, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,912.07 (Y)  
E 628,275.78 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE SOUTHERLY ALONG THE SAID BERKO LANDS AND CONTINUING ALONG LANDS NOW OR FORMERLY OF FELDMAN, NOW OR FORMERLY OF BERTINO, AND LANDS NOW OR FORMERLY OF MOHEGAN REALTY CO., THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

SOUTH 8° 21' 49" EAST 184.14 FEET;  
SOUTH 7° 23' 59" EAST 204.45 FEET;  
SOUTH 8° 27' 49" EAST 457.05 FEET;  
SOUTH 7° 57' 49" EAST 226.72 FEET;  
SOUTH 8° 03' 49" EAST 841.87 FEET TO LANDS NOW OR FORMERLY OF BOGIN, WHICH POINT OCCUPIES COORDINATE POSITION

N 477,016.99 (Y)  
E 628,545.67 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE ALONG SAID LANDS ON A COURSE OF SOUTH 84° 45' 51" WEST FOR A DISTANCE OF 565.62 FEET TO A POINT THAT IS A CORNER THEREOF, WHICH POINT IS AT THE SOUTHEASTERLY END OF THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,965.38 (Y)  
E 627,982.41 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE CONTINUING ALONG LANDS NOW OR FORMERLY OF BOGIN AND DEANIN ON A COURSE OF SOUTH 8° 44' 49" EAST FOR A DISTANCE OF 775.84 FEET TO LANDS NOW OR FORMERLY OF MCKEEL;

THENCE ALONG THE SAID MCKEEL LANDS AND IN PART ALONG THE ORIGINAL CENTER LINE OF A BROOK AS THE SAID CENTER LINE APPEARS ON THAT CERTAIN MAP ENTITLED "SURVEY... MIDWESTCHESTER INDUSTRIAL PARK INC...," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON JANUARY 24, 1969 ON MAP NO. 16581 THE FOLLOWING COURSES AND DISTANCES:

SOUTH 83° 29' 51" WEST 1204.04 FEET;  
SOUTH 64° 31' 01" WEST 35.43 FEET;  
SOUTH 87° 29' 41" WEST 100.66 FEET;  
SOUTH 79° 30' 01" WEST 100.04 FEET;  
SOUTH 80° 21' 21" WEST 99.99 FEET;  
SOUTH 82° 37' 11" WEST 219.69 FEET;  
SOUTH 81° 10' 01" WEST 102.96 FEET;  
SOUTH 74° 14' 51" WEST 99.92 FEET;  
SOUTH 75° 42' 31" WEST 81.58 FEET;  
SOUTH 73° 18' 21" WEST 101.89 FEET;  
SOUTH 87° 12' 21" WEST 100.12 FEET;  
SOUTH 89° 38' 51" WEST 100.44 FEET;  
SOUTH 84° 23' 51" WEST 107.95 FEET;

SOUTH 81° 42' 51" WEST 119.29 FEET;  
SOUTH 58° 38' 31" WEST 47.83 FEET;  
SOUTH 48° 18' 59" WEST 109.79 FEET AND;  
NORTH 68° 22' 19" WEST 32.81 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF SHELBY-COLERIDGE HOLDING CORP;

THENCE ALONG THE SAID SHELBY-COLERIDGE HOLDING CORP. LANDS AND ALONG THE NORTHEASTERLY LINES OF LOT NO. 19 AND LOT 21 AS SHOWN ON THE AFOREMENTIONED "MAP NO. 1 GULL MANOR..." FILED MAP NO. 8930, THE FOLLOWING COURSES:

NORTH 68° 14' 09" WEST 17.28 FEET;  
SOUTH 89° 44' 51" WEST 61.00 FEET;  
NORTH 46° 00' 09" WEST 54.45 FEET;  
NORTH 61° 11' 09" WEST 72.08 FEET;  
NORTH 55° 43' 09" WEST 93.25 FEET TO THE AFOREMENTIONED SOUTHEASTERLY LINE OF U.S. ROUTE 6 AND THE POINT OR PLACE OF BEGINNING.

TOGETHER WITH THE BENEFITS AND SUBJECT TO THE BURDENS OF THE GRANT OF SANITARY SEWER EASEMENT MADE BY AND BETWEEN HARDEE'S AND MID-WESTCHESTER INDUSTRIAL PARK, INC. RECORDED IN LIBER 7137 PAGE 92.

TOGETHER WITH THE BENEFITS OF THE EASEMENT RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 7099 OF DEEDS AT PAGE 228 AND REPEATED IN LIBER 7143 OF DEEDS AT PAGE 449 AND LIBER 7235 OF DEEDS AT PAGE 88.

TOGETHER WITH THE BENEFITS OF THE DECLARATION AND GRANT OF RECIPROCAL EASEMENTS MADE BY CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11673 OF DEEDS AT PAGE 78.

TOGETHER WITH THE BENEFITS OF THE RECIPROCAL EASEMENT AND OPERATION AGREEMENT MADE BY BETWEEN CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND HOME DEPOT U.S.A. INC. AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11618 OF DEEDS AT PAGE 1.

AMENDED AND RESTATED GUARANTY AGREEMENT

THIS AMENDED AND RESTATED GUARANTY AGREEMENT (this "Guaranty") is made as of the 26th day of October, 2010, by ACADIA STRATEGIC OPPORTUNITY FUND III LLC, a Delaware limited liability company ("Guarantor"), in favor of BANK OF AMERICA, N.A., a national banking association (in its individual capacity and not as administrative agent, "BofA"), as Administrative Agent (in such capacity and together with its successors and assigns in such capacity, "Administrative Agent") for the Lenders (as defined below).

Preliminary Statements

A. BofA and Acadia Cortlandt LLC, a Delaware limited liability company ("Borrower"), have entered into that certain Loan Agreement dated as of July 29, 2009, as modified by that certain Loan Agreement Modification Agreement dated as of August 27, 2009 (collectively, the "Original Loan Agreement").

B. In connection with the Original Loan Agreement, Guarantor executed and delivered a Guaranty Agreement dated as of July 29, 2009 (the "Original Guaranty") to Lenders.

C. On the date hereof Borrower, Lenders and Administrative Agent are entering into, among other documents, that certain Amended and Restated Loan Agreement (herein called, as it may hereafter be modified, supplemented, restated, extended, or renewed and in effect from time to time, the "Loan Agreement") which amends and restates the Original Loan Agreement in its entirety and which Loan Agreement sets forth the terms and conditions of a loan (the "Loan") by BofA and certain other lenders (BofA and such other entities as may become lenders in accordance with the terms of the Loan Agreement, collectively, "Lenders") to Borrower with respect to land located in the Town of Yorktown, Westchester County, New York as more particularly described in the Loan Agreement and identified therein as the Land and the Improvements thereon.

D. A condition precedent to Lenders' obligation to make the Loan to Borrower is Guarantor's execution and delivery to Administrative Agent of this Guaranty.

E. The Loan is, or will be, evidenced by one or more notes executed by Borrower pursuant to the Loan Agreement and payable to the order of Lenders in the aggregate principal face amount of up to \$75,000,000 (such notes, as may hereafter be renewed, extended, supplemented, increased or modified and in effect from time to time, and all other notes given in substitution therefor, or in modification, renewal, or extension thereof, in whole or in part, is herein collectively called the "Note").

F. Borrower and BofA may from time to time enter into one or more "Swap Contracts" as defined in the Loan Agreement.

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G. Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement. This Guaranty is one of the Loan Documents described in the Loan Agreement.

H. Lenders and Administrative Agent require as a condition to entering into the Loan Agreement, that Guarantor shall have executed and delivered this Guaranty, which amends and restates the Original Guaranty in its entirety, for the benefit of Lenders and Administrative Agent.

#### Statement of Agreements

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lenders to extend credit to Borrower, Guarantor hereby guarantees to Administrative Agent and Lenders the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

1. Guaranty of Payment. Guarantor hereby jointly and severally, unconditionally and irrevocably guarantees to Administrative Agent and Lenders the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of (a) all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to the terms of the Note, the Loan Agreement, the Mortgage, the Environmental Agreement, any application, agreement, note or other document executed and delivered in connection with any Swap Contract or any other Loan Documents, including any indemnifications contained in the Loan Documents, now or hereafter existing, and all renewals, extensions, refinancings, modifications, supplements or amendments of such indebtedness, or any of the Loan Documents, or any part thereof, (b) payment by Borrower of all customary or necessary costs and expenses actually incurred by Borrower, Administrative Agent or Lenders in connection with the operation, maintenance and management of the Land and the Improvements, including, without limitation, condominium common charges and assessments, insurance premiums, taxes and assessments, payments in lieu of taxes, utilities, repair, replacement and all other maintenance costs and expenses, equipment lease payments, management fees, professional fees, accounting fees, salaries, fringe and other benefits due to all employees engaged in the operation, maintenance or management of the Land and the Improvements, payroll and related taxes and any and all other customary or necessary operating expenses, (c) any and all transfer taxes which may be due in connection with the foreclosure of the Mortgage or delivery of a deed-in-lieu of foreclosure of the Mortgage, (d) all legal and other costs or expenses paid or incurred by or on behalf of Administrative Agent and/or Lenders in the enforcement thereof or hereof, (e) all leasing commissions, tenant allowances and/or other amounts which Borrower is obligated to pay as landlord under any and all existing leases of the Property and under any and all future leases at the Property executed while Borrower owns the Property and (f) any loss, cost, damage or expense paid or incurred by or on behalf of Administrative Agent and Lenders by reason of (i) any fraud or material misrepresentation, (ii) taxes of any kind (whether characterized as transfer, gains or other taxes)



payable in connection with the foreclosure sale of the Property, irrespective of who pays such taxes, (iii) application of any proceeds of the Loan to any purpose other than as provided in the Loan Documents (provided that Guarantor's liability under this clause (iii) shall not apply to distributions made by Borrower more than thirty (30) days prior to a Default provided that such distributions are in the ordinary course of business and Borrower is solvent at the time of such distributions); (iv) the application of any insurance or condemnation proceeds or other funds or payments other than strictly in accordance with the Loan Documents, (v) the misapplication of any security deposits, (vi) rents, sales proceeds, or other sums received after default under the Loan Documents which are not applied to expenses of operating the Property or paid to Administrative Agent or a duly appointed receiver of the Property, (vii) any failure to deliver to Administrative Agent, after demand therefor, any agreements relating to the operation, management, leasing, use, occupancy or construction of the Property, (viii) any intentional physical waste in respect of the Property, (ix) any failure to pay or discharge any real estate tax, other tax, assessment, fine, penalty or lien against the Property to the extent revenue from leases of the Property was available to pay same, (x) liability as landlord under any lease(s) relating to the Property which liability accrued prior to Administrative Agent's or Lenders' succeeding to such interest of Borrower, which Administrative Agent or Lenders is or becomes obligated for by virtue of Administrative Agent or Lenders succeeding to the interests of Borrower, (xi) any Insolvency Event (as hereinafter defined), (xii) any state of facts or circumstances which are contrary to the representations and warranties set forth in Section 31 or (xiii) Lenders being required by any agreement entered into with a tenant of the Property to release any insurance and/or condemnation award proceeds as to which Borrower is not entitled to have applied to restoration of the Property pursuant to Sections 2.1(d), 2.1(e) and/or 2.1(g), as applicable of each Mortgage (the indebtedness described above in this Section 1 is herein collectively called the "Indebtedness"). Notwithstanding the foregoing, (A) Guarantor's aggregate liability in respect of the principal amount of the Loan (the "Principal Liability") shall be limited to the PL Amount as defined below (the limitation in this proviso being herein referred to as the "Principal Liability Limitation") and (B) Guarantor's liability in respect of interest, fees, penalties and late charges and in respect of clause (b) above shall be equal to the aggregate amount of all such amounts accrued and unpaid as of the Determination Date (as hereinafter defined), provided that (x) in no event shall the Principal Liability Limitation in the foregoing proviso affect Guarantor's liability hereunder as to all interest, fees, penalties, late charges and any other amounts (other than principal) due under the Loan Documents and any amounts due and owing pursuant to clauses (b), (c), (d), (e) and (f) above (the "Guarantor's Non-Principal Liability") and (y) the effectiveness or continuing effectiveness of the Principal Liability Limitation shall be conditioned on the absence of any Insolvency Event, it being understood and agreed that if said condition is not continuously satisfied Guarantor's liability hereunder in respect of the entire principal amount of the Loan and all other amounts due under the Loan Documents shall be in full force and effect and the Principal Liability Limitation shall be void and of no force or effect. The "PL Amount" shall mean an amount equal to zero dollars (\$0).

As used herein, the term "Determination Date" shall mean the date which is the earliest to occur of (1) the acceptance by Administrative Agent or Administrative Agent's designee of the conveyance of the premises encumbered by the Mortgage by deed or assignment in lieu of foreclosure, or (2) the date upon which a sale (whether made under a power of sale, by virtue of a judicial proceeding or judgment or decree of foreclosure or sale or otherwise) of such

mortgaged premises occurs as a result of enforcement of the Mortgage or (3) payment in full of Borrower's obligations under the Note, Mortgage and Loan Agreement.

As used herein, the term "Insolvency Event" shall mean any voluntary or collusive involuntary filing of any bankruptcy, insolvency or similar proceeding by or against Borrower or Guarantor.

In the event of a foreclosure sale, Guarantor agrees that Guarantor's Non-Principal Liability obligation hereunder shall not be reduced out of the proceeds of such sale except to the extent that such proceeds exceed the sum of (x) the unpaid principal amount of the Loan, (y) costs and expenses of such sale and (z) the amount of any taxes or assessments or any similar charges paid out of the proceeds of such sale or subject to which the Property has been sold. Nothing herein is intended to require Administrative Agent to proceed against Borrower or any security for the Loan before proceeding against Guarantor at any time or limit Administrative Agent's right to proceed against Guarantor at any time or from time to time for principal, interest, default interest and late charges guaranteed hereby which are not paid as and when the same become due in accordance with the terms of the Note, Loan Agreement and Mortgage whether or not Administrative Agent shall have declared the principal of the Note and accrued and unpaid interest, default interest and late charges payable thereunder or under the Mortgage or the Loan Agreement to be immediately due and payable.

This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, including all amounts advanced by Lenders in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

2. Guaranty of Performance. Guarantor additionally hereby unconditionally and irrevocably guarantees to Administrative Agent and Lenders the timely performance of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing:

(a) that the tenant improvement work required to be performed by the landlord under any and all leases, both existing and future, of space in the Improvements (the "TI Work") will be constructed in accordance with such leases and the Loan Agreement; and

(b) that the TI Work will be completed, lien free, and ready for occupancy, including delivery of any permits, certificates or governmental approvals required by law or the applicable lease, on or before the date required in such lease.

If any of such obligations of Borrower are not complied with, in any respect whatsoever, and without the necessity of any notice from Administrative Agent or Lenders to Guarantor, Guarantor agrees to (i) assume all responsibility for the completion of the TI Work and, at Guarantor's own cost and expense, cause the TI Work to be fully completed in accordance with the leases of the Property and the Loan Documents; (ii) pay all bills in connection with the construction of the TI Work; and (iii) indemnify and hold Administrative Agent and Lenders harmless from any and all loss, cost, liability or expense that Administrative Agent and Lenders

may suffer by reason of any such non-compliance. So long as all of such obligations are being performed by Borrower or Guarantor and no Default exists, Lenders will make the Loan proceeds, if any, available under and subject to the terms of the Loan Agreement. If after the occurrence of a Default, and without limiting the rights and remedies of Administrative Agent and Lenders, Administrative Agent, in its sole and absolute discretion, is dissatisfied with the progress of construction by Borrower and/or Guarantor, Administrative Agent may, at its option, without notice to Guarantor or anyone else, complete the TI Work either before or after commencement of foreclosure proceedings or before or after exercise of any other right or remedy of Administrative Agent against Borrower or Guarantor and expend such sums as Administrative Agent, in its sole and absolute discretion, deems necessary or advisable to complete the TI Work, and Guarantor hereby waives any right to contest any such expenditures by Administrative Agent and/or Lenders. The amount of any and all expenditures made by Administrative Agent for the foregoing purposes shall bear interest from the date made until repaid to Administrative Agent, at a rate per annum equal to the interest rate provided for in the Note and, together with such interest, shall be due and payable by Guarantor to Administrative Agent upon demand. Neither Lenders nor Administrative Agent have nor shall they ever have any obligation to complete the TI Work or take any such action. The obligations and liability of Guarantor under this Section 2 shall not be limited or restricted by the existence of (or any terms of) the guaranty of payment under Section 1.

### 3. Primary Liability of Guarantor.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Administrative Agent or Lenders to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever.

(b) Guarantor hereby agrees that in the event of (i) default by Borrower in payment or performance of the Guaranteed Obligations, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate; (ii) the failure of Guarantor to perform completely and satisfactorily the covenants, terms and conditions of any of the Guaranteed Obligations; (iii) the death, incompetency, dissolution or insolvency of Guarantor, provided, however, that the death of a Guarantor shall not be an Event of Default if a new guarantor satisfactory to Administrative Agent in its sole discretion assumes the deceased Guarantor's obligations within sixty (60) days of the death of such Guarantor; (iv) the inability of Guarantor to pay debts as they mature; (v) an assignment by Guarantor for the benefit of creditors; (vi) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for any of them or for any of their respective properties; (vii) the determination by Administrative Agent in good faith that a material adverse change has occurred in the financial condition of Guarantor; (viii) the entry of a judgment against Guarantor for an amount in excess of \$500,000 and Guarantor shall not discharge the same or cause it to be discharged within sixty (60) days from the entry thereof, or shall not

appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution or bond over such judgment by a commercially acceptable bonding company pending such appeal; (ix) a writ or order of attachment, levy or garnishment is issued against Guarantor; (x) the falsity in any material respect of, or any material omission in, any representation made to Administrative Agent and/or Lenders by Guarantor; or (xi) any transfer of assets of any Guarantor, without Administrative Agent's prior consent (except for transfers of assets for estate planning purposes valued at less than \$50,000 per year per Guarantor, customary political and charitable contributions, and transfers for which Guarantor receives consideration substantially equivalent to the fair market value of the transferred asset) (individually and collectively an "Event of Default"); then upon the occurrence of such Event of Default, the Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of Administrative Agent, and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Administrative Agent and/or Lenders of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the amount due to Administrative Agent or perform or observe the agreement, covenant, term or condition, as the case may be, and pay all damages and all costs and expenses that may arise in consequence of such Event of Default (including, without limitation, all attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses incurred by Administrative Agent in connection with the collection and enforcement of the Note, this Guaranty or any other Loan Document), whether or not suit is filed thereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal. It shall not be necessary for Administrative Agent, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or others liable on such indebtedness or for such performance, or to enforce any rights against any security that shall ever have been given to secure such indebtedness or performance, or to join Borrower or any others liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Administrative Agent from suing on the Note or foreclosing the Mortgage or from exercising any other rights thereunder, and if such foreclosure or other remedy is availed of, only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Mortgage, and Administrative Agent shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the Property or other collateral given for the Indebtedness or any part thereof, whether by foreclosure or otherwise, Administrative Agent may at its discretion purchase all or any part of the Property or collateral so sold or offered for sale for its own account and may, in payment of the amount bid therefor, deduct such amount from the balance due it pursuant to the terms of the Note, Mortgage and other Loan Documents.

(c) Suit may be brought or demand may be made against Borrower or against all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Administrative Agent and/or Lenders against any party hereto. Any time that Administrative Agent is entitled to exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Administrative Agent elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Administrative Agent elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

4. Certain Agreements and Waivers by Guarantor.

(a) Guarantor hereby agrees that neither the rights or remedies of Administrative Agent and Lenders nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

- (1) any limitation of liability or recourse in any other Loan Document or arising under any law;
- (2) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;
- (3) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;
- (4) any homestead exemption or any other exemption that is waivable under applicable law;

(5) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, including any impairment of Guarantor's recourse against any Person or collateral;

(6) whether express or by operation of law, any partial release of the liability of Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Administrative Agent and/or Lenders covering all or any part of the Guaranteed Obligations, any complete or partial release of any one or more of such guarantors under any such other guaranty, or any complete or partial release of Borrower or any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(7) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(8) either with or without notice to or consent of Guarantor: any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Administrative Agent and/or Lenders to Borrower, Guarantor, and/or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(9) any neglect, lack of diligence, delay, omission, failure, or refusal of Administrative Agent and/or Lenders to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(10) any failure of Administrative Agent and/or Lenders to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Administrative Agent and/or Lenders against Borrower or any security or other recourse, or of any new agreement between Administrative Agent and/or Lenders and Borrower, it being understood that Administrative Agent and/or Lenders shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and Guarantor shall be responsible for obtaining for itself information regarding Borrower, including, but not limited to, any changes in the business or financial condition of Borrower, and Guarantor acknowledges and agrees that Administrative Agent and/or Lenders shall have no duty to notify Guarantor of any information which Administrative Agent and/or Lenders may have concerning Borrower;

(11) if for any reason Administrative Agent and/or Lenders is required to refund any payment by Borrower to any other party liable for the payment or

performance of any or all of the Guaranteed Obligations or pay the amount thereof to someone else;

(12) the making of advances by Administrative Agent and/or Lenders to protect their interest in the Property, preserve the value of the Property or for the purpose of performing any term or covenant contained in any of the Loan Documents;

(13) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Administrative Agent, any Lender, or any other Person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement, or any other Loan Document;

(14) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or because the officers or Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(15) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender; or

(16) any other condition, event, omission, action or inaction that would in the absence of this paragraph result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement.

(17) any early termination of any of the Guaranteed Obligations;

(18) Administrative Agent's and/or Lenders' enforcement or forbearance from enforcement of the Guaranteed Obligations on a net or gross basis; or

(19) any invalidity, irregularity or unenforceability in whole or in part (including with respect to any netting provision) of any Swap Contract or any confirmation, instrument or agreement required thereunder or related thereto, or any transaction entered into thereunder, or any limitation on the liability of Borrower thereunder or any limitation on the method or terms of payment thereunder which may now or hereafter be caused or imposed in any manner whatsoever.

(b) In the event any payment by Borrower or any other Person to Administrative Agent and/or Lenders is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason Administrative Agent and/or Lenders is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Administrative Agent and/or Lenders shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Administrative Agent and/or Lenders of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Administrative Agent and/or Lenders or paid by Administrative Agent and/or Lenders to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Administrative Agent and/or Lenders and any attorneys' fees, costs and expenses paid or incurred by Administrative Agent and/or Lenders in connection with any such event. It is the intent of Guarantor, Administrative Agent and Lenders that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. Administrative Agent and/or Lenders shall be entitled to continue to hold this Guaranty in its possession for the longer of (i) the period after which any performance of obligations under the Environmental Agreement shall accrue, or (ii) a period of one year from the date the Guaranteed Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of Guarantor hereunder and/or to exercise any right or remedy of Administrative Agent and/or Lenders hereunder.

(c) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement, any Swap Contract or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Administrative Agent and/or Lenders.

5. Subordination. If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Administrative Agent for the benefit of Lenders a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and



payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Administrative Agent shall have the right to prove the claim of Administrative Agent and/or Lenders in any such proceeding so as to establish their rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Administrative Agent immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Administrative Agent and Lenders and shall have absolutely no dominion over the same except to pay it immediately to Administrative Agent; and

(d) Guarantor shall promptly upon request of Administrative Agent from time to time execute such documents and perform such acts as Administrative Agent may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including, but not limited to, execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Administrative Agent of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

6. Other Liability of Guarantor or Borrower. If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Administrative Agent and/or Lenders other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Administrative Agent and/or Lenders hereunder shall be cumulative of any and all other rights that Administrative Agent and/or Lenders may have against Guarantor. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including without limitation, its capacity as a general partner.

7. Lender Assigns. This Guaranty is for the benefit of Administrative Agent and Lenders and their successors and assigns, subject to the terms of the Loan Agreement, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations, or any part thereof, and agrees that failure to give notice of any such transfer or assignment will not affect the liabilities of Guarantor hereunder.

8. Binding Effect. This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

9. Governing Law; Forum; Consent to Jurisdiction. This Guaranty is an agreement executed under seal. The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of New York and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. If any Guarantor is a corporation, the designation "(SEAL)" on this Guaranty shall be effective as the affixing of such Guarantor's corporate seal physically to this Guaranty. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable. Guarantor hereby irrevocably submits generally and unconditionally for Guarantor and in respect of Guarantor's property to the nonexclusive jurisdiction of any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section and to the jurisdiction of any state or United States federal court sitting in the state in which any of the Land is located, over any suit, action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations. Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon Guarantor and may be enforced in any court in which Guarantor is subject to jurisdiction. Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address set forth at the end of this Guaranty, or at a subsequent address of which Administrative Agent receives actual notice from Guarantor in accordance with the notice provisions hereof, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Administrative Agent to serve process in any manner permitted by law or limit the right of Administrative Agent to bring proceedings against Guarantor in any other court or jurisdiction. Guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which Guarantor may otherwise be entitled under the laws of the United States of America or any State or possession of the United States of America now in force or which may hereinafter be enacted. The authority and power to appear for and enter judgment against the Guarantor shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more

occasions or from time to time in the same or different jurisdiction as often as the Administrative Agent shall deem necessary and desirable.

10. Invalidity of Certain Provisions. If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

11. Attorneys' Fees and Costs of Collection. Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by Administrative Agent and/or Lenders in the enforcement of or preservation of Administrative Agent's and/or Lenders' rights under this Guaranty including, without limitation, all attorneys' fees and expenses, investigation costs, and all court costs, whether or not suit is filed hereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guaranty against any other Guarantor, if there be more than one. Guarantor agrees to pay interest on any expenses or other sums due to Administrative Agent and/or Lenders under this Section 11 that are not paid when due, at a rate per annum equal to the interest rate provided for in the Note. Guarantor's obligations and liabilities under this Section 11 shall survive any payment or discharge in full of the Guaranteed Obligations.

12. Payments. All sums payable under this Guaranty shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

13. Controlling Agreement. It is not the intention of Administrative Agent, Lenders or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section 13 shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor, Administrative Agent and Lenders.

14. Representations, Warranties, and Covenants of Guarantor. Guarantor hereby represents, warrants, and covenants that: (a) Guarantor has a financial interest in Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which

Guarantor is bound or affected; (d) Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and under Delaware laws, is lawfully doing business in New York, and has full power and authority to enter into and perform this Guaranty; (e) Guarantor will indemnify Administrative Agent and Lenders from any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect; (f) there is no litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor; (g) all financial statements and information heretofore furnished to Administrative Agent and Lenders by Guarantor do, and all financial statements and information hereafter furnished to Administrative Agent and Lenders by Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Administrative Agent, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Administrative Agent, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (h) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (i) Administrative Agent and Lenders have no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower's financial and business condition; (j) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligations in full without assistance or support from Borrower or any other Person; and (k) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Mortgage, the Environmental Agreement, and the other Loan Documents. Guarantor's representations, warranties and covenants are a material inducement to Administrative Agent and Lenders to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

Guarantor further represents, warrants and covenants that if any Swap Contract shall at any time be in effect, (x) Guarantor has received and examined copies of each such Swap Contract, the observance and performance of which by Borrower is hereby guaranteed; (y) Guarantor will benefit from Administrative Agent's and/or any Lender's entering into each such Swap Contract and any transaction thereunder with Borrower, and Guarantor has determined that the execution and delivery by Guarantor of this Guaranty are necessary and convenient to the conduct, promotion and attainment of the business of Guarantor; and (z) Administrative Agent and Lenders have no duty to determine whether any Swap Contract, or any other transaction relating to or arising under any Swap Contract, will be or has been entered into by Borrower for purposes of hedging interest rate, currency exchange rate, or other risks arising in its businesses or affairs and not for purposes of speculation or is otherwise inappropriate for Borrower. Guarantor's representations, warranties and covenants are a material inducement to Administrative Agent to enter into the other Loan Documents and any Swap Contract shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

15. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in any Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

16. Cumulative Rights. The exercise by Administrative Agent and/or Lenders of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Administrative Agent and Lenders shall have all rights, remedies and recourses afforded to Administrative Agent and Lenders by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole and absolute discretion of Administrative Agent, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Administrative Agent and/or Lenders shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right, remedy or recourse of Administrative Agent and/or Lenders with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by Administrative Agent.

17. Term of Guaranty. This Guaranty shall continue in effect until all the Guaranteed Obligations are fully and finally paid, performed and discharged, except that, and notwithstanding any return of this Guaranty to Guarantor, this Guaranty shall continue in effect (i) with respect to any of the Guaranteed Obligations that survive the full and final payment of the indebtedness evidenced by the Note, (ii) with respect to all obligations and liabilities of Guarantor under Section 11 and (iii) as provided in Section 4(b).

18. Financial Statements. As used in this Section, “Financial Statements” means (i) for each reporting party other than an individual, a balance sheet, income statement, statements of cash flow and amount and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and, unless Administrative Agent otherwise consents, consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities, sources and uses of cash and liquidity verification, and, unless Administrative Agent otherwise consents, Financial Statements for each entity owned or jointly owned by the reporting party. Each party for whom Financial Statements are required is a “reporting party” and a specified period to which the required Financial Statements relate is a “reporting period”. Guarantor shall provide or cause to be provided to Administrative Agent the following:

(a) Financial Statements of Guarantor, and copies of filed federal and state income tax returns of Guarantor as and when required under the Loan Agreement; and

(b) From time to time promptly after Administrative Agent’s request, such additional information, reports and statements regarding the business operations and financial condition of each reporting party as Administrative Agent may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Administrative Agent and shall contain or be attached to the signed and dated written certification of the reporting party in form satisfactory to Administrative Agent to certify that the Financial Statements are furnished to Administrative Agent in connection with the extension of credit by Lenders and constitute a true and correct statement of the reporting party’s financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the entity satisfactory to Administrative Agent. All Financial Statements for a reporting party who is an individual shall be on Administrative Agent’s then-current personal financial statement form or in another form satisfactory to Administrative Agent. All fiscal year-end Financial Statements shall be audited or certified, as required by Administrative Agent, without any qualification or exception not acceptable to Administrative Agent, by independent certified public accountants acceptable to Administrative Agent, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation. All fiscal year-end Financial Statements of the following reporting parties shall be compiled or reviewed by independent certified public accountants acceptable to Administrative Agent.

All assets shown on the Financial Statements provided by Guarantor, unless clearly designated to the contrary shall, be conclusively deemed to be free and clear of any exemption or any claim of exemption of Guarantor at the date of the Financial Statements and at

all times thereafter. Acceptance of any Financial Statement by Administrative Agent and/or Lenders, whether or not in the form prescribed herein, shall be relied upon by Administrative Agent and Lenders in the administration, enforcement, and extension of the Guaranteed Obligations.

19. **Financial Covenants.** At all times during the term of the Loan, Guarantor shall maintain in its own name Liquidity (as hereinafter defined) of not less than \$15,000,000. As used herein, the term "Liquidity" shall mean (x) Available Commitments (as hereinafter defined), (y) unencumbered cash and (z) unencumbered Cash Equivalents (as hereinafter defined). As used herein, the term "Available Commitments" shall mean unconditional commitments from solvent members of Guarantor to contribute capital in cash to Guarantor, which capital commitments have not been pledged to any party, other than to the lenders under the Credit Agreement (as hereinafter defined), or encumbered in any way, as security for indebtedness or otherwise. As used herein, the term "Cash Equivalents" shall mean (i) any evidence of indebtedness, maturing not more than one (1) year after the date of issue, issued by the United States of America or any instrumentality or agency thereof, the principal, interest and premium, if any, of which is guaranteed fully by, or backed by the full faith and credit of, the United States of America, (ii) dollar denominated time deposits, certificates of deposit and bankers acceptances maturing not more than one (1) year after the date of purchase, issued by (x) any Lender or (y) a United States commercial banking institution having, or which is the principal banking subsidiary of a bank holding company having, combined capital and surplus and undivided profits of not less than \$200,000,000, has a commercial paper rating of "P-1" (or higher) according to Moody's, "A-1" (or higher) according to Standard & Poor's or the equivalent rating by any other nationally recognized rating agency and which is not on negative watch by any such rating agencies (any such bank, an "Approved Bank"), or (z) a non-United States commercial banking institution which is currently ranked among the 100 largest banks in the world (by assets, according to the American Banker), has combined capital and surplus and undivided profits of not less than \$500,000,000 or whose commercial paper (or the commercial paper of such bank's holding company) has a rating of "P-1" (or higher) according to Moody's, "A-1" (or higher) according to Standard & Poor's, or the equivalent rating by any other nationally recognized rating agency and which is not on negative watch by any such rating agencies, (iii) commercial paper, maturing not more than 270 days after the date of purchase, issued or guaranteed by a corporation (other than Borrower or Guarantor or any subsidiary of Borrower or Guarantor or any of their respective Affiliates) organized and existing under the laws of any state within the United States of America with a rating, at the time as of which any determination thereof is to be made, of "P-1" (or higher) according to Moody's, or "A-1" (or higher) according to Standard & Poor's, (iv) FDIC-insured demand deposits with any bank or trust company maintained in the ordinary course of business, (v) repurchase or reverse repurchase agreements covering obligations of the type specified in clause (i) with a term of not more than seven (7) days with any Approved Bank and (vi) shares of any money market mutual fund rated at least AAA or the equivalent thereof by Standard & Poor's or at least AAA or the equivalent thereof by Moody's, including, without limitation, any such mutual fund managed or advised by a Lender and which is not on negative watch by any such rating agencies. As used herein, the term "Credit Agreement" shall mean that certain Revolving Credit Agreement dated as of October 10, 2007 by and among Guarantor and Bank of America, N.A., as administrative agent for itself and certain other lenders. Together with its quarterly and annual Financial Statements, Guarantor

shall deliver a reasonably detailed schedule, certified by Guarantor to be true and accurate, of the Available Commitments as of the date of each such Financial Statement.

20. Disclosure of Information. In accordance with the Loan Agreement Lenders may sell or offer to sell the Loan or interests in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant, to Lenders' affiliates, including without limitation Banc of America Securities LLC, to any regulatory body having jurisdiction over Administrative Agent or any Lender and to any other parties as necessary or appropriate in Lenders' reasonable judgment, any information Lenders now have or hereafter obtain pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including, without limitation, information regarding any security for the Guaranteed Obligations or for this Guaranty, credit or other information on Guarantor, Borrower, and/or any other party liable, directly or indirectly, for any part of the Guaranteed Obligations.

21. Right of Set-Off. Upon the occurrence and during the continuance of any Default, however defined, in the payment or performance when due of any of the Guaranteed Obligations, Lenders are hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, without notice to any Person (any such notice being expressly waived by Guarantor to the fullest extent permitted by applicable law), to set off and apply any and all deposits, funds, or assets at any time held and other indebtedness at any time owing by any Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, whether or not any such Lender or Administrative Agent shall have made any demand under this Guaranty or exercised any other right or remedy hereunder. Lenders will promptly notify Administrative Agent, the other Lenders and Guarantor after any such set-off and application made by any such Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lenders under this Section 21 are in addition to the other rights and remedies (including other rights of set-off) that Administrative Agent and Lenders may have and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Administrative Agent.

22. Subrogation. Notwithstanding anything to the contrary contained herein, Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Indebtedness or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Indebtedness has been fully and finally paid. This waiver is given to induce Administrative Agent and Lenders to make the Loan to Borrower.

23. Further Assurances. Guarantor at Guarantor's expense will promptly execute and deliver to Administrative Agent upon Administrative Agent's request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

24. No Fiduciary Relationship. The relationship between Administrative Agent, Lenders and Guarantor is solely that of lenders (acting through Administrative Agent) and guarantor. Administrative Agent and Lenders have no fiduciary or other special relationship



with or duty to Guarantor and none is created hereby or may be inferred from any course of dealing or act or omission of Administrative Agent and/or Lenders.

25. Interpretation. If this Guaranty is signed by more than one Person as “Guarantor”, then the term “Guarantor” as used in this Guaranty shall refer to all such Persons, jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guaranty are made by and shall be binding upon each and every such Person, jointly and severally and Administrative Agent may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Mortgage and/or applicable law with respect to the Property or any other Loan Documents. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other gender. Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents. All references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms “herein”, “hereof”, “hereto”, “hereunder” and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms “include” and “including” shall be interpreted as if followed by the words “without limitation”. All references in this Guaranty to sums denominated in dollars or with the symbol “\$” refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. For purposes of this Guaranty, “Person” or “Persons” shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including governmental bodies, agencies, or instrumentalities, as well as natural persons.

26. Time of Essence. Time shall be of the essence in this Guaranty with respect to all of Guarantor’s obligations hereunder.

27. Counterparts. This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which taken together shall constitute but one and the same agreement.

28. Entire Agreement. This Guaranty embodies the entire agreement between Administrative Agent, Lenders and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. No condition or conditions precedent to the effectiveness of this Guaranty exist. This Guaranty shall be effective upon execution by Guarantor and delivery to Administrative Agent. This Guaranty may not be modified, amended or superseded except in a writing signed by Administrative Agent and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded.

29. **WAIVER OF JURY TRIAL. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES’ AGREEMENT TO ARBITRATE ANY “DISPUTE” (FOR PURPOSES OF THIS SECTION, AS DEFINED BELOW) AS SET FORTH IN THIS GUARANTY, TO THE EXTENT ANY “DISPUTE” IS NOT SUBMITTED TO**

ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS, AND GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

30. Credit Verification. Each legal entity and individual obligated on this Guaranty, whether as a Guarantor, a general partner of a Guarantor or in any other capacity, hereby authorizes Administrative Agent and Lenders to check any credit references, verify his/her employment and obtain credit reports from credit reporting agencies of Administrative Agent's and Lenders' choice in connection with any monitoring, collection or future transaction concerning the Loan, including any modification, extension or renewal of the Loan. Also in connection with any such monitoring, collection or future transaction, Administrative Agent and Lender are hereby authorized to check credit references, verify employment and obtain a third party credit report for the spouse of any married person obligated on this Guaranty, if such person lives in a community property state.

31. Special Representation and Warranty as to Leases. Guarantor hereby represents and warrants to Administrative Agent and Lenders that all of the statements contained in any and all estoppels regarding the leases from Borrower to Lenders (the "Borrower Estoppels") are true and correct as of the date hereof, including, without limitation, that all tenants are not in default in the payment of rent as of the date hereof, there is no default by landlord or tenant under any of the leases at the Property as of the date hereof and no amounts due by Borrower to any tenant at the Property (except as may be expressly set forth in the Borrower Estoppels).

32. Prior Guaranty Restated. This Guaranty amends and restates the terms and provisions of the Original Guaranty in its entirety.

**THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE**

**PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

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GUARANTOR:

ACADIA STRATEGIC OPPORTUNITY FUND III LLC, a Delaware limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

Address of Guarantor:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605

This is to certify that this Guaranty was executed in my presence on the date hereof by the party whose signature appears above in the capacity indicated.

/s/ Debra Leibler Jones

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Notary Public

Debra Leibler Jones  
No. 01LE6005994  
Qualified in Dutchess County  
Commission Expires: April 20, 2014

My Commission Expires:

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Address of Lender:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036  
Attention: Mr. Gregory Egli  
Telefax: 212-293-8197

Administrative Agent hereby agrees to paragraph 32 of this Guaranty.

BANK OF AMERICA, N.A., as Administrative Agent

By /s/ Gregory Egli

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Gregory Egli  
Senior Vice President

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AGREEMENT OF MODIFICATION OFNOTE CONSOLIDATION AND MODIFICATION AGREEMENT

THIS AGREEMENT OF MODIFICATION OF NOTE CONSOLIDATION AND MODIFICATION AGREEMENT ("Agreement") dated November 5, 2010 but deemed effective as of October 30, 2010 (the "Effective Date") made by and between ACADIA TARRYTOWN LLC, a New York limited liability company having an address c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 ("Borrower") and ANGLO IRISH BANK CORPORATION LIMITED (f/k/a Anglo Irish Bank Corporation plc) a limited company organized under the laws of the Republic of Ireland, having an address at Stephen Court, 18/21 St. Stephen's Green, Dublin 2, Ireland ("Lender")

WITNESSETH:

A. Borrower is indebted to Lender pursuant to the terms of a Note Consolidation and Modification Agreement dated as of October 30, 2007 in the original principal sum of \$9,800,000.00 (the "Loan") from Borrower in favor of Lender (the "Note").

B. Borrower's obligations to Lender under the Note are secured by, *inter alia*, a Mortgage Consolidation and Modification Agreement dated as of October 30, 2007 made by Borrower in favor of Lender (the "Mortgage") encumbering that certain property located at 124-134 Wildey Street, Greenburgh, New York (the "Mortgaged Property"). The Mortgage, the Note and all other documents executed by Borrower or Guarantor in connection therewith are hereinafter collectively referred to as the "Loan Documents". Capitalized terms not defined herein shall have the respective meanings ascribed thereto in the Note.

C. Borrower desires to exercise the first Extension Option to extend the Maturity Date of the Note to the First Extended Maturity Date and in connection therewith, Borrower and Lender wish to document the terms of such extension and modify other terms of the Note as more fully set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Extension of Maturity Date. Borrower and Lender acknowledge and agree that the term of the Loan is hereby extended to the First Extended Maturity Date, or October 30, 2011. Borrower represents and warrants that the conditions to such Extension Option (as set forth in clauses (a) through and including (g) of Paragraph 6 of the Note) have been satisfied, to wit:

- a. As of the Effective Date, no default under the Loan Documents exists beyond any applicable notice and grace period;
  - b. As of the Effective Date (subject to the Prepayment, as defined in and required by Paragraph 2 below), the Loan to Value Ratio, as based on the
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value of the Mortgaged Property set forth in that certain MAI appraisal prepared by Cushman & Wakefield dated October 28, 2010 delivered to Lender, is no greater than seventy percent (70%);

- c. As of the Effective Date, based on the twelve (12) month pro-forma management statement submitted by Borrower to Lender on August 25, 2010 for the period from July 1, 2010 to June 30, 2011, the Mortgaged Property has achieved a Debt Service Coverage Ratio of 1.30 as of the most recent Calculation Date immediately preceding the Effective Date;
- d. Borrower has delivered the First Extension Notice in a timely manner (which First Extension Notice was dated September 13, 2010);
- e. As of the Effective Date, at least eighty-five percent (85%) of the Mortgaged Property is subject to satisfactory bona-fide third party leases, based on the certified rent roll Borrower has delivered to Lender dated October 18, 2010;
- f. Borrower has duly executed this Agreement and any other documents that Lender reasonably requires in connection with documenting the Extension Option; and
- g. Borrower has herewith paid to Lender the sum of \$20,650.00 as the extension fee equal to 0.25% of the outstanding principal balance of the Loan as of the Effective Date (as set forth in Paragraph 2 below) and shall pay all of the costs and expenses reasonably incurred by Lender.

2. Prepayment. Notwithstanding anything to the contrary set forth in Paragraph 4 of the Note or elsewhere in the Note, Borrower and Lender acknowledge and agree that Borrower may prepay the Note in part. Accordingly, Borrower has made a prepayment to Lender in the amount of \$1,372,885.00 (the "Prepayment") which Prepayment shall be applied as of the Effective Date, resulting in an outstanding principal balance under the Note of \$8,260,000.00. No Prepayment Premium is due in connection with the Prepayment.

3. Definition Deemed Interest Rate. Borrower and Lender acknowledge and agree that the definition of "Deemed Interest Rate" set forth in Paragraph 3(i) of the Note is hereby deleted and replaced in its entirety with the following:

"(i) "Deemed Interest Rate" shall mean (i) with respect to any portion of the Loan which is subject to Hedging Obligations, the actual rate of interest payable under the applicable Hedging Contract, and (ii) with respect to any portion of the Loan which is not subject to Hedging Obligations, the greater of (a) the Applicable Interest Rate then in effect and (b) seven percent (7.00%) per annum.

4. No further obligation to advance. Borrower and Lender hereby acknowledge and agree that the TI/LC Reserve described in Paragraph 27 of the Note has not been advanced and hereafter shall not be available to be advanced by Lender to Borrower. Accordingly, Paragraph 27

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of the Note is hereby deleted in its entirety. Lender shall have no further obligation to advance any loan proceeds and the outstanding principal balance as of the Effective Date (applying the Prepayment) shall be as set forth in Paragraph 2 herein.

5. Ratification. Borrower hereby ratifies and reaffirms its obligations under the Note, as modified hereby, and the Loan Documents, and represents and warrants to Lender that the Loan Documents are valid, binding and in full force and effect and nothing herein contained shall be construed to impair the security or affect the first priority of the lien of the Mortgage, nor impair any rights or powers which Lender or its successors may have for nonperformance of any term of any of the Loan Documents. Borrower has no existing claims or causes of action against Lender relating to or arising out of the Loan, and the Loan Documents and there are no offsets or defenses by Borrower to the payment of any amounts required to be paid by Borrower under the Loan Documents, or otherwise to the enforcement by Lender of the Loan Documents, as modified hereby.

6. Successors and Assigns. This Agreement shall be binding on, and inure to the benefit of, the successors, assigns, heirs, distributees, executors, administrators and legal representatives of the parties hereto.

7. No Waiver. No failure by Lender to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by such holder of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

8. Severability. The terms and provisions of this Agreement are severable, and if any term or provision shall be determined to be superseded, illegal, invalid or otherwise unenforceable in whole or in part pursuant to applicable law by a governmental authority having jurisdiction, such determination shall not in any manner impair or otherwise affect the validity, legality or enforceability of that term or provision in any other jurisdiction or any of the remaining terms and provisions of this Agreement in any jurisdiction.

9. Miscellaneous. This Agreement represents the entire understanding and agreement of the parties with respect to the subject matter hereof. The parties acknowledge and agree that that if the terms and provisions of the Note in any way conflict with the terms and provisions contained in this Agreement, the terms and provisions herein contained shall prevail. No representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by any party that are not set forth expressly in this Agreement. This Agreement may not be amended, modified or supplemented at any time whatsoever unless such amendment, modification or supplement is reduced to writing and executed by all parties hereto. This Agreement shall be governed by the laws of the State of New York. This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

10. Consent. Guarantor hereby expressly consents to the execution and delivery of this Agreement by Borrower and ratifies and confirms Guarantor's obligations to Lender under the Non-Recourse Carve Out Guaranty Agreement dated as of October 30, 2007 and Environmental Indemnity Agreement dated as of October 30, 2007. Guarantor has no existing claims or causes of

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action against Lender relating to or arising out of the Loan, and the Loan Documents and there are no offsets or defenses by Guarantor to the payment of any amounts required to be paid by Guarantor under the Loan Documents, or otherwise to the enforcement by Lender of the Loan Documents, as modified hereby.

11. Assignability. Notwithstanding anything to the contrary contained in the Note or any of the Loan Documents, Borrower hereby acknowledges and agrees that Lender may assign, negotiate, pledge, sell or otherwise grant participations in the Loan to (a) any commercial bank, savings and loan association, savings bank, lending institution, fund, equity group, real estate investment trust or other similar Person (i) organized under the laws of the United States, or any State thereof or the District of Columbia; (ii) organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development (the "OECD"), or a political subdivision of any such country, provided that such bank is acting through a branch or agency located in the country in which it is organized or another country which is also a member of the OECD or the central bank of any country which is a member of the OECD, and/or (b) any institution, organization or any other type of Person organized under the laws of any other country which is a member of the OECD, or a political subdivision of any such country, for the purpose of acquiring financial assets of commercial banks, savings and loan associations, savings banks, or other lending institutions organized under any of the criteria described in clauses (a) (i) or (ii) above. Except as provided for above, the remaining provisions of the Loan Documents regarding assignment and participations shall remain in effect. Lender may at any time pledge all or any portion of its interest and rights under the Loan Documents (including all or any portion of the Note, as modified hereby) to (i) any of the twelve Federal Reserve Banks organized under §4 of the Federal Reserve Act, 12 U.S.C. §341, or (ii) any central bank or similar banking entity organized under the laws of any other country which is a member of the OECD, or a political subdivision of any such country. No such pledge or the enforcement thereof shall release the pledgor Lender from its obligations hereunder or under any of the other Loan Documents.

[NO FURTHER TEXT ON THIS PAGE]

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WHEREFORE, the parties hereto have duly executed this Agreement as of the Effective Date.

**BORROWER:**

**ACADIA TARRYTOWN LLC**, a New York limited liability company

By: /s/ Robert Masters

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Name: Robert Masters  
Title: Senior Vice President

[ SIGNATURES CONTINUE ON THE FOLLOWING PAGE ]

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**LENDER:**

**ANGLO IRISH BANK CORPORATION LIMITED**

By: /s/ Brendan Farrell

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Name: Brendan Farrell  
Title: Director

By: /s/ Lorcan McCluskey

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Name: Lorcan McCluskey  
Title: Associate Director

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

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**AGREED AS TO PARAGRAPH 10 AND CONSENTED TO:**

**GUARANTOR:**

**ACADIA STRATEGIC OPPORTUNITY FUND, LP,**

a Delaware limited partnership

By: Acadia Realty Acquisition I, LLC, its general partner

By: Acadia Realty Limited Partnership, its sole member

By: Acadia Realty Trust, its general partner

By: /s/ Robert Masters

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Name: Robert Masters

Title: Senior Vice President

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SECOND AMENDMENT TO BUILDING LOAN AGREEMENT

Dated: as of October 20, 2010

By and between

ACADIA ATLANTIC AVENUE, LLC,  
as Borrower

and

U.S. BANK NATIONAL ASSOCIATION, NOT INDIVIDUALLY  
BUT SOLELY AS TRUSTEE FOR THE MAIDEN LANE COMMERCIAL  
MORTGAGE-BACKED SECURITIES TRUST 2008-1,  
as Lender

Location: Atlantic Avenue  
Borough: Brooklyn  
County: Kings  
Block: 4145  
Lots: 1, 13 and 23

MERS MIN: 8000101-0000007166-7

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SECOND AMENDMENT TO BUILDING LOAN AGREEMENT

This SECOND AMENDMENT TO BUILDING LOAN AGREEMENT (this "**Amendment**"), dated as of October 20, 2010 (the "**Effective Date**"), by and between **U.S. BANK NATIONAL ASSOCIATION, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE FOR THE MAIDEN LANE COMMERCIAL MORTGAGE-BACKED SECURITIES TRUST 2008-1**, c/o Bank of America, 900 West Trade Street, S 650, NCI-026-06-01, Charlotte, North Carolina 28255 ("**Lender**") and **ACADIA ATLANTIC AVENUE, LLC**, a Delaware limited liability company, having its principal place of business at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue-Suite 260, White Plains, New York 10605 ("**Borrower**"), and acknowledged and agreed to by **ACADIA STRATEGIC OPPORTUNITY FUND II, LLC**, a Delaware limited liability company ("**Fund II**"), **POST MANAGEMENT, LLC**, a Delaware limited liability company ("**Post**"; Fund II and Post, individually and/or collectively, as the context may require, the "**Guarantor**") and **SELF STORAGE MANAGEMENT LLC**, a Delaware limited liability company ("**Manager**").

WITNESSETH:

WHEREAS, pursuant to the terms and conditions of that certain Building Loan Agreement, dated as of December 26, 2007, which Building Loan Agreement was filed in the office of the Clerk of Kings County ("**County Clerk**") on January 10, 2008 in Control 002427648-01, as amended by that certain Amendment to Building Loan Agreement, dated as of March 12, 2008 (as the same has been or may be amended, renewed, modified, extended, replaced or supplemented from time to time, the "**Building Loan Agreement**"), Bear Stearns Commercial Mortgage, Inc. ("**Bear Stearns**") made a loan to Borrower in the principal amount of up to Eleven Million Two Hundred Twenty-Nine Thousand Two Hundred Sixty and 33/100 Dollars (\$11,229,260.33) (the "**Building Loan**"), which Building Loan is secured, inter alia, by that certain Building Loan Mortgage and Security Agreement, dated as of December 26, 2007, given by Borrower to Bear Stearns encumbering that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof, and the buildings, structures and improvements now or hereafter located thereon (collectively, the "**Property**");

WHEREAS, Lender has succeeded to the interest, rights, duties and obligations of Bear Stearns with respect to the Building Loan and is now the holder of the Building Loan Agreement and the other Loan Documents (as defined in the Building Loan Agreement);

WHEREAS, the parties hereto desire to amend the Building Loan Agreement as set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant, agree, represent and warrant as follows:

1. Representations and Warranties. Borrower and Guarantor hereby represent and warrant to Lender that, as of the Effective Date hereof:

(a) The Project, including the Project Improvements, was completed on or about June

(b) Attached hereto as Schedule I is a true, accurate and complete list of each contractor, materialman, laborer, workman, engineer, architect or other Person who could have standing to file a lien against the Property pursuant to the Lien Law (individually, each, a “**Work Provider**” and collectively, the “**Work Providers**”) in connection with the Project Improvements, the Completion of the Improvements and any other work performed at the Property (collectively, the “**Work**”);

(c) Each Work Provider has completed its respective Work;

(d) No Work Provider has performed any Work at the Property during eight (8) months prior to the Effective Date;

(e) All Work at the Property performed prior to the Effective Date has been paid for and is evidenced by unconditional final lien waivers;

(f) Borrower has previously delivered to Lender unconditional final lien waivers fully executed by the applicable Work Provider with respect to all Work and all amounts paid to such Work Provider;

(g) There are no mechanic’s liens currently recorded against the Property that have not been bonded and Borrower is not aware of any other potential liens which could be filed against the Property;

(h) After giving effect to the provisions of this Amendment and the other documents entered into by Borrower in connection herewith, no default or Event of Default shall be continuing under the Loan Documents and there is no existing condition which, but for the passage of time or the giving of notice, could result in an Event of Default under the Loan Documents;

(i) The outstanding principal balance of the Building Loan is \$10,140,619.77; and

(j) The Property is not subject to any existing municipal violations, including, without limitation, any violations issued by the New York City Department of Buildings.

2. Agreement with respect to the Final Advance.

(a) Borrower, Guarantor and Lender hereby acknowledge and agree that the conditions to release the Final Advance, as set forth in Section 2.12 of the Building Loan Agreement, have not been satisfied by Borrower and that Borrower is no longer permitted to request and/or receive the Final Advance under the Building Loan, pursuant to the express provisions thereof, now or at any time hereafter. Borrower and Guarantor hereby rescind, and acknowledge as void, any pending Draw Request delivered to Lender which has not been funded in whole or in part on or before the date hereof.

(b) Notwithstanding anything to the contrary in the Building Loan Agreement, Borrower, Lender and Guarantor hereby agree that as of the Effective Date, Borrower shall not

be permitted to request and/or receive any further Advances under the Building Loan.

3. Amendment to Building Loan Agreement.

(a) The following defined terms as defined in Section 1.1 of the Building Loan Agreement are hereby deleted in their entirety and replaced with the following:

“**Gross Income from Operations**” shall mean, for any period, all sustainable income, computed in accordance with GAAP, derived from the ownership and operation of the Property from whatever source during such period, *including*, but not limited to, Rents from tenants in occupancy and paying full contractual rent without right of offset or credit, utility charges, escalations, forfeited security deposits, service fees or charges, license fees, parking fees, rent concessions or credits, business interruption or other loss of income or rental insurance proceeds or other required pass-throughs and interest on Reserves, if any, but *excluding*, Rents from tenants that are included in any Bankruptcy Action, sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, interest on credit accounts, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, Insurance Proceeds (other than business interruption or other loss of income or rental insurance), Awards, unforfeited security deposits, utility and other similar deposits and any disbursements to Borrower from the Reserve Funds, if any.

“**Interest Rate**” shall mean seven and three hundred forty-four thousandths percent (7.344%).

“**Monthly Debt Service Payment Amount**” shall mean for each Payment Date (a) commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in October, 2010, the Monthly Interest Payment Amount, (b) commencing with the Payment Date occurring in November, 2010 through and including the Payment Date occurring in April, 2012 (the “**Accrual Period**”), the Accrual Period Monthly Payment Amount, and (c) commencing with the Payment Date occurring in May, 2012 and on each Payment Date thereafter, the P&I Payment Amount.

(b) The following defined terms shall be incorporated into Section 1.1 of the Building Loan Agreement:

“**Accrual Period Monthly Payment Amount**” shall mean an amount equal to the Net Cash Flow Before Debt Service (defined below) for the Interest Period second preceding the then applicable Payment Date, provided, that, in the event the Net Cash Flow Before Debt Service for such period is less than the Monthly Interest Payment Amount (such deficiency, the “**Accrual Period Shortfall**”), then Borrower shall pay such Accrual Period Shortfall as follows:

First, if on any prior Payment Date there were any NOI Errors, then the

remaining Accrual Period Shortfall (or the applicable portion thereof) shall be paid by Borrower (from funds other than funds derived from the use, occupancy, operation and ownership of the Property) in an amount not to exceed the aggregate amount of NOI Errors from such prior Payment Dates;

Second, in the event the Accrual Period Shortfall has not been paid in full as a result of the foregoing and if on any prior Payment Date there were any Excess Funds, then the Accrual Period Shortfall (or the applicable portion thereof) shall be paid by Borrower (from funds other than funds derived from the use, occupancy, operation and ownership of the Property) in an amount not to exceed the aggregate amount of Excess Funds from such prior Payment Dates;

Third, in the event the Accrual Period Shortfall has not been paid in full as a result of the foregoing and provided no Event of Default is then continuing, then the remaining Accrual Period Shortfall (or the applicable portion thereof) shall be disbursed by Lender from the Interest Reserve Account in an amount not to exceed the then remaining amount on deposit in the Interest Reserve Account (and Borrower hereby irrevocably directs Lender to apply such Interest Reserve Funds to the remaining Accrual Period Shortfall);

Fourth, in the event the Accrual Period Shortfall has not been paid in full, the remaining Accrual Period Shortfall shall accrue and (x) immediately commence earning interest at the Interest Rate to the extent permitted by law and (y) to the extent remaining unpaid at the Maturity Date, be due and payable in full at the Maturity Date (the “**Accrued Interest**”);

provided, however, in no event shall the Accrual Period Monthly Payment Amount exceed the Monthly Interest Payment Amount for such Interest Period.

For the avoidance of doubt and for purposes of illustration and example, for the Payment Date occurring in March, 2011, the Accrual Period Monthly Payment Amount shall be calculated based upon the Net Cash Flow Before Debt Service for the Interest Period from January 1, 2011 through and including January 31, 2011.

As used herein, “**Net Cash Flow Before Debt Service**” shall mean all income derived from the use, occupancy, operation and ownership of the Property, from any source whatsoever, *less* Operating Expenses.

“**Accrued Interest**” shall have the meaning set forth in the definition of “Accrual Period Monthly Payment Amount”.

“**Approved Lender**” shall mean a bona-fide, third party lender which is unaffiliated with any Borrower Party and is otherwise regularly engaged in



making commercial real estate loans in the State of New York.

“**BLA Modification Effective Date**” shall mean October 20, 2010.

“**BLA Modification Agreement**” shall mean that certain Second Amendment to Building Loan Agreement, dated as of the BLA Modification Effective Date, by and among Borrower, Lender, Guarantor and Manager.

“**Borrower Party**” and “**Borrower Parties**” shall mean each of Borrower, Guarantor, the constituent members of such Person and each of their principals, directors, officers, employees, beneficiaries, shareholders, partners, members, trustees, agents, or Affiliates or any legal representatives, successors or assigns of any of the foregoing.

“**Excess Funds**” shall mean, with respect to any applicable Payment Date, an amount equal to Net Cash Flow Before Debt Service *less* the applicable Monthly Debt Service Payment Amount, as determined by Lender in its sole but good faith discretion after Lender’s review of the applicable Monthly Income Reports.

“**NOI Error**” shall mean, with respect to any applicable Payment Date, an amount equal to difference of (i) the actual Net Cash Flow Before Debt Service for the applicable Interest Period as determined by Lender in its sole but good faith discretion after Lender’s review of the Monthly Income Report, *less* (ii) the amount of Net Cash Flow Before Debt Service actually delivered by Borrower for the payment of the Accrual Period Monthly Payment Amount.

“**Imputed Debt Service**” shall mean the product of (A) an imputed constant monthly amount of debt service that would be due under the Building Loan or the Project Loan, as applicable, based upon (i) the outstanding principal amount of the applicable Loan as of the date hereof, (ii) the Interest Rate and (iii) a twenty-five (25) year amortization period, *times* (B) 12.

“**Interest Reserve Release DSCR**” shall mean a ratio for the applicable period in which:

(a) the numerator is the Net Operating Income (using annualized Operating Expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) as set forth in the statements required hereunder, without deduction for actual management fees incurred in connection with the operation of the Property less (A) management fees equal to the greater of (1) assumed management fees of six percent (6%) of Gross Income from Operations or (2) the actual management fees incurred, and (B) Replacement Reserve Fund contributions equal to \$16,500.00 per annum; and

(b) the denominator is the sum of (i) the Imputed Debt Service with

respect to the Building Loan and (ii) the Imputed Debt Service with respect to the Project Loan.

**“Loan Hold Period”** shall mean the period commencing on the BLA Modification Effective Date and continuing until forty-five (45) days after the date on which Lender sends written notice to Borrower of Lender’s good faith election to market the Loan for sale (the **“Marketing Notice”**); provided, however, that the Loan Hold Period shall automatically be extended for one and only one additional forty-five (45) day period if Borrower delivers to Lender, at any time during the original forty-five (45) day period, a fully executed Loan Offer Agreement.

**“Loan Offer Agreement”** shall mean a bona-fide loan commitment or term sheet fully executed by an Approved Lender and Borrower, reasonably acceptable to Lender, evidencing such Approved Lender’s intent to make a loan to Borrower by no later than the last day of the Loan Hold Period and in an amount generating sufficient net proceeds to prepay the Debt and the debt evidenced by the Project Loan Documents in full in accordance with the terms hereof and the other Loan Documents. Notwithstanding the foregoing, no proposed Loan Offer Agreement shall constitute a Loan Offer Agreement for purposes hereof unless it is accompanied by an Officer’s Certificate of Borrower certifying to the matters set forth in the first sentence of this definition and such other related matters as may be reasonably requested by Lender.

**“Monthly Income Report”** has the meaning set forth in Section 5.1.11(h) hereof.

**“Monthly Interest Payment Amount”** shall mean an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with Section 2.2 hereof.

**“Net Cash Flow Before Debt Service”** shall have the meaning set forth in the definition of **“Accrual Period Monthly Payment Amount”**.

**“P&I Payment Amount”** shall mean an amount based upon (i) interest accrued on the outstanding principal balance of the Building Loan (including any Accrued Interest which has been added to the outstanding principal balance of the Loan, if any) in accordance with Section 2.2 hereof and (ii) a principal payment based on the then outstanding principal balance of the Building Loan (including any Accrued Interest which has been added to the outstanding principal balance of the Loan, if any) and a twenty-five (25) year amortization schedule); it being specifically understood that the amount required to be paid to Lender above shall be calculated by Lender no less than fifteen (15) Business Days prior to the Payment Date occurring in May 2012 and such calculation shall be conclusive and binding on Borrower absent manifest error.

**“PLA Modification Agreement”** shall mean that certain Second Amendment to

(c) The second and third sentences of Section 2.3.1 of the Building Loan Agreement are hereby deleted in their entirety.

(d) The following shall be incorporated into the Building Loan Agreement as Section 2.4.6:

Section 2.4.6 *Permitted Prepayment Prior to Loan Sale*. (a) Notwithstanding anything to the contrary herein or in any of the other Loan Documents, during the Loan Hold Period, provided no Event of Default exists, Borrower may, at its option, prepay the Debt in whole (but not in part) upon thirty (30) days prior irrevocable notice to Lender, without payment of the Yield Maintenance Premium or the requirement to defease the Loan; provided, however, if for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment. For purposes of clarification, Borrower right to prepay the Loan pursuant to this Section 2.4.6 is a one-time right to prepay the Loan in whole (but not in part).

(b) Provided that (i) no Event of Default is then continuing, (ii) Borrower has elected to prepay the Loan pursuant to the express terms of Section 2.4.6(a) above and (iii) provided that the Mortgage continues to secure a bona fide obligation of the Borrower, Lender agrees to assign the Note and the Mortgage (the "**Refinancing Assignment**"), all without recourse, covenant or warranty of any nature, express or implied (other than that Lender is the then holder of the Note and the Mortgage), to any party designated by Borrower (other than Borrower or a nominee of Borrower) (the "**Mortgage Assignee**"), provided that (A) Borrower shall have first caused the same to be purchased for an amount equal to the Debt (including, without limitation, all unpaid principal and accrued interest due) (the "**Mortgage Purchase Price**") as set forth on a loan pay-off letter delivered by Lender or its servicer and upon payment by Borrower of (1) the reasonable out-of-pocket expenses of Lender incurred in connection with the assignments of mortgages and any related matters together with any nominal processing and administrative fees; and (2) Lender's reasonable attorney's fees for the preparation, delivery and performance of such assignment and related documents; (B) Borrower shall have caused the recording with the recorder's office of Kings County of an executed Statement of Oath under Section 275 of the New York Real Property Law; and (C) such assignment is not then prohibited by any federal, state or local law, rule, regulation, order, or by any other governmental authority. Borrower shall be responsible for all taxes, recording fees and other charges payable in connection with such assignment.

(e) Section 2.12.3 of the Building Loan Agreement is hereby deleted in its entirety

and replaced with the following:

2.12.3 [Intentionally omitted].

(f) The following shall be incorporated in Section 5.1.11 of the Loan Agreement as Section 5.1.11(h):

(h) During the Accrual Period, Borrower shall deliver to Lender, within thirty (30) days after the end of each Interest Period, a report detailing Borrower's calculation of Net Cash Flow Before Debt Service for such prior Interest Period (including, without limitation, Borrower's calculation of Net Operating Income, Gross Income From Operations, and Operating Expenses), which such report shall include such documents evidencing and/or supporting Borrower's calculations as reasonably requested by Lender (such report, a "**Monthly Income Report**"). Each Monthly Income Report shall be subject to the review and approval of Lender, in its sole but good faith discretion.

(g) The words "after the Property shall have achieved the Required Ratios at Completion," are hereby deleted in their entirety from the first sentence of Section 5.1.20.

(h) Section 5.1.28 of the Building Loan Agreement is hereby deleted in its entirety and Borrower and Lender hereby acknowledge and agree that Borrower has no further express promise to complete the construction of any Improvements.

(i) The following shall be incorporated into the Building Loan Agreement as Section 5.1.47:

5.1.47 Transfer Taxes.

(a) In the event of any sale or transfer of Borrower's interest in the Property, or any part thereof, including any sale or transfer by reason of foreclosure of the Mortgage or any prior or subordinate mortgage or by deed in lieu of any such foreclosure, Borrower shall timely and duly complete, execute and deliver to Lender all forms and supporting documentation required by any taxing authority to estimate and fix any tax payable by reason of such sale or transfer or recording of the deed evidencing such sale or transfer, including any New York State Transfer Tax and New York City Real Estate Transfer Tax (individually, a "**Transfer Tax**" and collectively, the "**Transfer Taxes**").

(b) Borrower shall pay the Transfer Taxes that may hereafter become due and payable with respect to any sale or transfer of the property described in this Section 5.1.47, and in the event of a default of such payment, Lender may pay the same and the amount of such payment shall be added to the Debt secured hereby and, unless incurred in connection with a foreclosure of the Mortgage or deed in lieu of such foreclosure, be secured by the Mortgage.

(c) In the event that Borrower fails to execute the same and such failure

continues for more than ten (10) days after Mortgagee requests Borrower to execute the same, Borrower hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact, coupled with an interest, to prepare and deliver any questionnaire, statement, affidavit or tax return in connection with any Transfer Tax applicable to any foreclosure or deed in lieu of foreclosure described in this Article.

(d) Borrower shall indemnify and hold harmless Lender against (i) any and all liability incurred by Lender for the payment of any Transfer Tax with respect to any transfer of Borrower's interest in the Property, and (ii) any and all expenses reasonably incurred by Lender in connection therewith including, without limitation, interest, penalties and reasonable attorneys' fees.

(e) The obligation to pay the taxes and indemnify Lender under this Section 5.1.47 is a personal obligation of Borrower (excluding its shareholders, directors and officers), whether or not Borrower is personally obligated to pay the Debt secured by the Mortgage and shall be binding upon and enforceable against the distributees, successors and assigns of Borrower with the same force and effect as though each of them had personally executed and delivered the Mortgage, notwithstanding any exculpation provision in favor of Borrower with respect to the payment of any other monetary obligations under the Mortgage.

(f) In the event that Borrower fails or refuses to pay a tax payable by Borrower with respect to a sale or transfer by reason of a foreclosure of this Security Instrument in accordance with this Section 5.1.47, the amount of the tax, any interest or penalty applicable thereto and any other amount payable pursuant to Borrower's obligation to indemnify Lender under this Section 5.1.47 may, at the sole option of Lender, be paid as an expense of the sale out of the proceeds of the mortgage foreclosure sale.

(g) The provisions of this Section 5.1.47 shall survive any transfer and the delivery of the deed affecting such transfer. Nothing in this Section 5.1.47 shall be deemed to grant to Borrower any greater rights to sell, assign or otherwise transfer the premises than are expressly provided in the Mortgage nor to deprive Lender of any right to refuse to consent to any transaction referred to in this Section 5.1.47.

(j) Section 5.2.12 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following: 5.2.12 [Intentionally omitted].

(k) All of the text of Section 7.1 of the Building Loan Agreement prior to the sentence commencing with the phrase "The Tax and Insurance Escrow Fund and the Monthly Debt Service Payment Amount..." shall be deleted in its entirety (including such text as set forth in Section 1.1 of the Second Amendment to the Building Loan Agreement) and replaced with the following:

Section 7.1 **Tax and Insurance Escrow Fund**. On the BLA Modification

Effective Date, Borrower shall pay to Lender an amount that, when added to the amounts payable under the next sentence, will be sufficient to accumulate with Lender sufficient funds to pay all Taxes and Other Charges payable on the next due date thereof at least thirty (30) days prior to their respective due dates, and to pay all Insurance Premiums that Lender estimates will be payable for the next renewal of the coverage afforded by the Policies upon the expiration thereof at least thirty (30) days prior to the expiration of the Policies. In addition, Borrower shall pay to Lender (or shall cause Lender to advance) on each Payment Date occurring after the BLA Modification Effective Date (a) one-twelfth (1/12) of the Taxes and Other Charges that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes and Other Charges at least thirty (30) days prior to their respective due dates, and (b) one-twelfth (1/12) of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the “**Tax and Insurance Escrow Fund**”).

(l) Section 7.2.1 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following:

Section 7.2.1 *Interest Reserve*. Borrower shall deposit with Lender (i) the amount of \$461,036.51 (the “**Interest Reserve Deposit**”) on the BLA Modification Effective Date (the “**Interest Reserve Fund**”). The account in which the Interest Reserve Fund is held shall hereinafter be referred to as the “**Interest Reserve Account**”. Notwithstanding the foregoing, Borrower hereby authorizes Lender to disburse the remaining amounts on deposit pursuant to the terms of the Rate Lock Agreement, in the amount of \$461,036.51, to be applied to satisfy Borrower’s Interest Reserve Deposit obligation set forth herein.

(m) Section 7.2.2 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following:

Section 7.2.2 *Release of Interest Reserve Funds*. Provided no Event of Default or monetary Default exists (i) during the Accrual Period, Interest Reserve Funds shall only be released from the Interest Reserve Account pursuant to the terms of the definition of Accrual Period Monthly Payment Amount and (ii) at any time after the end of the Accrual Period, to the extent Net Cash Flow Before Debt Service for the applicable Payment Date is less than the applicable P&I Payment Amount which would otherwise be due with respect to each of the Building Loan and the Project Loan (as applicable, the “**P&I Shortfall**”), then Borrower hereby irrevocably directs Lender to apply a portion of the remaining Interest Reserve Fund, to the extent sufficient funds are then available to satisfy the applicable P&I Shortfall, in an amount equal to the P&I Shortfall, in order to pay the applicable Monthly Debt Service Payment Amount.

Notwithstanding the foregoing or anything to the contrary contained herein, provided that no Event of Default or monetary Default exists, if, at any time after the end of the Accrual Period, Lender determines that the Property has achieved an Interest Reserve Release DSCR of 1.10 to 1.00 (calculated based upon (A) with respect to rental income as a component of Gross Income from Operations, the rental income of the Property for the three (3) month period preceding the date of calculation (as annualized) and (B) with respect to all other components of Net Operating Income, such amount for the twelve (12) month period preceding the date of calculation) for three (3) consecutive months (with the first of such three (3) months being no earlier than May, 2012), Lender shall, promptly after written notice from Borrower to Lender, release to Borrower any amount remaining in the Interest Reserve Account.

(n) The first sentence of Section 7.3.1 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following:

Borrower shall pay to Lender the following amounts: \$1,375.00 (the “**Replacement Reserve Monthly Deposit**”) on each Payment Date occurring after the BLA Modification Effective Date, for replacements and repairs required to be made to the Property (collectively, the “**Replacements**”).

(o) Section 7.4 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following: [Intentionally omitted].

(p) Section 7.7 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following: [Intentionally omitted].

(q) The sixth and seventh sentences of Section 7.11 of the Loan Agreement are hereby deleted in their entirety replaced with the following:

Interest earned on the Replacement Reserve Funds and the Interest Reserve Funds shall be added to and become a part of such Reserve Fund and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Any interest on the Tax and Insurance Escrow Funds shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender.

(r) Sections 8.1(a)(xiii), (xiv), (xv), (xvii) and (xviii) of the Building Loan Agreement are each hereby deleted in its entirety and each replaced with the following: [Intentionally omitted];

(s) Section 8.1(a)(xxi) of the Building Loan Agreement is hereby deleted in its entirety and each replaced with the following: (xxi) if, during the Accrual Period, Borrower shall fail to deliver to Lender all Net Cash Flow Before Debt Service for the second preceding Interest Period as and when due;

(t) The “.” at the end of Section 9.3(ix) of the Building Loan Agreement is hereby deleted and replaced with “; or”.

(u) The following shall be incorporated into the Building Loan Agreement as Section 9.3(x):

(x) if, during the Accrual Period, Borrower fails to deliver to Lender all Net Cash Flow Before Debt Service for the second preceding Interest Period as and when due.

(v) The words “or (v) if Borrower fails to obtain Lender’s prior written consent to any Transfer as Required by this Agreement or the Mortgage.” at the end of the unnumbered paragraph at the end of Section 9.3 of the Building Loan Agreement are hereby deleted in their entirety and replaced with the following:

(v) if Borrower fails to obtain Lender’s prior written consent to any Transfer as Required by this Agreement or the Mortgage; (vi) any litigation or other legal proceeding related to the Debt filed by a Borrower Party that delays, opposes, impedes, obstructs, hinders, enjoins or otherwise interferes with or frustrates the efforts of Lender to exercise any rights and remedies available to Lender as provided herein and in the other Loan Documents; (vii) any action by a Borrower Party contesting the end date of the Loan Hold Period; (viii) any misrepresentation set forth in (a) the affidavit made pursuant to and in compliance with Section 22 of the Lien Law in connection with the filing of this Agreement or any amendment or modification thereto or (b) Section 1 of the Amendment; or (ix) Borrower’s failure to comply with the obligations set forth in Section 5.1.47 hereof.

(w) Pursuant to Section 10.6 of the Building Loan Agreement, if a notice is to be given to Lender, such notice shall be given to:

Federal Reserve Bank of New York  
33 Liberty Street  
New York, New York 10045  
Attention: Helen Mucciolo  
Fax: (212) 720-1530

With a copy to:

Federal Reserve Bank of New York  
33 Liberty Street  
New York, New York 10045  
Attention: Stephanie Heller, Esq.  
Fax: (212) 720-1953

With a copy to:

BlackRock Financial Management Inc.  
55 East 52<sup>nd</sup> Street  
New York, New York 10055



Attention: Frank Pomar  
Fax: (212) 810-5666

With a copy to:

Alston & Bird LLP  
90 Park Avenue  
New York, New York 10016  
Attention: Gerard Keegan, Esq.  
Fax: (212) 210-9444

4. Agreement with respect to Additional Mezzanine Loan.

Borrower, Guarantor and Lender hereby acknowledge and agree that an Additional Mezzanine Loan shall not be permitted under Section 5.2.14 of the Building Loan Agreement and Borrower shall not be entitled to cause an Additional Mezzanine Loan Borrower to obtain an Additional Mezzanine Loan. Borrower and Guarantor hereby further acknowledge and agree that mezzanine indebtedness of any kind shall be expressly prohibited under the terms of the Loan Documents, as amended hereby.

5. Guarantor Financial Statements.

Notwithstanding anything to the contrary herein or in the other Loan Documents, Guarantor shall furnish to Lender (i) quarterly, within thirty (30) days following the end of each calendar quarter and (ii) annually, within one hundred and twenty (120) days following the end of each Fiscal Year, a complete copy of Guarantor's financial statements covering the applicable corresponding period then ended, including a balance sheet and income statement of Guarantor. With respect to Guarantor's annual financial statements, such statements shall be audited in accordance with GAAP by BDO Seidman (so long as they are licensed certified public accountants) and shall include a complete copy of Guarantor's federal and New York state income tax returns for the immediately preceding tax year within thirty (30) days after timely filing of same given all allowable extensions of time to file.

6. Ratification.

(a) Borrower hereby ratifies and confirms to Lender that all of the terms, representations, warranties, covenants, indemnifications and provisions of the Loan Documents are and shall remain in full force and effect, and are true and correct with respect to Borrower without change except as otherwise expressly and specifically modified by this Amendment. Borrower hereby agrees to continue to be bound by terms, representations, warranties, covenants, indemnifications and provisions of the Loan Documents.

(b) Guarantor hereby ratifies and confirms to Lender that all of the terms, representations, warranties, covenants, indemnifications and provisions of the Loan Documents, including without limitation, the Guaranty of Completion (as defined in the Building Loan Agreement), the Guaranty of Recourse Carve Outs (as defined in the Building Loan Agreement) and the Environmental Indemnity (as defined in the Building Loan Agreement), are and shall

remain in full force and effect, and are true and correct with respect to Guarantor without change except as otherwise expressly and specifically modified by this Amendment. Guarantor hereby agrees to continue to be bound by the terms, representations, warranties, covenants, indemnifications and provisions of the Loan Documents, including, without limitation, the Guaranty of Completion, the Guaranty of Recourse Carve Outs and the Environmental Indemnity.

7. Release and Waiver of Claims, Defenses and Rights of Set Off.

(a) Each of Borrower and Guarantor acknowledge that Lender has performed all obligations and duties owed to Borrower and Guarantor under the Loan Documents through the date hereof.

(b) As additional consideration for entering into this Amendment, each of Borrower and Guarantor hereby unconditionally and irrevocably forever releases, waives and forever discharges Lender, BlackRock Financial Management Inc., the Federal Reserve Bank of New York, Maiden Lane LLC and any Servicer of the Loan (together with each of their respective predecessors, successors and assigns, each of their respective Affiliates and each of their respective officers, directors, employees, agents and representatives) (each, a “**Releasee**” and, collectively, the “**Releasees**”) from any action, cause of action, suit, debt, defense, right of set off or other claim arising on or prior to the date hereof, whatsoever, in law or in equity, arising out of or in connection with this Amendment and/or the other Loan Documents, known or unknown against the Releasees.

(c) Each of Borrower and Guarantor, on behalf of itself and its successors, assigns, Affiliates and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that neither Borrower (nor any of its successors, assigns, Affiliates or other legal representatives) nor Guarantor (nor any of its successors, assigns, Affiliates or other legal representatives) will sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any claim released, remised and discharged by such Borrower pursuant to Section 8(a) above. If either of Borrower (or any of its successors, assigns, Affiliates or other legal representatives) or Guarantor (or any of its successors, assigns, Affiliates or other legal representatives) violates the foregoing covenant, such party agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable attorneys’ fees and costs incurred by any Releasee as a result of such violation.

(d) Lender hereby waives the Events of Defaults specifically alleged in (i) that certain letter to Borrower, dated as of June 4, 2009, from Lender, (ii) that certain letter to Borrower, dated as of July 2, 2009, from Stites & Harbison PLLC, (iii) that certain letter to Borrower and Guarantor, dated as of December 4, 2009, from Alston & Bird LLP, and (iv) that certain letter to Otterbourg, Steindler, Houston & Rosen, P.C., dated as of March 25, 2010, from Alston & Bird LLP.

8. No Novation.

The parties do not intend this Amendment nor the transactions contemplated hereby to

be, and this Amendment and the transactions contemplated hereby shall not be construed to be, a novation of any of the obligations owing by the Borrower under or in connection with the Loan Documents. Further, the parties do not intend this Amendment nor the transactions contemplated hereby to affect the priority of Lender's first priority lien in any of the collateral securing the Note in any way, including, without limitation, the liens, security interests and encumbrances created by the Mortgage and the other Loan Documents

9. Representations, Warranties, and Covenants.

(a) Borrower and Guarantor agree that all of the representations, warranties, and covenants contained in the Loan Documents continue to be true and correct as of the date hereof, and Borrower and Guarantor hereby agree to continue to be bound by the representations, warranties, and covenants on and after the date hereof. Borrower and Guarantor agree that any default under this Amendment shall constitute an Event of Default under the Loan Documents.

(b) Lender represents and warrants to Borrower and Guarantor that Lender has advised the Servicer and any agents acting on behalf of Lender of the terms and provisions of the Loan Documents as amended by this Amendment.

(c) Lender, Borrower and Guarantor hereby represent and warrant that the Completion of the Improvements occurred on or about June 22, 2009.

(d) Borrower hereby represents and warrants that (i) Borrower has obtained a Certificate of Eligibility under the Industrial and Commercial Incentive Program, (ii) Borrower has obtained an extension of the conditional use permit for the Property permitting the Property to be used as a self-storage facility and (iii) Borrower has removed, or caused to be removed, all USTs (as defined in the Building Loan Agreement) and ASTs (as defined in the Building Loan Agreement).

10. [Intentionally omitted].

11. Miscellaneous.

(a) The Recitals set forth above are true and correct and are hereby incorporated into the body of this Amendment by reference.

(b) Capitalized terms used herein and not specifically defined herein shall have the respective meanings ascribed to such terms in the Building Loan Agreement. The definition of "Agreement" set forth in the Building Loan Agreement shall be deemed to include this Amendment. Additionally, the definition of "Loan Agreement" and "Loan Documents" as set forth in the Loan Documents shall be deemed to include this Amendment and the other documents entered into in connection with this Amendment.

(c) All exhibits and schedules attached hereto are incorporated in this Amendment and are expressly made a part hereof.

(d) This Amendment has been duly executed and delivered by Borrower and Guarantor and is the legal, valid and binding obligation of Borrower and Guarantor, enforceable

in accordance with its terms, except as enforceability may be affected by applicable bankruptcy, insolvency, and similar proceedings affecting the rights of creditors generally, and general principles of equity.

(e) This Amendment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one and the same instrument, but in making proof hereof it shall be necessary to produce only one such counterpart. Any counterpart delivered by facsimile, pdf or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Amendment. This Amendment shall not be binding, however, until all parties hereto have signed and delivered a counterpart of this Amendment.

(f) The parties hereto agree that, except as specifically set forth herein, this Amendment (i) does not amend, waive, satisfy, terminate, diminish or otherwise modify any of the terms, conditions, provisions and/or agreements contained in the Loan Documents and (ii) does not constitute a waiver, release or limitation upon Lender's exercise of any of its rights and remedies under the Loan Documents, all of which are hereby expressly reserved. This Amendment shall not relieve or release the Borrower or Guarantor in any way from any of their respective duties, obligations, covenants or agreements under the Loan Documents or from the consequences of any Event of Default thereunder. This Amendment shall not obligate Lender, or be construed to require Lender, to waive any Event of Default or defaults, whether now existing or which may occur after the date hereof.

(g) This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, except the terms and provisions of Section 2.4.6 of the Building Loan Agreement shall specifically not be binding on any successor or assign of U.S. Bank National Association, not individually but solely as trustee for the Maiden Lane Commercial Mortgage-Backed Securities Trust 2008-1.

(h) Except as expressly modified pursuant to this Amendment, all of the terms, covenants and provisions of the Loan Agreement and the other Loan Documents shall continue in full force and effect. In the event of any conflict or ambiguity between the terms, covenants, and provisions of this Amendment and those of the Loan Agreement or the other Loan Documents, the terms, covenants, and provisions of this Amendment shall control.

(i) This Amendment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of any party hereto, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

(j) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws and any applicable law of the United States of America.

(k) Borrower shall pay, on demand, all reasonable costs and expenses of Lender

(including reasonable fees, costs and expenses of counsel to Lender) incurred in connection with the negotiation, preparation, execution and delivery of this Amendment, and the modification and amendment of the other Loan Documents, the closing of the restructure of the Loan and the transactions contemplated thereby.

(l) Each party hereto acknowledges that it has participated in the negotiation of this Amendment, and agrees that no provision of this Amendment shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Each of the parties hereto at all times have had access to an attorney in the negotiation of the terms and in the preparation and execution of this Amendment, and the parties hereto each have had the opportunity to review and analyze this Amendment for a sufficient period of time prior to execution and delivery. All of the terms of this Amendment were negotiated at arm's length, and were prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by either party upon the other. The execution and delivery of this Amendment is the free and voluntary act of each of the parties hereto.

(m) Borrower shall deliver to Title Company an original executed counterpart of this Amendment and all related documentation necessary for the recording of this Amendment in the Clerk's Office and Borrower shall pay all fees and expenses in order to file this Amendment in the Clerk's Office. Borrower shall cause this Amendment to be filed within five (5) days with the Office of the Clerk of the County of Kings.

(n) Attached hereto as Exhibit B is the Amended and Restated N.Y. Lien Law Statement which amends and restates that certain N.Y. Lien Law Statement filed in connection with the Building Loan Agreement on January 10, 2008 in Control 002427648-01, which evidences that the remaining net sums available to Borrower from the Loan to pay contractors, subcontractors, laborers and materialmen for the cost of the Improvements has been reduced to zero.

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**ACADIA ATLANTIC AVENUE, LLC**, a Delaware limited liability company

By: /s/ Robert Masters

\_\_\_\_\_  
Name: Robert Masters  
Title: Senior Vice President

STATE OF NEW YORK            )  
  )  
COUNTY OF WESTCHESTER    )

On the 18<sup>th</sup> day of October, in the year 2010, before me the undersigned, personally appeared Robert Masters, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Debra Leibler-Jones

\_\_\_\_\_  
Notary Public

Debra Leibler Jones  
State of New York-Notary Public  
No. 01LE6005994  
Qualified in Dutchess County  
Comm. Exp. 04/20/2014

**[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]**

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**GUARANTOR:**

**ACADIA STRATEGIC OPPORTUNITY FUND II,  
LLC**, a Delaware limited liability company

By: /s/ Robert Masters

\_\_\_\_\_  
Name: Robert Masters  
Title: Senior Vice President

STATE OF NEW YORK            )  
  )  
COUNTY OF WESTCHESTER    )

On the 18<sup>th</sup> day of October, in the year 2010, before me the undersigned, personally appeared Robert Masters, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Debra Leibler-Jones

\_\_\_\_\_  
Notary Public

Debra Leibler Jones  
State of New York-Notary Public  
No. 01LE6005994  
Qualified in Dutchess County  
Comm. Exp. 04/20/2014

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**GUARANTOR:**

**POST MANAGEMENT, LLC**, a Delaware limited liability company

By: /s/ Marc Slayton

Name: Marc Slayton  
Title: President/Manager

STATE OF NEW YORK            )  
  )  
COUNTY OF WESTCHESTER    )

On the 18<sup>th</sup> day of October, in the year 2010, before me the undersigned, personally appeared Marc Slayton, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Debra Leibler-Jones

Notary Public

Debra Leibler Jones  
State of New York-Notary Public  
No. 01LE6005994  
Qualified in Dutchess County  
Comm. Exp. 04/20/2014

**[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]**

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**MANAGER:**

**SELF STORAGE MANAGEMENT LLC, a**  
Delaware limited liability company

By: /s/ Bruce Roch

\_\_\_\_\_  
Name: Bruce Roch  
Title: Chief Executive Officer

STATE OF GEORGIA            )  
  )  
COUNTY OF FULTON        )

On the 18<sup>th</sup> day of October, in the year 2010, before me the undersigned, personally appeared Bruce Roch, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Jada Cowans

\_\_\_\_\_  
Notary Public

Jada Cowans  
Notary Public, Henry County, Georgia  
My Commission Expires May 20, 2013

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EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH OF BROOKLYN, COUNTY OF KINGS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF ATLANTIC AVENUE (120 FEET IN WIDTH), WITH THE EASTERLY LINE OF EUCLID AVENUE (66 FEET IN WIDTH) AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. RUNNING ALONG SAID EASTERLY LINE OF EUCLID AVENUE, NORTH 11° 00' 00" WEST, A DISTANCE OF 211 FEET AND 6 INCHES LOCAL STANDARD, 211 FEET AND 8 1/2 INCHES UNITED STATES STANDARD, THENCE;

2. ALONG A LINE AT RIGHT ANGLES TO SAID EUCLID AVENUE, NORTH 79° 00' 00" EAST, A DISTANCE OF 100.00 FEET LOCAL STANDARD, 100 FEET 1 1/4 INCHES UNITED STATES STANDARD, THENCE;

3. ALONG THE LINE BEING PARALLEL TO SAID EUCLID AVENUE, NORTH 11° 00' 00" WEST, A DISTANCE OF 330.00 FEET LOCAL STANDARD, 330 FEET AND 4 INCHES UNITED STATES STANDARD, THENCE;

4. ALONG A LINE AT RIGHT ANGLES TO SAID EUCLID AVENUE, NORTH 79° 00' 00" EAST, A DISTANCE OF 52 FEET AND 11 1/4 INCHES LOCAL STANDARD, 52 FEET AND 11 7/8 INCHES UNITED STATES STANDARD, THENCE;

5. ALONG THE EASTERLY LINE OF SAID LOTS 23, 13 & 1, BLOCK 4145, SOUTH 11° 03' 56" EAST, A DISTANCE OF 515 FEET AND 1 1/2 INCHES LOCAL STANDARD, 515 FEET AND 6 5/8 INCHES UNITED STATES STANDARD TO THE NORTHERLY LINE OF SAID ATLANTIC AVENUE, THENCE;

6. ALONG SAID NORTHERLY LINE OF ATLANTIC AVENUE, SOUTH 69° 13' 14" WEST, A DISTANCE OF 155 FEET AND 9 1/4 INCHES LOCAL STANDARD, 155 FEET AND 10 3/4 INCHES UNITED STATES STANDARD TO THE POINT AND PLACE OF BEGINNING.

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EXHIBIT B

LIEN LAW STATEMENT

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AFFIDAVIT PURSUANT TO SECTION 22 OF THE  
LIEN LAW OF THE STATE OF NEW YORK

STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF WESTCHESTER         )

ROBERT MASTERS, being duly sworn, deposes and says that:

1. I reside at Westchester County, New York, and am the Senior Vice President of Acadia Atlantic Avenue LLC, a Delaware limited liability company (“**Borrower**”).

2. I give this Affidavit, on behalf of Borrower in my capacity as Senior Vice President of Borrower, in connection with that certain Building Loan Agreement, dated as of December 26, 2007, which Building Loan Agreement was filed in the office of the Clerk of Kings County (“**County Clerk**”) on January 10, 2008 in Control 002427648-01 (as the same may be amended, renewed, modified, extended, replaced or supplemented from time to time, the “**Building Loan Agreement**”).

3. The original amount of the Loan under the Building Loan Agreement was up to \$11,229,260.33 (the “**Original Loan Amount**”).

4. As of the date hereof, the amount of the Loan under the Building Agreement is up to \$10,140,619.77 (the “**Modified Loan Amount**”).

5. The consideration paid, or to be paid, by Borrower for the Loan described herein is: None.

6. The amount, if any, to be advanced from the Loan to repay amounts previously advanced to Borrower pursuant to Notices of Lending for costs of the improvement is: None.

7. The amount previously advanced from the Loan to reimburse Borrower for the Improvement expended by Borrower after the commencement of the Improvements but prior to the date of the initial advance of the Loan under the Building Loan Agreement was: None.

8. The amount previously advanced from the Loan under the Building Loan Agreement for expenses incurred after the commencement of the Improvements but prior to the date hereof for the following items is:

Contingency: \$0.00  
Total: \$0.00

9. The estimated amount to be advanced from the Loan for expenses which may become due and payable after the date hereof and during the construction of the Improvements for items such as bond and insurance premiums, fees of architects, engineers and surveyors, taxes, permits, assessments, water and sewer rents and contingency reserve is: None.

10. (a) The original net sum available to Borrower from the Original Loan Amount to pay contractors, subcontractors, laborers and materialmen for the Improvement was:

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\$10,178,856.12, less such amounts as may not be advanced and disbursed under the Building Loan Agreement due to the nonsatisfaction of conditions to the advance and disbursement of such amounts contained in the Building Loan Agreement.

(b) The net sum available to Borrower from the Modified Loan Amount to pay contractors, subcontractors, laborers and materialmen for the Improvement is: \$10,140,619.77, less such amounts as may not be advanced and disbursed under the Building Loan Agreement due to the nonsatisfaction of conditions to the advance and disbursement of such amounts contained in the Building Loan Agreement, as modified.

11. The amount previously advanced from the Loan to reimburse Borrower for the Improvement expended by Borrower after the date of the initial advance of the Loan under the Building Loan Agreement but prior to the date hereof is: \$10,140,619.77.

12. The net sum available to Borrower from the Loan to pay contractors, subcontractors, laborers and materialmen for the Improvement after the date hereof is: None.

13. No portion of the net sum available set forth above is available for the payment of the performance of real estate brokerage services in obtaining a lessee for a term of more than three years of all or any part of real property to be used for other than residential purposes pursuant to a written contract of brokerage employment or compensation.

14. This affidavit is made pursuant to and in compliance with Section 22 of the Lien Law of the State of New York and is hereby made a part of the Building Loan Agreement.

15. If Borrower is a corporation, partnership or limited liability company, this statement is verified by deponent and not by Borrower because Borrower is a corporation, partnership or limited liability company of which the deponent is an officer, member or general partner.

**[No Further Text on This Page]**

The facts stated above and any costs itemized on this statement are true, to the knowledge of the undersigned.

Sworn to before me this 18<sup>th</sup>  
day of October, 2010.

/s/ Robert Masters  
**ROBERT MASTERS**, Senior Vice President

/s/ Debra Leibler-Jones

Debra Leibler-Jones  
Notary Public  
No. 01LE6005934  
Qualified in Dutchess County  
Comm. Exp. 04/20/14  
State of New York

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SCHEDULE I

Work Providers

4 STAR CONTRACTING, INC.  
A.H. HARRIS & SONS INC.  
ACCURATE SITE SAFETY  
AEC REPROGRAPHICS  
AKERMAN SENTERFITT LP  
ALL GLASS SYSTEMS INC.  
ALPINE READY MIX INC.  
ARCHITECTURAL DOORS  
AT&T MOBILITY II, LLC  
ATLANTIC ENGINEERING LABORATORIES  
BANK OF AMERICA  
BANKS SHAPIRO GETTINGER & WALDINGER  
BESAM ENTRANCE SOLUTIONS  
BIG APPLE CONCRETE SUPPLY INC.  
BILCO WIRE ROPE & SUPPLY CORP  
BROOKSIDE ENVIRONMENTAL, INC.  
BUTZ-WILBERN  
C.M. RICHEY ELECTRICAL CONTRACTOR  
CASINO PLUMBING & HEATING CO. INC.  
CELTIC BUILDING SUPPLIES INC.  
CINGULAR WIRELESS II, LLC  
CITY OF NEW YORK DEPARTMENT  
CON ED  
CON EDISON  
CONSTRUCTION DATA CORPORATION  
CONTROL POINT ASSOCIATES INC.  
CSC  
CUSTOM BOOK BINDERY INC.  
DELAWARE SECRETARY OF STATE  
DEMAND ELECTRIC INC.  
DESIGLINE CONSTRUCTION SERVICES INC  
DIAMOND POINT GLASS CO. INC.  
DPK CONSULTING LLC  
DTS  
EASTBAY STEEL INC.  
ELIAS SLAIBY  
EMG  
EMMERSON ESTRADA  
ETRE ASSOCIATES, LTD  
FASTERNAL COMPANY  
FEDERAL EXPRESS  
FIRST AMERICAN TITLE INS CO  
FJM FERRO, INC.  
FORTE EXPRESS PLUMBING & HEATING  
FROMM ELETRIC SUPPLY CORP.  
GMA MECHANICAL CORPORATION  
GRAINGER  
GREENBERG FARROW ARCHIT CORP  
GREENBERG TRAGER & HERBRST, LLP  
GUY SACCENTO  
HOME DEPOT CREDIT SERVICES  
ICC CONCRETE & MASONRY CORP  
INDEPENDENT EQUIPMENT CORP  
JANUS INTERNATIONAL CORPORATION  
JD REINFORCING SUPPLY  
JM WELDING CO. INC.  
JOHN CHRISTODOULOU  
JOHN SPERANDO  
JPR SPECIALTY CONSULTING  
KETCHUM DIRECTORY ADVERTISING  
KEYSPAN ENERGY DELIVERY  
LOUIS STRIAR, INC.  
M.E. SABOSIK ASSOCIATES, INC.  
MAHENDRANATH RAMSAHAI  
MARJAM SUPPLY CO., INC.  
METALLINE FIRE DOOR CO., INC.  
METROPOLITAN VALUATION SERVICES  
MICHAEL ARIGOT  
MICHAEL S. LUTHER P.E.  
MODULEX PARTITION CORP  
MONZACK MERSKY MCLAUGHLIN  
MORRISON TRANSIT-MIX CORP



MRC II CONTRACTING INC.  
NACIREMA INDUSTRIES, INC.  
NATIONAL CONSTRUCTION RENTALS  
NEW YORK CITY COMMISSION  
NEWCO CORPORATE SERVICES INC.  
NY REBAR INC.  
NYC DEPARTMENT OF BUILDINGS  
NYC DEPARTMENT OF FINANCE  
NYC DEPARTMENT OF TRANSPORTATION  
NYC DEPT OF BUILDINGS  
NYC FIRE DEPARTMENT  
NYC PARK OF RECREATIONS  
NYC WATER BOARD  
OEHLER CONTRACTING CORP.  
OLDCASTLE APG NORTHEAST, INC.  
OTTERBOURG, STEINDLER, HOUSTON OUR RENTAL CORP  
OUTSOURCE CONSULTANTS  
PC RICHARD & SON BUILDERS DIVISION  
PERIMETER BRIDGE & SCAFFOLD CO., INC  
PETTY CASH  
PHOENIX CONSTRUCTION LLC  
POLAND SPRINGS  
POST MANAGEMENT II, LLC  
POST MANAGEMENT, LLC  
PRO ENERGY SERVICES  
QUEENSBORO FENCE CO. INC.  
RADIANT CLEANING SERVICES, INC.  
RARITAN BAY CONTRACTING INC.  
RED WING ELECTRIC LLC

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RIKER DANZIG SCHERER HYLAND  
ROBERT DONOHUE  
ROCK TECH INC.  
ROMA ARCHITECTURAL WOODWORKING, INC  
RON WRENSEN  
SANDAK HENNESSEY & GRECO LLP  
SH5 CONSTRUCTION CORP.  
SHANKER LAW GROUP  
SIGN A RAMA USA  
SIGN-A-RAMA  
SIGNS BY TOMORROW  
SIMKISS AGENCY  
SPEEDY CONCRETE PUMPING & REPAIR IN SPRAY- RITE LLC  
SPRINT  
SS20 BUILDING SYSTEMS, INC  
STADTMAUER BAILKIN LLP  
STAPLES CREDIT PLAN  
STILLWELL MATERIALS CORP.  
STOLTE PAINTING, LLC  
TASZ CONSTRUCTION, INC.  
THYSSENKRUPP ELEVATOR CORPORATION  
TIMOTHY CLARK  
ULTIMATE ACCESS SOLUTIONS  
UNBUILD IT SERVICES, LTD  
UNITED STEEL PRODUCTS VERIZON, INC.  
VITAL SIGN SOURCE LTD  
W. B. MASON CO., INC.  
WACHTEL & MASYR LLP  
WHITESTONE ASSOCIATES INC.  
WILLIAM VITACCO ASSOCIATES, LTD

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SECOND AMENDMENT TO PROJECT LOAN AGREEMENT AND  
AMENDMENT OF CERTAIN OTHER LOAN DOCUMENTS

Dated: as of October 20, 2010

By and between

ACADIA ATLANTIC AVENUE, LLC,  
as Borrower

and

U.S. BANK NATIONAL ASSOCIATION, NOT INDIVIDUALLY  
BUT SOLELY AS TRUSTEE FOR THE MAIDEN LANE COMMERCIAL  
MORTGAGE-BACKED SECURITIES TRUST 2008-1,  
as Lender

Location: Atlantic Avenue  
Borough: Brooklyn  
County: Kings  
Block: 4145  
Lots: 1, 13 and 23

MERS MIN: 8000101-0000007166-7

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SECOND AMENDMENT TO PROJECT LOAN AGREEMENT AND  
AMENDMENT OF CERTAIN OTHER LOAN DOCUMENTS

This SECOND AMENDMENT TO PROJECT LOAN AGREEMENT AND AMENDMENT OF CERTAIN OTHER LOAN DOCUMENTS (this "**Amendment**"), dated as of October 20, 2010 (the "**Effective Date**"), by and between **U.S. BANK NATIONAL ASSOCIATION, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE FOR THE MAIDEN LANE COMMERCIAL MORTGAGE-BACKED SECURITIES TRUST 2008-1**, c/o Bank of America, 900 West Trade Street, S 650, NCI-026-06-01, Charlotte, North Carolina 28255 ("**Lender**") and **ACADIA ATLANTIC AVENUE, LLC**, a Delaware limited liability company, having its principal place of business at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue-Suite 260, White Plains, New York 10605 ("**Borrower**"), and acknowledged and agreed to by **ACADIA STRATEGIC OPPORTUNITY FUND II, LLC**, a Delaware limited liability company ("**Fund II**"), **POST MANAGEMENT, LLC**, a Delaware limited liability company ("**Post**"; Fund II and Post, individually and/or collectively, as the context may require, the "**Guarantor**") and **SELF STORAGE MANAGEMENT LLC**, a Delaware limited liability company ("**Manager**").

WITNESSETH:

WHEREAS, pursuant to the terms and conditions of that certain Project Loan Agreement, dated as of December 26, 2007, as amended by that certain Amendment to Project Loan Agreement, dated as of March 12, 2008 (as the same has been or may be amended, renewed, modified, extended, replaced or supplemented from time to time, the "**Project Loan Agreement**"), Bear Stearns Commercial Mortgage, Inc. ("**Bear Stearns**") made a loan to Borrower in the principal amount of up to Four Million Nine Hundred Twenty Thousand Seven Hundred Thirty-Nine and 67/100 Dollars (\$4,920,739.67) (the "**Project Loan**"), which Project Loan is secured, inter alia, by that certain Project Loan Mortgage and Security Agreement, dated as of December 26, 2007, given by Borrower to Bear Stearns encumbering that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof, and the buildings, structures and improvements now or hereafter located thereon (collectively, the "**Property**");

WHEREAS, in connection with the Project Loan Agreement and other Loan Documents, Guarantor delivered to Bear Stearns that certain Guaranty of Recourse Carve Outs, dated as of December 26, 2007 (the "**Guaranty of Recourse Carve Outs**");

WHEREAS, Lender has succeeded to the interest, rights, duties and obligations of Bear Stearns with respect to the Project Loan and is now the holder of the Project Loan Agreement, the Guaranty of Recourse Carve Outs and the other Loan Documents (as defined in the Project Loan Agreement);

WHEREAS, the parties hereto desire to amend the Project Loan Agreement and certain other Loan Documents as set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant, agree, represent and warrant

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as follows:

1. Representations and Warranties. Borrower and Guarantor hereby represent and warrant to Lender that, as of the Effective Date hereof:

(a) The Project, including the Project Improvements, was completed on or about June 22, 2009;

(b) Attached hereto as Schedule I is a true, accurate and complete list of each contractor, materialman, laborer, workman, engineer, architect or other Person who could have standing to file a lien against the Property pursuant to the Lien Law (individually, each, a “**Work Provider**” and collectively, the “**Work Providers**”) in connection with the Project Improvements, the Completion of the Improvements and any other work performed at the Property (collectively, the “**Work**”);

(c) Each Work Provider has completed its respective Work;

(d) No Work Provider has performed any Work at the Property during eight (8) months prior to the Effective Date;

(e) All Work at the Property performed prior to the Effective Date has been paid for and is evidenced by unconditional final lien waivers;

(f) Borrower has previously delivered to Lender unconditional final lien waivers fully executed by the applicable Work Provider with respect to all Work and all amounts paid to such Work Provider;

(g) There are no mechanic’s liens currently recorded against the Property that have not been bonded and Borrower is not aware of any other potential liens which could be filed against the Property;

(h) After giving effect to the provisions of this Amendment and the other documents entered into by Borrower in connection herewith, no default or Event of Default shall be continuing under the Loan Documents and there is no existing condition which, but for the passage of time or the giving of notice, could result in an Event of Default under the Loan Documents; and

(i) The outstanding principal balance of the Project Loan is \$1,399,013.26; and

(j) The Property is not subject to any existing municipal violations, including, without limitation, any violations issued by the New York City Department of Buildings.

2. Agreement with respect to the Final Advance.

(a) Borrower, Guarantor and Lender hereby acknowledge and agree that the conditions to release the Final Advance, as set forth in Section 2.12 of the Project Loan Agreement, have not been satisfied by Borrower and that Borrower is no longer permitted to request and/or receive the Final Advance under the Project Loan, pursuant to the express

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provisions thereof, now or at any time hereafter. Borrower and Guarantor hereby rescind, and acknowledge as void, any pending Draw Request delivered to Lender which has not been funded in whole or in part on or before the date hereof.

(b) Notwithstanding anything to the contrary in the Project Loan Agreement, Borrower, Lender and Guarantor hereby agree that as of the Effective Date, Borrower shall not be permitted to request and/or receive any further Advances under the Project Loan.

3. Amendment to Project Loan Agreement.

(a) The following defined terms as defined in Section 1.1 of the Project Loan Agreement are hereby deleted in their entirety and replaced with the following:

**“Interest Rate”** shall mean seven and three hundred forty-four thousandths percent (7.344%).

**“Monthly Debt Service Payment Amount”** shall mean for each Payment Date (a) commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in October, 2010, the Monthly Interest Payment Amount, (b) commencing with the Payment Date occurring in November, 2010 through and including the Payment Date occurring in April, 2012 (the **“Accrual Period”**), the Accrual Period Monthly Payment Amount, and (c) commencing with the Payment Date occurring in May, 2012 and on each Payment Date thereafter, the P&I Payment Amount.

(b) The following defined terms shall be incorporated into Section 1.1 of the Project Loan Agreement:

**“Accrual Period Monthly Payment Amount”** shall mean an amount equal to the Net Cash Flow Before Debt Service (defined below) for the Interest Period second preceding the then applicable Payment Date, provided, that, in the event the Net Cash Flow Before Debt Service for such period is less than the Monthly Interest Payment Amount (such deficiency, the **“Accrual Period Shortfall”**), then Borrower shall pay such Accrual Period Shortfall as follows:

First, if on any prior Payment Date there were any NOI Errors, then the remaining Accrual Period Shortfall (or the applicable portion thereof) shall be paid by Borrower (from funds other than funds derived from the use, occupancy, operation and ownership of the Property) in an amount not to exceed the aggregate amount of NOI Errors from such prior Payment Dates;

Second, in the event the Accrual Period Shortfall has not been paid in full as a result of the foregoing and if on any prior Payment Date there were any Excess Funds, then the Accrual Period Shortfall (or the applicable portion thereof) shall be paid by Borrower (from funds other than funds derived from the use, occupancy, operation and ownership of the Property) in an amount not to exceed the aggregate amount of Excess Funds from such prior Payment

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Dates;

Third, in the event the Accrual Period Shortfall has not been paid in full as a result of the foregoing and provided no Event of Default is then continuing, then the remaining Accrual Period Shortfall (or the applicable portion thereof) shall be disbursed by Lender from the Interest Reserve Account (as defined in the Building Loan Agreement) in an amount not to exceed the then remaining amount on deposit in the Interest Reserve Account (and Borrower hereby irrevocably directs Lender to apply such Interest Reserve Funds to the remaining Accrual Period Shortfall);

Fourth, in the event the Accrual Period Shortfall has not been paid in full, the remaining Accrual Period Shortfall shall accrue and (x) immediately commence earning interest at the Interest Rate to the extent permitted by law and (y) to the extent remaining unpaid at the Maturity Date, be due and payable in full at the Maturity Date (the “**Accrued Interest**”);

provided, however, in no event shall the Accrual Period Monthly Payment Amount exceed the Monthly Interest Payment Amount for such Interest Period.

For the avoidance of doubt and for purposes of illustration and example, for the Payment Date occurring in March, 2011, the Accrual Period Monthly Payment Amount shall be calculated based upon the Net Cash Flow Before Debt Service for the Interest Period from January 1, 2011 through and including January 31, 2011.

As used herein, “**Net Cash Flow Before Debt Service**” shall mean all income derived from the use, occupancy, operation and ownership of the Property, from any source whatsoever, *less* Operating Expenses.

“**Accrued Interest**” shall have the meaning set forth in the definition of “Accrual Period Monthly Payment Amount”.

“**Approved Lender**” shall mean a bona-fide, third party lender which is unaffiliated with any Borrower Party and is otherwise regularly engaged in making commercial real estate loans in the State of New York.

“**BLA Modification Agreement**” shall mean that certain Second Amendment to Building Loan Agreement, dated as of the PLA Modification Effective Date, by and among Borrower, Lender, Guarantor and Manager.

“**Borrower Party**” and “**Borrower Parties**” shall mean each of Borrower, Guarantor, the constituent members of such Person and each of their principals, directors, officers, employees, beneficiaries, shareholders, partners, members, trustees, agents, or Affiliates or any legal representatives, successors or assigns of

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any of the foregoing.

“**Excess Funds**” shall mean, with respect to any applicable Payment Date, an amount equal to Net Cash Flow Before Debt Service *less* the applicable Monthly Debt Service Payment Amount, as determined by Lender in its sole but good faith discretion after Lender’s review of the applicable Monthly Income Reports.

“**NOI Error**” shall mean, with respect to any applicable Payment Date, an amount equal to difference of (i) the actual Net Cash Flow Before Debt Service for the applicable Interest Period as determined by Lender in its sole but good faith discretion after Lender’s review of the Monthly Income Report, *less* (ii) the amount of Net Cash Flow Before Debt Service actually delivered by Borrower for the payment of the Accrual Period Monthly Payment Amount.

“**Loan Hold Period**” shall mean the period commencing on the PLA Modification Effective Date and continuing until forty-five (45) days after the date on which Lender sends written notice to Borrower of Lender’s good faith election to market the Loan for sale (the “**Marketing Notice**”); provided, however, that the Loan Hold Period shall automatically be extended for one and only one additional forty-five (45) day period if Borrower delivers to Lender, at any time during the original forty-five (45) day period, a fully executed Loan Offer Agreement.

“**Loan Offer Agreement**” shall mean a bona-fide loan commitment or term sheet fully executed by an Approved Lender and Borrower, reasonably acceptable to Lender, evidencing such Approved Lender’s intent to make a loan to Borrower by no later than the last day of the Loan Hold Period and in an amount generating sufficient net proceeds to prepay the Debt and the debt evidenced by the Project Loan Documents in full in accordance with the terms hereof and the other Loan Documents. Notwithstanding the foregoing, no proposed Loan Offer Agreement shall constitute a Loan Offer Agreement for purposes hereof unless it is accompanied by an Officer’s Certificate of Borrower certifying to the matters set forth in the first sentence of this definition and such other related matters as may be reasonably requested by Lender.

“**Monthly Interest Payment Amount**” shall mean an amount equal to interest only on the outstanding principal balance of the Project Loan, calculated in accordance with Section 2.2 hereof.

“**Net Cash Flow Before Debt Service**” shall have the meaning set forth in the definition of “Accrual Period Monthly Payment Amount”.

“**P&I Payment Amount**” shall mean an amount based upon (i) interest accrued on the outstanding principal balance of the Project Loan (including any Accrued Interest which has been added to the outstanding principal balance of the Loan, if any) in accordance with Section 2.2 hereof and (ii) a principal payment based on

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the then outstanding principal balance of the Project Loan (including any Accrued Interest which has been added to the outstanding principal balance of the Loan, if any) and a twenty-five (25) year amortization schedule); it being specifically understood that the amount required to be paid to Lender above shall be calculated by Lender no less than fifteen (15) Business Days prior to the Payment Date occurring in May 2012 and such calculation shall be conclusive and binding on Borrower absent manifest error.

“**PLA Modification Agreement**” shall mean that certain Second Amendment to Project Loan Agreement and Amendment of Certain Other Loan Documents, dated as of the PLA Modification Effective Date, by and among Borrower, Lender, Guarantor and Manager.

“**PLA Modification Effective Date**” shall mean October 20, 2010.

(c) The second and third sentences of Section 2.3.1 of the Project Loan Agreement are hereby deleted in their entirety.

(d) The following shall be incorporated into the Project Loan Agreement as Section 2.4.6:

Section 2.4.6 *Permitted Prepayment Prior to Loan Sale*. (a) Notwithstanding anything to the contrary herein or in any of the other Loan Documents, during the Loan Hold Period, provided no Event of Default exists, Borrower may, at its option, prepay the Debt in whole (but not in part) upon thirty (30) days prior irrevocable notice to Lender, without payment of the Yield Maintenance Premium or the requirement to defease the Loan; provided, however, if for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment. For purposes of clarification, Borrower right to prepay the Loan pursuant to this Section 2.4.6 is a one-time right to prepay the Loan in whole (but not in part).

(b) Provided that (i) no Event of Default is then continuing, (ii) Borrower has elected to prepay the Loan pursuant to the express terms of Section 2.4.6(a) above and (iii) provided that the Mortgage continues to secure a bona fide obligation of the Borrower, Lender agrees to assign the Note and the Mortgage (the “**Refinancing Assignment**”), all without recourse, covenant or warranty of any nature, express or implied (other than that Lender is the then holder of the Note and the Mortgage), to any party designated by Borrower (other than Borrower or a nominee of Borrower) (the “**Mortgage Assignee**”), provided that (A) Borrower shall have first caused the same to be purchased for an amount equal to the Debt (including, without limitation, all unpaid principal and accrued interest due) (the “**Mortgage Purchase Price**”) as set forth on a loan pay-off letter delivered by Lender or its servicer and upon payment by Borrower of (1) the reasonable out-of-pocket expenses of Lender incurred in connection with the assignments of

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mortgages and any related matters together with any nominal processing and administrative fees; and (2) Lender's reasonable attorney's fees for the preparation, delivery and performance of such assignment and related documents; (B) Borrower shall have caused the recording with the recorder's office of Kings County of an executed Statement of Oath under Section 275 of the New York Real Property Law; and (C) such assignment is not then prohibited by any federal, state or local law, rule, regulation, order, or by any other governmental authority. Borrower shall be responsible for all taxes, recording fees and other charges payable in connection with such assignment.

(e) Section 2.12.3 of the Project Loan Agreement is hereby deleted in its entirety and replaced with the following:

2.12.3 [Intentionally omitted].

(f) Sections 8.1(a)(xiii), (xiv), (xv), (xvii) and (xviii) of the Project Loan Agreement are each hereby deleted in its entirety and each replaced with the following: [Intentionally omitted];

(g) Section 8.1(a)(xxi) of the Project Loan Agreement is hereby deleted in its entirety and each replaced with the following: (xxi) if, during the Accrual Period, Borrower shall fail to deliver to Lender all Cash Flow Before Debt Service for the second preceding Interest Period as and when due;

(h) Each of Borrower and Guarantor hereby acknowledge and agree that the BLA Modification Agreement (i) amends and modifies certain provisions of the Project Loan Agreement which have been incorporated into the Project Loan Agreement by reference, including, without limitation, the incorporation of Sections 5.1.47, 5.2.14 and 9.3 and Article 7 of the Building Loan Agreement, and (ii) such amendments and modifications shall be read into the Project Loan Agreement as if fully and completely set forth therein;

(i) Pursuant to Section 10.6 of the Project Loan Agreement, if a notice is to be given to Lender, such notice shall be given to:

Federal Reserve Bank of New York  
33 Liberty Street  
New York, New York 10045  
Attention: Helen Mucciolo  
Fax: (212) 720-1530

With a copy to:

Federal Reserve Bank of New York  
33 Liberty Street  
New York, New York 10045  
Attention: Stephanie Heller  
Fax: (212) 720-1953

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With a copy to:

BlackRock Financial Management Inc.  
55 East 52<sup>nd</sup> Street  
New York, New York 10055  
Attention: Frank Pomar  
Fax: (212) 810-5666

With a copy to:

Alston & Bird LLP  
90 Park Avenue  
New York, New York 10016  
Attention: Gerard Keegan, Esq.  
Fax: (212) 210-9444

4. Amendment to Guaranty of Recourse Carve Outs.

(a) The following shall be incorporated into the Guaranty of Recourse Carve Outs as Section 1.2(x):

(x) if, during the Accrual Period, Borrower fails to deliver to Lender all Cash Flow Before Debt Service for the second preceding Interest Period as and when due; and

(b) The words “or (vi) if Borrower fails to obtain Lender’s prior written consent to any Transfer as Required by the Loan Agreement or the Mortgage.” set forth in Section 1.2(b) of the Guaranty of Recourse Carve Outs are hereby deleted in their entirety and replaced with the following:

(vi) if Borrower fails to obtain Lender’s prior written consent to any Transfer as Required by the Loan Agreement or the Mortgage; (vii) any litigation or other legal proceeding related to the Debt filed by a Borrower Party that delays, opposes, impedes, obstructs, hinders, enjoins or otherwise interferes with or frustrates the efforts of Lender to exercise any rights and remedies available to Lender as provided herein and in the other Loan Documents; (viii) any action by a Borrower Party contesting the end date of the Loan Hold Period; (ix) any misrepresentation set forth in (a) the affidavit made pursuant to and in compliance with Section 22 of the Lien Law in connection with the filing of this Agreement or any amendment or modification thereto or (b) Section 1 of the BLA Modification Agreement; or (x) Borrower’s failure to comply with the obligations set forth in Section 5.1.47 hereof.

5. Guarantor Financial Statements.

Notwithstanding anything to the contrary herein or in the other Loan Documents,

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Guarantor shall furnish to Lender (i) quarterly, within thirty (30) days following the end of each calendar quarter and (ii) annually, within one hundred and twenty (120) days following the end of each Fiscal Year, a complete copy of Guarantor's financial statements covering the applicable corresponding period then ended, including a balance sheet and income statement of Guarantor. With respect to Guarantor's annual financial statements, such statements shall be audited in accordance with GAAP by BDO Seidman (so long as they are licensed certified public accountants) and shall include a complete copy of Guarantor's federal and New York state income tax returns for the immediately preceding tax year within thirty (30) days after timely filing of same given all allowable extensions of time to file.

#### 6. Ratification.

(a) Borrower hereby ratifies and confirms to Lender that all of the terms, representations, warranties, covenants, indemnifications and provisions of the Loan Documents are and shall remain in full force and effect, and are true and correct with respect to Borrower without change except as otherwise expressly and specifically modified by this Amendment. Borrower hereby agrees to continue to be bound by terms, representations, warranties, covenants, indemnifications and provisions of the Loan Documents.

(b) Guarantor hereby ratifies and confirms to Lender that all of the terms, representations, warranties, covenants, indemnifications and provisions of the Loan Documents, including without limitation, the Guaranty of Completion (as defined in the Building Loan Agreement), the Guaranty of Recourse Carve Outs (as defined in the Building Loan Agreement) and the Environmental Indemnity (as defined in the Building Loan Agreement), are and shall remain in full force and effect, and are true and correct with respect to Guarantor without change except as otherwise expressly and specifically modified by this Amendment. Guarantor hereby agrees to continue to be bound by the terms, representations, warranties, covenants, indemnifications and provisions of the Loan Documents, including, without limitation, the Guaranty of Completion, the Guaranty of Recourse Carve Outs and the Environmental Indemnity.

#### 7. Release and Waiver of Claims, Defenses and Rights of Set Off.

(a) Each of Borrower and Guarantor acknowledge that Lender has performed all obligations and duties owed to Borrower and Guarantor under the Loan Documents through the date hereof.

(b) As additional consideration for entering into this Amendment, each of Borrower and Guarantor hereby unconditionally and irrevocably forever releases, waives and forever discharges Lender, BlackRock Financial Management Inc., the Federal Reserve Bank of New York, Maiden Lane LLC and any Servicer of the Loan (together with each of their respective predecessors, successors and assigns, each of their respective Affiliates and each of their respective officers, directors, employees, agents and representatives) (each, a "**Releasee**" and, collectively, the "**Releasees**") from any action, cause of action, suit, debt, defense, right of set off or other claim arising on or prior to the date hereof, whatsoever, in law or in equity, arising out of or in connection with this Amendment and/or the other Loan Documents, known or unknown against the Releasees.

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(c) Each of Borrower and Guarantor, on behalf of itself and its successors, assigns, Affiliates and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that neither Borrower (nor any of its successors, assigns, Affiliates or other legal representatives) nor Guarantor (nor any of its successors, assigns, Affiliates or other legal representatives) will sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any claim released, remised and discharged by such Borrower pursuant to Section 8(a) above. If either of Borrower (or any of its successors, assigns, Affiliates or other legal representatives) or Guarantor (or any of its successors, assigns, Affiliates or other legal representatives) violates the foregoing covenant, such party agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable attorneys' fees and costs incurred by any Releasee as a result of such violation.

(d) Lender hereby waives the Events of Defaults specifically alleged in (i) that certain letter to Borrower, dated as of June 4, 2009, from Lender, (ii) that certain letter to Borrower, dated as of July 2, 2009, from Stites & Harbison PLLC, (iii) that certain letter to Borrower and Guarantor, dated as of December 4, 2009, from Alston & Bird LLP, and (iv) that certain letter to Otterbourg, Steindler, Houston & Rosen, P.C., dated as of March 25, 2010, from Alston & Bird LLP.

#### 8. No Novation.

The parties do not intend this Amendment nor the transactions contemplated hereby to be, and this Amendment and the transactions contemplated hereby shall not be construed to be, a novation of any of the obligations owing by the Borrower under or in connection with the Loan Documents. Further, the parties do not intend this Amendment nor the transactions contemplated hereby to affect the priority of Lender's first priority lien in any of the collateral securing the Note in any way, including, without limitation, the liens, security interests and encumbrances created by the Mortgage and the other Loan Documents

#### 9. Representations, Warranties, and Covenants.

(a) Borrower and Guarantor agree that all of the representations, warranties, and covenants contained in the Loan Documents (as incorporated into the Project Loan Agreement by reference) continue to be true and correct as of the date hereof, and Borrower and Guarantor hereby agree to continue to be bound by the representations, warranties, and covenants on and after the date hereof. Borrower and Guarantor agree that any default under this Amendment shall constitute an Event of Default under the Loan Documents.

(b) Lender represents and warrants to Borrower and Guarantor that Lender has advised the Servicer and any agents acting on behalf of Lender of the terms and provisions of the Loan Documents as amended by this Amendment.

(c) Lender, Borrower and Guarantor hereby represent and warrant that the Completion of the Improvements occurred on or about June 22, 2009.

(d) Borrower hereby represents and warrants that (i) Borrower has obtained a Certificate of Eligibility under the Industrial and Commercial Incentive Program, (ii) Borrower

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has obtained an extension of the conditional use permit for the Property permitting the Property to be used as a self-storage facility and (iii) Borrower has removed, or caused to be removed, all USTs (as defined in the Building Loan Agreement) and ASTs (as defined in the Building Loan Agreement).

10. [Intentionally omitted].

11. Miscellaneous.

(a) The Recitals set forth above are true and correct and are hereby incorporated into the body of this Amendment by reference.

(b) Capitalized terms used herein and not specifically defined herein shall have the respective meanings ascribed to such terms in the Project Loan Agreement. The definition of "Agreement" set forth in the Project Loan Agreement shall be deemed to include this Amendment. Additionally, the definition of "Loan Agreement" and "Loan Documents" as set forth in the Loan Documents shall be deemed to include this Amendment and the other documents entered into in connection with this Amendment.

(c) All exhibits and schedules attached hereto are incorporated in this Amendment and are expressly made a part hereof.

(d) This Amendment has been duly executed and delivered by Borrower and Guarantor and is the legal, valid and binding obligation of Borrower and Guarantor, enforceable in accordance with its terms, except as enforceability may be affected by applicable bankruptcy, insolvency, and similar proceedings affecting the rights of creditors generally, and general principles of equity.

(e) This Amendment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one and the same instrument, but in making proof hereof it shall be necessary to produce only one such counterpart. Any counterpart delivered by facsimile, pdf or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Amendment. This Amendment shall not be binding, however, until all parties hereto have signed and delivered a counterpart of this Amendment.

(f) The parties hereto agree that, except as specifically set forth herein, this Amendment (i) does not amend, waive, satisfy, terminate, diminish or otherwise modify any of the terms, conditions, provisions and/or agreements contained in the Loan Documents and (ii) does not constitute a waiver, release or limitation upon Lender's exercise of any of its rights and remedies under the Loan Documents, all of which are hereby expressly reserved. This Amendment shall not relieve or release the Borrower or Guarantor in any way from any of their respective duties, obligations, covenants or agreements under the Loan Documents or from the consequences of any Event of Default thereunder. This Amendment shall not obligate Lender, or be construed to require Lender, to waive any Event of Default or defaults, whether now existing or which may occur after the date hereof.

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(g) This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, except the terms and provisions of Section 2.4.6 of the Project Loan Agreement shall specifically not be binding on any successor or assign of U.S. Bank National Association, not individually but solely as trustee for the Maiden Lane Commercial Mortgage-Backed Securities Trust 2008-1.

(h) Except as expressly modified pursuant to this Amendment, all of the terms, covenants and provisions of the Loan Agreement and the other Loan Documents shall continue in full force and effect. In the event of any conflict or ambiguity between the terms, covenants, and provisions of this Amendment and those of the Loan Agreement or the other Loan Documents, the terms, covenants, and provisions of this Amendment shall control.

(i) This Amendment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of any party hereto, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

(j) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws and any applicable law of the United States of America.

(k) Borrower shall pay, on demand, all reasonable costs and expenses of Lender (including reasonable fees, costs and expenses of counsel to Lender) incurred in connection with the negotiation, preparation, execution and delivery of this Amendment, and the modification and amendment of the other Loan Documents, the closing of the restructure of the Loan and the transactions contemplated thereby.

(l) Each party hereto acknowledges that it has participated in the negotiation of this Amendment, and agrees that no provision of this Amendment shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Each of the parties hereto at all times have had access to an attorney in the negotiation of the terms and in the preparation and execution of this Amendment, and the parties hereto each have had the opportunity to review and analyze this Amendment for a sufficient period of time prior to execution and delivery. All of the terms of this Amendment were negotiated at arm's length, and were prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by either party upon the other. The execution and delivery of this Amendment is the free and voluntary act of each of the parties hereto.

**[NO FURTHER TEXT ON THIS PAGE]**

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

**ACADIA ATLANTIC AVENUE, LLC**, a Delaware limited liability company

By: /s/ Robert Masters

\_\_\_\_\_  
Name: Robert Masters  
Title: Senior Vice President

STATE OF NEW YORK            )  
  )  
COUNTY OF WESTCHESTER    )

On the 18<sup>th</sup> day of October, in the year 2010, before me the undersigned, personally appeared Robert Masters, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Debra Leibler-Jones

\_\_\_\_\_  
Notary Public

Debra Leibler Jones  
State of New York-Notary Public  
No. 01LE6005994  
Qualified in Dutchess County  
Comm. Exp. 04/20/2014

**[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]**

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**GUARANTOR:**

**ACADIA STRATEGIC OPPORTUNITY FUND II,  
LLC**, a Delaware limited liability company

By: /s/ Robert Masters

\_\_\_\_\_  
Name: Robert Masters  
Title: Senior Vice President

STATE OF NEW YORK            )  
  )  
COUNTY OF WESTCHESTER    )

On the 18<sup>th</sup> day of October, in the year 2010, before me the undersigned, personally appeared Robert Masters, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Debra Leibler-Jones

\_\_\_\_\_  
Notary Public

Debra Leibler Jones  
State of New York-Notary Public  
No. 01LE6005994  
Qualified in Dutchess County  
Comm. Exp. 04/20/2014

**[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]**

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**GUARANTOR:**

**POST MANAGEMENT, LLC**, a Delaware limited liability company

By: /s/ Marc Slayton

Name: Marc Slayton  
Title: President/Manager

STATE OF NEW YORK            )  
  )  
COUNTY OF WESTCHESTER    )

On the 18<sup>th</sup> day of October, in the year 2010, before me the undersigned, personally appeared Marc Slayton, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Debra Leibler-Jones

Notary Public

Debra Leibler Jones  
State of New York-Notary Public  
No. 01LE6005994  
Qualified in Dutchess County  
Comm. Exp. 04/20/2014

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**MANAGER:**

**SELF STORAGE MANAGEMENT LLC, a**  
Delaware limited liability company

By: /s/ Bruce Roch

\_\_\_\_\_  
Name: Bruce Roch  
Title: Chief Executive Officer

STATE OF GEORGIA            )  
  )  
COUNTY OF FULTON        )

On the 18<sup>th</sup> day of October, in the year 2010, before me the undersigned, personally appeared Bruce Roch, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Jada Cowans

\_\_\_\_\_  
Notary Public

Jada Cowans  
Notary Public, Henry County, Georgia  
My Commission Expires May 20, 2013

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EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH OF BROOKLYN, COUNTY OF KINGS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF ATLANTIC AVENUE (120 FEET IN WIDTH), WITH THE EASTERLY LINE OF EUCLID AVENUE (66 FEET IN WIDTH) AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. RUNNING ALONG SAID EASTERLY LINE OF EUCLID AVENUE, NORTH 11° 00' 00" WEST, A DISTANCE OF 211 FEET AND 6 INCHES LOCAL STANDARD, 211 FEET AND 8 1/2 INCHES UNITED STATES STANDARD, THENCE;
  2. ALONG A LINE AT RIGHT ANGLES TO SAID EUCLID AVENUE, NORTH 79° 00' 00" EAST, A DISTANCE OF 100.00 FEET LOCAL STANDARD, 100 FEET 1 1/4 INCHES UNITED STATES STANDARD, THENCE;
  3. ALONG THE LINE BEING PARALLEL TO SAID EUCLID AVENUE, NORTH 11° 00' 00" WEST, A DISTANCE OF 330.00 FEET LOCAL STANDARD, 330 FEET AND 4 INCHES UNITED STATES STANDARD, THENCE;
  4. ALONG A LINE AT RIGHT ANGLES TO SAID EUCLID AVENUE, NORTH 79° 00' 00" EAST, A DISTANCE OF 52 FEET AND 11 1/4 INCHES LOCAL STANDARD, 52 FEET AND 11 7/8 INCHES UNITED STATES STANDARD, THENCE;
  5. ALONG THE EASTERLY LINE OF SAID LOTS 23, 13 & 1, BLOCK 4145, SOUTH 11° 03' 56" EAST, A DISTANCE OF 515 FEET AND 1 1/2 INCHES LOCAL STANDARD, 515 FEET AND 6 5/8 INCHES UNITED STATES STANDARD TO THE NORTHERLY LINE OF SAID ATLANTIC AVENUE, THENCE;
  6. ALONG SAID NORTHERLY LINE OF ATLANTIC AVENUE, SOUTH 69° 13' 14" WEST, A DISTANCE OF 155 FEET AND 9 1/4 INCHES LOCAL STANDARD, 155 FEET AND 10 3/4 INCHES UNITED STATES STANDARD TO THE POINT AND PLACE OF BEGINNING.
-

SCHEDULE I

Work Providers

4 STAR CONTRACTING, INC.  
A.H. HARRIS & SONS INC.  
ACCURATE SITE SAFETY  
AEC REPROGRAPHICS  
AKERMAN SENTERFITT LP  
ALL GLASS SYSTEMS INC.  
ALPINE READY MIX INC.  
ARCHITECTURAL DOORS  
AT&T MOBILITY II, LLC  
ATLANTIC ENGINEERING LABORATORIES  
BANK OF AMERICA  
BANKS SHAPIRO GETTINGER & WALDINGER  
BESAM ENTRANCE SOLUTIONS  
BIG APPLE CONCRETE SUPPLY INC.  
BILCO WIRE ROPE & SUPPLY CORP  
BROOKSIDE ENVIRONMENTAL, INC.  
BUTZ-WILBERN  
C.M. RICHEY ELECTRICAL CONTRACTOR  
CASINO PLUMBING & HEATING CO. INC.  
CELTIC BUILDING SUPPLIES INC.  
CINGULAR WIRELESS II, LLC  
CITY OF NEW YORK DEPARTMENT  
CON ED  
CON EDISON  
CONSTRUCTION DATA CORPORATION  
CONTROL POINT ASSOCIATES INC.  
CSC  
CUSTOM BOOK BINDERY INC.  
DELAWARE SECRETARY OF STATE  
DEMAND ELECTRIC INC.  
DESIGLINE CONSTRUCTION SERVICES INC  
DIAMOND POINT GLASS CO. INC.  
DPK CONSULTING LLC  
DTS  
EASTBAY STEEL INC.  
ELIAS SLAIBY  
EMG  
EMMERSON ESTRADA  
ETRE ASSOCIATES, LTD  
FASTERNAL COMPANY  
FEDERAL EXPRESS  
FIRST AMERICAN TITLE INS CO  
FJM FERRO, INC.  
FORTE EXPRESS PLUMBING & HEATING  
FROMM ELETRIC SUPPLY CORP.  
GMA MECHANICAL CORPORATION  
GRAINGER  
GREENBERG FARROW ARCHIT CORP  
GREENBERG TRAGER & HERBRST, LLP  
GUY SACCENTO  
HOME DEPOT CREDIT SERVICES  
ICC CONCRETE & MASONRY CORP  
INDEPENDENT EQUIPMENT CORP  
JANUS INTERNATIONAL CORPORATION  
JD REINFORCING SUPPLY  
JM WELDING CO. INC.  
JOHN CHRISTODOULOU  
JOHN SPERANDO  
JPR SPECIALTY CONSULTING  
KETCHUM DIRECTORY ADVERTISING  
KEYSPAN ENERGY DELIVERY  
LOUIS STRIAR, INC.  
M.E. SABOSIK ASSOCIATES, INC.  
MAHENDRANATH RAMSAHAI  
MARJAM SUPPLY CO., INC.  
METALLINE FIRE DOOR CO., INC.  
METROPOLITAN VALUATION SERVICES  
MICHAEL ARIGOT  
MICHAEL S. LUTHER P.E.  
MODULEX PARTITION CORP  
MONZACK MERSKY MCLAUGHLIN  
MORRISON TRANSIT-MIX CORP

MRC II CONTRACTING INC.  
NACIREMA INDUSTRIES, INC.  
NATIONAL CONSTRUCTION RENTALS  
NEW YORK CITY COMMISSION  
NEWCO CORPORATE SERVICES INC.  
NY REBAR INC.  
NYC DEPARTMENT OF BUILDINGS  
NYC DEPARTMENT OF FINANCE  
NYC DEPARTMENT OF TRANSPORTATION  
NYC DEPT OF BUILDINGS  
NYC FIRE DEPARTMENT  
NYC PARK OF RECREATIONS  
NYC WATER BOARD  
OEHLER CONTRACTING CORP.  
OLDCASTLE APG NORTHEAST, INC.  
OTTERBOURG, STEINDLER, HOUSTON OUR RENTAL CORP  
OUTSOURCE CONSULTANTS  
PC RICHARD & SON BUILDERS DIVISION  
PERIMETER BRIDGE & SCAFFOLD CO., INC  
PETTY CASH  
PHOENIX CONSTRUCTION LLC  
POLAND SPRINGS  
POST MANAGEMENT II, LLC  
POST MANAGEMENT, LLC  
PRO ENERGY SERVICES  
QUEENSBORO FENCE CO. INC.  
RADIANT CLEANING SERVICES, INC.

RARITAN BAY CONTRACTING INC.  
RED WING ELECTRIC LLC  
RIKER DANZIG SCHERER HYLAND  
ROBERT DONOHUE  
ROCK TECH INC.  
ROMA ARCHITECTURAL WOODWORKING, INC  
RON WRENSEN  
SANDAK HENNESSEY & GRECO LLP  
SH5 CONSTRUCTION CORP.  
SHANKER LAW GROUP  
SIGN A RAMA USA  
SIGN-A-RAMA  
SIGNS BY TOMORROW  
SIMKISS AGENCY  
SPEEDY CONCRETE PUMPING & REPAIR IN SPRAY- RITE LLC  
SPRINT  
SS20 BUILDING SYSTEMS, INC  
STADTMAUER BAILKIN LLP  
STAPLES CREDIT PLAN  
STILLWELL MATERIALS CORP.  
STOLTE PAINTING, LLC  
TASZ CONSTRUCTION, INC.  
THYSSENKRUPP ELEVATOR CORPORATION  
TIMOTHY CLARK  
ULTIMATE ACCESS SOLUTIONS  
UNBUILD IT SERVICES, LTD  
UNITED STEEL PRODUCTS VERIZON, INC.  
VITAL SIGN SOURCE LTD  
W. B. MASON CO., INC.  
WACHTEL & MASZR LLP  
WHITESTONE ASSOCIATES INC.  
WILLIAM VITACCO ASSOCIATES, LTD



FOURTH AMENDED AND RESTATED CREDIT AGREEMENT

dated as of December 22, 2010

among

ACADIA STRATEGIC OPPORTUNITY FUND II, LLC,  
as Borrower,

and

BANK OF AMERICA, N.A.,  
as Lender

and

BANK OF AMERICA, N.A., as Administrative Agent

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SCHEDULES

A Individual Commitments

EXHIBITS

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B Investors/Capital Commitments  
C Investor Acknowledgment  
D Note  
E Closing Certificate  
F Reserved  
G Compliance Certificate  
H Capital Stock of Subsidiaries  
I Assignment and Assumption Agreement  
J Reserved  
K Form of Investor Reaffirmation  
L Form of Gloster Principal Reaffirmation  
M Form of Vanderbilt Principal Reaffirmation  
N

Sources Uses Statement

FOURTH AMENDED AND RESTATED CREDIT AGREEMENT (“this Agreement”) dated as of December 22, 2010 by and among ACADIA STRATEGIC OPPORTUNITY FUND II, LLC, a Delaware limited liability company (“Borrower”), ACADIA REALTY ACQUISITION II, LLC, a Delaware limited liability company (“Managing Member”), ACADIA INVESTORS II, INC., a Maryland corporation (“Acadia Investors II”), BANK OF AMERICA, N.A., successor by merger to Fleet National Bank (in its individual capacity and not as Administrative Agent, “BofA”; BofA and each other lender who may become a Lender pursuant to Section 10.10, each, a “Lender” and collectively, “Lenders”) and BANK OF AMERICA, N.A., as Administrative Agent for Lenders (together with its successors in such capacity, “Administrative Agent”).

WHEREAS, Fleet National Bank (“Fleet”), Borrower, Managing Member and Acadia Investors II entered into that certain Credit Agreement dated as of March 9, 2005 (the “Original Credit Agreement”);

WHEREAS, BofA is the successor by merger to Fleet;

WHEREAS, BofA, The Bank of New York Mellon, formerly known as The Bank of New York, Borrower (“BNYM”), Managing Member, Acadia Investors II and Administrative Agent entered into that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the “Amended Agreement”) and that certain Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 (the “Amendment”);

WHEREAS, BofA, BNYM, Borrower, Managing Member, Acadia Investors II and Administrative Agent entered into that certain Second Amended and Restated Credit Agreement dated as of February 27, 2009 (the “Second Amended Agreement”);

WHEREAS, pursuant to an Assignment and Assumption Agreement dated as of March 3, 2010 by and between BNYM, as assignor, and BofA, as assignee, BNYM assigned all of its interest under the Original Agreement to BofA;

WHEREAS, pursuant to that certain Third Amended and Restated Credit Agreement dated as of March 3, 2010 by and among BofA, Borrower, Managing Member, Acadia Investors II and Administrative Agent (the “Third Amended Agreement”; the Original Credit Agreement, as amended and restated by the Amended Agreement, as modified by the Amendment, as amended and restated by the Second Amended Agreement and as amended and restated by the Third Amended Agreement, collectively, the “Original Agreement”);

WHEREAS, Borrower, Managing Member and Acadia Investors II have requested that Lenders extend the Maturity Date of the Original Agreement and otherwise modify the terms and provisions thereof and Lenders have agreed, on the terms and conditions hereof, to do so; and

---

WHEREAS, Borrower desires that Lenders extend credit as provided herein, and Lenders are prepared to extend such credit on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, Borrower, Administrative Agent and Lenders hereby agree to amend and restate all of the terms and provisions of the Original Agreement as follows:

## ARTICLE I

### PARTICULAR TERMS, DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions. The following terms, as used herein, shall have the following meanings:

“Administrative Agent’s Counsel” — Schiff Hardin LLP, 900 Third Avenue, 23rd Floor, New York, New York 10022.

“Administrative Agent’s Office” — Administrative Agent’s Office as set forth on its signature page of this Agreement, or such other address in the United States as Administrative Agent may designate by notice to Borrower and Lenders.

“Adverse Investor Event” — Has the meaning given to such term in Section 2.14.

“Affiliate” — As to any Person, any other Person (other than a Subsidiary thereof) which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person (including, with its correlative meanings, “controlled by” and “under common control with”) means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Aggregate Outstanding Extensions of Credit” — As to any Lender at any time, an amount equal to such Lender’s Pro Rata Share of the sum of, without duplication, the aggregate Principal Amount plus the aggregate face amount of all Letters of Credit then outstanding plus the aggregate reimbursement obligations then outstanding.

“Allowable Construction Borrowing” — (i) Loan proceeds under loans to Albee Development LLC and/or Acadia-P/A Sherman Avenue LLC, which loans are solely for the purpose of providing such Subsidiaries with funds to construct buildings on the properties owned by such Subsidiaries, provided the loan budget for any such loan provides for an interest reserve sufficient to pay all debt service related to such property through the construction period, as reasonably determined by Administrative Agent, and (ii) up to \$5,000,000 in aggregate loan proceeds as

between all Subsidiaries of Borrower other than those referred to in the preceding clause (i) which proceeds are solely for the purpose of improving the real property owned by such Subsidiaries, provided the loan budget for any such loan provides for an interest reserve sufficient, together with any net operating income of such property, to pay all debt service related to such property through the construction period, as reasonably determined by Administrative Agent.

“Applicable Lending Office” — For each Lender and for the portions of the outstanding principal balance under its Note bearing interest based on the Prime Rate or the BBA LIBOR Daily Floating Rate, as applicable, the lending office of such Lender (or of an affiliate of such Lender) designated as such on the signature page hereof or in the applicable Assignment and Assumption Agreement, or such other office of such Lender (or of an affiliate of such Lender) as such Lender may from time to time specify to Administrative Agent and Borrower as the office by which the portions of the outstanding principal balance under its Note bearing interest based on the Prime Rate or the BBA LIBOR Daily Floating Rate are to be made and maintained.

“Applicable Margin” — 2.90% per annum.

“Approved Use” — Has the meaning specified in Section 5.16.

“Assignee” — Has the meaning specified in Section 10.10.

“Assignment and Assumption Agreement” — An Assignment and Assumption Agreement, substantially in the form of Exhibit I, pursuant to which a Lender assigns and an Assignee assumes rights and obligations in accordance with Section 10.10.

“Authorization Letter” — The letter in the form of Exhibit A.

“Available Commitment” — The Total Commitment.

“BBA LIBOR” — Has the meaning provided to such term in Section 2.08.

“BBA LIBOR Daily Floating Rate” — Has the meaning provided to such term in Section 2.08.

“Borrowing Date” — Any Business Day specified in a notice pursuant to Section 2.05 as a date on which Borrower requests Lenders to make Loans hereunder.

“Business Day” — Any day on which commercial banks are not authorized or required to close in New York City; and, whenever such day relates to BBA LIBOR, any such day in which dealings in Dollar deposits are also carried out in the London interbank market and banks are also open for business in London.



“Capital Call” — A call upon the Investors in Borrower and/or Acadia Investors II to fund all or any portion of the Capital Commitments pursuant to and in accordance with the Stockholders Agreement and/or in accordance with the Operating Agreement.

“Capital Commitments” — The commitment of each Investor to make Capital Contributions, directly or indirectly, to fund Borrower in the amount set forth in, and pursuant to the terms of, the Stockholders Agreement and the Operating Agreement.

“Capital Contributions” — With respect to any partner or member in Borrower, cash payments or contributions by such partner or member to Borrower pursuant to Article V of the Operating Agreement and, with respect to any other Investor, cash payments or contributions by such Investor to Acadia Investors II pursuant to Section 6 of the Stockholders Agreement.

“Capital Contributions Pledge Agreement” — Collectively, the Amended and Restated Capital Contributions Pledge Agreements dated as of March 21, 2006 and executed and delivered by Borrower and Acadia Investors II.

“Capital Demand Notice” — Any notice sent to the Investors in connection with a Capital Call.

“Capital Events Collateral Security Agreement” — That certain Capital Events Collateral Security Agreement dated as of the date hereof between Borrower and Administrative Agent, as the same may be amended, supplemented or otherwise modified from time to time.

“Capital Stock” — Any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all similar ownership interests in a Person (other than a corporation) and any and all warrants or options to purchase any of the foregoing.

“Cash Collateral Agreement” — The Amended and Restated Cash Collateral Agreement to be executed and delivered by Borrower dated as of March 21, 2006, as the same may be amended, supplemented or otherwise modified from time to time.

“Cash Equivalents” — (a) Securities with maturities of ninety (90) days or less from the date of acquisition issued or fully guaranteed or insured by the United States Government or any agency thereof, (b) certificates of deposit and eurodollar time deposits with maturities of ninety (90) days or less from the date of acquisition and overnight bank deposits of any Lender or of any commercial bank having capital and surplus in excess of \$500,000,000, (c) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than seven (7) days with respect to securities issued or fully guaranteed or insured by the United States Government, (d) commercial paper of a domestic issuer rated at least A-2 or the equivalent thereof by S&P or P-2 or the equivalent thereof by Moody’s and in either case maturing within ninety (90) days after the date of acquisition, (e) securities with maturities

of ninety (90) days or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's, (f) securities with maturities of ninety (90) days or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition or (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

“Closing Date” — The date of this Agreement as first set forth above.

“Code” — The Internal Revenue Code of 1986, as amended from time to time.

“Collateral” — (i) The Deposit Account and the Subscription Account, (ii) all funds now or hereafter deposited into the Subscription Account and (iii) any other property upon which a Lien has been or is purported or intended to have been granted to Administrative Agent, for the benefit of Lenders, under the Capital Events Collateral Security Agreement or the Cash Collateral Agreement.

“Credit Amount” — \$40,000,000, provided that (i) effective from and after October 31, 2013, the Credit Amount shall reduce to \$15,000,000, (ii) effective from and after February 1, 2014, the Credit Amount shall reduce to \$11,250,000, (iii) effective from and after May 1, 2014, the Credit Amount shall reduce to \$7,500,000 and (iv) effective from and after August 1, 2014, the Credit Amount shall reduce to \$3,750,000.

“Credit Documents” — This Agreement, each Note, each application referred to in Section 2.17(f), the Guaranty, the Security Documents, the Authorization Letter, the Investor Acknowledgments, any guarantees or documents of assurance given by direct investors in Borrower to Administrative Agent and/or Lenders, Uniform Commercial Code financing statements in respect of the Collateral and any other collateral given as security for the Credit Facility or the Obligations, and any other documents which evidence or secure the Credit Facility or the Obligations.

“Credit Facility” — The credit facility, in an amount up to the Credit Amount, to be provided pursuant to this Agreement including both the making of Loans and the issuance of Letters of Credit.

“Credit Parties” — Borrower, Managing Member and Acadia Investors II.

“Default” — Any event or circumstance which, with the giving of notice or the passage of time, or both, would become an Event of Default.

“Default Rate” — The Prime Based Rate plus 4% per annum.

“Deposit Account” — Has the meaning set forth in the Capital Events Collateral Security Agreement.

“Dollars” and “\$” — Lawful money of the United States.

“Dore LP” — Dore Capital Real Estate, L.P., a Delaware limited partnership.

“Employee Benefit Plan” — Any employee benefit or other plan established or maintained, or to which contributions have been made, by Borrower or Guarantor.

“Environmental Laws” — Any and all foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other requirements of Law regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or for the protection of human health from environmental dangers, as now or may at any time hereafter be in effect.

“ERISA” — The Employee Retirement Income Security Act of 1974, as amended from time to time, including the rules and regulations promulgated thereunder.

“ERISA Affiliate” — Any corporation which is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as Borrower and/or Guarantor, or any trade or business which is under common control (within the meaning of Section 414(c) of the Code) with Borrower and/or Guarantor, or any organization which is required to be treated as a single employer with Borrower and/or Guarantor under Section 414(m) or 414(o) of the Code.

“ERISA Investor” — An Investor that is an “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) subject to Title IV and Title I, Subtitle B, Part 3 of ERISA, a group trust, as described in Revenue Ruling 81-100, or a partnership or commingled account or fund which is subject to Title I of ERISA.

“ERISA Group” — Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with Borrower or any Subsidiary, are treated as a single employer under Section 414 of the Internal Revenue Code.

“Event of Default” — Has the meaning given to such term in Article VIII.

“Federal Funds Rate” — For any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upwards to the next higher 1/100 of

1%) charged to Bank of America on such day on such transactions as determined by Administrative Agent.

**“Financial Statements”** — Statements of the assets, liabilities (direct or contingent), income, expenses and cash flow of Borrower and Guarantor, prepared in accordance with GAAP.

**“Financing Lease”** — Any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee.

**“GAAP”** — Generally accepted accounting principles in the United States of America as in effect from time to time and consistently applied.

**“Gloster Principal Reaffirmations”** — Has the meaning specified in Section 6.14.

**“Governing Documents”** — As to any Person, its articles or certificate of incorporation and by-laws, its partnership agreement, its certificate of formation and operating agreement, and/or the other organizational or governing documents of such Person.

**“Governmental Authorities”** — The United States, any state and any political subdivision, agency, department, commission, board, bureau or instrumentality of either of them, including any local authorities, which exercises jurisdiction over Borrower, Guarantor or any of the other Credit Parties or any Investor.

**“Governmental Plan Investor”** — An Investor that is a “governmental plan” as defined in Section 3(32) of ERISA.

**“Guarantee Obligation”** — As to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The terms “Guarantee”

and “Guaranteed” used as a verb shall have a correlative meaning. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by Borrower in good faith.

“Guarantor” — Acadia Realty Limited Partnership, a Delaware limited partnership, which is the sole member of Managing Member.

“Guaranty” — That certain Guaranty Agreement dated as of the date hereof made by Acadia Realty Limited Partnership to Lenders and Administrative Agent.

“Indebtedness” — Of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money (whether by loan or the issuance and sale of debt securities) including any unfunded commitments to lend money to such Person, or for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (b) any other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (c) all obligations of such Person under Financing Leases, (d) all obligations of such Person in respect of letters of credit, acceptances or similar instruments issued or created for the account or upon the application of such Person and (e) all liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof.

“Individual Commitment” — With respect to each Lender, the amount set forth opposite the name of such Lender on Schedule A attached hereto (subject to change in accordance with the terms of this Agreement).

“Initial Advance” — The first advance of proceeds of any Loan to be made hereunder.

“Investments” — Has the meaning specified in the Operating Agreement.

“Investor Acknowledgment” — The acknowledgment executed and delivered by each Investor, substantially in the form of Exhibit C hereto, as the same may be reaffirmed, amended, supplemented or otherwise modified from time to time in accordance with this Agreement.

“Investor Claims” — All debts and liabilities of an Investor, in its capacity as a member in Borrower, to Borrower, and/or as a shareholder in Acadia Investors II, to Acadia Investors II, in either case whether such debts and liabilities now exist or hereafter are incurred or arise, or whether the obligations of such Investor therein be direct,

contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or liabilities are evidenced by a note, contract, bargain account, or otherwise, and irrespective of the Person or Persons in whose favor such debts or liabilities may, at their inception, have been, or may hereafter be, created, or the manner in which they have been or may hereafter be acquired by Borrower or Acadia Investors II. “Investor Claims” shall include, without limitation, all rights and claims of Borrower against an Investor under the Operating Agreement and of Acadia Investors II against an Investor under the Stockholders Agreement.

“Investor Guarantor” — Any entity which has guaranteed to Lenders the payment and/or funding of all or any portion of any Investor’s Capital Commitments.

“Investor Reaffirmations” — Has the meaning specified in Section 6.14.

“Investors” — From time to time, Managing Member, Acadia Investors II, each of the other members of Borrower and all stockholders of Acadia Investors II.

“Law” — Any federal, state or local law, statute, rule, regulation, ordinance, order, decree, directive, requirement, code, notice of violation or rule of common law, now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof by a Governmental Authority or otherwise, including any judicial or administrative order, determination, consent decree or judgment.

“Lead Arranger” — Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger to Banc of America Securities LLC.

“Lender Reply Period” — Has the meaning specified in Section 10.09.

“Lien” — Any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any Financing Lease having substantially the same economic effect as any of the foregoing), and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction in respect of any of the foregoing.

“Liquidity” — (x) Unpaid Capital Commitments of Managing Member and Investors as to whom no Adverse Investor Event has occurred, (y) unencumbered cash (excluding the Deposit Account and all funds on deposit therein) and (z) unencumbered Cash Equivalents.

“Loan” — Has the meaning given to such term in Section 2.01.

“Material Adverse Effect” — (a) A material adverse effect on the business, operations, property, condition (financial or otherwise) or prospects of Borrower or (b)  
a

material adverse effect on the validity or enforceability of this Agreement or any of the other Credit Documents or the Investor Acknowledgments or the rights or remedies of Administrative Agent or Lenders hereunder or thereunder, or (c) any circumstances or events which could reasonably be expected to materially impair, impede, or jeopardize the obligation and the liability of Managing Member or Acadia Investors II to fulfill their obligations under the Operating Agreement.

“Material Plan” — At any time a Plan or Plans having aggregate Unfunded Liabilities in an amount that would have a Material Adverse Effect if such Plans were terminated.

“Materials of Environmental Concern” — Any gasoline or petroleum products (including crude oil) or any fraction thereof or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

“Maturity Date” — December 22, 2014.

“Minimum Release Price” — As to each Subsidiary and its assets (each of which constitutes an Investment), the amount set forth on Exhibit H opposite the name of such Subsidiary.

“Moody’s” — Moody’s Investor Service, Inc.

“Multiemployer Plan” — Any plan defined as such in Section 3(37) of ERISA.

“Net Refinance Proceeds” — The excess of (i) the principal amount borrowed by any Subsidiary since the date of the most recent Financial Statements delivered by Borrower to Administrative Agent over (ii) the sum of (x) the principal amount of the Indebtedness (excluding interest) of such Subsidiary being repaid, (y) the reasonable and customary out-of-pocket closing costs of such refinance, as reasonably approved by Administrative Agent, and (z) the amount of such new borrowing which constitutes Allowable Construction Borrowing.

“Note”; “Notes” — Have the respective meanings specified in Section 2.06.

“Obligations” — The unpaid principal amount of, and interest (including, without limitation, interest accruing after the maturity of the Credit Facility and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) on the Loans, and all other obligations and liabilities of the Credit Parties and Guarantor to Administrative Agent and Lenders, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, or out of or in connection with, this Agreement, the Notes, the Letters of Credit, the Security Documents and any other Credit Documents and any other document made, delivered or given in

connection therewith or herewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all reasonable fees and disbursements of counsel to Administrative Agent or to Lenders that are required to be paid by a Credit Party or Guarantor pursuant to the terms of the Credit Documents) or otherwise.

“Operating Agreement” — That certain Amended and Restated Operating Agreement of Borrower by and among Managing Member and Acadia Investors II dated as of October 15, 2004 (effective as of August 15, 2004), as amended by First Amendment to Amended and Restated Operating Agreement of Borrower by and among Managing Member and Acadia Investors II dated as of August 15, 2004, as supplemented by that certain Pledge Agreement dated as of June 15, 2004 from Acadia Investors II, Inc. to Borrower, as amended by Second Amendment to Amended and Restated Operating Agreement of Borrower by and among Managing Member and Acadia Investors II dated as of January 1, 2006 and as amended by action of Managing Member with the written consent of the advisory committee of Borrower by required vote dated January 5, 2010, and as the same may hereafter be modified in compliance with the terms of this Agreement.

“Parent” — Acadia Realty Trust, a Maryland real estate investment trust and the parent company of Guarantor.

“Participant”; “Participation” — Have the meanings specified in Section 10.10.

“Payor” — Has the meaning given to such term in Section 9.12(a).

“PBGC” — The Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

“Pending Capital Call” — A Capital Call made upon the Investors of Borrower no more than fifteen (15) days prior to the date of determination, which Capital Call has not yet been funded by any of the Investors.

“Pension Plan” — Any employee pension benefit plan within the meaning of Section 3(2) of ERISA with respect to which Borrower, Guarantor or any ERISA Affiliate at any relevant time has liability or an obligation to contribute.

“Person” — An individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other entity of whatever nature.

“Plan” — At any time an employee pension benefit plan within the meaning of Section 3(2) of ERISA that is maintained or contributed to by any member of the ERISA Group.

“Prime Based Rate” — On any day, the rate of interest per annum equal to the Applicable Margin plus the Prime Rate, each change in said rates to be effective, without notice or demand of any kind, as of the date of such change.



**“Prime Rate”** — On any day, the rate of interest per annum then most recently established by the Person serving as Administrative Agent as its “prime rate,” it being understood and agreed that such rate is set by the Person serving as Administrative Agent as a general reference rate of interest, taking into account such factors as the Person serving as Administrative Agent may deem appropriate, that it is not necessarily the lowest or best rate actually charged to any customer or a favored rate, that it may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the Person serving as Administrative Agent may make various business or other loans at rates of interest having no relationship to such rate. If the Person serving as Administrative Agent (including any subsequent holder of such position) ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

**“Principal Amount”** — At any time, the aggregate outstanding principal amount of the Notes.

**“Projected Sources”** — Has the meaning specified in Section 6.17.

**“Projected Sources and Uses”** — Has the meaning specified in Section 6.17.

**“Projected Uses”** — Has the meaning specified in Section 6.17.

**“Pro Rata Share”** — With respect to each Lender, the ratio of such Lender’s Individual Commitment to the Credit Amount. As of the date hereof, Lenders’ respective Pro Rata Shares are as follows:

<u>Lender</u>	<u>Pro Rata Share</u>
BofA	100%

**“Regulation D”** and **“Regulation U”** — Respectively, Regulation D and Regulation U of the Board of Governors of the Federal Reserve System.

**“Release Price”** — With respect to the sale of any Subsidiary or the assets of such Subsidiary, the greater of (i) the gross sales price, including all consideration given to, or paid on behalf of, Borrower and/or the applicable Subsidiary in connection with such sale less only reasonable and customary out-of-pocket costs of such sale as reasonably approved by Administrative Agent and (ii) the Minimum Release Price for such Subsidiary.

**“Required Lenders”** — At any time, those Lenders whose aggregate Pro Rata Shares exceed 50%.

**“Required Payment”** — Has the meaning given to such term in Section 9.12(a).

**“Requisition”** — A written statement by or on behalf of Borrower, in form and substance satisfactory to Administrative Agent, setting forth in each instance the aggregate amount of the Loans requested to be borrowed and certifying the purpose for which the proceeds of such Loans are to be used.

**“Responsible Party.”** — For any Governmental Plan Investor, (a) if the state under which such Governmental Plan Investor operates is obligated to fund such Governmental Plan Investor and is liable to fund any shortfalls, such state, and (b) otherwise, the Governmental Plan Investor itself.

**“S&P”** — Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

**“Security Documents”** — The collective reference to the Capital Events Collateral Security Agreement and the Cash Collateral Agreement, and all other security documents at any time delivered to Lenders and/or Administrative Agent granting a Lien on any asset or assets of any Person to secure any of the Obligations or to secure any guarantee of any such Obligations.

**“Sources and Uses Period”** — Has the meaning specified in Section 6.17.

**“Sponsor”** — For any ERISA Investor, the “plan sponsor” within the meaning of Section 3(16)(B) of ERISA.

**“Stockholders Agreement”** — That certain Amended and Restated Stockholders Agreement by and among Acadia Investors II, Yale University, The Vanderbilt University, Carnegie Corporation of New York, The Board of Trustees of the Leland Stanford Junior University, Gloster, LLC, The Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of October 15, 2004 (effective as of August 15, 2004), as amended by First Amendment to Stockholders Agreement by and among Acadia Investors II, Yale University, The Vanderbilt University, Carnegie Corporation of New York, The Board of Trustees of the Leland Stanford University, Gloster, LLC, The Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of August 15, 2004.

**“Subscription Account”** — The collateral account established by Borrower at Bank of America, N.A., in the name of Administrative Agent, as secured party, and identified as follows: Acadia Strategic Opportunity Fund II, LLC, Account #9489651466, ABA #02120039, Bank of America, N.A., One Bryant Park, 35th Floor, New York, New York 10036.

**“Subsidiary”** — As to any Person, a corporation, partnership or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise

qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of Borrower.

“Supplemental Fee Letter” — Collectively, that certain letter agreement dated as of January 30, 2009 among BofA, Lead Arranger and Borrower, that certain letter agreement dated as of March 3, 2009 among BofA, Lead Arranger and Borrower and that certain letter agreement dated as of the date hereof among BofA, Lead Arranger and Borrower, providing for Borrower’s payment to Lead Arranger and/or BofA on the date hereof and from time to time hereafter certain fees in connection with the Credit Facility, each such fee to be for Lead Arranger’s and/or BofA’s own account.

“Termination Event” — (i) A “reportable event”, as such term is described in Section 4043 of ERISA (other than a “reportable event” not subject to the provision for thirty (30) day notice to the PBGC), or an event described in Section 4062(e) of ERISA, (ii) the withdrawal by any member of the ERISA Group from a Multiemployer Plan or the incurrence of liability by any member of the ERISA Group upon the termination of a Multiemployer Plan, (iii) the filing of a notice of intent to terminate any Plan under Section 4041 of ERISA, other than in a standard termination within the meaning of Section 4041 of ERISA, or the treatment of a Plan amendment as a distress termination under Section 4041 of ERISA, (iv) the institution by the PBGC of proceedings to terminate, impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or cause a trustee to be appointed to administer, any Plan or (v) any other event or condition that might reasonably constitute grounds for the involuntary termination of, or the appointment of a trustee by the PBGC to administer, any Plan or the imposition of any Lien on the assets of any member of the ERISA Group.

“Total Commitment” — The Credit Amount (subject to change in accordance with the terms of this Agreement).

“Unfunded Liabilities” — With respect to any Plan at any time, the amount (if any) by which (i) the value of all benefit liabilities under such Plan, determined on a plan termination basis using the assumptions prescribed by the PBGC for such purposes, exceeds (ii) the fair market value of all Plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions), all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the ERISA Group to the PBGC or any other Person under Title IV of ERISA.

“Unpaid Capital Commitments” — At any time (x) the aggregate Capital Commitments, including amounts which are subject to any Pending Capital Call under the Stockholders Agreement, provided, however, that to avoid double counting, the Capital Commitment of Acadia Investors II shall not be counted since such Capital Commitment is, in effect, a pass-through of the Capital Commitments of Investors under the Stockholders Agreement less (y) the aggregate Capital Calls

made upon the Investors regardless of whether the Investors have actually funded all such Capital Calls.

“Unused Commitment” — At any time, an amount equal to the excess, if any, of (a) the Total Commitment over (b) the Aggregate Outstanding Extensions of Credit of all Lenders.

“Unused Fee” — 0.30%.

“United States” and “U.S.” — The United States of America.

“Vanderbilt” — The Vanderbilt University, a corporation organized under the laws of the State of Tennessee.

“Vanderbilt Guaranty” — That certain Guaranty of Capital dated March 3, 2010 executed and delivered by Vanderbilt.

“Vanderbilt Reaffirmation” — Has the meaning specified in Section 6.14.

Section 1.02. Rules of Construction. Except as expressly provided otherwise, when used in this Agreement (i) “or” is not exclusive, (ii) “hereunder”, “herein”, “hereof” and the like refer to this Agreement as a whole, (iii) “Article”, “Section”, “Schedule” and “Exhibit” refer to Articles, Sections, Schedules and Exhibits of this Agreement, (iv) terms defined in the singular shall have a correlative meaning when used in the plural and vice versa, (v) a reference to a Law includes any amendment, modification or supplement to, or replacement of, such Law and (vi) a reference to a document shall mean such document as the same may be amended, modified or supplemented from time to time in accordance with its terms. The cover page and the Exhibits and Schedules annexed hereto are incorporated as a part of this Agreement with the same effect as if set forth in the body hereof. Any table of contents and all captions and headings herein are for convenience only and shall not affect the interpretation or construction hereof.

## ARTICLE II

### THE CREDIT FACILITY

#### Section 2.01. Generally.

(a) Subject to the terms and conditions of this Agreement, each Lender severally agrees to make a loan to Borrower (each, a “Loan” and, collectively, “Loans”), subject to the provisions of this Agreement, and on the basis of the representations, warranties and covenants made herein and in the other Credit Documents, in periodic disbursements as hereinafter set forth. On the date hereof following principal payments made on the date hereof by Borrower under the Original Agreement, the Principal Amount is \$40,000,000. Following any repayment of the principal amount of the Loans,

whether required pursuant to the terms hereof or voluntary, no amount may be re-advanced or re-borrowed.

(b) Notwithstanding anything to the contrary contained herein, the aggregate principal amount of Loans outstanding hereunder shall not at any time exceed the Available Commitment.

Section 2.02. Nature of Lenders' Obligations. The obligations of Lenders under this Agreement are several, and no Lender shall be responsible for the failure of any other Lender to make or participate in any extension of credit under the Credit Facility to be made or participated in by such other Lender. However, the failure of any Lender to make or participate in any extension of credit under the Credit Facility to be made or participated in by it hereunder on the date specified therefor shall not relieve any other Lender of its obligation to make or participate in any extension of credit under the Credit Facility specified hereby to be made or participated in by it on such date.

Section 2.03. Purpose. Borrower shall use the proceeds of the Loans for business purposes permitted under the Operating Agreement. In no event shall extensions of credit under the Credit Facility be used in a manner that would violate Regulation U or in connection with a hostile acquisition or for any illegal purpose.

Section 2.04. Amounts of Loans. The Initial Advance in the form of Loans by Lenders shall be in the minimum amount of \$100,000 and in integral multiples of \$25,000 above such amount unless otherwise agreed by Administrative Agent, and shall be made upon satisfaction of the conditions set forth in Section 4.01. Subsequent Loans by Lenders shall be made no more frequently than monthly thereafter, upon satisfaction of the conditions set forth in Section 4.02. The amount of each Loan by Lenders subsequent to the Initial Advance shall be in the minimum amount of \$100,000 (unless less than said amount is available for disbursement pursuant to the terms hereof at the time of such Loan, in which case the amount of such Loan shall be equal to such remaining availability) and in integral multiples of \$25,000 above such amount.

Section 2.05. Procedure for Loans. Prior to the Maturity Date, Borrower may borrow Loans under the Credit Facility on any Business Day in an aggregate principal amount not exceeding the lesser of (A) the aggregate Unused Commitments then in effect and (B) the Available Commitment then in effect minus the Aggregate Outstanding Extensions of Credit of all Lenders, provided that Borrower shall give Administrative Agent irrevocable Requisition (which Requisition must be received by Administrative Agent prior to 10:00 a.m., New York time, four (4) Business Days prior to the requested Borrowing Date, which shall include a certification of Borrower specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date, and (iii) in reasonable detail, the Approved Use for which such borrowing is being made and representing that such Approved Use is in compliance in all respects with the terms of the Operating Agreement, the Stockholders Agreement and the Credit Documents. Administrative Agent, upon its receipt and approval of the request for a borrowing of Loans, will notify all Lenders either by telephone or facsimile. Not later than 10:00 a.m. (New York time) on the applicable Borrowing Date, each Lender shall, through its Applicable Lending

Office and subject to the conditions of this Agreement, make its Pro Rata Share of the total amount of the Loan to be made on such Borrowing Date available to Administrative Agent, at Administrative Agent's Office and in immediately available funds for the account of Borrower. The amount so received by Administrative Agent shall, subject to the conditions of this Agreement, be made available to Borrower, in immediately available funds, by Administrative Agent's crediting an account of Borrower designated by Borrower in its Requisition for such Loans. Notwithstanding anything to the contrary contained herein, Borrower and Lenders acknowledge that (i) the full amount of the Loans was advanced under the Original Agreement and is outstanding as of the date hereof and (ii) Borrower is not entitled to any further advances hereunder

Section 2.06. Notes. The Loans shall be evidenced by a note or notes of Borrower in the form of Exhibit D, duly completed and executed by Borrower (one for each Lender in an amount equal to such Lender's Individual Commitment, payable for the account of such Lender's Applicable Lending Office), in an aggregate principal amount equal to the Credit Amount (such notes, as the same may hereafter be amended, modified, extended, severed, assigned, substituted, renewed or restated from time to time (including, without limitation, any substitute notes pursuant to Section 10.10), each, a "Note" and collectively, the "Notes"). The Notes include the existing Notes delivered to Lenders pursuant to the Original Agreement. The Notes shall mature, and all outstanding principal and other sums thereunder shall be paid in full, on the Maturity Date, as the same may be accelerated or extended.

In case of any loss, theft, destruction or mutilation of any Lender's Note, Borrower shall, upon its receipt of an affidavit of an officer of such Lender as to such loss, theft, destruction or mutilation and, in the case of any such loss, theft or destruction, an appropriate indemnification, execute and deliver a replacement Note to such Lender in the same principal amount and otherwise of like tenor as the lost, stolen, destroyed or mutilated Note.

Section 2.07. Payments and Distributions. Borrower shall make each payment under this Agreement and under the Notes not later than 11:00 a.m. (New York time) on the date when due to Administrative Agent at Administrative Agent's Office in immediately available funds. Administrative Agent will thereafter, on the day of its receipt of each such payment, cause to be distributed to each Lender such Lender's appropriate share of the payments of principal and interest, and its appropriate share of the payments of other sums, in like funds for the account of such Lender's Applicable Lending Office. Payments by Borrower hereunder or under the Notes or other Credit Documents shall be made without setoff or counterclaim.

Except to the extent otherwise provided in this Agreement, whenever any payment to be made under this Agreement or under the Notes is due on any day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of the payment of interest and, if applicable, fees, as the case may be.

Each Lender's interest in the Credit Facility shall be of equal priority with the interest of each other Lender.

Section 2.08. Interest.

(a) The unpaid Principal Amount of the Loan from day to day outstanding which is not past due, shall bear interest at a fluctuating rate of interest equal to the BBA LIBOR Daily Floating Rate plus the Applicable Margin. The "BBA LIBOR Daily Floating Rate" shall mean a fluctuating rate of interest equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by Administrative Agent from time to time) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in Administrative Agent's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternative method as reasonably selected by Administrative Agent. A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars. Interest shall be computed for the actual number of days which have elapsed, on the basis of a 360-day year.

(b) If Administrative Agent determines that no adequate basis exists for determining the BBA LIBOR Daily Floating Rate or that the BBA LIBOR Daily Floating Rate will not adequately and fairly reflect the cost to Lenders of funding the Loan, or that any applicable law or regulation or compliance therewith by any Lender prohibits or restricts or makes impossible the charging of interest based on the BBA LIBOR Daily Floating Rate and such Lender so notifies Administrative Agent and Borrower, then until Administrative Agent notifies Borrower that the circumstances giving rise to such suspension no longer exist, interest shall accrue and be payable on the unpaid principal balance of this Loan from the date Administrative Agent so notifies Borrower until the Maturity Date of this Loan (whether by acceleration, declaration, extension or otherwise) at a fluctuating rate of interest equal to the Prime Based Rate. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 2.09. Default Rate. If any amount payable by Borrower under any Credit Document is not paid when due (without regard to any applicable grace periods), such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable law.

Section 2.10. Intentionally Omitted.

Section 2.11. Intentionally Omitted.

Section 2.12. Late Payment Premium. Borrower shall pay to Administrative Agent for the account of Lenders a late payment premium in the amount of 5% of any payments of principal or interest of any Loan made more than ten (10) days after the due date thereof, which late payment premium shall be due with any such late payment.

Section 2.13. Voluntary Prepayments. Borrower may, upon at least five (5) Business Days' notice (which notice shall be irrevocable) to Administrative Agent (which shall promptly notify each Lender), prepay the Principal Amount, in whole or part, without premium or penalty; provided, however, that (i) any partial prepayment under this Section shall be in a principal amount of not less than \$100,000 and an integral multiple of \$25,000 and (ii) each prepayment under this Section shall include all interest accrued on the amount of principal prepaid (and all late charges and other sums that may be payable) through the date of prepayment. Amounts prepaid may be not reborrowed.

Section 2.14. Adverse Events Regarding Investors. In accordance with Section 6.06, Borrower shall promptly notify Administrative Agent of the occurrence of any one of the following events or existence of any one of the following conditions (each, an "Adverse Investor Event"):

(i) such Investor or its Sponsor or Responsible Party or Investor Guarantor, if any, shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due;

(ii) an involuntary case or other proceeding shall be commenced against such Investor or its Sponsor or Responsible Party or Investor Guarantor, if any, seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against such Investor or its Sponsor or Responsible Party or Investor Guarantor, if any, under the federal bankruptcy laws as now or hereafter in effect;

(iii) such Investor shall fail to timely fund a Capital Call subject to notice and time to cure in accordance with the terms of the Operating Agreement or the Stockholders Agreement (which cure period shall in no event exceed thirty (30) days), shall repudiate, challenge or declare unenforceable its obligation to fund Capital Contributions, or shall otherwise disaffirm, opt out of, be excused



from or default under, or breach the terms of, the Stockholders Agreement or the Operating Agreement in any material respect;

(iv) one or more judgments or decrees in an aggregate amount equal to ten percent (10%) or more of its net worth shall be entered by a court or courts of competent jurisdiction against such Investor or its Sponsor or Responsible Party or Investor Guarantor, if any (other than any judgment as to which, and only to the extent, a reputable insurance company has acknowledged coverage of such claim in writing or has acknowledged in writing its willingness to defend any such claim under a reservation of rights), and (A) any such judgments or decrees shall not be stayed, discharged, paid, bonded or vacated within thirty (30) days or (B) enforcement proceedings shall be commenced by any creditor on any such judgments or decrees;

(v) such Investor or its Investor Guarantor, if any, shall breach any obligation acknowledged under or made to Administrative Agent and Lenders in its Investor Acknowledgment (excluding any obligation to honor a Capital Call made by Administrative Agent, as Administrative Agent, Lenders and Borrower shall agree, contemporaneously herewith, to terminate the Capital Contributions Pledge Agreement and Administrative Agent's rights to make Capital Calls), in any guaranty related to such Investor Acknowledgment or in the Stockholders Agreement in any material respect, or any representation, warranty, certification or statement made by or on behalf of such Investor or its Investor Guarantor, if any, in the Stockholders Agreement, its Investor Acknowledgment, in any guaranty related to such Investor Acknowledgment or in any certificate, financial statement or other document delivered pursuant to this Agreement or such documents, shall have been false or misleading when made and such false or misleading statements could reasonably be expected to have a material adverse effect on the ability of such Investor to fund its Capital Commitment;

(vi) if either Moody's and/or S&P downgrade the credit rating of, or cease to provide a credit rating for, any Investor or its Investor Guarantor, if any, which as of the date hereof has a credit rating from Moody's and/or S&P;

(vii) the transfer or assignment of its indirect interest in Borrower, or withdrawal from, Borrower or Acadia Investors II by such Investor;

(viii) the failure by such Investor to comply in any material respect with the terms of, or the provisions of the Operating Agreement or the Stockholders Agreement acknowledged in, its Investor Acknowledgment, after Administrative Agent has notified Borrower in writing that such failure has occurred and will be treated as an Adverse Investor Event, and such Investor fails to comply with such terms or provisions within fifteen (15) Business Days after Administrative Agent's delivery of such notice to Borrower; or

(ix) the failure by Managing Member or Acadia Investors II to deliver to Administrative Agent within forty-five (45) days after notice thereof is

delivered to Borrower (A) the financial statements required to be delivered by such Investor pursuant to the Investor Acknowledgment executed by such Investor, and (B) from time to time upon the reasonable request of Administrative Agent, a certificate for such Investor setting forth the remaining amount of its Capital Commitment which it is obligated to fund.

Section 2.15. Mandatory Prepayments. If on any date the Aggregate Outstanding Extensions of Credit of all Lenders exceed the Available Commitment, Borrower shall immediately on such date prepay the Loans in an amount equal to the amount of such excess.

Section 2.16. Intentionally Omitted.

Section 2.17. Permanent Loan/No Letters of Credit. The credit facility under the Original Agreement was a revolving credit facility which included availability of letters of credit. As amended and restated hereby, the Credit Facility is modified to be a permanent loan which has been fully advanced under the Original Agreement. Neither Administrative Agent nor any Lender is obligated to, or will, issue any letters of credit as part of the Credit Facility and there are no existing letters of credit which are part of the Credit Facility.

### ARTICLE III

#### INTENTIONALLY OMITTED

### ARTICLE IV

#### CONDITIONS PRECEDENT

Section 4.01. Conditions Precedent to Initial Advance. Lenders shall not be obligated to make the Initial Advance hereunder until the following conditions shall have been satisfied:

(a) There shall exist no Default or Event of Default, and no Default or Event of Default would result from the making of the Initial Advance;

(b) The representations and warranties made to Administrative Agent or Lenders herein, in the other Credit Documents and in any other document, certificate or statement executed or delivered to Administrative Agent or Lenders in connection with the Credit Facility shall be true and correct on and as of the date of the advance with the same effect as if made on such date;

(c) Lenders shall have received and approved each of the following:

(1) Fees and Expenses. (i) Those fees required by the Supplemental Fee Letter to be paid on or before the date hereof, to be retained by Administrative Agent and/or BofA for its own account or as otherwise agreed among Lenders whether or not any Loan is advanced or any Letters of Credit are issued; and (ii) all fees and expenses incurred by Administrative Agent (including, without limitation, the reasonable fees and expenses of Administrative Agent's Counsel);

(2) Credit Documents and the Supplemental Fee Letter. This Agreement, each of the other Credit Documents, including, without limitation, the Supplemental Fee Letter, duly executed by the parties thereto, and, where applicable, duly acknowledged and in proper form for recording or filing, as the case may be, and all necessary or desirable recordings and filings shall have been duly made (Administrative Agent and Lenders hereby acknowledge that Administrative Agent has received all requisite Investor Acknowledgments in connection with the Original Agreement);

(3) Financial Statements. Current Financial Statements and such other financial data as Administrative Agent shall require;

(4) Actions to Perfect Liens. Evidence that all filings, recordings, registrations and other actions, including, without limitation, the filing of duly executed financing statements on form UCC-1, necessary or, in the reasonable opinion of Administrative Agent, desirable to perfect the Liens created by the Security Documents shall have been completed;

(5) Insurance. Evidence that all of the requirements of Section 6.09 have been satisfied;

(6) Closing Certificate. A certificate of Borrower and of Managing Member, each dated the Closing Date, substantially in the form of Exhibit E, with appropriate insertions and attachments, executed by Borrower or Managing Member, as the case may be;

(7) Certificate regarding Capital Commitments. A certificate regarding Capital Commitments, substantially in the form of Exhibit G, showing the Capital Commitments and Unpaid Capital Commitments of all Investors as of the Closing Date with appropriate insertions and dated the Closing Date, executed by Borrower;

(8) Corporate Proceedings of Borrower. A copy of the resolutions of the board of directors of Acadia Investors II and of Parent, as sole member of the Managing Member, on behalf of Borrower authorizing (i) the execution, delivery and performance of this Agreement and the other Credit Documents, (ii) the borrowings and other extensions of credit contemplated hereunder and (iii) the granting by it of the Liens

created pursuant to the Security Documents to which it is a party, certified by the Secretary or an Assistant Secretary of such corporations as of the Closing Date, which certificate shall state that the resolutions thereby certified have not been amended, modified, revoked or rescinded;

(9) Borrower Incumbency Certificate. A certificate, dated the Closing Date, as to the incumbency and signature of the officers of the Parent, Managing Member and Acadia Investors II executing any Credit Document, executed by the Secretary or any Assistant Secretary of such entities;

(10) Investor Documents. True and complete copies of the financial statements contemplated by the Investor Acknowledgment of each Investor;

(11) Additional Matters. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by this Agreement, the other Credit Documents, the Operating Agreement and the Stockholders Agreement and such other documents and legal opinions in respect of any aspect or consequence of the transactions contemplated hereby or thereby as Administrative Agent shall reasonably request;

(12) Investor Acknowledgments. Investor Acknowledgments from each Investor, duly executed and delivered by each Investor;

(13) Borrower Counsel Opinions. Opinions of counsel for Borrower, Managing Member and Acadia Investors II;

(14) Organizational Documents. If Borrower, Guarantor or any general partner or member of Borrower is a corporation, current copies of the following documents with respect to each (unless otherwise indicated):

(i) a good-standing certificate from the jurisdiction of its incorporation,

(ii) a resolution, certified by the corporate secretary, of the shareholders or directors of such corporation authorizing the consummation of the transactions contemplated hereby and the execution, delivery and performance of the Credit Documents and any other documents to be executed, delivered or performed by said corporation (including any substitute or replacement Notes to be executed and delivered pursuant to the terms hereof), and

(iii) a certificate of the corporate secretary as to the incumbency of the officers executing any of the documents required hereby,

and, if Borrower, Guarantor or any partner or member of Borrower is a partnership, venture, limited liability company or trust:

(iv) such entity's organizational agreement and all amendments and attachments thereto, certified by a general partner, venturer, member or trustee to be true and complete,

(v) any certificates filed or required to be filed by such entity in the jurisdictions of its formation and any other jurisdiction where it does business, and

(vi) evidence of the authorization of the consummation of the transactions contemplated hereby and the execution, delivery and performance of the Credit Documents and any other documents to be executed, delivered and performed by said entity (including any substitute or replacement notes to be executed and delivered pursuant to the terms hereof), and including any required consents by partners, venturers, members, trustees or beneficiaries;

(15) Chattel Searches. UCC, judgment and lien searches against Borrower to the effect that searches of proper public records disclose no financing statements filed or recorded against Borrower and no other breaches of this Agreement;

(16) Requisition. A Requisition for the Initial Advance; and

(17) Additional Documentation. Such other approvals, opinions or documents as Administrative Agent may reasonably request;

(d) Immediately after such extension of credit, the Aggregate Outstanding Extensions of Credit of all Lenders will not exceed the Available Commitment; and

(e) No condition or event shall have occurred which has a Material Adverse Effect.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and Lenders that:

Section 5.01. Due Formation, Power and Authority. If Borrower, Guarantor or any general partner or member of Borrower is a corporation, partnership, venture, limited liability company or trust, each such entity is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and has full power and authority to own or lease its property, to conduct its business as presently and as proposed

to be conducted and to consummate the transactions contemplated hereby and to execute, deliver and perform this Agreement and any other Credit Document to which it is a party.

Section 5.02. Legally Enforceable Agreements. Each of the Supplemental Fee Letter and each Credit Document to which Borrower, Managing Member, Acadia Investors II or Guarantor is a party is a legal, valid and binding obligation of such party, enforceable against Borrower or Guarantor, as the case may be, in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Laws affecting creditors' rights generally.

Section 5.03. Financial Statements. Financial Statements have been heretofore delivered to Lenders which are true, correct and current in all respects and which fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof; no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no borrowings or other extensions of credit (other than under the Credit Facility) which might give rise to a lien or claim against the proceeds of the Credit Facility have been made by or to Borrower or others since the dates thereof.

Section 5.04. Compliance With Laws; Payment of Taxes. Borrower and Guarantor are in compliance with, and the transactions contemplated hereby and by the other Credit Documents do not and will not violate any provision of, or require any filing, registration, consent or approval under, any Law presently in effect having applicability to Borrower or Guarantor; and Borrower has filed all tax returns (federal, state and local) required to be filed and has paid all taxes, assessments and governmental charges and levies due and payable, including interest and penalties.

Section 5.05. Litigation. There are no actions, suits or proceedings pending or threatened against or affecting Borrower, Guarantor, the validity or enforceability of any of the Security Documents or the priority of any of the liens created thereby at law, in equity or before or by any Governmental Authorities except actions, suits or proceedings which have been disclosed to Administrative Agent and Lenders in writing and which are fully covered by insurance or would, if adversely determined, not substantially impair the ability of Borrower or Guarantor to pay when due any amounts which may become payable hereunder or under the Notes or the Guaranty or the other Credit Documents or to otherwise pay and perform their respective obligations in connection with the Credit Facility; to Borrower's knowledge, neither Borrower nor Guarantor is in default with respect to any order, writ, injunction, decree or demand of any court or Governmental Authority.

Section 5.06. No Conflicts or Defaults. The consummation of the transactions contemplated hereby and the performance hereof and of the other Credit Documents have not resulted and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, by-laws, partnership agreement or other instrument to which Borrower or Guarantor is a party or by which Borrower may be bound or affected.

Section 5.07. Solvency. Borrower and Guarantor are, and upon consummation of the transactions contemplated by this Agreement, the other Credit Documents and any other related documents, will be, solvent.

Section 5.08. Governmental Regulation. Borrower is not subject to regulation under the Investment Company Act of 1940 or any Law limiting its ability to incur indebtedness for money borrowed as contemplated hereby.

Section 5.09. Insurance. Borrower has, with respect to its properties and business, insurance covering risks, in amounts, with deductibles or other retention amounts, and with carriers, which meet the requirements of Section 6.09 as of the date hereof.

Section 5.10. ERISA. Neither Borrower nor Guarantor nor any other Person, including any fiduciary, has engaged in any prohibited transaction (as defined in Section 4975 of the Code or Section 406 of ERISA) which could subject Borrower or Guarantor or any Person whom they have an obligation to indemnify to any tax or penalty imposed under Section 4975 of the Code or Section 502 of ERISA; neither Borrower nor Guarantor nor any ERISA Affiliate maintains, contributes to or has any liability with respect to a Multiemployer Plan or any other plan subject to Title IV of ERISA; each Employee Benefit Plan is administered in accordance with its terms and in compliance with all applicable Laws, including any reporting requirements; each Pension Plan intending to qualify under Section 401(a) or 401(k) of the Code does so qualify; there is no lien outstanding or security interest given in connection with a Pension Plan; neither Borrower nor Guarantor nor any ERISA Affiliate has any liability with respect to an accumulated funding deficiency (whether or not waived) under Section 412 of the Code or Section 302 of ERISA; neither Borrower nor Guarantor has any liability for retiree medical or death benefits (contingent or otherwise) other than as required by Section 4980B of the Code; and no part of the funds to be used by Borrower or Guarantor in satisfaction of Borrower's obligations under this Agreement and the other Credit Documents constitute "plan assets" of any "employee benefit plan" within the meaning of ERISA or of any "plan" within the meaning of Section 4975(e)(1) of the Code, as interpreted by the Internal Revenue Service and the United States Department of Labor in rules, regulations, releases or bulletins or as interpreted under applicable case law. The DuPont Pension Trust and Gloster, LLC are the only investors in Acadia Strategic Opportunity Fund II, LLC, Acadia Realty Acquisition II, LLC and Acadia Investors II, Inc. that are either: (i) an employee benefit plan as defined in Section 3(3) of ERISA; or (ii) an entity holding Plan Assets (within the meaning of the plan assets regulation set forth in 29 C.F.R. § 2510.3-101) in which such an employee benefit plan holds an equity interest.

Section 5.11. No Default. There exists no Default or Event of Default.

Section 5.12. Liens. None of the Collateral is subject to any Lien except as created by the Security Documents.

Section 5.13. Federal Regulations. No part of the proceeds of any Loan made under, and no other extension of credit under, the Credit Facility will be used for “purchasing” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect, or for any purpose which violates, or which would be inconsistent with, the provisions of the regulations of such Board of Governors. If requested by any Lender or Administrative Agent, Borrower will furnish to Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 referred to in said Regulation U.

Section 5.14. Subsidiaries, Exhibit H sets forth the name of each direct or indirect Subsidiary, its form of organization, its jurisdiction of organization, the total number of issued and outstanding shares or other interests of Capital Stock thereof, the classes and number of issued and outstanding shares or other interests of Capital Stock of each such class, the name of each holder of Capital Stock thereof and the number of shares or other interests of such Capital Stock held by each such holder and the percentage of all outstanding shares or other interests of such class of Capital Stock held by such holders.

Section 5.15. Security Documents.

(a) The provisions of each Security Document are effective to create in favor of Administrative Agent for the ratable benefit of Lenders a legal, valid and enforceable security interest in all right, title and interest of the Credit Party party thereto in the “Collateral” described therein.

(b) The Cash Collateral Agreement and the Capital Events Collateral Security Agreement constitute a fully perfected first Lien on, and security interest in, all right, title and interest of Borrower in the Collateral.

Section 5.16. Purpose of Credit. The proceeds of the Loans made under, and the other extensions of credit under, the Credit Facility shall be used by Borrower to make Investments, to pay expenses of Borrower in the ordinary course of business and for such other uses as are expressly permitted by the Operating Agreement (collectively, “Approved Uses”), all in accordance with, and subject to the limitations and restrictions contained in, the Operating Agreement.

Section 5.17. Environmental Matters. Borrower has not received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any Investment, or of any release or threat of release of Materials of Environmental Concern at or from any real property comprising or underlying any Investment, in violation of or in amounts or in a manner that could reasonably give rise to liability under Environmental Laws, nor does Borrower have knowledge or reason to believe that any such notice will be received or is being threatened, except in each case insofar as such notice or threatened notice, or any aggregation thereof, does not involve a matter or matters that is or are reasonably likely to have a Material Adverse Effect.



Section 5.18. Capital Commitments. As of the date hereof, the aggregate amount of Unpaid Capital Commitments of Managing Member and all Investors is \$50,384,957. Exhibit B sets forth in detail, as of the date hereof, the Capital Commitments and Unpaid Capital Commitments of each Investor and of Managing Member. As of the date hereof, no Investor has defaulted in paying its Capital Calls.

Section 5.19. Accuracy of Information; Full Disclosure. Neither this Agreement nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of Borrower or Guarantor to Administrative Agent or Lenders in connection with the negotiation of this Agreement or the other Credit Documents or the consummation of the transactions contemplated hereby, or required herein or by the other Credit Documents to be furnished by or on behalf of Borrower or Guarantor, contains any untrue or misleading statement of a material fact or omits a material fact necessary to make the statements herein or therein not misleading; there is no fact which Borrower has not disclosed to Administrative Agent and Lenders in writing which materially affects adversely nor, so far as Borrower can now foresee, will materially affect adversely the business affairs or financial condition of Borrower or Guarantor, or the ability of Borrower or Guarantor to perform this Agreement and the other Credit Documents.

Section 5.20. Requisition as Reaffirmation. Each Requisition submitted to Administrative Agent, and the receipt of the proceeds of the Loan(s) requested thereby, shall constitute an affirmation by Borrower that the representations and warranties contained herein and in the other Credit Documents remain true and correct as of the date of such Requisition.

## ARTICLE VI

### AFFIRMATIVE COVENANTS OF BORROWER

Borrower covenants and agrees that it will promptly:

Section 6.01. Compliance with Laws; Payment of Taxes. Comply with all Laws applicable to it, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed on it and promptly furnish Administrative Agent and Lenders with reports of any official searches made by Governmental Authorities and any claims of violations thereof.

Section 6.02. Continuing Accuracy of Representations and Warranties. Cause all of the representations and warranties made to Administrative Agent or Lenders herein and in the other Credit Documents to be continuously true and correct.

Section 6.03. Payment of Costs. Pay all costs and expenses required for and the satisfaction of the conditions hereof, including, without limitation, all document and stamp taxes, recording and filing expenses and fees and commissions lawfully due to brokers in connection with the transactions contemplated hereby.

Section 6.04. Brokers. Indemnify Administrative Agent and Lenders against claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby.

Section 6.05. Intentionally Omitted.

Section 6.06. Reporting Requirements. Furnish to Administrative Agent (it being understood that Administrative Agent shall provide, promptly following receipt, to each Lender):

(1) Annual Financial Statements; Tax Returns. As soon as available and in any event within one hundred twenty (120) days after the end of the respective fiscal years of Borrower and Parent, Financial Statements of Borrower and Parent, as of the end of and for such fiscal year, certified by the principal financial or accounting officer of Borrower or Parent, as the case may be, in reasonable detail, stating in comparative form the respective figures for the preceding fiscal year and audited by a firm of certified public accountants reasonably satisfactory to Administrative Agent; and complete copies of the federal and state income tax returns of Borrower and Guarantor, within thirty (30) days of filing, provided that, notwithstanding the foregoing, so long as Parent timely files 10Q and 10K reports with the Securities and Exchange Commission, Parent shall have complied with this Subsection and Subsection (2) below;

(2) Quarterly Financial Statements. As soon as available and in any event within sixty (60) days after the end of each calendar quarter, Financial Statements of Borrower and Parent, as of the end of and for such calendar quarter, certified by the principal financial or accounting officer of Borrower or Parent, as the case may be, in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the preceding fiscal year together with an updated Projected Sources and Uses Statement in the form of Exhibit N;

(3) Certificate of No Default. At the time of the delivery of the Financial Statements required by paragraph (2) above, a certificate of the principal financial or accounting officer of Borrower or Parent, as the case may be, dated within five (5) days of the delivery of such statements to Administrative Agent, stating that Borrower during the period covered by such Financial Statements has observed or performed all of its covenants and other agreements in all material respects, and satisfied every material condition, contained in this Agreement and the other Credit Documents to be observed, performed or satisfied by it, and that such officer knows of no Default or Event of Default which has occurred and is continuing, or, if any such Default or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action Borrower has taken or proposes to take with respect thereto;

(4) Notice of Litigation. Promptly after the commencement and knowledge thereof, notice of all actions, suits and proceedings before any court or

arbitrator or any Governmental Authorities, affecting Borrower, Managing Member, Acadia Investors II, Guarantor, Parent or any of Borrower's Investments, provided, however, that such notice shall not be required with respect to personal injury claims which are fully covered by applicable insurance policies in place or with respect to suits claiming damages of \$50,000 or less;

(5) Notices of Defaults. As soon as possible and in any event within ten (10) days after Borrower becomes aware of the occurrence of a Default or Event of Default, a written notice setting forth the details of such Default or Event of Default and the action that has been taken or is proposed to be taken with respect thereto;

(6) Compliance Certificates. As soon as available and in any event within thirty (30) days after the end of each fiscal quarter of Borrower, a certificate of the principal financial or accounting officer of Borrower in the form attached as Exhibit G setting forth (i) the Capital Commitments and Unpaid Capital Commitment of the Managing Member and all of the Investors (all as of the end of the relevant quarter), (ii) a detailed calculation of Borrower's Liquidity and (iii) specifying changes, if any, in the names of Investors. As soon as available and in any event within thirty (30) days after the end of each fiscal quarter of Guarantor, a certificate of the principal financial or accounting officer of Guarantor or Parent regarding compliance with the covenants set forth in the Guaranty, such certificate to be in the form prescribed in the Guaranty;

(7) Financial Statements to Investors. To the extent not otherwise provided hereunder, promptly upon the mailing or other transmittal thereof to the Investors generally, copies of all financial statements, reports and other information related to Borrower or any Investments so mailed or otherwise transmitted;

(8) Events Affecting Available Commitment. Promptly upon the receipt thereof, copies of all financial statements, notices of changes or possible changes in any Investor's credit rating, and notices of default, notices relating in any way to an Investor's funding obligation or change in such Investor's financial condition and any notice containing any reference to misconduct of Managing Member or Borrower and promptly and in any event within five (5) Business Days after Borrower obtains actual knowledge of the occurrence of an Adverse Investor Event, a notice setting forth such Adverse Investor Event;

(9) Environmental Matters. Promptly and in any event within ten (10) Business Days after Borrower obtains actual knowledge of any of the following events, a certificate of Borrower specifying the nature of such condition and Borrower's proposed initial response thereto: (i) the receipt by Borrower of any written communication, whether from a Governmental Authority, citizens group, employee or otherwise, that alleges that Borrower is not in compliance with applicable Environmental Laws, and such noncompliance is likely to have a Material Adverse Effect, (ii) Borrower shall obtain actual knowledge that there

exists any environmental claim pending or threatened against Borrower which, if adversely determined is reasonably likely to have a Material Adverse Effect, or (iii) Borrower obtains actual knowledge of any release, emission, discharge or disposal of any Hazardous Material that is likely to form the basis of any environmental claim against Borrower which, if adversely determined is reasonably likely to have a Material Adverse Effect;

(10) Capital Demand Notices. Copies of each Capital Demand Notice delivered to the Investors and any other notice, report or opinion of counsel sent to or received from any Investor relating to the funding of Capital Contributions or the making of Capital Calls within three (3) Business Days after the same is sent to or received from any Investor;

(11) Investor's Annual Financial Statements. Within thirty (30) days of request by Administrative Agent, given not earlier than ninety (90) days after the end of any calendar year, financial statements of The Dupont Pension Trust and The William and Flora Hewlett Foundation, as of the end of and for the most recently ended calendar year, in form and substance prepared, certified and formatted in the same manner as the financial statements previously delivered by such Investors to Administrative Agent, certified by the principal financial or accounting officer of each such entity, in reasonable detail, stating in comparative form the respective figures as of the end of and for the preceding fiscal year and audited by the firm of certified public accountants which audited the statements heretofore given to Administrative Agent or another firm of certified public accountants reasonably satisfactory to Administrative Agent;

(12) Other Investor Information. (i) Promptly after receipt thereof, the financial information respecting each Investor required to be delivered by each Investor pursuant to the Investor Acknowledgment executed by such Investor, and (ii) from time to time upon the reasonable request of Administrative Agent, a certificate for any Investor setting forth the remaining amount of its Unpaid Capital Commitment; and

(13) General Information. Promptly, such other information respecting the condition or operations, financial or otherwise, of Borrower, Guarantor, Parent, Managing Member or Acadia Investors II as Administrative Agent may from time to time reasonably request.

Section 6.07. Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its obligations of whatever nature, except (other than with respect to the Credit Facility) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of Borrower or its Subsidiaries, as the case may be.

Section 6.08. Conduct of Business and Maintenance of Existence. Continue to engage in business of the same general type as now conducted by it and preserve, renew

and keep in full force and effect its existence and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business; and comply with all of its contractual obligations and all Laws except to the extent that failure to comply therewith could not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 6.09. Maintenance of Property; Insurance. Keep all property useful and necessary in its business in good working order and condition; maintain with financially sound and reputable insurance companies insurance on all its property in at least such amounts and against at least such risks (but including in any event public liability insurance) as are usually insured against in the same general area by companies engaged in the same or a similar business; and furnish to Lender, upon written request, full information as to the insurance carried.

Section 6.10. Inspection of Property; Books and Records; Discussions. Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Laws shall be made of all dealings and transactions in relation to its business and activities; and permit representatives of each Lender to visit the site of any Investment and Borrower's offices and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of Borrower and its Subsidiaries with officers and employees of Borrower and its Subsidiaries and with its independent certified public accountants.

Section 6.11. Environmental Laws. Comply with, and take commercially reasonable measures to ensure compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws and obtain and comply in all material respects with and maintain, and take commercially reasonable measures to ensure that all tenants and subtenants obtain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws except to the extent that failure to do so could not be reasonably expected to have a Material Adverse Effect.

Section 6.12. Further Assurances.

(a) Borrower shall deliver such security agreements, financing statements, assignments and other collateral documents (all of which shall be deemed part of the Security Documents), in form and substance reasonably satisfactory to Administrative Agent, as Administrative Agent acting on behalf of Lenders may reasonably request from time to time for the purpose of granting to, or maintaining or perfecting in favor of, Lenders, first and exclusive security interests in any of the Collateral, together with other reasonable assurances as to the enforceability and priority of Lenders' liens and assurances of due recording and documentation of copies of the Security Documents, as Administrative Agent may reasonably require to avoid impairment of the liens and security interests granted or purported to be granted pursuant to the Credit Documents.

(b) If Managing Member shall receive any request for transfer of the interest of any Investor and Managing Member shall be prepared to grant such request, it shall promptly notify Administrative Agent and shall send to Administrative Agent all information about such proposed transfer as Managing Member shall receive or otherwise become aware of. In the event that the Investor proposing to transfer its interest (the "Transferor") has not fully funded its Capital Commitment, then, prior to the effectiveness of any such transfer, Managing Member shall request in writing the consent of Administrative Agent to such transfer. If Administrative Agent does not consent to the transfer, Managing Member shall not, to the extent within Managing Member's rights, permit such transfer.

Section 6.13. Subscription Account. Borrower shall establish and maintain with Administrative Agent the Subscription Account into which all Capital Contributions contributed by the Investors shall be deposited and maintained until application of same in accordance with Section 11.01.

Section 6.14. Investor Reaffirmations and Guaranties. Borrower shall cause each Investor to execute and deliver to Administrative Agent a reaffirmation of such Investor's Capital Commitment dated as of a date not earlier than November 1, 2010 in the form attached hereto as Exhibit K ("Investor Reaffirmations") on or before February 22, 2011. Borrower shall cause each of Yale University, Fourth Century, LLC, Yale University Retirement Plan for Staff Employees and Yale University Retiree Health Benefits Coverage Trust to execute and deliver to Administrative Agent reaffirmations of the guaranty and comfort letter from such entities regarding their credit support of Gloster LLC dated as of a date not earlier than November 1, 2010 in the form attached hereto as Exhibit L (collectively, the "Gloster Principal Reaffirmations") on or before February 22, 2011. Borrower shall cause Vanderbilt to execute and deliver to Administrative Agent a reaffirmation of the Vanderbilt Guaranty (the "Vanderbilt Reaffirmation") in the form attached hereto as Exhibit M on or before February 22, 2011.

Section 6.15. Sales by Subsidiaries. Borrower shall not sell, assign, transfer or convey any of its interests in any of its Subsidiaries, and shall not permit any Subsidiary to sell any real estate interests owned by such Subsidiary, unless within two (2) Business Days after such sale, Borrower causes the Release Price applicable to such Subsidiary and its property to be paid to Administrative Agent to be applied in reduction of the Principal Amount or, if specified by Borrower in a notice to Administrative Agent given on or before the date the applicable Release Price is paid to Administrative Agent, to be deposited in the Deposit Account. If Borrower proposes to make a sale of any less than all of its interest in any Subsidiary, or to have a Subsidiary sell less than all of its real property, Borrower shall be required to notify Administrative Agent at least thirty (30) days prior to any such sale with a detailed description of the proposed transaction, and the Release Price with respect to such partial sale shall be equitably adjusted from the full release price, such adjustment to be determined by Administrative Agent in Administrative Agent's sole and absolute discretion. Borrower shall promptly deliver true and complete copies of sales agreements and amendments thereto, completed transfer tax forms and filings, and closing statements from any sale referred to in this

Section, together with such other information as Administrative Agent shall reasonably request in advance to confirm the correct Release Price applicable to such transaction.

Section 6.16. Refinancing by Subsidiaries. Borrower shall not permit any subsidiary to refinance any existing Indebtedness unless, within two (2) Business Days after such refinance, Borrower causes the Net Refinance Proceeds with respect to such transaction to be paid to Administrative Agent to be applied in reduction of the Principal Amount or, if specified by Borrower in a notice to Administrative Agent given on or before the date the applicable Net Refinance Proceeds are paid to Administrative Agent, to be deposited in the Deposit Account.

Section 6.17. Projected Sources and Uses. Exhibit N attached hereto and made a part hereof sets forth Borrower's good faith projection of (i) the amounts of funds which will be required in the operation of Borrower and its Subsidiaries, and planned development of Investments (collectively, the "Projected Uses") and (ii) the sources of funds which will be available to Borrower to fund such operations (collectively, the "Projected Sources"). Exhibit N covers the period commencing with the most recently ended calendar quarter through the Maturity Date and Borrower shall provide to Administrative Agent on a quarterly basis an updated statement (a "Projected Sources and Uses Statement") of Projected Sources and Projected Uses for the remaining period through the Maturity Date (the "Sources and Uses Period"). If at any time Administrative Agent determines that Projected Uses exceed Projected Sources (each as reasonably determined by Administrative Agent), Borrower shall be required, within ten (10) days of notice from Administrative Agent to deposit the amount specified by Administrative Agent into the Deposit Account so that Projected Sources (which shall include amounts on deposit in the Deposit Account) equal Projected Uses.

Section 6.18. Conditional Use of Funds on Deposit in the Deposit Account. Borrower may requisition funds in the Deposit Account to pay for Projected Uses set forth on a Projected Sources and Uses Statement reasonably acceptable to Administrative Agent and, provided the following conditions are satisfied, Administrative Agent shall release such funds to Borrower: (i) no Default or Event of Default exists; (ii) no more than \$17,750,000 in the aggregate from Release Prices and Net Refinance Proceeds may be released from the Deposit Account; (iii) following any such release, Administrative Agent shall have determined, in Administrative Agent's reasonable discretion, that Projected Uses will not exceed Projected Sources for the then current Sources and Uses Period; (iv) Borrower shall provide such supporting documentation regarding the incurrence of the items of cost and expense for such Projected Use as Administrative Agent shall reasonably require; and (v) Borrower shall deliver notice to Administrative Agent thirty (30) days in advance of the requested date for any release of funds from the Deposit Account and Borrower shall not be entitled to request such release more often than once per month.

Section 6.19. Liquidity Covenants. At all times Borrower shall maintain in its own name Liquidity of not less than \$10,000,000.

## NEGATIVE COVENANTS

Borrower, Managing Member and Acadia Investors II hereby jointly and severally agree that, so long as any of the Individual Commitments remains in effect or any Principal Amount remains outstanding and unpaid or any amount is owing to any Lender or Administrative Agent hereunder, under the Notes or under any other Credit Document, Borrower, Managing Member and Acadia Investors II shall not, and shall not permit any of their Subsidiaries to:

Section 7.01. Limitation on Indebtedness and Guarantee Obligations. Create, incur, assume or suffer to exist any Indebtedness, other than trade payables due within sixty (60) days which are not delinquent, of Borrower or any Guarantee Obligations of Borrower, other than Indebtedness and Guarantee Obligations in existence on the date hereof. Create, incur, assume or suffer to exist any Indebtedness of Borrower's Subsidiaries or any Guarantee Obligations of Borrower's Subsidiaries, if (i) same would result in the aggregate amount of Indebtedness and Guaranteed Obligations of Borrower and its Subsidiaries exceeding seventy-five percent (75%) of the aggregate cost basis of all Investments which Borrower continues to own or (ii) the agreements evidencing any Indebtedness of Borrower do not contain an express acknowledgment of the obligee that any rights thereunder against Borrower are expressly subordinate to the Security Documents.

Section 7.02. Material Adverse Effect. Permit any event or condition to occur which has a Material Adverse Effect.

Section 7.03. Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of (i) the right to make Capital Calls, (ii) the Capital Commitments or (iii) any Collateral, except for Liens, if any, created in favor of Administrative Agent and/or Lenders.

Section 7.04. Limitation on Fundamental Changes. Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease, assign, transfer, or otherwise dispose of, all or substantially all of its property, business or assets, or make any material change in its present method of conducting business, except:

(a) any Subsidiary may be merged or consolidated with or into Borrower (provided that Borrower shall be the continuing or surviving entity) or with or into any one or more wholly owned Subsidiaries (provided that the wholly owned Subsidiary or Subsidiaries shall be the continuing or surviving entity);

(b) any Subsidiary may sell and dispose of Investments in compliance with Section 6.15; and



(c) any wholly owned Subsidiary may sell, lease, transfer or otherwise dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Borrower or any other wholly owned Subsidiary.

Section 7.05. Limitation on Dividends and Distributions. Declare or pay any dividend or distribution on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any shares of any class of Capital Stock of Borrower or Acadia Investors II or any warrants or options to purchase any such Capital Stock, whether now or hereafter outstanding, or make any other distribution in respect thereof (including distributions to Investors), either directly or indirectly, whether in cash or property or in obligations of Borrower or any Subsidiary.

Section 7.06. Limitation on New Investments. (a) Acquire any new investments (other than Cash Equivalents) or Investments without the prior written consent of Administrative Agent or (b) invest further funds in Acadia Marsh Investors LLC, Acadia Shopko Investors LLC or any other Subsidiary which does not own an Investment permitted hereunder.

Section 7.07. Limitation on Modifications of Agreements. Amend, supplement, waive or otherwise modify in any material respect the provisions of the Operating Agreement, the Stockholders Agreement, or any Governing Documents of Managing Member or Acadia Investors II or the Investor Acknowledgments relating to the Capital Commitments, the making of Capital Contributions or the obligation of any Investor to fund the same pursuant to Capital Calls or the incurrence of Indebtedness or any other provisions that would adversely affect the rights of Lenders.

Section 7.08. Intentionally Omitted.

Section 7.09. Limitation on Changes in Fiscal Year. Permit the fiscal year of Borrower to end on a day other than December 31.

Section 7.10. Intentionally Omitted.

Section 7.11. Capital Calls. Make any Capital Call unless, simultaneously with the delivery of a notice of such Capital Call to the Investors:

- (i) Borrower has provided Administrative Agent with a copy of the written notice of such Capital Call;
- (ii) except in the case of a Capital Call in accordance with Section 11.01(f), no Event of Default shall have occurred and be continuing; and
- (iii) the proceeds of such Capital Call are deposited into the Subscription Account.

Section 7.12. No Additional Managing Members. Admit or name any additional managing members to Borrower.

Section 7.13. Transfer of Managing Member's Interests. With respect to Managing Member, withdraw as managing member from, or transfer any of Managing Member's interests in, Borrower (whether by way of sale, assignments, merger, consolidation, liquidation or otherwise) without the consent of Administrative Agent and the Required Lenders; provided, that any transferee consented to under this Section 7.13 shall assume all of the obligations of Managing Member under the Credit Documents pursuant to an instrument in form and substance satisfactory to Administrative Agent. Upon any transfer consented to by this Section 7.13 and such assumption of obligations, Managing Member and Borrower shall cause such transferee promptly to be admitted as managing member of Borrower and, upon such admission in accordance with the Operating Agreement, such transferee shall be deemed to be Managing Member for all purposes of the Credit Documents.

Section 7.14. Withdrawal Events. Managing Member shall not permit any Investor to withdraw from Borrower or Acadia Investors II without the prior written consent of Administrative Agent and Required Lenders.

Section 7.15. Compliance with the Operating Agreement. Make any Investment or take or permit any action in contravention of the terms of the Operating Agreement or the Stockholders Agreement.

Section 7.16. ERISA.

(a) Take any action, or omit to take any action, which would give rise to a nonexempt prohibited transaction (as such term is defined in Section 4975 of the Code or Section 406 of ERISA) that is reasonably likely to subject Administrative Agent and/or any Lender to any material tax or penalty on prohibited transactions imposed under Section 4975 of the Code or Section 502(i) of ERISA; or

(b) Raise any defense to Administrative Agent's or Lenders' enforcement of its or their rights or remedies under the Investor Acknowledgments (or under the Credit Documents relating to the Investor Acknowledgments) based on an assertion that the provisions of the Investor Acknowledgments or the enforcement by Administrative Agent or Lenders of its or their rights under the Investor Acknowledgments (or under the Credit Documents relating to the Investor Acknowledgments), would constitute a "prohibited transaction" under Section 306(a) of ERISA or Section 4975(c)(1)(A)-(D) of the Code.

## ARTICLE VIII

### EVENTS OF DEFAULT

If any of the following events (each, an "Event of Default") shall occur and be continuing:

(a) Borrower shall fail to pay any principal of any Loan when due in accordance with the terms hereof or of the Notes or any other Credit Document; or

Borrower shall fail to pay any interest on any Loan, or any other amount payable hereunder or under the other Credit Documents, within five (5) days after any such interest or other amount becomes due in accordance with the terms thereof or hereof; or

(b) Any representation or warranty made or deemed made by Borrower or any other Credit Party or Guarantor herein or in any other Credit Document or which is contained in any certificate, document or financial or other written statement furnished by it at any time under or in connection with this Agreement or any such other Credit Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or

(c) Borrower or any other Credit Party or Guarantor shall default in the observance or performance of any agreement contained in Article VII of this Agreement or Section 19 of the Guaranty; or

(d) Borrower or any other Credit Party or Guarantor shall default in the observance or performance of any agreement contained in this Agreement or any other Credit Document which is not defined as an Event of Default elsewhere in this Article VIII, and such default shall continue unremedied for a period of thirty (30) days provided that such thirty (30) day period shall be extended (for a period not to exceed sixty (60) days in addition to such thirty (30) day period) as to defaults which cannot be cured by the payment of money but are not reasonably capable of cure within such thirty (30) day period, provided that Borrower has commenced to cure such default prior to the end of such thirty (30) day period and diligently prosecutes such cure to completion; or

(e) (i) Any Credit Party or Guarantor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Credit Party or Guarantor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Credit Party or Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against any Credit Party or Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) any Credit Party or Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Credit Party or Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(f) Acadia Investors II shall default in its obligations under the Stockholders Agreement, and such default shall continue unremedied for a period of thirty (30) days provided that such thirty (30) day period shall be extended (for a period not to exceed sixty (60) days in addition to such thirty (30) day period) as to defaults which cannot be cured by the payment of money but are not reasonably capable of cure within such thirty (30) day period, provided that Acadia Investors II has commenced to cure such default prior to the end of such thirty (30) day period and diligently prosecutes such cure to completion; or

(g) Investors having Capital Commitments aggregating five percent (5%) or greater of the total Capital Commitments of Investors who have previously delivered Investor Acknowledgments to Administrative Agent shall default in their obligation to fund any portion of their Capital Commitments under the Stockholders Agreement or the Operating Agreement and such default continues for fifteen (15) days, provided that one or more other Investors may cure such default by (x) funding the amount of the defaulted Capital Commitment and (y) agreeing in writing to fund the future Capital Commitment of the defaulting Investor; or

(h) One or more judgments or decrees shall be entered against Borrower, any other Credit Party, Guarantor or any of their respective Subsidiaries involving in the aggregate a liability (not paid or fully covered by insurance) of \$1,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof; or

(i) (i) Any of the Security Documents shall cease, for any reason, to be in full force and effect, or Borrower or any other Credit Party which is a party to any of the Security Documents shall so assert or (ii) the Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) Any Termination Event with respect to a Material Plan shall occur as a result of which Termination Event or Events any member of the ERISA Group has incurred or may incur any liability to the PBGC or any other Person and the sum (determined as of the date of occurrence of such Termination Event) of the Unfunded Liabilities of such Material Plan and the Unfunded Liabilities of any and all other Plans with respect to which such a Termination Event shall occur and be continuing (or, in the case of a Multiemployer Plan with respect to which a Termination Event described in clause (ii) of the definition of Termination Event shall occur and be continuing, the liability of Borrower and the Subsidiaries related thereto) is an amount that is reasonably likely to have a Material Adverse Effect; or

(k) Any member of the ERISA Group shall commit a failure described in Section 302(f)(1) of ERISA or Section 412(n)(1) of the Code and the amount of the lien determined under Section 302(f)(3) of ERISA or Section 412(n)(3) of the Code that could reasonably be expected to be imposed on any member of the ERISA Group or its assets in respect of such failure shall be an amount that is reasonably likely to have a Material Adverse Effect; or

(l) The occurrence of any of the following: (i) Managing Member ceases, voluntarily or involuntarily, to be the sole managing member of Borrower, (ii) any event that causes a dissolution or liquidation of Borrower or Managing Member or (iii) any material breach of the Operating Agreement by Managing Member which shall continue for thirty (30) days; or

(m) Borrower fails to deliver any of the Investor Reaffirmations, Gloster Principal Reaffirmations and the Vanderbilt Reaffirmation to Administrative Agent on or before February 22, 2011.

then, and in any such event, (A) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (e) of this Section with respect to Borrower, automatically the Individual Commitments shall immediately terminate and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Credit Documents shall immediately become due and payable, in each case without presentment, demand, protest, notice of protest or other notice of any kind whatsoever, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) Administrative Agent may, and upon the request of the Required Lenders Administrative Agent shall, by notice to Borrower declare the Individual Commitments to be terminated forthwith, whereupon the Individual Commitments shall immediately terminate; and (ii) Administrative Agent may, and upon the request of the Required Lenders Administrative Agent shall, by notice to Borrower, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Credit Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable, in each case without presentment, demand, protest, notice of protest or other notice of any kind whatsoever other than any notice specifically provided for above.

## ARTICLE IX

### ADMINISTRATIVE AGENT; RELATIONS AMONG LENDERS

Section 9.01. Appointment, Powers and Immunities of Administrative Agent. Each Lender hereby irrevocably appoints and authorizes Administrative Agent to act as its agent hereunder and under any other Credit Document with such powers as are specifically delegated to Administrative Agent by the terms of this Agreement and any other Credit Document, together with such other powers as are reasonably incidental thereto. Administrative Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and any other Credit Document or required by Law, and shall not by reason of this Agreement be a fiduciary or trustee for any Lender except to the extent that Administrative Agent acts as an agent with respect to the receipt or payment of funds, nor shall Administrative Agent have any fiduciary duty to Borrower or any Lender have any fiduciary duty to Borrower or any other Lender. No implied covenants, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Administrative Agent. Neither Administrative Agent nor any of its directors, officers, employees, agents, attorneys-in-fact or affiliates

shall be responsible to Lenders for any recitals, statements, representations or warranties made by Borrower or any officer, partner or official of Borrower or any other Person contained in this Agreement or any other Credit Document, or in any certificate or other document or instrument referred to or provided for in, or received by any of them under, this Agreement or any other Credit Document, or for the value, legality, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Credit Document or any other document or instrument referred to or provided for herein or therein, for the perfection or priority of any lien securing the obligations hereunder or thereunder or for any failure by Borrower or Guarantor to perform any of its obligations hereunder or thereunder. Administrative Agent may employ agents and attorneys-in-fact and shall not be responsible, except as to money or securities received by it or its authorized agents, for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. Neither Administrative Agent nor any of its directors, officers, employees, agents, attorneys-in-fact or affiliates shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or under any other Credit Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct.

Section 9.02. Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. Administrative Agent may deem and treat each Lender as the holder of its Note and interest in the Credit Facility for all purposes hereof and shall not be required to deal with any Person who has acquired a Participation in the Credit Facility from a Lender. As to any matters not expressly provided for by this Agreement or any other Credit Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, in accordance with instructions signed by the Required Lenders, and such instructions of the Required Lenders and any action taken or failure to act pursuant thereto shall be binding on all Lenders and any other holder of all or any portion of the Credit Facility or any Participation therein.

Section 9.03. Defaults. Administrative Agent shall not be deemed to have knowledge of the occurrence of a Default or of an Event of Default unless Administrative Agent has actual knowledge thereof or has received notice from a Lender or Borrower specifying such Default or Event of Default and stating that such notice is a "Notice of Default." In the event that Administrative Agent has such actual knowledge or receives such a notice of the occurrence of a Default or Event of Default, Administrative Agent shall give prompt notice thereof to Lenders. Administrative Agent shall promptly send to each Lender a copy of any notice of a Default or Event of Default that Administrative Agent sends to Borrower or Guarantor. Administrative Agent, following consultation with Lenders, shall (subject to Section 9.07 and Section 10.09) take such action with respect to such Default or Event of Default which is continuing, including with respect to the exercise of remedies or the realization on, or operation or disposition of, any or all of the Collateral or any other collateral for the Obligations, as shall be directed by the Required Lenders; provided, however, that, unless and until Administrative Agent shall

have received such directions, Administrative Agent may take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem to be in the best interest of Lenders. In no event shall Administrative Agent be required to take any such action which it determines would be contrary to the Credit Documents or to Law. Each of the Lenders acknowledges and agrees that no individual Lender may separately enforce or exercise any of the provisions of any of the Credit Documents (including, without limitation, the Notes) other than through Administrative Agent.

Section 9.04. Rights of Administrative Agent as Lender. With respect to its Note and interest in the Credit Facility, the Person serving as Administrative Agent in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as Administrative Agent, and the terms “Lender” and “Lenders” shall include the Person serving as Administrative Agent in its capacity as a Lender. The Person serving as Administrative Agent and its affiliates may (without having to account therefor to any Lender) accept deposits from, lend money to (on a secured or unsecured basis), and generally engage in any kind of banking, trust or other business with, Borrower as if it were not acting as Administrative Agent.

Section 9.05. Sharing of Costs by Lenders; Indemnification of Administrative Agent. Each Lender shall pay its ratable share, based on the respective outstanding principal balances under its Note and the other Notes, of any expenses incurred (and not paid or reimbursed by Borrower after demand for payment is made by Administrative Agent) by or on behalf of Lenders in connection with any Default or Event of Default, including, without limitation, costs of enforcement of the Credit Documents to preserve the lien of any of the Security Documents or to preserve or protect the Collateral. In the event a Lender fails to pay its share of expenses as aforesaid, and all or a portion of such unpaid amount is paid by Administrative Agent and/or one or more of the other Lenders, then the defaulting Lender shall reimburse Administrative Agent and/or the other Lender(s) for the portion of such unpaid amount paid by it or them, as the case may be, together with interest thereon at the Prime Based Rate from the date of payment by Administrative Agent and/or the other Lender(s). In addition, each Lender agrees to reimburse and indemnify Administrative Agent (to the extent it is not paid by or on behalf of Borrower, after demand for payment is made by Administrative Agent, under Section 10.16 or under the applicable provisions of any other Credit Document, but without limiting the obligation of Borrower under said Section 10.16 or such provisions), for such Lender’s ratable share, based upon the respective outstanding principal balances under its Note and the other Notes, of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Administrative Agent in any way relating to or arising out of this Agreement, any other Credit Document or any other documents contemplated by or referred to herein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses which Borrower is obligated to pay under Section 10.16 or under the applicable provisions of any other Credit Document) or the enforcement of any of the terms hereof or thereof or of any such other documents or instruments; provided, however, that no Lender shall be liable for (i) any of the foregoing to the extent they arise from the gross

negligence or willful misconduct of the party to be indemnified or (ii) any loss of principal or interest with respect to the Note or interest in the Credit Facility of the Person serving as Administrative Agent.

Section 9.06. Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance on Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own analysis of the Collateral and of the credit of Borrower and Guarantor, and its own decision to enter into this Agreement, and that it will, independently and without reliance upon Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Credit Document. Administrative Agent shall not be required to keep itself informed as to the performance or observance by Borrower of this Agreement or any other Credit Document or any other document referred to or provided for herein or therein or to inspect the properties or books of Borrower. Except for notices, reports and other documents and information expressly required to be furnished to Lenders by Administrative Agent hereunder, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of Borrower or Guarantor or any of their affiliates which may come into the possession of Administrative Agent or any of its affiliates. Administrative Agent shall not be required to file this Agreement, any other Credit Document or any document or instrument referred to herein or therein, for record or give notice of this Agreement, any other Credit Document or any document or instrument referred to herein or therein, to anyone.

Section 9.07. Failure of Administrative Agent to Act. Except for action expressly required of Administrative Agent hereunder, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall have received further assurances (which may include cash collateral) of the indemnification obligations of Lenders under Section 9.05 in respect of any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. If any indemnity furnished to Administrative Agent for any purpose shall, in the opinion of Administrative Agent, be insufficient or become impaired, Administrative Agent may call for additional indemnity (other than against its gross negligence or willful misconduct) and cease, or not commence, the action indemnified against until such additional indemnity is furnished.

Section 9.08. Resignation or Removal of Administrative Agent. Administrative Agent may resign, or be removed with cause by the Required Lenders, at any time provided that Borrower and the other Lenders shall be promptly notified thereof. Upon such resignation or removal of Administrative Agent, the Required Lenders shall have the right to appoint a successor Administrative Agent, which successor Administrative Agent shall (provided there exists no Event of Default) be subject to Borrower's approval, such approval not to be unreasonably withheld or delayed. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within twenty (20) days after the resignation or the



Required Lenders' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of Lenders, appoint a successor Administrative Agent, which shall be one of the Lenders, within ten (10) days. The Required Lenders or the retiring Administrative Agent, as the case may be, shall upon the appointment of a successor Administrative Agent promptly so notify Borrower and the other Lenders. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article IX shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

Section 9.09. Amendments Concerning Agency Function. Notwithstanding anything to the contrary contained in this Agreement, Administrative Agent shall not be bound by any waiver, amendment, supplement or modification of this Agreement or any other Credit Document which affects its duties, rights, and/or function hereunder or thereunder unless it shall have given its prior written consent thereto.

Section 9.10. Liability of Administrative Agent. Administrative Agent shall not have any liabilities or responsibilities to Borrower on account of the failure of any Lender to perform its obligations hereunder or to any Lender on account of the failure of Borrower to perform its obligations hereunder or under any other Credit Document.

Section 9.11. Transfer of Agency Function. Without the consent of Borrower or any Lender, Administrative Agent may at any time or from time to time transfer its functions as Administrative Agent hereunder to any of its offices wherever located in the United States, provided that Administrative Agent shall promptly notify Borrower and Lenders thereof.

Section 9.12. Non-Receipt of Funds by Administrative Agent; Adjustments.

(a) Unless Administrative Agent shall have received notice from a Lender or Borrower (either one as appropriate being the "Payor") prior to the date on which such Lender is to make payment hereunder to Administrative Agent of proceeds of any Loan or Borrower is to make payment to Administrative Agent, as the case may be (either such payment being a "Required Payment"), which notice shall be effective upon receipt, that the Payor will not make the Required Payment in full to Administrative Agent, Administrative Agent may assume that the Required Payment has been made in full to Administrative Agent on such date, and Administrative Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, make the amount thereof available to the intended recipient on such date. If and to the extent the Payor shall not have in fact so made the Required Payment in full to Administrative Agent, the recipient of such payment shall repay to Administrative Agent forthwith on demand such amount made available to it together with interest thereon, for each day from the date such

amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount, at the Federal Funds Rate.

(b) If, after Administrative Agent has paid each Lender's share of any payment received or applied by Administrative Agent in respect of the Credit Facility, that payment is rescinded or must otherwise be returned or paid over by Administrative Agent, whether pursuant to any bankruptcy or insolvency Law, or otherwise, such Lender shall, at Administrative Agent's request, promptly return its share of such payment to Administrative Agent, together with such Lender's proportionate share of any interest or other amount required to be paid by Administrative Agent with respect to such payment. In addition, if a court of competent jurisdiction shall adjudge that any amount received and distributed by Administrative Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to Administrative Agent its share of the amount so adjudged to be repaid or shall pay over the same in such manner and to such Persons as shall be determined by such court.

Section 9.13. Withholding Taxes. Each Lender represents that it is entitled to receive any payments to be made to it hereunder without the withholding of any tax and will furnish to Administrative Agent such forms, certifications, statements and other documents as Administrative Agent may reasonably request from time to time to evidence such Lender's exemption from the withholding of any tax imposed by any jurisdiction or to enable Administrative Agent to comply with any applicable Laws relating thereto. Without limiting the effect of the foregoing, if any Lender is not created or organized under the Laws of the United States or any state thereof, such Lender will furnish to Administrative Agent Form W-8ECI or Form W-8BEN of the U.S. Internal Revenue Service, or such other forms, certifications, statements or documents, duly executed and completed by such Lender, as evidence of such Lender's complete exemption from the withholding of United States tax with respect thereto. Administrative Agent shall not be obligated to make any payments hereunder to such Lender in respect of the Credit Facility until such Lender shall have furnished to Administrative Agent the requested form, certification, statement or document.

Section 9.14. Sharing of Payments among Lenders. If a Lender shall obtain payment of any principal of its Note or of interest thereon through the exercise of any right of setoff, banker's lien or counterclaim, or by any other means (including direct payment), and such payment results in such Lender receiving a greater payment than it would have been entitled to had such payment been paid directly to Administrative Agent for disbursement to Lenders, then such Lender shall promptly purchase for cash from the other Lenders Participations in the Credit Facility in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all Lenders shall share ratably the benefit of such payment. To such end Lenders shall make appropriate adjustments among themselves (by the resale of Participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

Section 9.15. Possession of Documents. Each Lender shall maintain possession of its own Note. Administrative Agent shall hold all other Credit Documents and related documents in its possession and maintain separate records and accounts with respect to

the Credit Facility, reflecting the interests of Lenders in the Credit Facility, and shall permit Lenders and their representatives access at all reasonable times to inspect such Credit Documents, related documents, records and accounts.

## ARTICLE X

### GENERAL CONDITIONS AND PROVISIONS

Section 10.01. Advance Not Waiver. Any Loan by any Lender hereunder made prior to or without the fulfillment by Borrower of all of the conditions precedent thereto, whether or not known to Lenders, shall not constitute a waiver by Administrative Agent or Lenders of the requirement that all conditions, including the non-performed conditions, shall be required with respect to all future Loans.

Section 10.02. Authorization to Advance for Interest, Etc. Borrower hereby irrevocably authorizes Administrative Agent and Lenders to make Loans to pay interest accrued on the Notes as it comes due, or to satisfy any of the conditions hereof, including, without limitation, the payment of the fees and expenses of Administrative Agent's Counsel.

Section 10.03. Concerning Irrevocable Authorizations. Any and all Loans made at any time by any Lender pursuant to the irrevocable authorizations granted by Sections 2.17 and 10.02 shall require no further direction, authorization or request for disbursement from Borrower and may be made whether or not there exists a Default or Event of Default. Any and all such disbursements shall be added to the outstanding principal balance evidenced by the Notes and shall be secured by the Security Documents. The aforesaid authorizations shall (i) not prevent Borrower from paying the interest, or from satisfying the conditions and obligations referred to in said Sections, out of its own funds, (ii) in no event be construed so as to relieve Borrower or others from their obligations to pay interest as and when due under the Notes, or to satisfy such conditions and obligations and (iii) in no event obligate any Lender to disburse proceeds of the Loans for any such purposes.

Section 10.04. Ratification of Requisition by Acceptance of Advance. Borrower agrees that, by its acceptance of any proceeds of any Loan hereunder, it shall be bound in all respects by the Requisition submitted on its behalf in connection therewith with the same force and effect as if Borrower had itself executed and submitted such Requisition and whether or not such Requisition is executed and/or submitted by an authorized person.

Section 10.05. No Third-Party Beneficiaries. This Agreement is solely for the benefit of Administrative Agent, Lenders and Borrower. All conditions of the obligations of Lenders to make credit available hereunder are imposed solely and exclusively for the benefit of Lenders and may be freely waived or modified in whole or in part by Lenders at any time if in their sole discretion they deem it advisable to do so, and no person other than Borrower (provided, however, that all conditions have been satisfied) shall have

standing to require Lenders to make any credit available or to be a beneficiary of this Agreement.

Section 10.06. Documentation Etc. Satisfactory. All documentation and proceedings deemed by Administrative Agent or Administrative Agent's Counsel to be necessary or required in connection herewith and the documents relating hereto shall be subject to the prior approval of, and satisfactory to, both of them as to form and substance. In addition, the Persons responsible for the execution and delivery of, and signatories to, all of such documentation, shall be acceptable to, and subject to the approval of, Administrative Agent and Administrative Agent's Counsel. Administrative Agent or Administrative Agent's Counsel shall receive copies, certified if requested by either of them, of all documents which they may require in connection with the transactions contemplated hereby.

Section 10.07. Administrative Agent's and Lenders' Determination Conclusive. Administrative Agent and each Lender shall, at all times, be free to independently establish to its satisfaction and in its absolute discretion the existence or nonexistence of any fact or facts the existence or nonexistence of which is a condition hereof.

Section 10.08. Notices. Except as expressly provided otherwise, all notices, demands, consents, approvals and statements required or permitted hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, three (3) days after mailing by registered or certified mail, postage prepaid, or one (1) day after delivery to a nationally recognized overnight courier service providing evidence of the date of delivery, addressed to a party at its address on the signature page hereof or of the applicable Assignment and Assumption Agreement, or at such other address of which a party shall have notified the party giving such notice in writing in accordance with the foregoing requirements.

Section 10.09. Amendments and Waivers. No amendment or material waiver of any provision of this Agreement or any other Credit Document, nor consent to any material departure by Borrower or Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the party against whom such amendment, waiver or consent is sought to be enforced (it being understood, however, that the signatures of the Required Lenders and, solely for purposes of its acknowledgement thereof, Administrative Agent, shall be sufficient to bind Lenders to any such amendment, waiver or consent), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall, unless in writing and signed by all Lenders, do any of the following: (i) reduce the principal of, or interest on, the Notes or any fees due hereunder or any other amount due hereunder or under any other Credit Document; (ii) postpone any date fixed for any payment of principal of, or interest on, the Notes or any fees due hereunder or any other amount due hereunder or under any other Credit Document; (iii) change the definition of Required Lenders; (iv) release any material portion of the Collateral or other collateral for the Obligations other than in accordance with the Credit Documents; (v) amend this Section, Section 2.17(d) or any provision requiring the consent of all Lenders; (vi) release, in whole or in part,

Guarantor other than in accordance with the Credit Documents; or (vii) increase the Credit Amount. Without limiting the foregoing, acceptance by Administrative Agent or Lenders of any sum required to be paid pursuant hereto or pursuant to any other Credit Document, after its due date, or in an amount less than the sum then due, shall not constitute a waiver by Administrative Agent or Lenders of their right to require prompt payment when due of all other such sums or to declare a default or to exercise such other rights provided herein or in the other Credit Documents for such late or reduced payment.

All communications from Administrative Agent to Lenders requesting Lenders' determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Lender, (ii) shall be accompanied by or include a description or copy of the matter or thing as to which such determination, approval, consent or disapproval is requested and (iii) shall include Administrative Agent's recommended course of action or determination in respect thereof. Each Lender shall reply promptly, but in any event within ten (10) Business Days (or five (5) Business Days with respect to any decision to accelerate or stop acceleration of any of the Obligations) after receipt of the request therefor by Administrative Agent (the "Lender Reply Period"). Unless a Lender shall give written notice to Administrative Agent that it objects to the recommendation or determination of Administrative Agent (together with a written explanation of the reasons behind such objection) within the Lender Reply Period, such Lender shall be deemed to have approved or consented to such recommendation or determination.

Section 10.10. Assignment; Participation. Any Lender may at any time grant to one or more banks or other institutions not affiliated with Borrower or Guarantor (each a "Participant") participating interests in its Pro Rata Share of the Credit Facility (the "Participations"). In the event of any such grant by a Lender of a Participation to a Participant, such Lender shall remain responsible for the performance of its obligations hereunder, and Borrower, each other Lender and Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder. Any agreement pursuant to which any Lender may grant a Participation shall provide that such Lender shall retain the sole right and responsibility to enforce the obligations of Borrower hereunder and under any other Credit Document, including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document; provided that such participation agreement may provide that such Lender will not agree to any modification, amendment or waiver described in clauses (i) through (vii) of Section 10.09 without the consent of the Participant.

Upon request by Borrower, each Lender agrees to provide Borrower with notice of all Participations sold by such Lender. Borrower agrees to provide all assistance reasonably requested by a Lender to enable such Lender to sell Participations as aforesaid, or make assignments of its interest in the Credit Facility as hereinafter provided in this Section.

A Lender may at any time assign to any bank or other institution not affiliated with Borrower or Guarantor with the consent of Administrative Agent, which consents shall not be unreasonably withheld or delayed (such assignee, a "Consented Assignee"),

or to one or more banks or other institutions which are majority owned subsidiaries of a Lender or of the parent of a Lender (each Consented Assignee or subsidiary bank or institution, an "Assignee") all or a proportionate part of all of its rights and obligations under this Agreement and its Note and the other Credit Documents, and such Assignee shall assume rights and obligations, pursuant to an Assignment and Assumption Agreement executed by such Assignee and the assigning Lender, provided that, after giving effect to such assignment, the Assignee's portion of the Credit Facility and, in the case of a partial assignment of a Lender's interest, the assigning Lender's portion of the Credit Facility will each be equal to or greater than \$5,000,000. Upon (i) execution and delivery of such instrument, (ii) payment by such Assignee to the assigning Lender of an amount equal to the purchase price agreed between such Lender and such Assignee and (iii) payment by such Assignee to Administrative Agent of a fee, for Administrative Agent's own account, in the amount of \$3,500, such Assignee shall be a party to this Agreement and shall have all the rights and obligations of a Lender as set forth in such Assignment and Assumption Agreement, and the assigning Lender shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this paragraph, substitute notes, in the form of Exhibit D, shall be issued to the assigning Lender (in the case of a partial assignment) and Assignee by Borrower, in exchange for the return of the assigning Lender's original Note. Without limiting the provisions of Section 2.04, all such substitute notes shall constitute "Notes" and the obligations evidenced by such substitute notes shall constitute obligations secured by the Security Documents. In connection with Borrower's execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent such evidence of the due authorization, execution and delivery of the substitute notes and any related documents as Administrative Agent may reasonably request. If the Assignee is not incorporated under the Laws of the United States or a state thereof, it shall, prior to the first date on which interest or fees are payable hereunder for its account, deliver to Borrower and Administrative Agent certification as to exemption from deduction or withholding of any United States federal income taxes in accordance with Section 9.13.

Borrower, Administrative Agent and Lenders shall execute such modifications to the Credit Documents as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with assignments in accordance with the foregoing provisions of this Section.

Any Lender may at any time assign all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank. No such assignment shall release the transferor Lender from its obligations hereunder.

Borrower recognizes that in connection with a Lender's selling of Participations or making of assignments, any or all documentation, financial statements, appraisals and other data, or copies thereof, relevant to Borrower, Guarantor or the Credit Facility may be exhibited to and retained by any such Participant or Assignee or prospective Participant or Assignee.

Section 10.11. Setoff. In addition to (and without limitation of) any right of setoff, bankers' lien or counterclaim Administrative Agent or any Lender may otherwise have, Administrative Agent and each Lender shall be entitled to offset balances (general or special, time or demand, provisional or final) held by it for the account of Borrower at any of Administrative Agent's or such Lender's offices against any amount payable by Borrower to Administrative Agent or such Lender hereunder or under any other Credit Document which is not paid when due (regardless of whether such balances are then due to Borrower), in which case it shall promptly notify Borrower and (in the case of a Lender) Administrative Agent thereof; provided, however, that Administrative Agent's or such Lender's failure to give such notice shall not affect the validity thereof.

Section 10.12. Successors and Assigns. Except as herein provided, this Agreement shall be binding upon and inure to the benefit of Borrower, Administrative Agent and Lenders and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Borrower may not assign, transfer or set over to another, in whole or in part, all or any part of its benefits, rights, duties and obligations hereunder and under the other Credit Documents, including, but not limited to, performance of and compliance with conditions hereof and the right to receive the proceeds of Loans made under, and other extensions of credit under, the Credit Facility without the prior written consent of all of the Lenders (and any attempted such assignment, transfer or setting over without such consent shall be null and void).

Section 10.13. Severability. The provisions hereof are intended to be severable. Any provisions hereof, or the application thereof to any Person or circumstance, which, for any reason, in whole or in part, is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof (or the remaining portions of such provision) or the application thereof to any other Person or circumstance, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision (or portion thereof) or the application thereof to any Person or circumstance in any other jurisdiction.

Section 10.14. Non-Waiver; Remedies Cumulative. No failure or delay on Administrative Agent's or any Lender's part in exercising any right, remedy, power or privilege hereunder or under any of the other Credit Documents or provided by law (hereinafter in this Section, each a "Remedy") shall operate as a waiver of any such Remedy or shall be deemed to constitute Administrative Agent's or any Lender's acquiescence in any default by Borrower or Guarantor under any of said documents. A waiver by Administrative Agent or any Lender of any Remedy on any one occasion shall not be construed as a bar to any other or future exercise thereof or of any other Remedy. The Remedies are cumulative, may be exercised singly or concurrently and are not exclusive of any other Remedies.

Section 10.15. Certain Waivers. Each Credit Party hereby irrevocably and unconditionally waives (i) promptness and diligence, (ii) notice of any actions taken by Administrative Agent or any Lender hereunder or under any other Credit Document or any other agreement or instrument relating hereto or thereto except to the extent

otherwise provided herein, (iii) all other notices, demands and protests, and all other formalities of every kind, in connection with the enforcement of a Credit Party's obligations hereunder and under the other Credit Documents, the omission of or delay in which, but for the provisions of this Section, might constitute grounds for relieving any Credit Party of any of its obligations hereunder or under the other Credit Documents, (iv) any requirement that Administrative Agent or any Lender protect, secure, perfect or insure any lien on any collateral for the Obligations or exhaust any right or take any action against Borrower, any other Credit Party, Guarantor or any other Person or against any collateral for the Obligations, (v) any right or claim of right to cause a marshalling of Borrower's assets and (vi) all rights of subrogation or contribution, whether arising by contract or operation of law or otherwise by reason of payment by Borrower pursuant hereto or pursuant to any other Credit Document. EACH CREDIT PARTY FURTHER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF ADMINISTRATIVE AGENT OR LENDERS WITH RESPECT TO THIS AGREEMENT, THE NOTES OR THE OTHER CREDIT DOCUMENTS OR OTHERWISE IN RESPECT OF THE LOANS OR THE CREDIT FACILITY, ANY AND EVERY RIGHT SUCH CREDIT PARTY MAY HAVE TO (W) INJUNCTIVE RELIEF, (X) A TRIAL BY JURY, (Y) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM, AND/OR (Z) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST ADMINISTRATIVE AGENT OR LENDERS WITH RESPECT TO ANY ASSERTED CLAIM.

Section 10.16. Expenses; Indemnification. Borrower covenants and agrees to pay all costs, expenses and charges (including, without limitation, all fees and charges of engineers, appraisers and Administrative Agent's Counsel) incurred by Administrative Agent or any Lender in connection with (i) the preparation for and consummation of the transactions contemplated hereby or for the performance hereof and of the other Credit Documents, and for any services which may be required in addition to those normally and reasonably contemplated hereby and (ii) the enforcement hereof or of any or all of the other Credit Documents. If Borrower fails to pay promptly any costs, charges or expense required to be paid by it as aforesaid, and Administrative Agent or any Lender pays such costs, charges or expenses, Borrower shall reimburse Administrative Agent or such Lender, as appropriate, on demand for the amounts so paid, together with interest thereon at the Default Rate. Borrower further agrees to indemnify Administrative Agent and each Lender and their respective directors, officers, employees and agents from, and hold each of them harmless against, (x) any and all losses arising out of or by reason of any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by Borrower of the proceeds of any of the Loans or of any other extension of credit under the Credit Facility, including, without limitation, the fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceedings and (y) any and all claims, actions, suits, proceedings, costs, expenses, losses, damages and



liabilities of any kind, including in tort, penalties and interest, arising out or by reason of any matter relating, directly or indirectly, to the ownership, condition, development, construction, sale, rental or financing of any of Borrower's Investments or any part thereof (but excluding any such losses, liabilities, claims, damages or expenses incurred solely by reason of the gross negligence or willful misconduct of the party to be indemnified). The obligations of Borrower under this Section and under Sections 3.01, 3.03, 6.03 and 6.04 shall survive the repayment of all amounts due under or in connection with any of the Credit Documents and the termination of the Credit Facility.

Section 10.17. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

Section 10.18. Governing Law; Jurisdiction. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the Laws of the State of New York (without giving effect to New York's principles of conflicts of law). Each Credit Party, Administrative Agent and each Lender hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or Federal court sitting in The City of New York over any suit, action or proceeding arising out of or relating to this Agreement and the other Credit Documents, and each Credit Party hereby agrees and consents that, in addition to any methods of service of process provided for under applicable Law, all service of process in any such suit, action or proceeding in any New York State or Federal court sitting in The City of New York (or such other county in New York State) may be made by certified or registered mail, return receipt requested, directed to such Credit Party at the address for Borrower indicated on the signature page hereof, and service so made shall be complete five (5) days after the same shall have been so mailed.

Section 10.19. Integration. The Credit Documents and the Supplemental Fee Letter constitute the entire agreement among Administrative Agent, Borrower and Lenders relating to the transactions contemplated thereby (except with respect to agreements among Lenders or with Administrative Agent relating solely to compensation, consideration and the syndication of the Credit Facility) and supersede any prior oral or written statements or agreements with respect to such transactions.

Section 10.20. Gross-Up for Taxes. All payments made by Borrower under this Agreement and the Notes shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding income taxes and franchise or other taxes (imposed in lieu of income taxes) imposed on a Lender as a result of a present or former connection between such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Lender's having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or its Note). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-

Excluded Taxes”) are required to be withheld from any amounts payable to such Lender hereunder or under its Note, the amounts so payable to such Lender shall be increased to the extent necessary to yield to such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts payable with respect to the Credit Facility at the rates or in the amounts specified in this Agreement and its Note; provided, however, that Borrower shall not be required to increase any such amounts payable to such Lender if such Lender is not organized under the Laws of the United States or a state thereof and such Lender fails to comply with the requirements of Section 9.13. Whenever any Non-Excluded Taxes are payable by Borrower, as promptly as possible thereafter Borrower shall send to Administrative Agent for the account of such Lender a certified copy of an original official receipt received by Borrower showing payment thereof. If Borrower fails to pay any Non-Excluded Taxes when due to the appropriate taxing authority or fails to remit to Administrative Agent the required receipts or other required documentary evidence, Borrower shall indemnify such Lender for any incremental taxes, interest or penalties that may become payable by such Lender as a result of any such failure. The agreements in this Section shall survive the termination of this Agreement and the payment of all amounts payable hereunder.

## ARTICLE XI

### PARTICULAR PROVISIONS

The foregoing Articles of this Agreement are subject to the following further provisions:

#### Section 11.01. Capital Calls; Subscription Account.

(a) Borrower and Acadia Investors II shall direct all Investors to wire transfer to the Subscription Account all monies or sums paid or to be paid by any Investor to Borrower or Managing Member to fund its Capital Contribution as and when such Investor is required pursuant to the Operating Agreement and/or the Stockholders Agreement to fund such Capital Contribution. In addition, to the extent that Borrower or Acadia Investors II receives any Capital Contributions from the Investors during the term of this Agreement, they shall immediately deposit such Capital Contributions upon receipt into the Subscription Account and to the extent that Borrower or Acadia Investors II receives any amounts from an Investor while an Event of Default is continuing, they shall immediately deposit such amounts upon receipt into the Subscription Account.

(b) Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that neither Administrative Agent nor any Lender undertakes any duties, responsibilities, or liabilities with respect to the Capital Calls, the Stockholder Agreement or the Operating Agreement. Neither Administrative Agent nor any Lender shall be required to refer to Borrower’s organizational documents or the Stockholders Agreement or take any other action with respect to any other matter which might arise in connection with Borrower’s organizational documents or the Stockholder Agreement or any Capital Call. Neither Administrative Agent nor any Lender has any duty to

determine or inquire into any happening or occurrence or any performance or failure of performance of Borrower. Neither Administrative Agent nor any Lender has any duty to inquire into the use, purpose, or reasons for the making of any Capital Call or with respect to the investment or use of the proceeds thereof.

(c) Provided that no Default or Event of Default has occurred and is then continuing, Administrative Agent shall release funds from the Subscription Account to Borrower for Approved Uses, subject to the terms hereof and of the Cash Collateral Agreement. Except as provided in Section 11.01(f), upon the occurrence and during the continuance of a Default or any Event of Default, Borrower shall have no right to any funds from the Subscription Account.

(d) Borrower and Acadia Investors II hereby irrevocably authorize and direct Lenders, acting through Administrative Agent, at any time following the occurrence and during the continuance of an Event of Default while any Obligations are outstanding, to charge from time to time the Subscription Account and any other accounts of Borrower at Lenders for amounts due Lenders or any of them hereunder and under the Notes and the other Credit Documents.

(e) Intentionally Omitted.

(f) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuation of an Event of Default, Borrower and Acadia Investors II shall be permitted to make a single Capital Call provided (i) the proceeds of such Capital Call are deposited into the Subscription Account, (ii) Borrower directs that such proceeds together with any other funds held in the Subscription Account shall be released by Administrative Agent to prepay the Notes in their entirety and/or held by Administrative Agent, for the benefit of the Lenders, as cash collateral for the Obligations, including, without limitation, the full amount of the Aggregate Outstanding Extensions of Credit, for application by Administrative Agent and Lenders to amounts due Administrative Agent and Lenders hereunder until the expiration, or return for cancellation, of all Letters of Credit and payment of all other outstanding Obligations hereunder, together with costs, expenses, funding losses, interest and penalties incurred therein as expressly contemplated in this Agreement and (iii) Borrower terminates the Credit Facility and agrees that upon the occurrence of an Event of Default Borrower shall have no further right to the making of any Loan hereunder.

(g) The application by Lenders of such funds hereunder shall, unless Administrative Agent shall agree otherwise in writing, be first to the payment of reasonable costs and expenses due Lenders under this Agreement, second to the payment of accrued interest due hereunder or under the Notes and last to the payment of the principal due hereunder. Borrower acknowledges that all funds so transferred into the Subscription Account shall be the property of Borrower only and not subject to any Lien of any party, other than Administrative Agent and Lenders.

Section 11.02. Subordination of Claims.

(a) Until the Obligations shall be paid and satisfied in full and except as expressly permitted under Section 11.01, Borrower, Managing Member and Acadia Investors II shall not receive or collect, directly or indirectly, from any Investor any amount upon the Investor Claims other than pursuant to this Section 11.02.

(b) Without the prior written consent of Administrative Agent, after the occurrence and during the continuation of an Event of Default Borrower and Acadia Investors II shall not (i) exercise or enforce any creditor or other right it may have against an Investor on account of any Investor Claims, (ii) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings (judicial or otherwise, including, without limitation, the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interest, collateral rights, judgments or other encumbrances on assets of such Investor held by Borrower and/or Acadia Investors II as security for any Investor Claims, or (iii) exercise any rights or remedies against an Investor under a Stockholders Agreement or the Operating Agreement.

(c) Managing Member hereby agrees that its right to receive the Asset Management Fees as set forth in the Operating Agreement is subordinated to the Obligations, provided, however, so long as no Event of Default has occurred and is continuing, Acadia Investors II shall be entitled to receive the Asset Management Fees pursuant to the terms of the Operating Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written.

ACADIA STRATEGIC OPPORTUNITY FUND II,  
LLC, a Delaware limited liability company

By: Acadia Realty Acquisition II, LLC, a  
Delaware limited liability company, its  
managing member

By: Acadia Realty Limited Partnership,  
its sole member

By: Acadia Realty Trust, its  
general partner

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

Address for notices:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605

ACADIA REALTY ACQUISITION II, LLC, a  
Delaware limited liability company

By: Acadia Realty Limited Partnership, its sole  
member

By: Acadia Realty Trust, its general  
partner

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

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ACADIA INVESTORS II, INC., a Maryland  
corporation

By /s/ Robert Masters

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Name: Robert Masters  
Title: Senior Vice President

BANK OF AMERICA, N.A.

By /s/ Gregory Egli

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Gregory Egli  
Senior Vice President

Address for notices and Applicable Lending Office:

One Bryant Park, 35th Floor  
New York, New York 10036  
Attention: Mr. Gregory Egli

BANK OF AMERICA, N.A.  
(as Administrative Agent)

By /s/ Gregory Egli

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Gregory Egli  
Senior Vice President

Administrative Agent's Office and address for notices:

One Bryant Park, 35th Floor  
New York, New York 10036  
Attention: Mr. Gregory Egli

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SCHEDULE A

INDIVIDUAL COMMITMENTS

Lender	Individual Commitment until October 31, 2013	Individual Commitment from November 1, 2013 to January 31, 2014	Individual Commitment from February 1, 2014 to April 30, 2014	Individual Commitment from May 1, 2014 to July 31, 2014	Individual Commitment from and after August 1, 2014
BofA	\$ 40,000,000	\$ 15,000,000	\$ 11,250,000	\$ 7,500,000	\$ 3,750,000

AUTHORIZATION LETTER

\_\_\_\_\_, 2010

[Name and address of Administrative Agent]

Re: Fourth Amended and Restated Credit Agreement dated as of December 22, 2010 (the "Credit Agreement"; capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement) among us, as Borrower, Acadia Realty Acquisition II, LLC, Acadia Investors II, Inc., the Lenders named therein, and you, as Administrative Agent for said Lenders

Dear Sir/Madam:

In connection with the captioned Credit Agreement, we hereby designate any of the following persons to give to you instructions, including notices required pursuant to the Credit Agreement, orally, by telephone or teleprocess, or in writing:

Michael Nelsen  
Robert Masters  
Richard Hartmann

Instructions may be honored on the oral, telephonic, teleprocess or written instructions of anyone purporting to be any one of the above designated persons even if the instructions are for the benefit of the person delivering them. We will furnish you with written confirmation of each such instruction signed by any person designated above (including any telecopy which appears to bear the signature of any person designated above) on the same day that the instruction is provided to you, but your responsibility with respect to any instruction shall not be affected by your failure to receive such confirmation or by its contents.

You and Lenders shall be fully protected in, and shall incur no liability to us for, acting upon any instructions which you in good faith believe to have been given by any person designated above, and in no event shall you or Lenders be liable for special, consequential or punitive damages. In addition, we agree to hold you and Lenders and your and their respective agents harmless from any and all liability, loss and expense arising directly or indirectly out of instructions that we provide to you in connection with

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the Credit Agreement except for liability, loss or expense occasioned by your gross negligence or willful misconduct.

Upon notice to us, you may, at your option, refuse to execute any instruction, or part thereof, without you or any Lender incurring any responsibility for any loss, liability or expense arising out of such refusal if you in good faith believe that the person delivering the instruction is not one of the persons designated above or if the instruction is not accompanied by an authentication method that we have agreed to in writing.

We will promptly notify you in writing of any change in the persons designated above and, until you have actually received such written notice and have had a reasonable opportunity to act upon it, you are authorized to act upon instructions, even though the person delivering them may no longer be authorized.

Very truly yours,

ACADIA STRATEGIC OPPORTUNITY FUND II, LLC, a Delaware limited liability company

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, its sole member

By: Acadia Realty Trust, its general partner

By

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Robert Masters  
Senior Vice President

## EXHIBIT B

INVESTORS/CAPITAL COMMITMENTS

Investors	Capital Commitment	Percentage Interest	Paid Capital Contributions	Unpaid Capital Commitments
Yale University	\$ 52,383,677	20.00%	\$ 42,306,686	\$ 10,076,991
The Vanderbilt University	8,730,611	3.33%	7,051,116	1,679,495
The Board of Trustees of the Leland Stanford Junior University	43,653,064	16.67%	35,255,570	8,397,493
Gloster, LLC	43,653,064	16.67%	35,255,570	8,397,493
Carnegie Corporation of New York	\$ 17,461,226	6.67%	14,102,228	3,358,998
The William and Flora Hewlett Foundation	21,826,532	8.33%	17,627,786	4,198,747
The Dupont Pension Trust	21,826,532	8.33%	17,627,786	4,198,747
Total	<u>\$ 209,534,706</u>	<u>80.00%*</u>	<u>\$ 169,226,742</u>	<u>\$ 40,307,964</u>
<u>Managing Member</u>				
Acadia Realty Acquisition II, LLC	\$ 52,383,678	20.00%	\$ 42,306,685	\$ 10,076,993

\* Note: Acadia Realty Acquisition II, LLC holds a 20% interest

INVESTOR ACKNOWLEDGMENT

[Investor Acknowledgment - Investor to copy/print on letterhead]

[**Note: Executed in connection with the Original Agreement**]

\_\_\_\_\_, 200\_\_

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 by and among Borrower, Managing Member, Investor and Fleet (the "First Restated Agreement"), as modified by that certain Modification of Amended and Restated Credit Agreement dated as of February, 2008 by and among Borrower, Managing Member, Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA") and The Bank of New York (the "Amendment", as amended and restated by that certain Third Amended and Restated Credit Agreement dated as of February 27, 2009 (the "Second Restated Agreement") among Borrower, Managing Member, Investor, BofA, certain other lenders which are, or may become, lenders pursuant to such Agreement (BofA and such other lenders, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as further amended and restated by that certain Third Amended and Restated Agreement dated as of March 3, 2010 by and among Borrower, Managing Member, Investor, Lenders and Administrative Agent (the "Third Restated Agreement", and, as amended, supplemented or otherwise modified from time to time, the "Credit Agreement").

Ladies and Gentlemen:

In order to induce Lenders to provide the Credit Facility to Borrower, the undersigned hereby acknowledges and agrees as follows:

We have entered into that certain that certain Stockholders Agreement by and among Investor, Yale University, The Vanderbilt University, Carnegie Corporation of

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New York, The Board of Trustees of the Leland Stanford Junior University, State Street Bank and Trust Company as Trustee for the Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of October 15, 2004 (effective as of August 15, 2004) as amended by First Amendment to Stockholders Agreement dated as of August 15, 2004, as the same may hereafter be modified in compliance with the terms of this Agreement (the "Stockholders Agreement"; all capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Stockholders Agreement), pursuant to which we have (i) purchased shares of stock in Investor, which is a member in Borrower and (ii) committed to make cash contributions of capital ("Capital Contributions") to Investor on the terms and subject to the conditions set forth in the Stockholders Agreement with an Aggregate Capital Commitment of \$\_\_\_\_\_ (our "Capital Commitment"), which Capital Contributions are to be contributed by Investor to Borrower pursuant to the terms of the Operating Agreement.

As of the date hereof, our Remaining Capital Commitment is \$\_\_\_\_\_, which may be drawn upon the delivery of one or more Drawdown Notices pursuant to and in accordance with the Stockholders Agreement.

We hereby agree that we shall deliver to Administrative Agent from time to time upon the request of Managing Member, Investor, Administrative Agent or any Lender, a certificate setting forth the amount of our Remaining Capital Commitment. **[Add for Dupont Trust and Hewlett Trust: We hereby further agree to deliver to Administrative Agent the financial statements as and when required under Section 6.06(11) of the Credit Agreement.]**

We hereby acknowledge and agree that under the terms of and subject to the conditions set forth in the Stockholders Agreement, we are obligated to fund our undrawn Aggregate Capital Commitment required on account of calls for Capital Contributions duly made in accordance with the terms of the Stockholders Agreement (including, without limitation, subsequent calls for Capital Contributions made in connection with a shortfall in funds available to Borrower as a result of the failure of any other Major Stockholder or Managing Member to advance funds with respect to a call for Capital Contributions duly made). In addition, we hereby acknowledge and confirm to Administrative Agent, Lenders, Managing Member and Investor that we will make Capital Contributions to the extent of our unfunded Aggregate Capital Commitment, to be applied to the repayment of outstanding obligations under the Credit Agreement, whether such Capital Contributions are called by Managing Member, Investor or Administrative Agent for such purpose on behalf of Managing Member and Investor (whether or not any Person is then acting as Managing Member for Borrower or Manager for Investor) without defense, counterclaim or offset of any kind, all of which we hereby waive. Notwithstanding anything to the contrary in the Stockholders Agreement or Operating Agreement, we hereby acknowledge and agree that (i) our obligation to fund our Aggregate Capital Commitment as and when requested by Administrative Agent is unconditional and (ii) Administrative Agent shall not be required to state any specific purpose or use of funds, deliver any supporting documentation whatsoever or comply with any formalities when making a Drawdown on our Aggregate Capital Commitment, except that such Drawdown must be made in writing.

We hereby (i) acknowledge that Borrower, Managing Member and Investor, pursuant to the terms of the Stockholders Agreement are making a collateral assignment to Administrative Agent for the benefit of Lenders of the right to call all future draws under the Stockholders Agreement to secure all loans and other extensions of credit made under the Credit Facility and all other obligations of Borrower under the Credit Agreement and the other Credit Documents (as defined in the Credit Agreement), (ii) represent that as of the date hereof, (A) to the best of our knowledge there is no default or circumstance which with the passage of time and/or the giving of notice would constitute a default under the Operating Agreement or the Stockholders Agreement, (B) the Stockholders Agreement has not been modified or amended except for the amendment referred to above and is in full force and effect and enforceable against the undersigned in accordance with its terms and (C) we do not have any right of offset against, or reduction to, our obligation to fund our undrawn Aggregate Capital Commitment, (iii) acknowledge that for so long as the Credit Facility is in place we will not amend, modify, supplement, cancel, terminate, reduce or suspend any of the provisions of the Stockholders Agreement or the Operating Agreement relating to the Aggregate Capital Commitments, the making of Capital Contributions or the incurrence of indebtedness or any other provisions that would adversely affect the rights of Administrative Agent or Lenders without your prior written consent and (iv) acknowledge that until otherwise instructed by both Borrower and you in writing, all future Capital Contributions made by us under the Stockholders Agreement will be made by wire transfer to the following account which Borrower has also pledged as security for the Obligations (as such term is defined in the Credit Agreement):

Bank:	Bank of America, N.A.
Bank Address:	One Bryant Park, 35th Floor New York, New York 10036
Account Number:	9489651466
ABA Number:	021200339
Account Name:	Acadia Strategic Opportunity Fund II, LLC
Contact Person:	Mr. Gregory Egli
Telephone:	646-855-2630

**[Add to Yale acknowledgment: The undersigned represents, warrants and agrees to and with you that Yale University fully and irrevocably guarantees payment by Gloster LLC of Gloster LLC's Capital Commitment to Investor. Alternatively, Yale to provide separate guaranty in form acceptable to Lenders.]**

We understand that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Credit Facility available to Borrower and, accordingly, hereby acknowledge that Capital Contributions we make under the Stockholders Agreement will not satisfy our obligation to fund our undrawn Aggregate Capital Commitment unless such Capital Contributions are paid into the above account (unless we are otherwise instructed by Borrower and Administrative Agent as described above). We hereby acknowledge that the terms of the Credit Agreement and of each other Credit Document (as defined therein) can be modified without further notice to us or our consent. In addition, we understand that the Credit Agreement and this Investor Acknowledgment shall be for the benefit of Administrative Agent, Lenders, and Lenders' successors and assigns, and that this Investor Acknowledgment will remain in effect until we are notified jointly by Administrative Agent and Managing Member that the Credit Facility has been terminated.

Very truly yours,

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By

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Name:

Title:

NOTE

\$ \_\_\_\_\_

New York, New York  
\_\_\_\_\_, 2010

For value received, ACADIA STRATEGIC OPPORTUNITY FUND II, LLC, a Delaware limited liability company ("Maker") hereby covenants and promises to pay to the order of [NAME OF LENDER] or its successors or assigns (collectively, "Lender"), at the principal office of BANK OF AMERICA, N.A. located at One Bryant Park, 35th Floor, New York, New York 10036 ("Administrative Agent") for the account of the Applicable Lending Office of Lender, the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) or so much thereof as shall be advanced and remain unpaid pursuant to the Loan Agreement (as defined below), in lawful money of the United States and in immediately available funds, in accordance with the terms set forth in the Loan Agreement. Maker also covenants and promises to pay interest on the unpaid principal balance hereof, for the period such balance is outstanding, in like money, at said office for the account of said Applicable Lending Office, at the time and at a rate per annum as provided in the Loan Agreement. Any amount of principal hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at the Default Rate.

This Note is one of the Notes referred to in the Fourth Amended and Restated Credit Agreement dated as of the date hereof (as the same may be amended or supplemented from time to time, the "Loan Agreement") among Maker, as Borrower, Acadia Realty Acquisition II, LLC, Acadia Investors II, Inc., the lenders named therein (including Lender), as Lenders, and Administrative Agent, as Administrative Agent for Lenders. All of the terms, conditions and provisions of the Loan Agreement are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement.

The Loan Agreement contains, among other things, provisions for the prepayment of and acceleration of this Note upon the happening of certain stated events.

Should the indebtedness represented by this Note or any part thereof be collected at law or in equity, or in bankruptcy, receivership or any other court proceeding (whether at the trial or appellate level), or should this Note be placed in the hands of attorneys for collection upon default, Maker agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses.

All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor.

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This Note shall be governed by the Laws of the State of New York (without giving effect to New York's principles of conflicts of law), provided that, as to the maximum lawful rate of interest which may be charged or collected, if the Laws applicable to Lender permit it to charge or collect a higher rate than the Laws of the State of New York, then such Law applicable to Lender shall apply to Lender under this Note.

Anything herein to the contrary notwithstanding, the obligations of Maker under this Note shall be subject to the limitation that payments of interest shall not be required to the extent that receipt of any such payment by Lender would be contrary to provisions of Law applicable to Lender limiting the maximum rate of interest that may be charged or collected by Lender.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of the date first above written.

ACADIA STRATEGIC OPPORTUNITY FUND II,  
LLC, a Delaware limited liability company

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability  
company, its managing member

By: Acadia Realty Limited Partnership, its sole member

By: Acadia Realty Trust, its general partner

By

\_\_\_\_\_  
Robert Masters  
Senior Vice President



CLOSING CERTIFICATE

Pursuant to Section 4.01(c) of that certain Fourth Amended and Restated Credit Agreement, dated as of the date hereof (the "Credit Agreement"; capitalized terms used herein without definition are used as defined in the Credit Agreement), among Acadia Strategic Opportunity Fund II, LLC, a Delaware liability company ("Borrower"), as Borrower, Acadia Realty Acquisition II, LLC, Acadia Investors, Inc., the lenders named therein and Administrative Agent, as Administrative Agent for Lenders, the undersigned hereby certifies to Administrative Agent and Lenders as follows:

(a) The Certificate of Formation of Borrower previously delivered to Administrative Agent in connection with the execution and delivery of the Credit Agreement has not been amended or modified;

(b) The Operating Agreement of Borrower dated as of October 15, 2004 (effective as of August 15, 2004) previously delivered to Administrative Agent in connection with the execution and delivery of the Credit Agreement has been amended by First Amendment to Amended and Restated Operating Agreement of Borrower dated as of August 15, 2004 by and among Managing Member and Acadia Investors II, Inc. dated as of August 15, 2004, as supplemented by that certain Pledge Agreement dated as of June 15, 2004 from Acadia Investors II, Inc. to Borrower, as amended by Second Amendment to Amended and Restated Operating Agreement of Borrower by and among Managing Member and Acadia Investors II dated as of January 1, 2006, and as amended by action of Managing Member with the written consent of the advisory committee of Borrower by required vote dated January 5, 2010, and the Operating Agreement, as so amended and supplemented, has not been further modified, amended or supplemented and is in full force and effect;

(c) Attached hereto as "Exhibit A" is a certificate dated as of a recent date from the Secretary of State of Delaware evidencing the good standing of Borrower in such jurisdiction; and

(d) Immediately prior to and immediately after the date hereof, no Default or Event of Default shall have occurred and will be continuing.

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IN WITNESS WHEREOF, the undersigned has hereunto executed this Closing Certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

ACADIA STRATEGIC OPPORTUNITY FUND II, LLC, a Delaware limited liability company

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, its sole member

By: Acadia Realty Trust, its general partner

By

\_\_\_\_\_  
Robert Masters  
Senior Vice President

EXHIBIT F

RESERVED

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COMPLIANCE CERTIFICATE

Robert Masters does hereby certify to Bank of America, N.A., as Administrative Agent ("Agent") and the Lenders referred to in the Credit Agreement referred to below as follows:

1. I am a Senior Vice President and General Counsel of Acadia Realty Trust, the general partner of Acadia Realty Limited Partnership, the sole member of Acadia Realty Acquisition II, LLC ("Managing Member"), which is the managing member of Acadia Strategic Opportunity Fund II, LLC ("Borrower").

2. This certificate is the certificate regarding Capital Commitments referred to in Section 4.01(c) of the Fourth Amended and Restated Credit Agreement ("Credit Agreement") dated as of December 22, 2010 (the "Closing Date") among Borrower, the Managing Member, Acadia Investors II, Inc., Agent and Lenders named therein. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement. This certificate is being delivered to the Administrative Agent and Lenders with the understanding that Administrative Agent and Lenders will be relying on the accuracy hereof.

3. As of the date hereof the aggregate Capital Commitments of the Investors is \$\_\_\_\_\_ and the aggregate Unpaid Capital Commitments is \$\_\_\_\_\_.

4. Exhibit 1 annexed hereto contains a list of the Investors and sets forth their respective interests in Borrower, Capital Commitments and Unpaid Capital Commitments, all as of the date hereof.

5. Borrower's Liquidity as of the date hereof is \$\_\_\_\_\_, a calculation of which is set forth on Exhibit 2 annexed hereto.

6. Borrower has not created, incurred, assumed or suffered to exist any Indebtedness, other than trade payables due within sixty (60) days which are not delinquent, of Borrower or any Guarantee Obligations of Borrower, other than Indebtedness and Guarantee Obligations in existence on the Closing Date. The cost basis of each Investment owned by Borrower as of the date hereof is separately identified and quantified on Exhibit 3 annexed hereto and the aggregate of such amounts is \$\_\_\_\_\_ (the "Investment Amount"). Each obligation which constitutes Indebtedness or Guaranteed Obligations of Borrower and its Subsidiaries is separately identified and quantified on Exhibit 4 annexed hereto and the aggregate of such amounts is \$\_\_\_\_\_ (the "Indebtedness and Guaranteed Obligations Amount"). As of the date hereof, the Indebtedness and Guaranteed Obligations Amount constitutes \_\_\_\_\_% of the Investment Amount and therefore Borrower **[is] [is not]** in compliance with Section 7.01 of the Credit Agreement.

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7. As of the date hereof, Borrower has observed or performed all of its covenants and other agreements in all material respects, and satisfied every material condition, contained in the Credit Agreement and the other Credit Documents to be observed, performed or satisfied by it, and the undersigned officer knows of no Default or Event of Default which has occurred and is continuing, except as follows: **[If none, state "none", otherwise specify the nature and period of existence of the Default or Event of Default and what action Borrower has taken or proposes to take with respect thereto.]**

8. As of the date hereof, Borrower has observed or performed all of its covenants and other agreements in all material respects, and satisfied every material condition, contained in the Credit Agreement and the other Credit Documents to be observed, performed or satisfied by it, and that the undersigned knows of no Default or Event of Default which has occurred and is continuing.

Dated: As of \_\_\_\_\_, 2010

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Robert Masters  
Senior Vice President - General Counsel

Exhibit 1

Investors	Capital Commitment	Percentage Interest	Paid Capital Contributions	Unpaid Capital Commitments
Yale University	\$ 52,383,677	20.00%		\$
Dore LP <sup>1</sup>	8,730,611	3.33%		
The Board of Trustees of the Leland Stanford Junior University	43,653,064	16.67%		
Gloster, LLC <sup>2</sup>	43,653,064	16.67%		
Carnegie Corporation of New York	17,461,226	6.67%		
The William and Flora Hewlett Foundation	21,826,532	8.33%		
The Dupont Pension Trust	21,826,532	8.33%		
Acadia Realty Acquisition II, LLC <sup>3</sup>	52,383,678	20.00%		
<b>Total</b>	<b>\$ 261,918,384</b>	<b>100%</b>		<b>\$</b>

<sup>1</sup> The Vanderbilt University is the Investor Guarantor of Dore Capital Real Estate, L.P.

<sup>2</sup> Yale University is the Investor Guarantor of Gloster LLC

<sup>3</sup> Guarantor is the Investor Guarantor of Acadia Realty Acquisition II, LLC

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Liquidity

Unencumbered Cash (excluding amounts in Deposit Account)		\$
		_____
Unpaid Capital Commitments		_____
		_____
Cash Equivalents (listed by category according to the clauses of the definition of "Cash Equivalents"):		
(a) Short-term U.S. Government securities	\$	_____
(b) CDs, etc.		_____
(c) Commercial bank repo obligations		_____
(d) Investment grade commercial paper		_____
(e) Investment grade short-term municipal bonds		_____
(f) Commercial paper		_____
(g) Permitted money market funds		_____
Subtotal:		_____
		_____
TOTAL:		\$
		_____



EXHIBIT H  
CAPITAL STOCK OF SUBSIDIARIES

Name	Ownership	Minimum Release Price
Acadia-P/A Holding Company, LLC (“P/A Holding”):	90% owned by Borrower	N/A
Acadia-PA East Fordham Acquisitions, LLC	100% owned by P/A Holdings	\$ 19,158,000
P/A-Acadia Pelham Manor, LLC	100% owned by P/A Holdings	\$ 9,321,000
Acadia-PA Sherman Avenue, LLC	100% owned by P/A Holdings	\$ 0
Acadia-P/A Canarsie, LLC	100% owned by P/A Holdings	\$ 15,204,000
Canarsie Plaza LLC	80% owned by Acadia-P/A Canarsie, LLC	\$ 15,204,000
Acadia-P/A Albee LLC	100% owned by P/A Holdings	*
Acadia-P/A/T Albee LLC	95% owned by Acadia-P/A Albee LLC	*
Albee Office Development LLC	50% owned by Acadia-P/A/T Albee LLC	*
Albee Retail Development LLC	75% owned by Acadia-P/A/T Albee LLC	*
Albee Development LLC	1.5% owned by Albee Office Development LLC	*
	32% owned by Albee Retail Development LLC	
Fordham Place Office LLC	100% owned by P/A Holdings	\$ 19,158,000
APA 216 <sup>th</sup> Street LLC	100% owned by P/A Holdings	\$ 3,886,200
Acadia-P/A 161 <sup>st</sup> Street LLC	100% owned by P/A Holdings	\$ 10,581,000
Acadia-P/A Liberty LLC	100% owned by P/A Holdings	\$ 3,399,600
Acadia Marsh Investors LLC	100% owned by Borrower	\$ 0
Acadia Shopko Investors LLC	100% owned by Borrower	\$ 0
Acadia Oakbrook LLC	100% owned by Borrower	\$ 5,400,000
Acadia Atlantic Avenue LLC	100% owned by Borrower	\$ 4,080,600

\* Site 1A: \$4,956,000  
Balance of Investment: \$0



ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of \_\_\_\_\_, 200\_\_, among [NAME OF ASSIGNING BANK] (“Assignor”) and [NAME OF ASSIGNEE] (“Assignee”).

Preliminary Statement

1. This Assignment and Assumption Agreement (this “Agreement”) relates to the Fourth Amended and Restated Credit Agreement (as the same may be amended from time to time, the “Loan Agreement”) dated as of December 22, 2010 among Acadia Strategic Opportunity Fund II, LLC (“Borrower”), Acadia Realty Acquisition II, LLC, Acadia Investors II, Inc., the lender(s) party thereto (each a “Lender” and, collectively, “Lenders”) and Bank of America, N.A., as administrative agent (“Administrative Agent”). All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Loan Agreement.

2. Subject to the terms and conditions set forth in the Loan Agreement, Assignor has made an Individual Commitment to Borrower in an aggregate principal amount of \$\_\_\_\_\_ (“Assignor’s Loan Commitment”).

3. The aggregate outstanding principal amount under Assignor’s Loan Commitment at the commencement of business on the date hereof is \$\_\_\_\_\_.

4. Assignor desires to assign to Assignee all of the rights of Assignor under the Loan Agreement in respect of a portion of Assignor’s Loan Commitment and the Loans and other extensions of credit made or participated in by Assignor pursuant thereto, such portion being in an amount equal to \$\_\_\_\_\_ (the “Assigned Loan and Commitment”), of which \$\_\_\_\_\_ is currently outstanding and \$\_\_\_\_\_ is still to be extended to Borrower pursuant to the Loan Agreement; and Assignee desires to accept assignment of such rights and assume the corresponding obligations from Assignor on such terms.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1. Assignment. Assignor hereby assigns and sells to Assignee all of the rights of Assignor under the Loan Agreement in and to the Assigned Loan and Commitment, and Assignee hereby accepts such assignment from Assignor and assumes all of the obligations of Assignor under the Loan Agreement with respect to the Assigned Loan and Commitment, including, without limitation, Assignor’s obligations with respect to the undisbursed portion, if any, thereof. Upon the execution and delivery hereof by Assignor, Assignee, and (if applicable) Administrative Agent and the payment of the amount specified in Section 2 hereof required to be paid on the date hereof, (1) Assignee

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shall, as of the commencement of business on the date hereof, succeed to the rights and obligations of a Lender under the Loan Agreement with an Individual Commitment in an amount equal to the Assigned Loan and Commitment, and (2) the Individual Commitment of Assignor shall, as of the commencement of business on the date hereof, be reduced correspondingly and Assignor released from its obligations under the Loan Agreement to the extent such obligations have been assumed by Assignee. Assignor represents and warrants that it (x) owns the Assigned Loan and Commitment free and clear of all liens and other encumbrances created by Assignor and (y) is legally authorized to enter into and perform this Agreement. Except as provided in the immediately preceding sentence, the assignment provided for herein shall be without representation or warranty by, or recourse to, Assignor.

SECTION 2. Payments. As consideration for the assignment and sale contemplated in Section 1 hereof, Assignee shall pay to Assignor on the date hereof, in immediately available funds, an amount equal to the outstanding principal amount under the Assigned Loan and Commitment recited in paragraph 4 of the Preliminary Statement above. Each of Assignor and Assignee hereby agrees that if it receives any amount under the Loan Agreement which is for the account of the other party hereto, it shall receive the same for the account of such other party to the extent of such other party's interest therein and shall promptly pay the same to such other party.

SECTION 3. Consent; Execution and Delivery of Notes. [This Agreement is conditioned upon the consent of Administrative Agent pursuant to Section 10.10 of the Loan Agreement. The execution of this Agreement by Administrative Agent is evidence of this consent.] [**Consents not required for certain assignments to entities related to a Lender.**] Pursuant to Section 10.10 of the Loan Agreement, Borrower has agreed to execute and deliver Notes payable to the respective orders of Assignee and Assignor to evidence the assignment and assumption provided for herein. Assignee has designated as its Applicable Lending Office, and as its address for notices, the office identified as such below.

SECTION 4. Non-Reliance on Assignor. Assignor makes no representation or warranty in connection with, and shall have no responsibility with respect to, the solvency, financial condition, or statements of Borrower or any other party to any Credit Document, or the validity and enforceability of the obligations of Borrower or any other party to a Credit Document in respect of the Loan Agreement or any other Credit Document. Assignee acknowledges that it has, independently and without reliance on Assignor, any other Lender or Administrative Agent, and based on such documents and information as it has deemed appropriate, made its own analysis of the Collateral, credit analysis of Borrower and Guarantor and decision to enter into this Agreement and will continue to be responsible for making its own independent appraisal of the Collateral and of the business, affairs and financial condition of Borrower and the other parties to the Credit Documents.

SECTION 5. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the Laws of the State of New York (without giving effect to New York's principles of conflicts of law).

SECTION 6. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 7. Certain Representations and Agreements by Assignee. Assignee represents that it is legally authorized to enter into and perform this Agreement. In addition, Assignee hereby represents that it is entitled to receive any payments to be made to it under the Loan Agreement or hereunder without the withholding of any tax and agrees to furnish the evidence of such exemption as specified therein and otherwise to comply with the provisions of Section 9.13 of the Loan Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

[NAME OF ASSIGNOR]

By \_\_\_\_\_

Name:

Title:

[NAME OF ASSIGNEE]

By \_\_\_\_\_

Name:

Title:

Assignee's Applicable Lending Office and Address for Notices:

[Assignee]

[Address]

Attention: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

BANK OF AMERICA, N.A.

By \_\_\_\_\_

Name:

Title:

EXHIBIT J

RESERVED

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EXHIBIT K

FORM OF INVESTOR REAFFIRMATIONS

[Attached]

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As of \_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement"), as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, The Vanderbilt University executed and delivered to Administrative Agent for Lenders a letter agreement dated contemporaneously with the Credit Agreement (the "Investor Acknowledgment"), which was assumed by Dore Capital Real Estate, L.P., a Delaware limited partnership ("Investor"). Investor has been advised that Borrower has requested that Lenders modify

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the Credit Agreement to, among other things, extend the maturity date of the Credit Agreement (such modifications, the "Extension Modification").

Pursuant to the Investor Acknowledgment and in order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledges and agrees as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Investor Acknowledgment):

1. That certain Stockholders Agreement by and among Gloster LLC, Yale University, The Vanderbilt University, Carnegie Corporation of New York, The Board of Trustees of the Leland Stanford Junior University, State Street Bank and Trust Company as Trustee for the Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of October 15, 2004 (effective as of August 15, 2004) as amended by First Amendment to Stockholders Agreement dated as of August 15, 2004 (the "Stockholders Agreement") remains in full force and effect and has not been modified.

2. Investor hereby acknowledges that the Investor Acknowledgment remains unmodified and in full force and effect. As of the date hereof, (i) Investor's Remaining Capital Commitment is \$\_\_\_\_\_, which may be drawn upon the delivery of one or more Drawdown Notices pursuant to and in accordance with the Stockholders Agreement and/or the Investor Acknowledgment and (ii) Investor does not have any right of offset against, or reduction to, Investor's obligation to fund Investor's undrawn Aggregate Capital Commitment.

3. Investor understands that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

DORE CAPITAL REAL ESTATE L.P., a Delaware limited liability partnership

By: Dore Capital Real Estate, LLC, its general partner

By

\_\_\_\_\_  
Matthew W. Wright  
President

This is to certify that this instrument was executed in my presence on the date hereof by the parties whose signature appears above in the capacity indicated.

---

Notary Public

My Commission Expires:



[Investor Acknowledgment Reaffirmation -  
Gloster LLC to copy/print on letterhead]

As of \_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement") and as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, the undersigned ("Investor") executed and delivered to Administrative Agent for Lenders a letter agreement dated contemporaneously with the Credit Agreement (the "Investor Acknowledgment").

---

Investor has been advised that Borrower has requested that Lenders modify the Credit Agreement to, among other things, extend the maturity date of the Credit Agreement (such modifications, the "Extension Modification").

Pursuant to the Investor Acknowledgment and in order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledges and agrees as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Investor Acknowledgment):

1. That certain Stockholders Agreement by and among Gloster LLC, Yale University, The Vanderbilt University, Carnegie Corporation of New York, The Board of Trustees of the Leland Stanford Junior University, State Street Bank and Trust Company as Trustee for the Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of October 15, 2004 (effective as of August 15, 2004) as amended by First Amendment to Stockholders Agreement dated as of August 15, 2004 (the "Stockholders Agreement") remains in full force and effect and has not been modified.

2. Investor hereby acknowledges that the Investor Acknowledgment remains unmodified and in full force and effect. As of the date hereof, (i) Investor's Remaining Capital Commitment is \$\_\_\_\_\_, which may be drawn upon the delivery of one or more Drawdown Notices pursuant to and in accordance with the Stockholders Agreement and/or the Investor Acknowledgment and (ii) Investor does not have any right of offset against, or reduction to, Investor's obligation to fund Investor's undrawn Aggregate Capital Commitment.

3. Investor understands that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

GLOSTER, LLC

By: Fourth Century, LLC, its managing member

By: 3C Corporation, its managing member

By

\_\_\_\_\_  
David F. Swensen  
President

This is to certify that this instrument was executed in my presence on the date hereof by the parties whose signature appears above in the capacity indicated.

---

Notary Public

My Commission Expires:

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[Investor Acknowledgment Reaffirmation -  
Yale University to copy/print on letterhead]

As of \_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement") and as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, the undersigned ("Investor") executed and delivered to Administrative Agent for Lenders a letter agreement dated contemporaneously with the Credit Agreement (the "Investor Acknowledgment").

---

Investor has been advised that Borrower has requested that Lenders modify the Credit Agreement to, among other things, extend the maturity date of the Credit Agreement (such modifications, the "Extension Modification").

Pursuant to the Investor Acknowledgment and in order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledges and agrees as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Investor Acknowledgment):

1. That certain Stockholders Agreement by and among Gloster LLC, Yale University, The Vanderbilt University, Carnegie Corporation of New York, The Board of Trustees of the Leland Stanford Junior University, State Street Bank and Trust Company as Trustee for the Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of October 15, 2004 (effective as of August 15, 2004) as amended by First Amendment to Stockholders Agreement dated as of August 15, 2004 (the "Stockholders Agreement") remains in full force and effect and has not been modified.

2. Investor hereby acknowledges that the Investor Acknowledgment remains unmodified and in full force and effect. As of the date hereof, (i) Investor's Remaining Capital Commitment is \$\_\_\_\_\_, which may be drawn upon the delivery of one or more Drawdown Notices pursuant to and in accordance with the Stockholders Agreement and/or the Investor Acknowledgment and (ii) Investor does not have any right of offset against, or reduction to, Investor's obligation to fund Investor's undrawn Aggregate Capital Commitment.

3. Investor understands that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

YALE UNIVERSITY

By

\_\_\_\_\_  
David F. Swensen  
Chief Investment Officer

This is to certify that this instrument was executed in my presence on the date hereof by the parties whose signature appears above in the capacity indicated.

---

Notary Public

My Commission Expires:

[Investor Acknowledgment Reaffirmation -  
Stanford to copy/print on letterhead]

As of \_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement") and as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, the undersigned ("Investor") executed and delivered to Administrative Agent for Lenders a letter agreement dated contemporaneously with the Credit Agreement (the "Investor Acknowledgment").

---

Investor has been advised that Borrower has requested that Lenders modify the Credit Agreement to, among other things, extend the maturity date of the Credit Agreement (such modifications, the "Extension Modification").

Pursuant to the Investor Acknowledgment and in order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledges and agrees as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Investor Acknowledgment):

1. That certain Stockholders Agreement by and among Gloster LLC, Yale University, The Vanderbilt University, Carnegie Corporation of New York, The Board of Trustees of the Leland Stanford Junior University, State Street Bank and Trust Company as Trustee for the Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of October 15, 2004 (effective as of August 15, 2004) as amended by First Amendment to Stockholders Agreement dated as of August 15, 2004 (the "Stockholders Agreement") remains in full force and effect and has not been modified.

2. Investor hereby acknowledges that the Investor Acknowledgment remains unmodified and in full force and effect. As of the date hereof, (i) Investor's Remaining Capital Commitment is \$\_\_\_\_\_, which may be drawn upon the delivery of one or more Drawdown Notices pursuant to and in accordance with the Stockholders Agreement and/or the Investor Acknowledgment and (ii) Investor does not have any right of offset against, or reduction to, Investor's obligation to fund Investor's undrawn Aggregate Capital Commitment.

3. Investor understands that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR  
UNIVERSITY

By

\_\_\_\_\_  
Laudan Nabizadeh  
Director, Real Estate & Natural Resources Investments



This is to certify that this instrument was executed in my presence on the date hereof by the parties whose signature appears above in the capacity indicated.

---

Notary Public

My Commission Expires:

[Investor Acknowledgment Reaffirmation -  
State Street/Dupont to copy/print on letterhead]

As of \_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement") and as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, the undersigned ("Investor") executed and delivered to Administrative Agent for Lenders a letter agreement dated contemporaneously with the Credit Agreement (the "Investor Acknowledgment").

---

Investor has been advised that Borrower has requested that Lenders modify the Credit Agreement to, among other things, extend the maturity date of the Credit Agreement (such modifications, the "Extension Modification").

Pursuant to the Investor Acknowledgment and in order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledges and agrees as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Investor Acknowledgment):

1. That certain Stockholders Agreement by and among Gloster LLC, Yale University, The Vanderbilt University, Carnegie Corporation of New York, The Board of Trustees of the Leland Stanford Junior University, State Street Bank and Trust Company as Trustee for the Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of October 15, 2004 (effective as of August 15, 2004) as amended by First Amendment to Stockholders Agreement dated as of August 15, 2004 (the "Stockholders Agreement") remains in full force and effect and has not been modified.

2. Investor hereby acknowledges that the Investor Acknowledgment remains unmodified and in full force and effect. As of the date hereof, (i) Investor's Remaining Capital Commitment is \$\_\_\_\_\_, which may be drawn upon the delivery of one or more Drawdown Notices pursuant to and in accordance with the Stockholders Agreement and/or the Investor Acknowledgment and (ii) Investor does not have any right of offset against, or reduction to, Investor's obligation to fund Investor's undrawn Aggregate Capital Commitment.

3. Investor understands that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

STATE STREET BANK AND TRUST COMPANY, as Trustee for the DuPont Pension Trust

By \_\_\_\_\_

Name:

Title:

This is to certify that this instrument was executed in my presence on the date hereof by the parties whose signature appears above in the capacity indicated.

---

Notary Public

My Commission Expires:

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[Investor Acknowledgment Reaffirmation -  
Carnegie Corp. to copy/print on letterhead]

As of \_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement") and as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, the undersigned ("Investor") executed and delivered to Administrative Agent for Lenders a letter agreement dated contemporaneously with the Credit Agreement (the "Investor Acknowledgment").

---

Investor has been advised that Borrower has requested that Lenders modify the Credit Agreement to, among other things, extend the maturity date of the Credit Agreement (such modifications, the "Extension Modification").

Pursuant to the Investor Acknowledgment and in order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledges and agrees as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Investor Acknowledgment):

1. That certain Stockholders Agreement by and among Gloster LLC, Yale University, The Vanderbilt University, Carnegie Corporation of New York, The Board of Trustees of the Leland Stanford Junior University, State Street Bank and Trust Company as Trustee for the Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of October 15, 2004 (effective as of August 15, 2004) as amended by First Amendment to Stockholders Agreement dated as of August 15, 2004 (the "Stockholders Agreement") remains in full force and effect and has not been modified.

2. Investor hereby acknowledges that the Investor Acknowledgment remains unmodified and in full force and effect. As of the date hereof, (i) Investor's Remaining Capital Commitment is \$\_\_\_\_\_, which may be drawn upon the delivery of one or more Drawdown Notices pursuant to and in accordance with the Stockholders Agreement and/or the Investor Acknowledgment and (ii) Investor does not have any right of offset against, or reduction to, Investor's obligation to fund Investor's undrawn Aggregate Capital Commitment.

3. Investor understands that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

CARNEGIE CORPORATION OF NEW YORK

By

\_\_\_\_\_  
D. Ellen Shuman  
Vice President and Chief Investment Officer

This is to certify that this instrument was executed in my presence on the date hereof by the parties whose signature appears above in the capacity indicated.

---

Notary Public

My Commission Expires:

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[Investor Acknowledgment Reaffirmation -  
Hewlett Foundation to copy/print on letterhead]

As of \_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement") and as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, the undersigned ("Investor") executed and delivered to Administrative Agent for Lenders a letter agreement dated contemporaneously with the Credit Agreement (the "Investor Acknowledgment").

---



Investor has been advised that Borrower has requested that Lenders modify the Credit Agreement to, among other things, extend the maturity date of the Credit Agreement. In connection with the extension, Borrower has agreed that the maximum principal amount of the credit facility under the Credit Agreement will be \$40,000,000 and has agreed to increase the "Applicable Margin" (as such quoted term is defined in the Credit Agreement) (such modifications, the "Extension Modification").

Pursuant to the Investor Acknowledgment and in order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledges and agrees as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Investor Acknowledgment):

1. That certain Stockholders Agreement by and among Gloster LLC, Yale University, The Vanderbilt University, Carnegie Corporation of New York, The Board of Trustees of the Leland Stanford Junior University, State Street Bank and Trust Company as Trustee for the Dupont Pension Trust and The William and Flora Hewlett Foundation dated as of October 15, 2004 (effective as of August 15, 2004) as amended by First Amendment to Stockholders Agreement dated as of August 15, 2004 (the "Stockholders Agreement") remains in full force and effect and has not been modified.

2. Investor hereby acknowledges that the Investor Acknowledgment remains unmodified and in full force and effect. As of the date hereof, (i) Investor's Remaining Capital Commitment is \$\_\_\_\_\_, which may be drawn upon the delivery of one or more Drawdown Notices pursuant to and in accordance with the Stockholders Agreement and/or the Investor Acknowledgment and (ii) Investor does not have any right of offset against, or reduction to, Investor's obligation to fund Investor's undrawn Aggregate Capital Commitment.

3. Investor understands that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

THE WILLIAM AND FLORA HEWLETT FOUNDATION

By

\_\_\_\_\_  
Laurance R. Hoagland, Jr.  
Vice President and Chief Investment Officer

This is to certify that this instrument was executed in my presence on the date hereof by the parties whose signature appears above in the capacity indicated.

---

Notary Public

My Commission Expires:

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EXHIBIT L

FORM OF GLOSTER PRINCIPAL REAFFIRMATION

[Attached]

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\_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement") and as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, the undersigned ("Guarantor") executed and delivered to Administrative Agent for Lenders a Guaranty dated as of March 21, 2006 (the "Guaranty"). Guarantor has been advised that Borrower has requested that

---

Lenders modify the Credit Agreement to, among other things, extend the Maturity Date of the Credit Agreement (such modifications, the "Extension Modification").

In order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledges and agrees as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Guaranty):

1. Guarantor hereby acknowledges that the Guaranty remains unmodified and in full force and effect.

2. Guarantor understands that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

YALE UNIVERSITY

By

\_\_\_\_\_

David F. Swensen  
Chief Investment Officer

This is to certify that this instrument was executed in my presence on the date hereof by the parties whose signature appears above in the capacity indicated.

\_\_\_\_\_

Notary Public

My Commission Expires:

\_\_\_\_\_

[Comfort Letter Reaffirmation - copy/print on Yale letterhead]

As of \_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement") and as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, the undersigned (collectively, "Gloster Affiliates") executed and delivered to Administrative Agent for Lenders a letter agreement dated contemporaneously with the Credit Agreement (the "Comfort Letter"). The Gloster Affiliates have been advised that Borrower has requested that Lenders modify the Credit Agreement to, among other things, extend the Maturity Date of the Credit Agreement (such modifications, the "Extension Modification").

---

In order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledge and agree as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Comfort Letter):

1. The Gloster Affiliates hereby acknowledge that the Comfort Letter remains unmodified and in full force and effect.

2. The Gloster Affiliates understand that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

FOURTH CENTURY, LLC

By: 3C Corporation, as Manager

By

---

Dale F. Swensen  
President

YALE UNIVERSITY RETIREMENT PLAN FOR STAFF EMPLOYEES

By: Yale University, as Administrator

By

---

Dale F. Swensen  
Chief Investment Officer

YALE UNIVERSITY RETIREE HEALTH BENEFITS COVERAGE TRUST

By: Yale University, as Trustee

By

---

Dale F. Swensen  
Chief Investment Officer

This is to certify that this instrument was executed in my presence on the date hereof by the parties whose signature appears above in the capacity indicated.

---

Notary Public

My Commission Expires:

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FORM OF VANDERBILT PRINCIPAL REAFFIRMATION**[Guaranty Reaffirmation - copy/print on Vanderbilt letterhead]**

\_\_\_\_\_, 2010

Bank of America, N.A., as Administrative Agent  
One Bryant Park, 35th Floor  
New York, New York 10036

Re: Revolving Credit Facility (the "Credit Facility") established pursuant to that certain Credit Agreement dated as of March 9, 2005 (the "Original Credit Agreement"), among Acadia Strategic Opportunity Fund II, LLC ("Borrower"), Acadia Realty Acquisition II, LLC ("Managing Member"), Acadia Investors II, Inc. ("Acadia Investor") and Fleet National Bank ("Fleet"), as amended and restated by that certain Amended and Restated Credit Agreement dated as of March 21, 2006 (the "First Restated Credit Agreement") among Borrower, Managing Member, Acadia Investor, Bank of America, N.A., as successor by merger to Fleet (in its individual capacity, "BofA"), The Bank of New York, now known as The Bank of New York Mellon ("BNYM"; BNYM, BofA and each other lender which may become a lender pursuant to such agreement, collectively, "Lenders") and Bank of America, N.A., as administrative agent ("Administrative Agent"), as amended by Modification of Amended and Restated Credit Agreement dated as of February 29, 2008 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "First Modification Agreement") and as amended and restated by Second Amended and Restated Credit Agreement dated as of February 27, 2009 among Borrower, Managing Member, Acadia Investor, BofA, BNYM and Administrative Agent (the "Second Restated Credit Agreement") and by Third Amended and Restated Credit Agreement dated as of March 3, 2010 (the "Third Restated Credit Agreement"; the Original Credit Agreement, as restated by the First Restated Credit Agreement, modified by the First Modification Agreement, amended and restated by the Second Restated Credit Agreement and amended and restated by the Third Restated Credit Agreement and as amended, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

Ladies and Gentlemen:

In connection with the Credit Agreement, the undersigned ("Guarantor") executed and delivered to Administrative Agent for Lenders a Guaranty of Capital dated as of March 3, 2010 (the "Guaranty"). Guarantor has been advised that Borrower has requested that Lenders modify the Credit Agreement to, among other things, extend the

---

Maturity Date of the Credit Agreement (such modifications, the "Extension Modification").

In order to induce Lenders to enter into the Extension Modification, the undersigned hereby acknowledges and agrees as follows (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Guaranty):

3. Guarantor hereby acknowledges that the Guaranty remains unmodified and in full force and effect.

4. Guarantor understands that Lenders and Administrative Agent will be relying upon the statements and agreements made herein in connection with making the Extension Modification available to Borrower.

Very truly yours,

VANDERBILT UNIVERSITY

By

\_\_\_\_\_  
Matthew W. Wright  
Vice Chancellor for Investments

This is to certify that this instrument was executed in my presence on the date hereof by the party whose signature appears above in the capacity indicated.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

SOURCES AND USES STATEMENT

[Attached]

**Acadia Strategic Opportunity Fund II, LLC**  
**At September 30, 2010**

**Sources of Funds**

161st Street, cash in escrow	\$ 1,481,000	\$ 1,481,000
<hr/>		
Canarsie, gross incremental proceeds (above \$48M), original scope	\$ 10,000,000	
Canarsie, \$10M loan costs	\$ (330,000)	
Canarsie, gross incremental proceeds (above \$58M), PetSmart	\$ 4,200,000	
Canarsie, \$4.2M loan costs	\$ (153,000)	\$ 13,717,000
<hr/>		
City Point, cash in escrow (bond financing, etc.)	\$ 21,222,000	
City Point, Phase 2 resi recapitalization (market rate housing)	\$ 18,000,000	\$ 39,222,000
<hr/>		
Oakbrook, net sale proceeds	\$ 7,950,000	\$ 7,950,000
<hr/>		
Pelham, cash in escrow	\$ 1,216,000	
Pelham, incremental loan proceeds, existing debt	\$ 2,446,000	\$ 3,662,000
<hr/>		
<b>Net cash flow (through 12.2010)</b>		
161st Street	\$ 2,294,000	
216th Street	\$ 740,000	
Atlantic Avenue	\$ 128,000	
Canarsie Plaza	\$ 3,822,000	
City Point	\$ —	
Fordham Place (CF sweep)	\$ —	
Liberty Avenue	\$ 1,833,000	
Pelham Manor	\$ 2,772,000	
Sherman Plaza	\$ —	
Oakbrook Center Nieman Marcus (10.2010 thru 01.15.2011)	\$ 241,000	
Contingency @ 5%	\$ (591,000)	\$ 11,239,000
<hr/>		
Cash and cash equivalents	\$ 2,643,000	
Unfunded capital commitments	\$ 50,385,000	
Working capital requirement	\$ (10,000,000)	\$ 43,028,000

<b>Total</b>		<b>\$ 120,299,000</b>
Net Source or (Use)		\$ (60,000)
Less: Loan Balance		\$ (40,000,000)
Funds required from other sources to repay Loan		\$ (40,060,000)

**Uses of Funds**

161st Street, construction, Einstein	\$ (1,349,000)	
161st Street, construction, Legal Aid	\$ (414,000)	
161st Street, construction, Walgreens	\$ (521,000)	
161st Street, construction, infrastructure	\$ (414,000)	
161st Street, construction, general conditions	\$ (1,521,000)	
161st Street, construction, City of New York	\$ (3,220,000)	
161st Street, construction, 15,132 SF on S-Level	\$ (1,211,000)	
161st Street, misc. soft costs	\$ (210,000)	\$ (8,860,000)
<hr/>		
Canarsie, hard cost overrun on original \$82.8M budget	\$ (5,712,000)	
Canarsie, PetSmart building, TI, LC	\$ (4,023,000)	\$ (9,735,000)

CityPoint, BofA land loan payoff	\$	(20,650,000)	
City Point, bonds payoff	\$	(20,000,000)	
<u>City Point, equity requirement</u>			
Total estimated project costs	\$	(190,000,000)	
Construction financing @ 60% LTC	\$	114,000,000	
North Parcel Contribution	\$	10,800,000	
Purchase allocation & sunk costs	\$	56,479,000	
<hr/>			
Remaining equity requirement	\$	(8,721,000)	
City Point, project administration fee (WSP)	\$	(1,744,000)	
City Point, P/A Associates	\$	(3,540,000)	
City Point, residential carry	\$	(2,163,000)	
City Point, parking liability	\$	(4,500,000)	
City Point, interim use	\$	(935,000)	\$ (62,253,000)
<hr/>			
Fordham TI/LC - 100,000 SF @ \$100 SF	\$	(10,000,000)	\$ (10,000,000)
<hr/>			
Liberty Ave	\$	—	\$ —
<hr/>			
Pelham, Petsmart TI/LC	\$	(1,811,000)	
Pelman, Five Below TI/LC	\$	(737,000)	
Pelham, Joyce Leslie TI/LC	\$	(268,000)	
Pelman, T-Mobile TI/LC	\$	(97,000)	
Pelham, other TI/LC	\$	(1,448,000)	
Pelham, BofA refi costs	\$	(433,000)	
Pelham, contingency / signage	\$	(296,000)	\$ (5,090,000)
<hr/>			
Sherman Ave	\$	—	\$ —
<hr/>			
<u>Repay ARLP's bridge financing to Fund II</u>			
City Point, BofA land loan paydown, Phase 1	\$	(5,340,000)	
City Point, bond financing, interest reserve	\$	(4,000,000)	
City Point, past due PILOT	\$	(2,336,000)	
Advance from ARLP	\$	(2,896,000)	
Pelham, advance to fund loan escrow	\$	(793,000)	\$ (15,365,000)
<hr/>			
Fund II, net payables	\$	(3,461,000)	
Fund II, subscription line interest (avg annual rate = 3.54%)	\$	(3,182,000)	
Fund II, subscription line commitment fee	\$	(350,000)	
Fund II, P/A Associates	\$	(2,063,000)	\$ (9,056,000)
<hr/>			
<b>Total</b>			<b>\$ (120,359,000)</b>



LOAN AGREEMENT

among

P/A-ACADIA PELHAM MANOR, LLC,  
as Borrower

and

BANK OF AMERICA, N.A.,  
a national banking association,  
as Administrative Agent

and

THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO

Dated as of December 1, 2010

BANC OF AMERICA SECURITIES LLC,  
as Sole Arranger and Sole Book Manager

LOCATION:	2 Penn Place
VILLAGE:	Pelham Manor
TOWN:	Pelham
COUNTY:	Westchester
SECTION:	166.26
BLOCK:	1
LOTS:	8.1, 8.2 and 8.3

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EXHIBITS

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EXHIBIT "K"	Intentionally Omitted
EXHIBIT "L"	Assignment and Assumption
EXHIBIT "M"	Note
EXHIBIT "N"	Schedule of Lenders and Other Parties
EXHIBIT "O"	Swap Contracts

## LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") dated as of December 1, 2010 is made by and among each lender from time to time a party hereto (individually, a "Lender" and collectively, "Lenders"), and BANK OF AMERICA, N.A., a national banking association as Administrative Agent, and P/A-ACADIA PELHAM MANOR, LLC, a Delaware limited liability company ("Borrower"), who agree as follows:

### ARTICLE 1 THE LOAN

1.1. General Information and Exhibits. This Agreement includes the Exhibits listed below which are marked by an "X", all of which Exhibits are attached hereto and made a part hereof for all purposes. Borrower and Lenders agree that if any Exhibit to be attached to this Agreement contains blanks, the same shall be completed correctly and in accordance with this Agreement prior to or at the time of the execution and delivery thereof.

<u>X</u> _____	Exhibit "A"	- Legal Description of the Land
<u>X</u> _____	Exhibit "B"	- Definitions and Financial Statements
<u>X</u> _____	Exhibit "C"	- Conditions Precedent to the Initial Advance
_____	Exhibit "C-1"	- Conditions Precedent to Advances in Excess of the Initial Advance
<u>X</u> _____	Exhibit "D"	- Monthly Amortization Schedule
<u>X</u> _____	Exhibit "E"	- Intentionally Omitted
_____	Exhibit "F"	- Advances
_____	Exhibit "F-1"	- Draw Request
<u>X</u> _____	Exhibit "G"	- Survey Requirements
_____	Exhibit "H"	- Intentionally Omitted
<u>X</u> _____	Exhibit "I"	- Leasing and Tenant Matters
_____	Exhibit "J"	- Intentionally Omitted
_____	Exhibit "K"	- Intentionally Omitted
<u>X</u> _____	Exhibit "L"	- Assignment and Assumption
<u>X</u> _____	Exhibit "M"	- Loan Note
<u>X</u> _____	Exhibit "N"	- Schedule of Lenders and Other Parties
<u>X</u> _____	Exhibit "O"	- Swap Contracts

The Exhibits contain other terms, provisions and conditions applicable to the Loan. Capitalized terms used in this Agreement shall have the meanings assigned to them in Exhibit "B". This Agreement and the other Loan Documents, which must be in form, detail and substance satisfactory to Lenders, evidence the agreements of Borrower and Lenders with respect to the Loan. Borrower shall comply with all of the Loan Documents.

1.2. Purpose. The proceeds of the Loan shall only be used by Borrower to reimburse Borrower for paid Tenant Improvement Costs and Leasing Commissions with respect to leases of the Property in compliance with this Agreement and the other Loan Documents.

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1.3. Commitment to Lend. Borrower agrees to borrow from each Lender, and each Lender severally agrees to make advances of its Pro Rata Share of the Loan proceeds to Borrower in amounts at any one time outstanding not to exceed such Lender's Pro Rata Share of the Loan and (except for Administrative Agent with respect to Administrative Agent Advances), on the terms and subject to the conditions set forth in this Agreement and Exhibit "C", Exhibit "C-1" and Exhibit "F" attached to this Agreement. Lender's commitment to lend shall expire and terminate automatically if the Loan is prepaid in full. The Loan is not revolving. Any amount repaid may not be reborrowed.

1.4. Intentionally Omitted.

1.5. Intentionally Omitted.

1.6. Evidence of Debt. Amounts of the Loan made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loan made by Lenders to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Indebtedness. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

1.7. Interest Rates.

1.7.1. Interest Rate.

(a) The unpaid principal balance of this Loan from day to day outstanding which is not past due, shall bear interest at a fluctuating rate of interest equal to the BBA LIBOR Daily Floating Rate plus the LIBOR Margin. The "BBA LIBOR Daily Floating Rate" shall mean a fluctuating rate of interest equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by Administrative Agent from time to time) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in Administrative Agent's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternative method as reasonably selected by Administrative Agent. A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars. Interest shall be computed for the actual number of days which have elapsed, on the basis of a 360-day year.

(b) If Administrative Agent determines that no adequate basis exists for determining the BBA LIBOR Daily Floating Rate or that the BBA LIBOR Daily Floating Rate will not adequately and fairly reflect the cost to Lenders of funding the Loan, or that any

applicable law or regulation or compliance therewith by any Lender prohibits or restricts or makes impossible the charging of interest based on the BBA LIBOR Daily Floating Rate and such Lender so notifies Administrative Agent and Borrower, then until Administrative Agent notifies Borrower that the circumstances giving rise to such suspension no longer exist, interest shall accrue and be payable on the unpaid principal balance of this Loan from the date Administrative Agent so notifies Borrower until the Maturity Date of this Loan (whether by acceleration, declaration, extension or otherwise) at a fluctuating rate of interest equal to the Base Rate. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

1.7.2. Default Rate. After the occurrence of a Default (including the expiration of any applicable cure period), Administrative Agent, in Administrative Agent's sole discretion and without notice or demand, may raise the rate of interest accruing on the Principal Debt a rate per annum (the "Default Rate") equal to the BBA LIBOR Daily Floating Rate (or, if unavailable pursuant to Section 1.7.1, the Prime Rate) plus 6.65%.

1.8. Prepayment. Borrower may prepay the principal balance of this Loan, in full at any time or in part from time to time, without fee, premium or penalty, provided that: (a) Administrative Agent shall have actually received from Borrower prior written notice of (i) Borrower's intent to prepay, (ii) the amount of principal which will be prepaid (the "Prepaid Principal"), and (iii) the date on which the prepayment will be made; (b) each prepayment shall be in a minimum amount of \$1,000 or more (unless the prepayment retires the outstanding balance of this Loan in full); and (c) each prepayment shall be in the amount of 100% of the Prepaid Principal, plus accrued unpaid interest thereon to the date of prepayment, plus any other sums which have become due to Administrative Agent and Lenders under the Loan Documents on or before the date of prepayment but have not been paid. If this Loan is prepaid in full, any commitment of Lenders for further advances shall automatically terminate.

1.9. Intentionally Omitted.

1.10. Late Charge. If Borrower shall fail to make any payment due hereunder or under the terms of any Note within fifteen (15) days after the date such payment is due, Borrower shall pay to the applicable Lender or Lenders on demand a late charge equal to 4% of such payment. Such fifteen (15) day period shall not be construed as in any way extending the due date of any payment. The "late charge" is imposed for the purpose of defraying the expenses of a Lender incident to handling such defaulting payment. This charge shall be in addition to, and not in lieu of, any other remedy Lenders may have and is in addition to any fees and charges of any agents or attorneys which Administrative Agent or Lenders may employ upon the occurrence of a Default, whether authorized herein or by Law.

1.11. Taxes.

(a) Any and all payments by Borrower to or for the account of Administrative Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the

case of Administrative Agent and any Lender, taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which Administrative Agent or such Lender, as the case may be, is organized or maintains a lending office (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and liabilities being hereinafter referred to as "Taxes"). If Borrower shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), Administrative Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, (iii) Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment, Borrower shall furnish to Administrative Agent (which shall forward the same to such Lender) the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise or property taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (hereinafter referred to as "Other Taxes").

(c) If Borrower shall be required by the Laws of any jurisdiction outside the United States to deduct any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Lender, Borrower shall also pay to Administrative Agent (for the account of such Lender) or to such Lender, at the time interest is paid, such additional amount that such Lender specifies is necessary to preserve the after-tax yield (after factoring in United States (federal and state) taxes imposed on or measured by net income) Lender would have received if such deductions (including deductions applicable to additional sums payable under this Section) had not been made.

(d) Borrower agrees to indemnify Administrative Agent and each Lender for the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section) paid by Administrative Agent and such Lender and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Tribunal. Payment under this subsection (d) shall be made within thirty (30) days after the date Lender or Administrative Agent makes a demand therefor.

(e) Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section shall survive the termination of the Commitments and the payment in full of all the other Indebtedness.

1.12. Payment Schedule and Maturity Date.

(a) Accrued unpaid interest shall be due and payable on the first day of the calendar month after the date of this Agreement and on the same day of each succeeding calendar month thereafter until all principal and accrued interest owing on this Loan shall have been fully paid and satisfied.

(b) Commencing on the date (the "Amortization Date") which is the first day of the month commencing on or after the eighteenth month anniversary of the date hereof, the principal of the Loan shall be due and payable in monthly installments equal to the amount for the applicable month (by specific calendar months) set forth on Exhibit "D". Such principal amortization payments shall be due and payable on the Amortization Date and on the first day of each succeeding month thereafter until the Loan shall have been fully paid and satisfied.

1.13. Advances and Payments.

(a) Following receipt of a Draw Request, Administrative Agent shall promptly provide each Lender with a copy of the Draw Request. Administrative Agent shall notify each Lender telephonically (with confirmation by facsimile) or by facsimile (with confirmation by telephone) not later than 1:00 p.m. Administrative Agent's Time two (2) Business Days prior to the advance Funding Date for LIBOR Rate Principal advances, and one (1) Business Day prior to the advance Funding Date for all other advances, of its Pro Rata Share of the amount Administrative Agent has determined shall be advanced in connection therewith ("Advance Amount"). In the case of an advance of the Loan, each Lender shall make the funds for its Pro Rata Share of the Advance Amount available to Administrative Agent not later than 11:00 a.m. Administrative Agent's Time on the Funding Date thereof. After Administrative Agent's receipt of the Advance Amount from Lenders, Administrative Agent shall make proceeds of the Loan in an amount equal to the Advance Amount (or, if less, such portion of the Advance Amount that shall have been paid to Administrative Agent by Lenders in accordance with the terms hereof) available to Borrower on the applicable Funding Date by advancing such funds to Borrower in accordance with the provisions of Exhibit "F".

(b) All payments by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Borrower hereunder shall be made to Administrative Agent not later than 12:00 p.m. (Administrative Agent's Time) on the date specified herein. Administrative Agent shall distribute to each Lender such funds as such Lender may be entitled to receive hereunder (i) on or before 3:00 p.m. (Administrative Agent's Time) on the day Administrative Agent receives such funds, if Administrative Agent has received such funds on or before 12:00 p.m. (Administrative Agent's Time), or (ii) on or before 12:00 p.m. (Administrative Agent's Time) on the Business Day following the day Administrative Agent receives such funds, if Administrative Agent receives such funds after 12:00 p.m. (Administrative Agent's Time). If Administrative Agent fails to timely pay any amount to any Lender in accordance with this subsection, Administrative Agent shall pay to such Lender interest at the Federal Funds Rate on such amount, for each day from the day such amount was to be paid until it is paid to such Lender.

(c) Except as otherwise provided herein, all payments by Borrower or any Lender shall be made to Administrative Agent at Administrative Agent's Office not later than the time for such type of payment specified in this Agreement. All payments received after such time shall be deemed received on the next succeeding Business Day. All payments shall be made in immediately available funds in lawful money of the United States of America. Whenever any payment falls due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

(d) Upon satisfaction of any applicable terms and conditions set forth herein, Administrative Agent shall promptly make any amounts received in accordance with the prior subsection available in like funds received as follows: (i) if payable to Borrower, in accordance with Exhibit "F", except as otherwise specified herein, and (ii) if payable to any Lender, by wire transfer to such Lender at the address specified in the Schedule of Lenders.

(e) Unless Borrower or any Lender has notified Administrative Agent, prior to the date any payment is required to be made by it to Administrative Agent, that Borrower or such Lender, as the case may be, will not make such payment, Administrative Agent may assume that Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be required to do so) in reliance thereon, make available a corresponding amount to the person or entity entitled thereto. If and to the extent that such payment was not in fact made to Administrative Agent in immediately available funds, then:

(i) if Borrower failed to make such payment, each Lender shall forthwith on demand repay to Administrative Agent the portion of such assumed payment that was made available to such Lender in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by Administrative Agent to such Lender to the date such amount is repaid to Administrative Agent in immediately available funds at the Federal Funds Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender or, if applicable, Electing Lender or Lenders shall forthwith on demand pay to Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by Administrative Agent to Borrower to the date such amount is recovered by Administrative Agent (the "Compensation Period") at a rate per annum equal to the interest rate applicable to such amount under the Loan. If such Lender pays such amount to Administrative Agent, then such amount shall constitute such Lender's Pro Rata Share, included in the applicable Loan advance. If such Lender does not pay such amount forthwith upon Administrative Agent's demand therefor, Administrative Agent may make a demand therefor upon Borrower, and Borrower shall pay such amount to Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to such amount under the Loan. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which Administrative Agent or Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of Administrative Agent to any Lender or to Borrower with respect to any amount owing under this subsection shall be conclusive, absent manifest error.

(f) If any Lender makes available to Administrative Agent funds for the Loan advance to be made by such Lender as provided in the foregoing provisions of this Section, and the funds are not advanced to Borrower or otherwise used to satisfy any Obligations of such Lender hereunder, Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(g) Nothing herein shall be deemed to obligate any Lender to obtain the funds for the Loan advance in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for the Loan advance in any particular place or manner.

#### 1.14. Administrative Agent Advances.

(a) Administrative Agent is authorized, from time to time, in Administrative Agent's sole discretion to make, authorize or determine advances of the Loan, or otherwise expend funds, on behalf of Lenders ("Administrative Agent Advances"), (i) to pay any costs, fees and expenses as described in Section 6.10 herein, (ii) when the applicable conditions precedent set forth in Exhibit "C" and Exhibit "F" have been satisfied to the extent required by Administrative Agent, and (iii) when Administrative Agent deems necessary or desirable to preserve or protect the Loan collateral or any portion thereof (including those with respect to property taxes, insurance premiums, completion of construction, operation, management, improvements, maintenance, repair, sale and disposition) (A) subject to Section 5.5, after the occurrence of a Default, and (B) subject to Section 5.10, after acquisition of all or a portion of the Loan collateral by foreclosure or otherwise.

(b) Administrative Agent Advances shall constitute obligatory advances of Lenders under this Agreement, shall be repayable on demand and secured by the Loan collateral, and if unpaid by Lenders as set forth below shall bear interest at the rate applicable to such amount under the Loan or if no longer applicable, at the Base Rate. Administrative Agent shall notify each Lender in writing of each Administrative Agent Advance. Upon receipt of notice from Administrative Agent of its making of an Administrative Agent Advance, each Lender shall make the amount of such Lender's Pro Rata Share of the outstanding principal amount of Administrative Agent Advance available to Administrative Agent, in same day funds, to such account of Administrative Agent as Administrative Agent may designate, (i) on or before 3:00 p.m. (Administrative Agent's Time) on the day Administrative Agent provides Lenders with notice of the making of such Administrative Agent Advance if Administrative Agent provides such notice on or before 12:00 p.m. (Administrative Agent's Time), or (ii) on or before 12:00 p.m. on the Business Day immediately following the day Administrative Agent provides Lenders with notice of the making of such advance if Administrative Agent provides notice after 12:00 p.m. (Administrative Agent's Time).



## 1.15. Defaulting Lender.

1.15.1. Notice and Cure of Lender Default; Election Period; Electing Lenders. Administrative Agent shall notify (such notice being referred to as the "Default Notice") Borrower (for Loan advances) and each non-Defaulting Lender if any Lender is a Defaulting Lender. Each non-Defaulting Lender shall have the right, but in no event or under any circumstance the obligation, to fund such Defaulting Lender Amount, provided that within twenty (20) days after the date of the Default Notice (the "Election Period"), such non-Defaulting Lender or Lenders (each such Lender, an "Electing Lender") irrevocably commit(s) by notice in writing (an "Election Notice") to Administrative Agent, the other Lenders and Borrower to fund the Defaulting Lender Amount. If Administrative Agent receives more than one Election Notice within the Election Period, then the commitment to fund the Defaulting Lender Amount shall be apportioned pro rata among the Electing Lenders in the proportion that the amount of each such Electing Lender's Commitment bears to the total Commitments of all Electing Lenders. If the Defaulting Lender fails to pay the Defaulting Lender Payment Amount within the Election Period, the Electing Lender or Lenders, as applicable, shall be automatically obligated to fund the Defaulting Lender Amount (and Defaulting Lender shall no longer be entitled to fund such Defaulting Lender Amount) within three (3) Business Days following the expiration of the Election Period to reimburse Administrative Agent or make payment to Borrower, as applicable. Notwithstanding anything to the contrary contained herein, if Administrative Agent has funded the Defaulting Lender Amount, Administrative Agent shall be entitled to reimbursement for its portion of the Defaulting Lender Payment Amount pursuant to Section 5.11.

1.15.2. Removal of Rights; Indemnity. Administrative Agent shall not be obligated to transfer to a Defaulting Lender any payments made by or on behalf of Borrower to Administrative Agent for the Defaulting Lender's benefit; nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder or under any Note until all Defaulting Lender Payment Amounts are paid in full. Amounts payable to a Defaulting Lender shall be paid by Administrative Agent to reimburse Administrative Agent and any Electing Lender pro rata for all Defaulting Lender Payment Amounts. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents, a Defaulting Lender shall be deemed not to be a "Lender" and such Defaulting Lender's Commitment shall be deemed to be zero. A Defaulting Lender shall have no right to participate in any discussions among and/or decisions by Lenders hereunder and/or under the other Loan Documents. Further, any Defaulting Lender shall be bound by any amendment to, or waiver of, any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the non-Defaulting Lenders under, any Loan Document which is made subsequent to the Defaulting Lender's becoming a Defaulting Lender. This Section shall remain effective with respect to a Defaulting Lender until such time as the Defaulting Lender shall no longer be in default of any of its obligations under this Agreement by curing such default by payment of all Defaulting Lender Payment Amounts (i) within the Election Period, or (ii) after the Election Period with the consent of the non-Defaulting Lenders. Such Defaulting Lender nonetheless shall be bound by any amendment to or waiver of any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the non-Defaulting Lenders under any Loan Document which is made subsequent to that Lender's becoming a Defaulting Lender and prior to such cure or waiver. The operation of this subsection or the subsection above alone shall not be construed to increase or otherwise affect the Commitment of any non-Defaulting Lender, or relieve or excuse the performance by Borrower

of their duties and obligations hereunder or under any of the other Loan Documents. Furthermore, nothing contained in this Section shall release or in any way limit a Defaulting Lender's obligations as a Lender hereunder and/or under any other of the Loan Documents. Further, a Defaulting Lender shall indemnify and hold harmless Administrative Agent and each of the non-Defaulting Lenders from any claim, loss, or costs incurred by Administrative Agent and/or the non-Defaulting Lenders as a result of a Defaulting Lender's failure to comply with the requirements of this Agreement, including, without limitation, any and all additional losses, damages, costs and expenses (including, without limitation, attorneys' fees) incurred by Administrative Agent and any non-Defaulting Lender as a result of and/or in connection with (i) a non-Defaulting Lender's acting as an Electing Lender, (ii) any enforcement action brought by Administrative Agent against a Defaulting Lender, and (iii) any action brought against Administrative Agent and/or Lenders. The indemnification provided above shall survive any termination of this Agreement.

1.15.3. Commitment Adjustments. In connection with the adjustment of the amounts of the Loan Commitments of the Defaulting Lender and Electing Lender(s) upon the expiration of the Election Period as aforesaid, Borrower, Administrative Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with the adjustment of the amounts of Commitments in accordance with the foregoing provisions of this Section. For the purpose of voting or consenting to matters with respect to the Loan Documents such modifications shall also reflect the removal of voting rights of the Defaulting Lender and increase in voting rights of Electing Lenders to the extent an Electing Lender has funded the Defaulting Lender Amount. In connection with such adjustments, Defaulting Lenders shall execute and deliver an Assignment and Assumption covering that Lender's Commitment and otherwise comply with Section 6.5. If a Lender refuses to execute and deliver such Assignment and Assumption or otherwise comply with Section 6.5, such Lender hereby appoints Administrative Agent to do so on such Lender's behalf. Administrative Agent shall distribute an amended Schedule of Lenders, which shall thereafter be incorporated into this Agreement, to reflect such adjustments. However, all such Defaulting Lender Amounts funded by Administrative Agent or Electing Lenders shall continue to be Defaulting Lender Amounts of the Defaulting Lender pursuant to its obligations under this Agreement.

1.15.4. No Election. In the event that no Lender elects to commit to fund the Defaulting Lender Amount within the Election Period, Administrative Agent shall, upon the expiration of the Election Period, so notify Borrower and each Lender.

1.16. Several Obligations; No Liability; No Release. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Administrative Agent in its capacity as such, and not by or in favor of Lenders, any and all obligations on the part of Administrative Agent (if any) to make any advances of the Loan or reimbursements for other Payment Amounts shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Pro Rata Shares. Except as may be specifically provided in this Agreement, no Lender shall have any liability for the acts of any other Lender. No Lender shall be responsible to Borrower or any other person for any failure by any other Lender to fulfill its obligations to make advances of the Loan or reimbursements for other Payment Amounts, nor to take any other action on its behalf

hereunder or in connection with the financing contemplated herein. The failure of any Lender to pay to Administrative Agent its Pro Rata Share of a Payment Amount shall not relieve any other Lender of any obligation hereunder to pay to Administrative Agent its Pro Rata Share of such Payment Amounts as and when required herein, but no Lender shall be responsible for the failure of any other Lender to so fund its Pro Rata Share of the Payment Amount. In furtherance of the foregoing, Lenders shall comply with their obligation to pay Administrative Agent their Pro Rata Share of such Payment Amounts regardless of (i) the occurrence of any Default hereunder or under any Loan Document; (ii) any failure of consideration, absence of consideration, misrepresentation, fraud, or any other event, failure, deficiency, breach or irregularity of any nature whatsoever in the Loan Documents; or (iii) any bankruptcy, insolvency or other like event with regard to any Borrower or Guarantor. The obligation of Lenders to pay to such Payment Amounts are in all regards independent of any claims between Administrative Agent and any Lender.

ARTICLE 2  
ADDITIONAL COVENANTS AND AGREEMENTS

2.1. Bank Accounts. Borrower shall maintain all security deposits collected from tenants or others with respect to the Property in one or more accounts with Administrative Agent in accordance with all applicable legal requirements. Borrower shall maintain all bank accounts used by Borrower in connection with the operation of the Property with Administrative Agent.

2.2. Intentionally Omitted.

2.3. Contracts. Without Administrative Agent's prior written approval as to parties, terms, and all other matters, Borrower shall not (a) enter into any Material Contract, (b) enter into any management, leasing, maintenance or other contract pertaining to the Property not described in clause (a) that is not unconditionally terminable by Borrower or any successor owner without penalty or payment on not more than thirty (30) days' notice to the other party thereunder, or (c) modify, amend, or terminate any such contracts. All such contracts shall provide that all rights and liens of the applicable contractor, architect, engineer, supplier, surveyor or other party and any right to remove removable Improvements are subordinate to Lender's rights and liens, shall require all subcontracts and purchase orders to contain a provision subordinating the subcontractors' and mechanics' and materialmen's liens and any right to remove removable Improvements to Lender's rights and liens. Borrower shall not default under any contract, Borrower shall not permit any contract to terminate by reason of any failure of Borrower to perform thereunder, and Borrower shall promptly notify Administrative Agent of any default thereunder. Borrower will deliver to Administrative Agent, upon request of Administrative Agent, the names and addresses of all persons or entities with whom each contractor has contracted or intends to contract for the construction of the Improvements or for the furnishing of labor or materials therefor.

2.4. Assignment of Contracts and Plans. As additional security for the Obligations, Borrower hereby transfers and assigns to Administrative Agent for the ratable benefit of Administrative Agent and Lenders and grants a security interest in all of Borrower's

right, title and interest, but not its liability, in, under, and to all construction, architectural and design contracts, and the Plans, and agrees that all of the same are covered by the security agreement provisions of the Mortgage. Borrower agrees to deliver to Administrative Agent from time to time upon Administrative Agent's request such consents to the foregoing assignment from parties contracting with Borrower as Administrative Agent may reasonably require. Neither this assignment nor any action by Administrative Agent or Lenders shall constitute an assumption by Administrative Agent or Lenders of any obligation under any contract or with respect to the Plans, Borrower hereby agrees to perform all of its obligations under any contract, and Borrower shall continue to be liable for all obligations of Borrower with respect thereto. Administrative Agent shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower such action as Administrative Agent may determine to be necessary to cure any default under any contract or with respect to the Plans or to protect the rights of Borrower, Administrative Agent or Lenders with respect thereto. Borrower irrevocably constitutes and appoints Administrative Agent as Borrower's attorney-in-fact, which power of attorney is coupled with an interest and irrevocable, to enforce in Borrower's name or in Administrative Agent's and Lender's name all rights of Borrower under any contract or with respect to the Plans. Administrative Agent shall incur no liability if any action so taken by it or on its behalf shall prove to be inadequate or invalid. Borrower indemnifies and holds Administrative Agent and Lenders harmless against and from any loss, cost, liability or expense (including, but not limited to, consultants' fees and expenses and attorneys' fees and expenses) incurred in connection with Borrower's failure to perform such contracts or any such action taken by Administrative Agent or Lenders. Administrative Agent may use the Plans for any purpose relating to the Improvements. Borrower represents and warrants to Administrative Agent and Lenders that the copy of any contract furnished or to be furnished to Administrative Agent is and shall be a true and complete copy thereof, that there have been no modifications thereof which are not fully set forth in the copies delivered, and that Borrower's interest therein is not subject to any claim, setoff, or encumbrance.

2.5. Financial Covenants.

(a) Loan to Value Ratio. The Property shall have a "Loan to Value Ratio" of not greater than 70%, which Loan to Value Ratio shall be calculated, and defined, as follows: the outstanding principal balance and accrued but unpaid interest on the Loan as of the date of the determination of the ratio shall be divided by the appraised "As-Is" value of the Property. The appraised "As-Is" value of the Property shall be based upon the most recent appraisal performed pursuant to Section 2.13, as reviewed, adjusted and approved by Administrative Agent. The Loan to Value Ratio requirement shall be tested no more often than once per calendar year, unless one or more events have occurred which have, alone or in the aggregate, a Material Adverse Effect. In the event the Loan to Value Ratio covenant is not met, Administrative Agent shall notify Borrower of such condition and Borrower may satisfy the Loan to Value Ratio covenant by, within thirty (30) days of such notice, either (A) making a principal curtailment on the Loan (which shall not be credited towards future principal amortization required under the Loan Documents) in an amount sufficient to bring this Loan to Value Ratio into compliance and/or (B) provide additional collateral acceptable to Administrative Agent, which shall have value (as determined by Administrative Agent) which when added to the Property value is sufficient to satisfy the Loan to Value Ratio covenant. If

Borrower fails to satisfy the Loan to Value Ratio covenant within such thirty (30) day period, such condition shall constitute an immediate Default.

(b) Debt Service Coverage Ratio. Commencing on the earlier to occur of (i) December 31, 2011 or (ii) the date which is six (6) months after the date which at least 95% of the rentable space in the Property is leased pursuant to Leases entered into in accordance with the terms hereof, as determined by Administrative Agent, Borrower shall at all times have a Debt Service Coverage Ratio of at least 1.25 to 1.00. In the event the Debt Service Coverage Ratio covenant is not met, Administrative Agent shall notify Borrower of such condition and Borrower may satisfy the Debt Service Coverage Ratio covenant by, within thirty (30) days of such notice, either (A) making a principal curtailment on the Loan (which shall not be credited towards future principal amortization required under the Loan Documents) in an amount sufficient to bring this Debt Service Coverage Ratio into compliance and/or (B) provide additional collateral acceptable to Administrative Agent, which shall have value (as determined by Administrative Agent) which would, assuming such collateral were liquidated and applied to reduce the outstanding principal amount of the Loan, be sufficient to satisfy the Debt Service Coverage Ratio covenant. If Borrower fails to satisfy the Debt Service Coverage Ratio covenant within such thirty (30) day period, such condition shall constitute an immediate Default.

2.6. Limitation on Debt. Borrower will not incur, create, assume directly or indirectly, or suffer to exist any Debt or encumber any of its assets nor form or own any subsidiaries, nor acquire or hold a direct or indirect equity investments in any other Person without in each such instance the prior written consent of Administrative Agent, except for:

- (a) Debt incurred pursuant to this Agreement and the other Loan Documents;
- (b) Debt of Borrower under a Swap Contract;
- (c) Debt constituting a trade payable which is payable in the ordinary course of business and is not past due;
- (d) obligations to pay brokerage commissions in connection with executed leases so long as such commissions are at market rates; and
- (e) amounts payable under leases in connection with build-out allowances or tenant improvement reimbursements (but only to the extent approved by Administrative Agent in its reasonable discretion to the extent Administrative Agent's consent is required hereunder).

2.7. Inspection. Administrative Agent and its agents may enter upon the Property to inspect the Property at any reasonable time, unless Administrative Agent deems such inspection is of an emergency nature, in which event Borrower shall provide Administrative Agent with immediate access to the Property. Borrower will furnish to Administrative Agent and its agents for inspection and copying, all Plans, shop drawings, specifications, books and records, and other documents and information that Administrative Agent may reasonably request from time to time.

2.8. Notice to Lenders. Borrower shall promptly within ten (10) days after the occurrence of any of the following events, notify each Lender in writing thereof, specifying in each case the action Borrower has taken or will take with respect thereto: (a) any violation of any Law or governmental requirement; (b) any litigation, arbitration or governmental investigation or proceeding instituted or threatened against Borrower or any Guarantor or the Property, and any material development therein; (c) any actual or threatened condemnation of any portion of the Property, any negotiations with respect to any such taking, or any loss of or substantial damage to the Property; (d) any labor controversy pending or threatened against Borrower or any contractor, and any material development in any labor controversy; (e) any notice received by Borrower with respect to the cancellation, alteration or non-renewal of any insurance coverage maintained with respect to the Property; (f) Borrower receiving notice or otherwise having knowledge of any lien in excess of \$50,000 filed against the Property or any stop notice served on Borrower in connection with construction of any alterations or renovations of the Improvements; or (g) any required permit, license, certificate or approval with respect to the Property lapses or ceases to be in full force and effect.

2.9. Financial Statements. Borrower shall deliver to Administrative Agent with sufficient copies for each Lender the Financial Statements and other statements and information at the times and for the periods described in (a) Exhibit "B" and (b) any other Loan Document, and Borrower shall deliver to Administrative Agent with sufficient copies for each Lender from time to time such additional financial statements and information as Administrative Agent may at any time request. Borrower will make all of its books, records and accounts available to Administrative Agent and its representatives at the Property upon request and will permit them to review and copy the same. Borrower shall promptly notify Administrative Agent of any event or condition that could reasonably be expected to have a Material Adverse Effect in the financial condition of Borrower and, if known by Borrower, Guarantor. Administrative Agent shall provide a copy of such Financial Statements to each Lender upon receipt.

2.10. Other Information. Borrower shall furnish to Administrative Agent from time to time upon Administrative Agent's request budgets of Borrower and revisions thereof showing the estimated costs and expenses to be incurred in connection with the completion of construction of the Improvements; (v) current or updated detailed Project schedules or construction schedules; and (vi) such other information relating to Borrower, Guarantor, the Improvements, the Property, or any indemnitor or other person or party connected with Borrower, the Loan, the construction of the Improvements or any security for the Loan.

2.11. Intentionally Omitted.

2.12. Intentionally Omitted.

2.13. Appraisal. Administrative Agent may obtain from time to time, an appraisal of all or any part of the Property prepared in accordance with written instructions from Administrative Agent by a third-party appraiser engaged directly by Administrative Agent. Each such appraiser and appraisal shall be satisfactory to Administrative Agent (including satisfaction of applicable regulatory requirements). The cost of any such appraisal shall be borne by Borrower if such appraisal is the first appraisal in any calendar year and in all events if Administrative Agent obtains such appraisal after the occurrence of a Default, and such cost is

due and payable by Borrower on demand and shall be secured by the Loan Documents. Administrative Agent shall provide a copy of such appraisal to each Lender upon receipt. Provided no Default exists and Borrower has paid the cost of such appraisal as aforesaid, Administrative Agent shall provide a copy of such appraisal to Borrower upon request.

2.14. Payment of Withholding Taxes. Borrower shall not use, or permit the property manager of the Property to use, any portion of the proceeds of any Loan advance to pay the wages of employees unless a portion of the proceeds or other funds are also used to make timely payment to or deposit with (a) the United States of all amounts of tax required to be deducted and withheld with respect to such wages under the Code, and (b) any state and/or local Tribunal or agency having jurisdiction of all amounts of tax required to be deducted and withheld with respect to such wages under any applicable state and/or local Laws.

2.15. ERISA and Prohibited Transaction Taxes. As of the date hereof and throughout the term of this Agreement, (a) Borrower is not and will not be (i) an “employee benefit plan”, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”); or (ii) a “plan” within the meaning of Section 4975(e) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”); (b) the assets of Borrower do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101; (c) Borrower is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA; (d) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans; and (e) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Administrative Agent of any of Lender’s rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code. Borrower further agrees to deliver to Administrative Agent such certifications or other evidence of compliance with the provisions of this Section 2.15 as Administrative Agent may from time to time request.

2.16. Ground Lease.

(a) Borrower shall, at its sole cost and expense, promptly and timely perform and observe all the material terms, covenants and conditions required to be performed and observed by Borrower as lessee under the Ground Lease (including, but not limited to, the payment of all rent, additional rent, percentage rent and other charges required to be paid under the Ground Lease).

(b) If Borrower shall be in default under the Ground Lease, then, subject to the terms of the Ground Lease, Borrower hereby grants Administrative Agent the right (but not the obligation), to cause the default or defaults under the Ground Lease to be remedied and otherwise exercise any and all rights of Borrower under the Ground Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect the interests of Administrative Agent and Lenders under the Loan Documents, and Administrative Agent and its agents shall have the right to enter all or any portion of the Property subject to the Ground Lease

at such times and in such manner as Administrative Agent deems necessary, to prevent or to cure any such default.

(c) The actions or payments of Administrative Agent to cure any default by Borrower under the Ground Lease shall not remove or waive, as between Borrower, Administrative Agent and Lenders, the default that occurred under this Agreement by virtue of the default by Borrower under the Ground Lease. All sums expended by Administrative Agent and Lenders to cure any such default shall be paid by Borrower to Administrative Agent, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Administrative Agent. All such indebtedness shall be deemed to be secured by the Mortgage.

(d) Borrower shall notify Administrative Agent promptly in writing of the occurrence of any material default by Ground Lessor under the Ground Lease or the occurrence of any event that, with the passage of time or service of notice, or both, would constitute a material default by Ground Lessor under the Ground Lease, and the receipt by Borrower of any notice (written or otherwise) from Ground Lessor under the Ground Lease noting or claiming the occurrence of any default by Borrower under the Ground Lease or the occurrence of any event that, with the passage of time or service of notice, or both, would constitute a default by Borrower under the Ground Lease. Borrower shall promptly deliver to Lender a copy of any such written notice of default.

(e) Within ten (10) days after receipt of written demand by Administrative Agent, Borrower shall use reasonable efforts to obtain from Ground Lessor under the Ground Lease and furnish to Lender the estoppel certificate of Ground Lessor stating the date through which rent has been paid and whether or not there are any defaults thereunder and specifying the nature of such claimed defaults, if any.

(f) Borrower shall promptly execute, acknowledge and deliver to Administrative Agent such instruments as may reasonably be required to permit Administrative Agent to cure any default under the Ground Lease or permit Administrative Agent to take such other action required to enable Administrative Agent to cure or remedy the matter in default and preserve the security interest of Administrative Agent under the Loan Documents with respect to the Ground Lease. Borrower irrevocably appoints Administrative Agent as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Borrower under or with respect to the Ground Lease, including, without limitation, the right to effectuate any extension or renewal of the Ground Lease, or to preserve any rights of Borrower whatsoever in respect of any part of the Ground Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(g) Notwithstanding anything to the contrary contained in this Agreement with respect to the Ground Lease:

(i) The lien of the Mortgage attaches to all of Borrower's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code,



including, without limitation, all of Borrower's rights, as debtor, to remain in possession of the related Property subject to the Ground Lease.

(ii) Borrower shall not, without Administrative Agent's written consent, elect to treat the Ground Lease as terminated under subsection 365(h)(1) of the Bankruptcy Code. Any such election made without Administrative Agent's prior written consent shall be void.

(iii) As security for the Indebtedness, Borrower unconditionally assigns, transfers and sets over to Lender all of Borrower's claims and rights to the payment of damages arising from any rejection by Ground Lessor under the Ground Lease under the Bankruptcy Code. Lender and Borrower shall proceed jointly or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents in any case in respect of Ground Lessor under the Bankruptcy Code. This assignment constitutes a present, in-evocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Indebtedness shall have been satisfied and discharged in full. Any amounts received by Administrative Agent or Borrower as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied to all costs and expenses of Administrative Agent (including, without limitation, attorney's fees and costs) incurred in connection with the exercise of any of its rights or remedies in accordance with the applicable provisions of this Agreement.

(iv) If, pursuant to subsection 365(h) of the Bankruptcy Code, Borrower seeks to offset, against the rent reserved in the Ground Lease, the amount of any damages caused by the nonperformance by Ground Lessor of any of its obligations thereunder after the rejection by Ground Lessor of the Ground Lease under the Bankruptcy Code, then Borrower shall not effect any offset of the amounts so objected to by Administrative Agent. If Administrative Agent has failed to object as aforesaid within ten (10) days after notice from Borrower in accordance with the first sentence of this subsection, Borrower may proceed to offset the amounts set forth in Borrower's notice.

(v) If any action, proceeding, motion or notice shall be commenced or filed in respect of Ground Lessor of all or any part of the Property in connection with any case under the Bankruptcy Code, Administrative Agent and Borrower shall cooperatively conduct and control any such litigation with counsel agreed upon between Borrower and Administrative Agent in connection with such litigation. Borrower shall, upon demand, pay to Administrative Agent all costs and expenses (including reasonable attorneys' fees and costs) actually paid or actually incurred by Administrative Agent in connection with the cooperative prosecution or conduct of any such proceedings. All such costs and expenses shall be secured by the lien of the related Mortgage.

(vi) Borrower shall promptly, after obtaining knowledge of such filing notify Administrative Agent orally of any filing by or against Ground Lessor under the Ground Lease of a petition under the Bankruptcy Code. Borrower shall thereafter promptly give written notice of such filing to Administrative Agent, setting forth any information

available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought in such filing. Borrower shall promptly deliver to Administrative Agent any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating to such petition.

(h) Borrower shall not, without Lender's prior written consent, fail to exercise any option or right to renew or extend the term of the Ground Lease in accordance with the terms of the Ground Lease, and shall give immediate written notice to Administrative Agent of each exercise of any such option or right and shall execute, acknowledge, deliver mid record any document requested by Administrative Agent to evidence the Lien of the Mortgage on such extended or renewed lease term; provided, however, Borrower shall not be required to exercise any particular such option or right to renew or extend to the extent Borrower shall have received the prior written consent of Administrative Agent (which consent may be withheld by Administrative Agent in its sole and absolute discretion) allowing Borrower to forego exercising such option or right to renew or extend. If Borrower shall fail to exercise any such option or right as aforesaid, Administrative Agent may exercise the option or right as Borrower's agent and attorney-in-fact as provided above in Administrative Agent's own name or in the name of and on behalf of a nominee offender, as Administrative Agent may determine in the exercise of its sole and absolute discretion.

(i) Borrower shall not waive, excuse, condone or in any way release or discharge Ground Lessor under the Ground Lease of or from Ground Lessor's material obligations, covenant and/or conditions under the Ground Lease without the prior written consent of Administrative Agent.

(j) Borrower shall not, without Administrative Agent's prior written consent, surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or change, supplement, modify, alter or amend the Ground Lease, which consent, in the case of a change, supplement, modification, alteration or amendment, shall not be unreasonably withheld or delayed. Consent to one amendment, change, agreement or modification shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, changes, agreements or modifications. Any acquisition of lessor's interest in the Ground Lease by Borrower or any Affiliate of Borrower shall be accomplished by Borrower in such a manner so as to avoid a merger of the interests of lessor and lessee in Ground Lease, unless consent to such merger is granted by Administrative Agent.

#### 2.17. Storage Facility Master Lease.

(a) Borrower has entered into a Sublease Agreement dated December 10, 2007 (the "Storage Facility Master Lease") with Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company (the "Storage Facility Tenant") for the approximately 88,127 square foot self storage facility to be constructed at the Property (the "Self Storage Facility") which Storage Facility Master Lease provides for the payment of an annual base rent of \$800,000 per annum (the "Storage Facility Rent") (payable in equal monthly installments) and has a term expiring no earlier than December 1, 2024. Borrower hereby assigns to

Administrative Agent all of its right title and interest in the Storage Facility Master Lease and the guaranty thereto as additional security for the Loan.

(b) The Storage Facility Master Lease is in full force and effect and there are no uncured defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. The copy of the Storage Facility Master Lease delivered to Administrative Agent is true and complete, and there are no oral agreements with respect thereto.

(c) Borrower shall give to Administrative Agent copies of all notices given to Borrower or received by Borrower with respect to the Storage Facility Master Lease. Borrower shall not (i) waive any rights under the Storage Facility Master Lease, (ii) modify the rent or other amounts payable under the Storage Facility Master Lease, or extend any period for the payment of rent or other amounts under the Storage Facility Master Lease, or (iii) terminate, cancel, accept a surrender (except as specifically provided in Section 2.17(d) hereof) of or otherwise amend or modify the Storage Facility Master Lease, without, in each case, the prior written consent of Lender, which consent may be granted or withheld by Administrative Agent in Administrative Agent's sole discretion.

(d) Administrative Agent will consent to a termination of the Storage Facility Master Lease in the event that (i) the Self Storage Facility is open for business and (ii) the Self Storage Facility yields an underwritten annual net cash flow, as reasonably determined by Administrative Agent, of \$800,000 or more with no free rent, credit or right of offset.

(e) Notwithstanding anything to the contrary in the organizational documents of Storage Facility Tenant, Storage Facility Tenant shall not dissolve unless and until each of the following conditions have been satisfied: (i) an appropriate winding down of and disposition of its assets and liabilities, satisfaction of all claims, creditors and liabilities, and retention of adequate reserves to satisfy future contingent liabilities, including, without limitation, its liabilities under the Storage Facility Master Lease; (ii) compliance with all organizational and applicable Laws relating to dissolution and winding up of Storage Facility Tenant, and (iii) the assignment of the Storage Facility Master Lease to and the assumption thereof by a replacement storage facility tenant acceptable to Administrative Agent in its sole discretion.

#### 2.18. Condominium Provisions.

(a) Condominium Representations and Warranties. Borrower hereby makes the following representations and warranties: (a) no unpaid Condominium Assessments currently exist, or to the best of Borrower's knowledge, are pending and to the best of Borrower's knowledge, no assessments or special assessments are currently contemplated, (b) the Condominium Documents are in full force and effect and Borrower is not in default of any obligation to the Condominium with respect to any of the Condominium Documents and (c) to the best of Borrower's knowledge, the Condominium is in compliance with all state, local or federal laws, rules and regulation applicable to the condominium regime.

(b) Condominium Covenants.

(i) Borrower shall pay all Condominium Assessments, as and when the same become due and payable, subject to any right of Borrower to contest same in accordance with the provisions of the Condominium Documents and provided that Borrower shall exercise any such right if and only if: (i) such proceeding suspends the collection of such Condominium Assessments and the Property will not be in danger of being sold for such unpaid Condominium Assessments, or Borrower has paid all of such Condominium Assessments under protest, (ii) such proceeding is permitted under and is conducted in accordance with the provisions of the Condominium Documents, (iii) if Borrower has not paid the disputed amounts in full under protest, Borrower shall deposit with Administrative Agent cash (or other security as may be approved, in writing, by Administrative Agent) in an amount Administrative Agent deems sufficient to insure the payment of any such Condominium Assessments together with interest and penalties thereon, if any, (iv) Borrower furnishes to Administrative Agent all other items reasonably requested by Lender and (v) upon a final determination thereof, Borrower promptly pays the amount of any such Condominium Assessments, together with all costs, interest and penalties which may be payable in connection therewith.

(ii) In addition to the financial reporting requirements of this Agreement Borrower shall furnish the following to Lender, each prepared in such detail as reasonably required by Administrative Agent and certified by an officer of Borrower to be true, complete and correct: as soon as available, but in any event within forty-five (45) days after the end of each fiscal quarter, evidence satisfactory to Administrative Agent that all Condominium Assessments for the immediately preceding quarter which are then due and payable for the Property, have been paid by Borrower (or are being duly and properly contested in accordance with Section (a)(l) above) which evidence shall include, without limitation, a true and correct photocopy of Borrower's cancelled check(s) evidencing such payment(s) with respect thereto, provided, however, in lieu of furnishing such evidence to Administrative Agent, Borrower shall have the right to deposit cash with Lender in the full annual amount of such Condominium Assessments due with respect to the Property, which deposit shall be held by Administrative Agent as additional security for the Loan until such time as satisfactory evidence of such payment in accordance with this clause is accepted by Administrative Agent.

(iii) Borrower shall observe and enforce all obligations imposed upon it under the Condominium Documents and shall enforce the terms, covenants and conditions contained in the Condominium Documents to be observed or performed upon the part of the other parties thereunder in a commercially reasonable manner.

(iv) Borrower shall not alter, modify or change the material terms of, nor terminate, any of the Condominium Documents without Administrative Agent's consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(v) Borrower shall comply with any Law applicable to the condominium regime at the Property, the Land or the sale or transfer of the Land, including but not

limited to, the securities and condominium laws of the State where the Property is located and the rules and regulations pertaining thereto.

(vi) Borrower shall take all actions as may be necessary from time to time to preserve and maintain the condominium regime at the Property in accordance with the laws of the State where the Property is located.

(vii) Provided that the same was not included in any of the reports, statements, certificates or other documentation submitted to Administrative Agent, Borrower shall give Administrative Agent prompt notice of any special assessment relating to the condominium regime received by Borrower.

(viii) Borrower shall provide Administrative Agent with notice of any proposed additions, alterations or improvements proposed by any Condominium Board costing in excess of \$50,000 and provided that Borrower or its designee has consent rights under the Condominium Documents, Borrower shall not consent to same without Administrative Agent's prior approval, not to be unreasonably withheld.

(ix) Borrower shall promptly deliver to Administrative Agent a true and complete copy of each and every notice of default received or delivered by Borrower with respect to any obligation of Borrower or any other party under the Condominium Documents.

(x) If a Default has occurred and is continuing, Borrower hereby acknowledges and agrees that, subject to the provisions of the Condominium Documents, Administrative Agent (or its nominee) shall be solely entitled to remove any Condominium Board members appointed by Borrower and/or to designate replacement or substitute members of the Condominium Board. If a Default has occurred and is continuing, Administrative Agent shall have the right to exercise the power of attorney granted pursuant to the Proxy (as hereinafter defined) to exercise all rights, powers and remedies of Borrower pursuant to the Condominium Documents. The rights granted to Lender under the Proxy shall automatically terminate upon the payment of the Loan in full or upon a defeasance of the Loan in accordance with the terms hereof.

(xi) If a Default has occurred and is continuing, Administrative Agent may, at its option, and Borrower hereby grants and assigns to Administrative Agent, from and after the occurrence and during the continuation of a Default, the right, either by itself or by its nominee or designee, in the name of Borrower, to exercise the rights, powers and remedies of Borrower pursuant to the Condominium Documents. Such rights and remedies shall include, without limitation, the right to exercise all voting, consent, managerial and other rights relating to the Condominium, whether in Borrower's name or otherwise, and the right to exercise Borrower's rights in the Condominium, including, without limitation, voting to elect members of the Condominium Board and voting to amend the Condominium Documents.

(c) Additional Event of Default. It shall be an immediate Default hereunder if Borrower violates or does not comply with any of the material provisions of Section 2.18(a) or

(b) above and/or the Condominium shall become subject to an action for partition and said action has been commenced and not dismissed within thirty (30) days after commencement thereof, or if any provision of the applicable Condominium Act or any section, sentence, clause, phrase or word or the application thereof in any circumstances, is held invalid and such invalidity shall affect the lien of the Security Instrument or the rights of Administrative Agent under the Loan Documents.

#### 2.19. Transfer Taxes.

(a) In the event of any sale or transfer of Borrower's interest in the Property, or any part thereof, including any sale or transfer by reason of foreclosure of the Mortgage or any prior or subordinate mortgage or by deed in lieu of any such foreclosure, Borrower shall timely and duly complete, execute and deliver to Administrative Agent all forms and supporting documentation required by any taxing authority to estimate and fix any tax payable by reason of such sale or transfer or recording of the deed evidencing such sale or transfer, including any New York State Transfer Tax (individually, a "Transfer Tax").

(b) Borrower shall pay the Transfer Tax that may hereafter become due and payable with respect to any sale or transfer of the property described in this Section, and in the event of a default of such payment, Administrative Agent may pay the same and the amount of such payment shall be added to the Indebtedness secured hereby and, unless incurred in connection with a foreclosure of the Mortgage or deed in lieu of such foreclosure, be secured by the Mortgage.

(c) In the event that Borrower fails to execute the same and such failure continues for more than ten (10) days after Administrative Agent requests Borrower to execute the same, Borrower hereby irrevocably constitutes and appoints Administrative Agent as its attorney-in-fact, coupled with an interest, to prepare and deliver any questionnaire, statement, affidavit or tax return in connection with any Transfer Tax applicable to any foreclosure or deed in lieu of foreclosure described related to the Mortgage.

(d) Borrower shall indemnify and hold harmless Administrative Agent and Lenders against (i) any and all liability incurred by Administrative Agent and/or Lenders for the payment of any Transfer Tax with respect to any transfer of Borrower's interest in the Property, and (ii) any and all expenses reasonably incurred by Lender in connection therewith including, without limitation, interest, penalties and reasonable attorneys' fees.

(e) The obligation to pay the taxes and indemnify Administrative Agent and Lenders under this Section is a personal obligation of Borrower (excluding its shareholders, directors and officers), whether or not Borrower is personally obligated to pay the Indebtedness secured by the Mortgage and shall be binding upon and enforceable against the distributees, successors and assigns of Borrower with the same force and effect as though each of them had personally executed and delivered the Mortgage, notwithstanding any exculpation provision in favor of Borrower with respect to the payment of any other monetary obligations under the Mortgage.

(f) In the event that Borrower fails or refuses to pay a tax payable by Borrower with respect to a sale or transfer by reason of a foreclosure of this Security Instrument in accordance with this Section, the amount of the tax, any interest or penalty applicable thereto and any other amount payable pursuant to Borrower's obligation to indemnify Administrative Agent and Lenders under this Section may, at the sole option of Lender, be paid as an expense of the sale out of the proceeds of the mortgage foreclosure sale.

(g) The provisions of this Section shall survive any transfer and the delivery of the deed affecting such transfer. Nothing in this Section shall be deemed to grant to Borrower any greater rights to sell, assign or otherwise transfer the premises than are expressly provided in the Mortgage nor to deprive Administrative Agent of any right to refuse to consent to any transaction referred to in this Section.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1. General Representations and Warranties. To induce Lenders to make the Loan, Borrower hereby represents and warrants to Administrative Agent and Lenders that except as otherwise disclosed to Administrative Agent in writing (a) Borrower has complied with any and all Laws and regulations concerning its organization, existence and the transaction of its business, and has the right and power to own the Property and to develop the Improvements as contemplated in this Agreement and the other Loan Documents; (b) Borrower is authorized to execute, deliver and perform all of its obligations under the Loan Documents; (c) the Loan Documents are valid and binding obligations of Borrower; (d) Borrower is not in violation of any Law, regulation or ordinance, or any order of any court or Tribunal, and no provision of the Loan Documents violates any applicable Law, any covenants or restrictions affecting the Property, any order of any court or Tribunal or any contract or agreement binding on Borrower or the Property; (e) to the extent required by applicable Law, Borrower and Guarantor have filed all necessary tax returns and reports and have paid all taxes and governmental charges thereby shown to be owing; (f) the Land is not part of a larger tract of land owned by Borrower or any of its affiliates or any Guarantor, is not otherwise included under any unity of title or similar covenant with other lands not encumbered by the Mortgage, and constitutes a separate tax lot or lots with a separate tax assessment or assessments for the Land and Improvements, independent of those for any other lands or improvements; (g) the Land and Improvements comply with all Laws and governmental requirements, including all subdivision and platting requirements, without reliance on any adjoining or neighboring property; (h) the Improvements comply with all legal requirements regarding access and facilities for handicapped or disabled persons; (i) Borrower has not directly or indirectly conveyed, assigned or otherwise disposed of or transferred (or agreed to do so) any development rights, air rights or other similar rights, privileges or attributes with respect to the Property, including those arising under any zoning or land use ordinance or other Law or governmental requirement; (j) the Financial Statements delivered to Administrative Agent are true, correct, and complete in all material respects, and there has been no event or condition that could reasonably be expected to have a Material Adverse Effect in Borrower's or Guarantor's financial condition from the financial condition of Borrower or Guarantor (as the case may be) indicated in such Financial Statements; (k) all utility services necessary for operation of the Improvements for their intended purpose are available at the boundaries of the Land, including

electric and natural gas facilities, telephone service, water supply, storm and sanitary sewer facilities; (l) except as otherwise provided for in the Loan Documents, Borrower has made no contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Property; and (m) the current and anticipated use of the Property complies with all applicable zoning ordinances, regulations and restrictive covenants affecting the Land without the existence of any variance, non-complying use, nonconforming use or other special exception, all use restrictions of any Tribunal having jurisdiction have been satisfied, and no violation of any Law or regulation exists with respect thereto.

3.2. Ground Lease. Borrower hereby represents and warrants to Administrative Agent and Lenders the following with respect to the Ground Lease:

(a) Recording; Modification. A memorandum of the Ground Lease has been duly recorded. The Ground Lease permits the interest of Borrower to be encumbered by a mortgage or Ground Lessor has approved and consented to the encumbrance of the Property by the Mortgage. There have been no amendments or modifications to the terms of the Ground Lease since recordation of the Ground Lease (or a memoranda thereof), with the exception of written instruments which have been delivered to Lender. The Ground Lease may not be terminated, surrendered or amended without the prior written consent of Lender; provided that Ground Lessor shall not be prevented from exercising its remedies in accordance with the Ground Lease if the obligations of Borrower under the Ground Lease are not performed as provided in the Ground Lease, subject to notice and cure rights provided to Lender in the Ground Lease.

(b) No Liens. Except for the Permitted Encumbrances (as defined in the Mortgage) Borrower's interest in the Ground Lease is not subject to any liens or encumbrances superior to, or of equal priority with, the Mortgage other than Ground Lessor's related fee interest.

(c) Ground Lease Assignable. Borrower's interest in the Ground Lease is assignable without the consent of Ground Lessor to Lender, the purchaser at any foreclosure sale or the transferee under a deed or assignment in lieu of foreclosure in connection with the foreclosure of the Lien of the Mortgage or transfer of Borrower's leasehold state by deed or assignment in lieu of foreclosure. In connection with the first assignment thereafter, the Ground Lease is further assignable by such transferee and its successors and assigns without the consent of Ground Lessor, subject to the provisions of Section 11.1(b) of the Ground Lease.

(d) Default. As of the date hereof, the Ground Lease is in full force and effect and no default has occurred under the Ground Lease and there is no existing condition which, but for the passage of time or the giving of notice, could result in a default under the terms of the Ground Lease.

(e) Notice. The Ground Lease requires Ground Lessor to give notice of any default by Borrower to Lender prior to exercising its remedies thereunder.



(f) Cure. Lender is permitted the opportunity (including, where necessary, sufficient time to gain possession of the interest of Borrower under the Ground Lease) to cure any default under the Ground Lease, which is curable after the receipt of notice of any of the default before Ground Lessor thereunder may terminate the Ground Lease as set forth in Section 11.8 thereof.

(g) Term. The Ground Lease has a term which extends not less than ten (10) years beyond the Maturity Date.

(h) New Lease. The Ground Lease requires Ground Lessor to enter into a new lease upon termination of the Ground Lease for any reason, including rejection or disaffirmation of the Ground Lease in a bankruptcy proceeding.

(i) Insurance Proceeds. Under the terms of the Ground Lease and the Mortgage, taken together, any related insurance and condemnation proceeds that are paid or awarded with respect to the leasehold interest will be applied either to the repair or restoration of all or part of the Property, with Lender having the right, if the proceeds exceed \$500,000, to hold and disburse the proceeds as the repair or restoration progresses, or to the payment of the outstanding principal balance of the Loan together with any accrued interest thereon.

(j) Subleasing. Except as set forth in Article 11 of the Ground Lease, the Ground Lease does not impose any restrictions on subleasing.

#### ARTICLE 4 DEFAULT AND REMEDIES

4.1. Events of Default. The occurrence of any one of the following shall be a default under this Agreement (“Default”): (a) any of the Indebtedness is not paid when due, whether on the scheduled due date or upon acceleration, maturity or otherwise and such default shall have continued for a period of ten (10) days; (b) any covenant, agreement, condition, representation or warranty in this Agreement (other than covenants to pay the Indebtedness and other than Defaults expressly listed in this Section) is not fully and timely performed, observed or kept and, except with respect to provisions which are specified to be immediate Defaults, such default shall have continued for a period of thirty (30) days after notice thereof shall have been given to Borrower by Administrative Agent (or such other grace period as may be specified elsewhere in this Agreement with respect to specific provisions), provided, however, if such default is not susceptible of being cured within such thirty (30) day period and Borrower has commenced such cure within such thirty (30) day period and is diligently pursuing such cure to Administrative Agent’s satisfaction, such thirty (30) day cure period shall be extended, but in no event shall such cure period exceed sixty (60) days, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein; (c) the occurrence of a Default under any other Loan Document (taking into account any applicable notice and cure period set forth in such Loan Document); (d) any required permit, license, certificate or approval with respect to the Property lapses or ceases to be in full force and effect and Borrower fails to have such required permit, license, certificate or approval renewed or reinstated within thirty (30) days; (e)

Borrower, Administrative Agent or any Lender is enjoined or prohibited from performing any of its respective obligations under any of the Loan Documents; (f) the owner of the Property enters into any lease of part or all of the Property which does not comply with the Loan Documents; (g) a lien for the performance of work or the supply of materials which is established against the Property remains unsatisfied or unbonded for a period of twenty (20) days after Borrower's receipt of notice or otherwise obtaining knowledge of the date of filing or service; (h) the entry of a judgment against Borrower or any Guarantor for an amount in excess of \$500,000 and Borrower shall not discharge the same or cause it to be discharged within sixty (60) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution or bond over such judgment by a commercially acceptable bonding company pending such appeal; (i) the issuance of any attachment, sequestration, or similar writ levied upon any of Borrower's or Guarantor's property which is not discharged within a period of ten (10) days; (j) Administrative Agent determines that an event or condition that could reasonably be expected to have a Material Adverse Effect has occurred in the financial condition of Borrower or any Guarantor or in the condition of the Property; (k) the death, incompetency, dissolution or insolvency of Borrower or any Guarantor; (l) a Default as specified in Section 6.26; (m) a default occurs under any other Loan Document which is not cured within any applicable notice and cure period provided therein; (n) a Default occurs under the Other Loan Agreement, Other Note and/or Other Mortgage; (o) any of the following: (i) a breach or default by Borrower under any condition or obligation contained in the Ground Lease shall occur, (ii) there occurs any event or condition that gives Ground Lessor under the Ground Lease a right to terminate or cancel the Ground Lease, (iii) the Ground Lease shall be surrendered or the Ground Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever or (iv) any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered or amended without the prior written consent of Lenders; (p) any of the following: (i) a breach or default by Borrower or Storage Facility Tenant under any condition or obligation contained in the Storage Facility Master Lease shall occur, (ii) there occurs any event or condition that gives Borrower or Storage Facility Tenant under the Storage Facility Master Lease a right to terminate or cancel the Storage Facility Master Lease, (iii) the Storage Facility Master Lease shall be surrendered or the Storage Facility Master Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever, except as specifically permitted herein or (iv) any of the terms, covenants or conditions of the Storage Facility Master Lease shall in any manner be modified, changed, supplemented, altered or amended without the prior written consent of Administrative Agent; and (q) Storage Facility Tenant shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of Section 2.17 hereof.

4.2. Remedies. Upon a Default, Administrative Agent may with the consent of, and shall at the direction of the Required Lenders, without notice, exercise any and all rights and remedies afforded by this Agreement, the other Loan Documents, Law, equity or otherwise, including (a) declaring any and all Indebtedness immediately due and payable; (b) reducing any claim to judgment; or (c) obtaining appointment of a receiver (to which Borrower hereby consents) and/or judicial or nonjudicial foreclosure under the Mortgage; provided, however, that upon a Default, Administrative Agent at its election may (but shall not be obligated to) without the consent of and shall at the direction of the Required Lenders, without notice, do any one or more of the following: (a) terminate Lenders' Commitment to lend; and (b) set-off and apply, to the extent thereof and to the maximum extent permitted by Law, any and all deposits, funds, or

assets at any time held and any and all other indebtedness at any time owing by Administrative Agent or any Lender to or for the credit or account of Borrower against any Indebtedness.

Borrower hereby appoints Administrative Agent as Borrower's attorney-in-fact, which power of attorney is irrevocable and coupled with an interest, with full power of substitution if Administrative Agent so elects, to do any of the following in Borrower's name upon the occurrence of a Default: (i) use such sums as are necessary, including any proceeds of the Loan and employ such architects, engineers, and contractors as may be required, or as Lenders may otherwise consider desirable, for the purpose of completing construction of the Improvements substantially in accordance with the Plans, the Loan Documents, and all applicable Laws, governmental requirements and restrictive covenants; (ii) endorse the name of Borrower on any checks or drafts representing proceeds of any insurance policies, or other checks or instruments payable to Borrower with respect to the Property; (iii) do every act with respect to the construction of the Tenant Improvements that Borrower may do; (iv) prosecute or defend any action or proceeding incident to the Property, (v) pay, settle, or compromise all bills and claims so as to clear title to the Property; and (vi) take over and use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the Improvements. Any amounts expended by Administrative Agent itself or on behalf of Lenders to construct or to complete the Tenant Improvements in connection with the exercise of its remedies herein shall be deemed to have been advanced to Borrower hereunder as a demand obligation owing by Borrower to Administrative Agent or Lenders as applicable and shall constitute a portion of the Indebtedness, regardless of whether such amounts exceed any limits for Indebtedness otherwise set forth herein. Neither Administrative Agent nor Lenders shall have any liability to Borrower for the sufficiency or adequacy of any such actions taken by Administrative Agent.

No delay or omission of Administrative Agent or Lenders to exercise any right, power or remedy accruing upon the happening of a Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Default or any acquiescence therein. No delay or omission on the part of Administrative Agent or Lenders to exercise any option for acceleration of the maturity of the Indebtedness, or for foreclosure of the Mortgage following any Default as aforesaid, or any other option granted to Administrative Agent and Lenders hereunder in any one or more instances, or the acceptances by Administrative Agent or Lenders of any partial payment on account of the Indebtedness, shall constitute a waiver of any such Default, and each such option shall remain continuously in full force and effect. No remedy herein conferred upon or reserved to Administrative Agent and/or Lenders is intended to be exclusive of any other remedies provided for in any Note or any of the other Loan Documents, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under any Note or any of the other Loan Documents, or now or hereafter existing at Law or in equity or by statute. Every right, power and remedy given to Administrative Agent and Lenders by this Agreement, any Note or any of the other Loan Documents shall be concurrent, and may be pursued separately, successively or together against Borrower, or the Property or any part thereof, or any personal property granted as security under the Loan Documents, and every right, power and remedy given by this Agreement, any Note or any of the other Loan Documents may be exercised from time to time as often as may be deemed expedient by the Required Lenders.

Regardless of how a Lender may treat payments received from the exercise of remedies under the Loan Documents for the purpose of its own accounting, for the purpose of computing the Indebtedness, payments shall be applied as elected by Lenders. No application of payments will cure any event of Default, or prevent acceleration, or continued acceleration, of amounts payable under the Loan Documents, or prevent the exercise, or continued exercise, of rights or remedies of Administrative Agent and Lenders hereunder or thereunder or at Law or in equity.

ARTICLE 5  
ADMINISTRATIVE AGENT

5.1. Appointment and Authorization of Administrative Agent.

(a) Each Lender hereby irrevocably (subject to Section 5.9) appoints, designates and authorizes Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Administrative Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Loan Documents with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) No individual Lender or group of Lenders shall have any right to amend or waive, or consent to the departure of any party from any provision of any Loan Document, or secure or enforce the obligations of Borrower or any other party pursuant to the Loan Documents, or otherwise. All such rights, on behalf of Administrative Agent or any Lender or Lenders, shall be held and exercised solely by and at the option of Administrative Agent for the pro rata benefit of Lenders. Such rights, however, are subject to the rights of a Lender or Lenders, as expressly set forth in this Agreement, to approve matters or direct Administrative Agent to take or refrain from taking action as set forth in this Agreement. Except as expressly otherwise provided in this Agreement or the other Loan Documents, Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights, or taking or refraining from taking any actions which Administrative Agent is expressly entitled to exercise or take under this Agreement and the other Loan Documents, including, without limitation, (i) the determination if and to what extent matters or items subject to Administrative Agent’s satisfaction are acceptable or otherwise within its discretion, (ii) the making of Administrative Agent Advances, and (iii) the exercise of remedies pursuant to, but

subject to, Article 4 or pursuant to any other Loan Document and any action so taken or not taken shall be deemed consented to by Lenders.

(c) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower or Guarantor, no individual Lender or group of Lenders shall have the right, and Administrative Agent (irrespective of whether the principal of the Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be exclusively entitled and empowered on behalf of itself and Lenders, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and Administrative Agent and their respective agents and counsel and all other amounts due Lenders and Administrative Agent under Section 6.10 and Exhibit "K" allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Section 6.10.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of Lenders except as approved by Required Lenders or to authorize Administrative Agent to vote in respect of the claims of Lenders except as approved by Required Lenders in any such proceeding.

5.2. Delegation of Duties. Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultant experts concerning all matters pertaining to such duties. Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

5.3. Liability of Administrative Agent. No Agent-Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (ii) be responsible in any manner to any of

Lenders for any recital, statement, representation or warranty made by Borrower or any subsidiary or Affiliate of Borrower, or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of Borrower, Guarantor or any of their Affiliates.

5.4. Reliance by Administrative Agent. Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon advice and statements of legal counsel (including counsel to any party to the Loan Documents), independent accountants and other experts selected by Administrative Agent. Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders or all Lenders if required hereunder as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders or such greater number of Lenders as may be expressly required hereby in any instance, and such request and any action taken or failure to act pursuant thereto shall be binding upon all Lenders. In the absence of written instructions from the Required Lenders or such greater number of Lenders, as expressly required hereunder, Administrative Agent may take or not take any action, at its discretion, unless this Agreement specifically requires the consent of the Required Lenders or such greater number of Lenders.

5.5. Notice of Default. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, unless Administrative Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default that Administrative Agent determines will have a Material Adverse Effect. Administrative Agent will notify Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to such Default as may be requested by the Required Lenders in accordance with Article 4; provided, however, that unless and until Administrative Agent has received any such request, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable or in the best interest of Lenders.

5.6. Credit Decision; Disclosure of Information by Administrative Agent.

(a) Each Lender acknowledges that none of Agent-Related Persons has made any representation or warranty to it, and that no act by Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of Borrower and Guarantor, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lenders as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to Administrative Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and Guarantor, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower and Guarantor hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and Guarantor.

(b) Administrative Agent upon its receipt shall provide each Lender such notices, reports and other documents expressly required to be furnished to Lenders by Administrative Agent herein. To the extent not already available to a Lender, Administrative Agent shall also provide Lender and/or make available for Lender's inspection during reasonable business hours and at Lender's expense, upon Lender's written request therefor: (i) copies of the Loan Documents; (ii) such information as is then in Administrative Agent's possession in respect of the current status of principal and interest payments and accruals in respect of the Loan; (iii) copies of all current financial statements in respect of Borrower, any Guarantor or other person liable for payment or performance by Borrower of any obligations under the Loan Documents, then in Administrative Agent's possession with respect to the Loan; and (iv) other current factual information then in Administrative Agent's possession with respect to the Loan and bearing on the continuing creditworthiness of Borrower or any Guarantor, or any of their respective Affiliates; provided that nothing contained in this Section shall impose any liability upon Administrative Agent for its failure to provide a Lender any of such Loan Documents, information, or financial statements, unless such failure constitutes willful misconduct or gross negligence on Administrative Agent's part; and provided further that Administrative Agent shall not be obligated to provide any Lender with any information in violation of Law or any contractual restrictions on the disclosure thereof (provided such contractual restrictions shall not apply to distributing to a Lender factual and financial information expressly required to be provided herein). Except as set forth above, Administrative Agent shall not have any duty or responsibility to provide any Lenders with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or Guarantor or any of their respective Affiliates which may come into the possession of any of Agent-Related Persons.

5.7. Indemnification of Administrative Agent. Whether or not the transactions contemplated hereby are consummated, Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, to the extent that Administrative Agent is not reimbursed by or on behalf of Borrower, each Lender shall reimburse Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorney fees) incurred by Administrative Agent as described in Section 6.10. The undertaking in this Section shall survive the payment of all Indebtedness hereunder and the resignation or replacement of Administrative Agent.

5.8. Administrative Agent in Individual Capacity. Administrative Agent, in its individual capacity, and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any party to the Loan Documents and their respective Affiliates as though Administrative Agent were not Administrative Agent hereunder and without notice to or consent of Lenders. Lenders acknowledge that Borrower and Bank of America, N.A. or its Affiliate have entered or may enter into Swap Transactions. A portion of the Loan may be funded to honor Borrower's payment obligations under the terms of such Swap Transactions, and Lenders shall have no right to share in any portion of such payments. Lenders acknowledge that, pursuant to such activities, Bank of America, N.A. or its Affiliates may receive information regarding any party to the Loan Documents, or their respective Affiliates (including information that may be subject to confidentiality obligations in favor of such parties or such parties' Affiliates) and acknowledge that Administrative Agent shall be under no obligation to provide such information to them. With respect to its Pro Rata Share of the Loan, Bank of America, N.A. shall have the same rights and powers under this Agreement as any other Lenders and may exercise such rights and powers as though it were not Administrative Agent or party to Swap Transactions, and the terms "Lender" and "Lenders" include Bank of America, N.A. in its individual capacity.

5.9. Successor Administrative Agent. Administrative Agent may, and at the request of the Required Lenders as a result of Administrative Agent's gross negligence or willful misconduct in performing its duties under this Agreement shall, resign as Administrative Agent upon thirty (30) days' notice to Lenders. If Administrative Agent resigns under this Agreement, the Required Lenders shall appoint from among Lenders a successor administrative agent for Lenders, which successor administrative agent shall be consented to by Borrower at all times other than during the existence of a Default (which consent of Borrower shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed prior to the effective date of the resignation of Administrative Agent, Administrative Agent may appoint, after consulting with Lenders and Borrower, a successor administrative agent from among Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder,



such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term “Administrative Agent” shall mean such successor administrative agent, and the retiring Administrative Agent’s appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the provisions of this Article and other applicable Sections of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is thirty (30) days following a retiring Administrative Agent’s notice of resignation, the retiring Administrative Agent’s resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

5.10. Releases; Acquisition and Transfers of Collateral.

(a) Lenders hereby irrevocably authorize Administrative Agent to transfer or release any lien on, or after foreclosure or other acquisition of title by Administrative Agent on behalf of Lenders to transfer or sell, any Loan collateral (i) upon the termination of the Commitments and payment and satisfaction in full of all Indebtedness, (ii) constituting a release, transfer or sale of a lien or Loan collateral if Borrower will certify to Administrative Agent that the release, transfer or sale is permitted under this Agreement or the other Loan Documents (and Administrative Agent may rely conclusively on any such certificate, without further inquiry); or (iv) after foreclosure or other acquisition of title (1) for a purchase price of at least 90% of the value indicated in the most recent appraisal of the collateral obtained by Administrative Agent made in accordance with regulations governing Administrative Agent, less any reduction indicated in the appraisal estimated by experts in such areas; or (2) if approved by the Required Lenders.

(b) If all or any portion of the Loan collateral is acquired by foreclosure or by deed in lieu of foreclosure, Administrative Agent shall take title to the collateral in its name or by an Affiliate of Administrative Agent, but for the benefit of all Lenders in their Pro Rata Shares on the date of the foreclosure sale or recordation of the deed in lieu of foreclosure (the “Acquisition Date”). Administrative Agent and all Lenders hereby expressly waive and relinquish any right of partition with respect to any collateral so acquired. After any collateral is acquired, Administrative Agent shall appoint and retain one or more persons (individually and collectively, “Property Manager”) experienced in the management, leasing, sale and/or dispositions of similar properties.

After consulting with the Property Manager, Administrative Agent shall prepare a written plan for completion of construction (if required), operation, management, improvement, maintenance, repair, sale and disposition of the Loan collateral and a budget for the aforesaid, which may include a reasonable management fee payable to Administrative Agent (the “Business Plan”). Administrative Agent will deliver the Business Plan not later than the sixtieth (60th) day after the Acquisition Date to each Lender with a written request for approval of the Business Plan. If the Business Plan is approved by the Required Lenders, Administrative Agent and the Property Manager shall adhere to the Business Plan until a different Business Plan is approved by the Required Lenders. Administrative Agent may propose an amendment to the

Business Plan as it deems appropriate, which shall also be subject to Required Lender approval. If the Business Plan (as may be amended) proposed by Administrative Agent is not approved by the Required Lenders, (or if sixty (60) days have elapsed following the Acquisition Date without a Business Plan being proposed by Administrative Agent), any Lender may propose an alternative Business Plan, which Administrative Agent shall submit to all Lenders for their approval. If an alternative Business Plan is approved by the Required Lenders, Administrative Agent may appoint one of the approving Lenders to implement the alternative Business Plan. Notwithstanding any other provision of this Agreement, unless in violation of an approved Business Plan or otherwise in an emergency situation, Administrative Agent shall, subject to subsection (a) of this Section, have the right but not the obligation to take any action in connection with the Loan collateral (including those with respect to property taxes, insurance premiums, completion of construction, operation, management, improvement, maintenance, repair, sale and disposition), or any portion thereof.

(c) Upon request by Administrative Agent or Borrower at any time, Lenders will confirm in writing Administrative Agent's authority to sell, transfer or release any such liens of particular types or items of Loan collateral pursuant to this Section; provided, however, that (i) Administrative Agent shall not be required to execute any document necessary to evidence such release, transfer or sale on terms that, in Administrative Agent's opinion, would expose Administrative Agent to liability or create any obligation or entail any consequence other than the transfer, release or sale without recourse, representation or warranty, and (ii) such transfer, release or sale shall not in any manner discharge, affect or impair the obligations of Borrower other than those expressly being released.

(d) If only two (2) Lenders exist at the time Administrative Agent receives a purchase offer for Loan collateral for which one of Lenders does not consent within ten (10) Business Days after notification from Administrative Agent, the consenting Lender may offer ("Purchase Offer") to purchase all of non-consenting Lender's right, title and interest in the collateral for a purchase price equal to non-consenting Lender's Pro Rata Share of the net proceeds anticipated from such sale of such collateral (as reasonably determined by Administrative Agent, including the undiscounted face principal amount of any purchase money obligation not payable at closing) ("Net Proceeds"). Within ten (10) Business Days thereafter the non-consenting Lender shall be deemed to have accepted such Purchase Offer unless the non-consenting Lender notifies Administrative Agent that it elects to purchase all of the consenting Lender's right, title and interest in the collateral for a purchase price payable by the non-consenting Lender in an amount equal to the consenting Lender's Pro Rata Share of the Net Proceeds. Any amount payable hereunder by a Lender shall be due on the earlier to occur of the closing of the sale of the collateral or ninety (90) days after the Purchase Offer, regardless of whether the collateral has been sold.

5.11. Application of Payments. Except as otherwise provided below with respect to Defaulting Lenders, aggregate principal and interest payments, payments for Indemnified Liabilities and/or foreclosure or sale of the collateral, and net operating income from the collateral during any period it is owned by Administrative Agent on behalf of Lenders ("Payments") shall be apportioned pro rata among Lenders and payments of any fees (other than fees designated for Administrative Agent's separate account) shall, as applicable, be apportioned pro rata among Lenders. Notwithstanding anything to the contrary in this Agreement, all

Payments due and payable to Defaulting Lenders shall be due and payable to and be apportioned pro rata among Administrative Agent and Electing Lenders. Such apportionment shall be in the proportion that the Defaulting Lender Payment Amounts paid by them bears to the total Defaulting Lender Payment Amounts of such Defaulting Lender. Such apportionment shall be made until Administrative Agent and Lenders have been paid in full for the Defaulting Lender Payment Amounts. All pro rata Payments shall be remitted to Administrative Agent and all such payments not constituting payment of specific fees, and all proceeds of the Loan collateral received by Administrative Agent, shall be applied first, to pay any fees, indemnities, costs, expenses (including those in Section 5.7) and reimbursements then due to Administrative Agent from Borrower; second, to pay any fees, costs, expenses and reimbursements then due to Lenders from Borrower; third, to pay pro rata interest and late charges due in respect of the Indebtedness and Administrative Agent Advances; fourth, to pay or prepay pro rata principal of the Indebtedness and Administrative Agent Advances; fifth, to pay any indebtedness of Borrower under Swap Transactions; and last, to Borrower, if required by law, or Lenders in Pro Rata Share percentages equal to their percentages at the termination of the Aggregate Commitments.

5.12. Benefit. The terms and conditions of this Article are inserted for the sole benefit of Administrative Agent and Lenders; the same may be waived in whole or in part, with or without terms or conditions, without prejudicing Administrative Agent's or Lenders' rights to later assert them in whole or in part.

## ARTICLE 6 GENERAL TERMS AND CONDITIONS

6.1. Consents; Borrower's Indemnity. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Administrative Agent's or Lenders' judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (a) within the sole discretion of Administrative Agent or Lenders; (b) deemed to have been given only by a specific writing intended for the purpose given and executed by Administrative Agent or Lenders; and (c) free from any limitation or requirement of reasonableness. Notwithstanding any approvals or consents by Administrative Agent or Lenders, neither Administrative Agent nor any Lender has any obligation or responsibility whatsoever for the adequacy, form or content of any appraisal, any contract, any lease, or any other matter incident to the Property. Administrative Agent's or Lenders' acceptance of an assignment of the Plans for the benefit of Administrative Agent and Lenders shall not constitute approval of the Plans. Any inspection, appraisal or audit of the Property or the books and records of Borrower, or the procuring of documents and financial and other information, by or on behalf of Administrative Agent shall be for Administrative Agent's and Lenders' protection only, and shall not constitute an assumption of responsibility to Borrower or anyone else with regard to the condition, value, construction, maintenance or operation of the Property, or relieve Borrower of any of Borrower's obligations. Borrower has selected all surveyors, architects, engineers, contractors, materialmen and all other persons or entities furnishing services or materials to the Project. Neither Administrative Agent nor any Lender has any duty to supervise or to inspect the Property or the construction of the Improvements nor any duty of care to Borrower or any other person to protect against, or inform Borrower or any other person of the existence of, negligent, faulty, inadequate or defective

design or construction of the Improvements. Neither Administrative Agent nor any Lender shall be liable or responsible for, and Borrower shall indemnify each Agent-Related Person and each Lender and their respective Affiliates, directors, officers, agents, attorneys and employees (collectively, the "Indemnitees") from and against: (a) any claim, action, loss or cost (including attorney's fees and costs) arising from or relating to (i) any defect in the Property or the Improvements, (ii) the performance or default of Borrower, Borrower's surveyors, architects, engineers, contractors or any other person, (iii) any failure to construct, complete, protect or insure the Improvements, (iv) the payment of costs of labor, materials, or services supplied for the construction, alteration or renovation of the Improvements, including, without limitation, Tenant Improvements, (v) in connection with the protection and preservation of the Loan collateral (including those with respect to property taxes, insurance premiums, completion of construction, operation, management, improvements, maintenance, repair, sale and disposition), or (vi) the performance of any obligation of Borrower whatsoever; (b) any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorney fees and costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Commitment or Loan, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto; (c) any and all claims, demands, actions or causes of action arising out of or relating to the use of Information (as defined in Section 6.6) or other materials obtained through internet, Intralinks or other similar information transmission systems in connection with this Agreement; and (d) any and all liabilities, losses, costs or expenses (including attorney fees and costs) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action, cause of action or proceeding, or as a result of the preparation of any defense in connection with any foregoing claim, demand, action, cause of action or proceeding, in all cases, whether or not an Indemnitee is a party to such claim, demand, action, cause of action or proceeding and whether it is defeated, successful or withdrawn, (all the foregoing, collectively, the "Indemnified Liabilities"); provided, however, that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. Nothing, including any advance or acceptance of any document or instrument, shall be construed as a representation or warranty, express or implied, to any party by Administrative Agent or Lenders. Inspection shall not constitute an acknowledgment or representation by Administrative Agent or any Lender that there has been or will be compliance with the Plans, the Loan Documents, or applicable Laws, governmental requirements and restrictive covenants, or that the construction is free from defective materials or workmanship. Inspection, whether or not followed by notice of Default, shall not constitute a waiver of any Default then existing, or a waiver of Administrative Agent's and Lenders' right thereafter to insist that the Improvements be in compliance with the Plans, the

Loan Documents, and all applicable Laws, governmental requirements and restrictive covenants. Administrative Agent's failure to inspect shall not constitute a waiver of any of Administrative Agent's or Lenders' rights under the Loan Documents or at Law or in equity.

6.2. Miscellaneous. This Agreement may be executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons, entities or circumstances. Time shall be of the essence with respect to obligations under the Loan Documents. This Agreement, and its validity, enforcement and interpretation, shall be governed by New York law (without regard to any conflict of Laws principles) and applicable United States federal Law.

### 6.3. Notices.

6.3.1. Modes of Delivery; Changes. Except as otherwise provided herein, all notices, and other communications required or which any party desires to give under this Agreement or any other Loan Document shall be in writing. Unless otherwise specifically provided in such other Loan Document, all such notices and other communications shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier (including overnight delivery services such as FedEx), by registered or certified United States mail, postage prepaid, or by facsimile (with, subject to Subsection 6.3.2 below, a confirmatory duplicate copy sent by first class United States mail), addressed to the party to whom directed or by (subject to Subsection 6.3.3 below) electronic mail address to Borrower, at the addresses set forth at the end of this Agreement or to Administrative Agent or Lenders at the addresses specified for notices on the Schedule of Lenders (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided, however, that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

6.3.2. Effectiveness of Facsimile Documents and Signatures. Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually-signed originals and shall be binding on all parties to the Loan Documents. Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

6.3.3. Limited Use of Electronic Mail. Electronic mail and internet and intranet websites may be used only to distribute routine communications, such as financial statements and other information, and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose.

6.3.4. Reliance by Administrative Agent and Lenders. Administrative Agent and Lenders shall be entitled to rely and act upon any notices (including telephonic Loan advance notices) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such person on each notice purportedly given by or on behalf of Borrower. All telephonic notices to and other communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording. If a Lender does not notify or inform Administrative Agent of whether or not it consents to, or approves of or agrees to any matter of any nature whatsoever with respect to which its consent, approval or agreement is required under the express provisions of this Agreement or with respect to which its consent, approval or agreement is otherwise requested by Administrative Agent, in connection with the Loan or any matter pertaining to the Loan, within ten (10) Business Days (or such longer period as may be specified by Administrative Agent) after such consent, approval or agreement is requested by Administrative Agent, Lender shall be deemed to have given its consent, approval or agreement, as the case may be, with respect to the matter in question.

6.4. Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to Administrative Agent or any Lender, or Administrative Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law, to a depository (including Administrative Agent, any Lender or its or their Affiliates) for returned items or insufficient collected funds, or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

6.5. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with

the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and Pro Rata Share of the Loan at the time owing to it); provided that:

(i) so long as no Default has occurred and is continuing the assigning Lender's Commitment after the assignment must be at least \$10,000,000.00, and except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and Pro Rata Share of the Loan at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund as defined in subsection (h) of this Section with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes its Pro Rata Share of the Loan outstanding) subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent, shall not be less than \$10,000,000 unless each of Administrative Agent and, so long as no Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to its Pro Rata Share of the Loan and the Commitment assigned;

(iii) any assignment of a Commitment must be approved by Administrative Agent, unless the person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(iv) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500.

Subject to acceptance and recording thereof by Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of this Agreement with respect to Borrower's obligations surviving

termination of this Agreement). Upon request, Administrative Agent shall prepare and Borrower shall execute and deliver a Note (“Replacement Note”) to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Administrative Agent, acting solely for this purpose as an agent of Borrower shall maintain at Administrative Agent’s Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amount of each Lender’s Pro Rata Share of the Loan owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and Borrower, Administrative Agent and Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may, without the consent of, but with prior notice to Administrative Agent, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or its Pro Rata Share of the Loan owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) Borrower, Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement, and (iv) except to the extent consented to by Administrative Agent in its sole discretion with respect to each participation, any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement.

(e) A Participant shall not be entitled to receive any greater payment under Sections 1.7, 1.8 or 1.9 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) If the consent of Borrower to an assignment or to an assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment threshold specified in clause (i) of the provision to the first sentence of subsection (b) above), Borrower shall be deemed to have given its consent five (5) Business Days after the date notice



thereof has been delivered by the assigning Lender (through Administrative Agent) unless such consent is expressly refused by Borrower prior to such fifth Business Day.

(h) As used herein, the following terms have the following meanings:

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Eligible Assignee” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other person (other than a natural person) approved by Administrative Agent, and, unless a Default has occurred and is continuing, Borrower (each such approval not to be unreasonably withheld or delayed).

“Fund” means any person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial real estate loans and similar extensions of credit in the ordinary course of its business.

6.6. Confidentiality. Each of Administrative Agent and Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates’ directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty’s or prospective counterparty’s professional advisor) to any Swap Transaction or credit derivative transaction relating to obligations of Borrower and Guarantor; (g) with the consent of Borrower; or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Borrower; or (i) to the National Association of Insurance Commissioners or any other similar organization. For the purposes of this Section, “Information” means all information received from Borrower or Guarantor relating to Borrower or Guarantor or their business, other than any such information that is available to Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower or Guarantor; provided that in the case of information received from Borrower or Guarantor after the date hereof, such information is clearly identified in writing at the time of delivery as confidential. Any person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information. Administrative Agent and Lenders may disclose the existence of this Agreement and information about this Agreement to market data

collectors, similar service providers to the lending industry, and service providers to Administrative Agent and Lenders in connection with the administration and management of this Agreement, the Loan and Loan Documents.

6.7. Set-off. In addition to any rights and remedies of Administrative Agent and Lenders provided by Law, upon the occurrence and during the continuance of any Default, Administrative Agent and each Lender is authorized at any time and from time to time, without prior notice to Borrower or any other party to the Loan Documents, any such notice being waived by Borrower (on its own behalf and on behalf of each party to the Loan Documents to the fullest extent permitted by Law), to set-off and apply any and all deposits, general or special, time or demand, provisional or final, any time owing by Administrative Agent or such Lender hereunder or under any other Loan Document to or for the credit or the account of such parties to the Loan Documents against any and all Indebtedness, irrespective of whether or not Administrative Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Indebtedness may be contingent or unmatured or denominated in a currency different from that of the applicable depositor indebtedness. Each Lender agrees promptly to notify Borrower and Administrative Agent after any such set-off and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application.

6.8. Sharing of Payments. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the portions of the Loan advanced by it, any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the portions of the Loan made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such portions of the Loan or such participations, as the case may be, pro rata with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 6.4 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered without further interest thereon. Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by Law, exercise all its rights of payment (including the right of set-off), but subject to Section 6.7 with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

6.9. Amendments; Survival. Administrative Agent and Lenders shall be entitled to amend (whether pursuant to a separate intercreditor agreement or otherwise) any of the terms, conditions or agreements set forth in Article 5 or as to any other matter in the Loan Documents respecting payments to Administrative Agent or Lenders or the required number of Lenders to approve or disapprove any matter or to take or refrain from taking any action, without the consent of Borrower or any other person or the execution by Borrower or any other person of any such amendment or intercreditor agreement. Subject to the foregoing, Administrative Agent may amend or waive any provision of this Agreement or any other Loan Document, or consent to any departure by any party to the Loan Documents therefrom which amendment, waiver or consent is intended to be within Administrative Agent's discretion or determination, or otherwise in Administrative Agent's reasonable determination shall not have a Material Adverse Effect; provided, however, that otherwise no such amendment, waiver or consent shall be effective unless in writing, signed by the Required Lenders and Borrower or the applicable party to the Loan Documents, as the case may be, and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; and provided further that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 4.2), without the written consent of such Lender (it being understood that a waiver of a Default shall not constitute an extension or increase in any Lender's Commitment);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to Lenders (or any of them) hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any portion of the Loan or any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; provided, however, that Administrative Agent may waive any obligation of Borrower to pay interest at the Default Rate and/or late charges for periods of up to thirty (30) days, and only the consent of the Required Lenders shall be necessary to waive any obligation of Borrower to pay interest at the Default Rate or late charges thereafter, or to amend the definition of "Default Rate" or "late charges";

(d) change the percentage of the combined Commitments or of the aggregate unpaid principal amount of the Loan which is required for Lenders or any of them to take any action hereunder, without the written consent of each Lender;

(e) change the definition of "Pro Rata Share" or "Required Lender" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(f) amend this Section, or Section 6.8, without the written consent of each Lender;

(g) release the liability of Borrower or any existing Guarantor without the written consent of each Lender;

(h) permit the sale, transfer, pledge, mortgage or assignment of any Loan collateral or any direct or indirect interest in Borrower, except as expressly permitted under the Loan Documents, without the written consent of each Lender; or

(i) transfer or release any lien on, or after foreclosure or other acquisition of title by Administrative Agent on behalf of Lenders transfer or sell, any Loan collateral except as permitted in Section 5.10, without the written consent of each Lender,

and provided further that no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased without the consent of such Lender.

This Agreement shall continue in full force and effect until the Indebtedness is paid in full and all of Administrative Agent's and Lenders' obligations under this Agreement are terminated; and all representations and warranties and all provisions herein for indemnity of the Indemnitees, Administrative Agent and Lenders (and any other provisions herein specified to survive) shall survive payment in full, satisfaction or discharge of the Indebtedness, the resignation or removal of Administrative Agent or replacement of any Lender, and any release or termination of this Agreement or of any other Loan Documents.

6.10. Costs and Expenses. Without limiting any Loan Document and to the extent not prohibited by applicable Laws, Borrower shall pay when due, shall reimburse to Administrative Agent for the benefit of itself and Lenders on demand and shall indemnify Administrative Agent and Lenders from, all reasonable out-of-pocket fees, costs, and expenses paid or incurred by Administrative Agent in connection with the negotiation, preparation and execution of this Agreement and the other Loan Documents (and any amendments, approvals, consents, waivers and releases requested, required, proposed or done from time to time), or in connection with the disbursement, administration or collection of the Loan or the enforcement of the obligations of Borrower or the exercise of any right or remedy of Administrative Agent, including (a) all reasonable fees and expenses of Administrative Agent's counsel; (b) reasonable fees and charges of each inspector and engineer retained by Administrative Agent for purposes specified in this Agreement; (c) appraisal, re-appraisal and survey costs; (d) title insurance charges and premiums; (e) title search or examination costs, including abstracts, abstractors' certificates and uniform commercial code searches; (f) judgment and tax lien searches for Borrower and each Guarantor; (g) escrow fees; (h) fees and costs of environmental investigations, site assessments and remediations; (i) recordation taxes, documentary taxes, transfer taxes and mortgage taxes; (j) filing and recording fees; and (k) loan brokerage fees. Borrower shall pay all costs and expenses incurred by Administrative Agent, including attorneys' fees, if the obligations or any part thereof are sought to be collected by or through an attorney at law, whether or not involving probate, appellate, administrative or bankruptcy proceedings. Borrower shall pay all costs and expenses of complying with the Loan Documents, whether or

not such costs and expenses are included in any budget related to the Property. Borrower's obligations under this Section shall survive the delivery of the Loan Documents, the making of advances, the payment in full of the Indebtedness, the release or reconveyance of any of the Loan Documents, the foreclosure of the Mortgage or conveyance in lieu of foreclosure, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

#### 6.11. Tax Forms.

(a) (i) Each Lender, and each holder of a participation interest herein, that is not a "United States person" (a "Foreign Lender") within the meaning of Section 7701(a)(30) of the Code shall deliver to Administrative Agent, prior to receipt of any payment subject to withholding (or upon accepting an assignment or receiving a participation interest herein), two duly signed completed copies of either Form W-8BEN or any successor thereto (relating to such Foreign Lender and entitling it to a complete exemption from withholding on all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement) or Form W-8ECI or any successor thereto (relating to all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement) of the United States Internal Revenue Service or such other evidence satisfactory to Borrower and Administrative Agent that such Foreign Lender is entitled to an exemption from or reduction of, United States withholding tax, including any exemption pursuant to Section 881(c) of the Code. Thereafter and from time to time, each such Foreign Lender shall (A) promptly submit to Administrative Agent such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States Laws and regulations to avoid, or such evidence as is satisfactory to Borrower and Administrative Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Foreign Lender by Borrower pursuant to the Loan Documents, (B) promptly notify Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (C) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lenders, and as may be reasonably necessary (including the re-designation of its lending office, if any) to avoid any requirement of applicable Laws that Borrower make any deduction or withholding for taxes from amounts payable to such Foreign Lender.

(ii) Each Foreign Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents (for example, in the case of a typical participation by such Lender), shall deliver to Administrative Agent on the date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of Administrative Agent (in the reasonable exercise of its discretion), (A) two duly signed completed copies of the forms or statements required to be provided by such Lender as set forth above, to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account that is not subject to U.S. withholding tax, and (B) two duly signed completed copies of United States Internal Revenue Service Form W-8IMY (or any successor thereto), together with any information such Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Code, to establish that such Lender is not acting for its own account with respect to a portion of any such sums payable to such Lender.

(iii) Borrower shall not be required to pay any additional amount to any Foreign Lender under Section 1.11, (A) with respect to any Taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption such Lender transmits with an United States Internal Revenue Service Form W-8IMY pursuant to this subsection (a) of this Section, or (B) if such Lender shall have failed to satisfy the foregoing provisions of this subsection (a); provided that if such Lender shall have satisfied the requirement of this subsection (a) on the date such Lender became a Lender or ceased to act for its own account with respect to any payment under any of the Loan Documents, nothing in this subsection (a) shall relieve Borrower of its obligation to pay any amounts pursuant to Section 1.11 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender or other person for the account of which such Lender receives any sums payable under any of the Loan Documents is not subject to withholding or is subject to withholding at a reduced rate.

(iv) Administrative Agent may, without reduction, withhold any Taxes required to be deducted and withheld from any payment under any of the Loan Documents with respect to which Borrower is not required to pay additional amounts under this subsection (a).

(b) Upon the request of Administrative Agent, each Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to Administrative Agent two duly signed completed copies of United States Internal Revenue Service Form W-9. If such Lender fails to deliver such forms, then Administrative Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable backup withholding tax imposed by the Code, without reduction.

(c) If any Tribunal asserts that Administrative Agent did not properly withhold or backup withhold, as the case may be, any tax or other amount from payments made to or for the account of any Lender, such Lender shall indemnify Administrative Agent therefor, including all penalties and interest and costs and expenses (including attorney fees) of Administrative Agent. The obligation of Lenders under this subsection shall survive the removal or replacement of a Lender, the payment of all Indebtedness and the resignation or replacement of Administrative Agent.

6.12. Further Assurances. Borrower will, upon Administrative Agent's request, (a) promptly correct any defect, error or omission in any Loan Document; (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts as Administrative Agent deems reasonably necessary, desirable or proper to carry out the purposes of the Loan Documents and to identify and subject to the liens and security interest of the Loan Documents any property intended to be covered thereby, including any renewals, additions, substitutions, replacements, or appurtenances to the Property; (c) execute, acknowledge, deliver, procure, file or record any document or instrument Administrative Agent deems necessary, desirable, or proper to protect the liens or the security interest under the Loan Documents against the rights or interests of third persons; and (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by Administrative Agent to comply with the requirements of any agency

having jurisdiction over Administrative Agent. In addition, at any time, and from time to time, upon request by Administrative Agent or any Lender, Borrower will, at Borrower's expense, provide any and all further instruments, certificates and other documents as may, in the opinion of Administrative Agent or such Lender, be necessary or desirable in order to verify Borrower's identity and background in a manner satisfactory to Administrative Agent or such Lender.

6.13. Inducement to Lenders. The representations and warranties contained in this Agreement and the other Loan Documents (a) are made to induce Lenders to make the Loan and extend any other credit to or for the account of Borrower pursuant hereto, and Administrative Agent and Lenders are relying thereon, and will continue to rely thereon, and (b) shall survive any bankruptcy proceedings involving Borrower, Guarantor or the Property, foreclosure, or conveyance in lieu of foreclosure.

6.14. Forum. Each party to this Agreement hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court, or any United States federal court, sitting in the State specified in Section 6.2 of this Agreement and to the jurisdiction of any state court or any United States federal court, sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Agreement or the Indebtedness. Each party to this Agreement hereby irrevocably waives, to the fullest extent permitted by Law, any objection that they may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Each party to this Agreement hereby agrees and consents that, in addition to any methods of service of process provided for under applicable Law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified in Section 6.2 may be made by certified or registered mail, return receipt requested, directed to such party at its address for notice stated in the Loan Documents, or at a subsequent address of which Administrative Agent received actual notice from such party in accordance with the Loan Documents, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Administrative Agent to serve process in any manner permitted by Law or limit the right of Administrative Agent to bring proceedings against any party in any other court or jurisdiction.

6.15. Interpretation. References to "Dollars", "\$", "money", "payments" or other similar financial or monetary terms are references to lawful money of the United States of America. References to Articles, Sections, and Exhibits are, unless specified otherwise, references to articles, sections and exhibits of this Agreement. Words of any gender shall include each other gender. Words in the singular shall include the plural and words in the plural shall include the singular. References to Borrower or Guarantor shall mean, each person comprising same, jointly and severally. References to "persons" shall include both natural persons and any legal entities, including public or governmental bodies, agencies or instrumentalities. The words "include" and "including" shall be interpreted as if followed by the words "without limitation". Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents.

6.16. No Partnership, etc. The relationship between Lenders (including Administrative Agent) and Borrower is solely that of lender and borrower. Neither Administrative Agent nor any Lender has any fiduciary or other special relationship with or duty

to Borrower and none is created by the Loan Documents. Nothing contained in the Loan Documents, and no action taken or omitted pursuant to the Loan Documents, is intended or shall be construed to create any partnership, joint venture, association, or special relationship between Borrower and Administrative Agent or any Lender or in any way make Administrative Agent or any Lender a co-principal with Borrower with reference to the Project, the Property or otherwise. In no event shall Administrative Agent's or Lenders' rights and interests under the Loan Documents be construed to give Administrative Agent or any Lender the right to control, or be deemed to indicate that Administrative Agent or any Lender is in control of, the business, properties, management or operations of Borrower.

6.17. Records. The unpaid amount of the Loan and the amount of any other credit extended by Administrative Agent or Lenders to or for the account of Borrower set forth on the books and records of Administrative Agent shall be presumptive evidence of the amount thereof owing and unpaid, but failure to record any such amount on Administrative Agent's books and records shall not limit or affect the obligations of Borrower under the Loan Documents to make payments on the Loan when due.

6.18. Commercial Purpose. Borrower warrants that the Loan is being made solely to acquire or carry on a business or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of this Loan shall be used for commercial purposes and stipulates that the Loan shall be construed for all purposes as a commercial loan, and is made for other than personal, family, household or agricultural purposes.

6.19. WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THEY MAY BE A PARTY, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, ANY NOTE, THE LOAN AGREEMENT, THE MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO ANY NOTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY EACH PARTY TO THIS AGREEMENT, AND THEY HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH PARTY FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE EXECUTION OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

6.20. Service of Process. Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Loan by (a) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower and (b) serving a copy thereof upon Robert Masters, the agent hereby designated and appointed by



Borrower as Borrower's agent for service of process. Borrower irrevocably agrees that such service shall be deemed to be service of process upon Borrower in any such suit, action, or proceeding. Nothing in any Note shall affect the right of Administrative Agent to serve process in any manner otherwise permitted by Law and nothing in any Note will limit the right of Administrative Agent on behalf of Lenders otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions.

6.21. USA Patriot Act Notice. Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the Act.

6.22. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Borrower, Administrative Agent and Lenders with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Borrower, Administrative Agent and Lenders with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment letter, letter of intent or quote letter by Administrative Agent or any Lender to make the Loan are merged into the Loan Documents. Neither Administrative Agent nor any Lender has made any commitments to extend the term of the Loan past its stated maturity date or to provide Borrower with financing except as set forth in the Loan Documents. Except as incorporated in writing into the Loan Documents, there are not, and were not, and no persons are or were authorized by Administrative Agent or any Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

BORROWER FURTHER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF ADMINISTRATIVE AGENT OR LENDERS WITH RESPECT TO THIS AGREEMENT, THE NOTES OR OTHERWISE IN RESPECT OF THE LOAN, ANY AND EVERY RIGHT BORROWER MAY HAVE TO (X) INJUNCTIVE RELIEF, (Y) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM, AND (Z) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST LENDER WITH RESPECT TO ANY ASSERTED CLAIM.

6.23. Limitation on Liability. Borrower waives any right to assert or make any claim against Administrative Agent or any Lender (or to sue Administrative Agent or any Lender upon any claim for) any special, indirect, incidental, punitive or consequential damages in respect of any breach or wrongful conduct (whether the claim is based on contract, tort or duty imposed by law) in connection with, arising out of or in any way related to this Agreement, the other Loan Documents or the transactions contemplated hereby and/or thereby, or any act, omission or event in connection therewith.

6.24. Third Parties; Benefit. All conditions to the obligation of Lenders or Administrative Agent to make advances hereunder are imposed solely and exclusively for the benefit of Lenders, Administrative Agent and their assigns and no other persons shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lenders or Administrative Agent will refuse to make advances in the absence of strict compliance with any or all thereof and no other person shall, under any circumstances, be deemed to be the beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lenders or Administrative Agent at any time in the sole and absolute exercise of their discretion. The terms and provisions of this Agreement and the other Loan Documents are for the benefit of the parties hereto and, except as herein specifically provided, no other person shall have any right or cause of action on account thereof.

6.25. Rules of Construction. The words “hereof”, “herein”, “hereunder”, “hereto”, and other words of similar import refer to this Agreement in its entirety. The terms “agree” and “agreements” mean and include “covenant” and “covenants”. The words “include” and “including” shall be interpreted as if followed by the words “without limitation”. The captions and headings contained in this Agreement are included herein for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, the Improvements or the Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles, Sections and Schedules are to the respective Articles, Sections and Schedules contained in this Agreement unless expressly indicated otherwise.

6.26. Cross-Default. This Loan shall be cross-defaulted with any and all other loans which Borrower (or any entity included within Borrower shall have from any Lender (or any subsidiary or affiliated entity of Lender) during the term of this Loan, whether existing as of the date of this Agreement or subsequently made. A default under any of the above-described loans or credit facilities shall constitute a Default under this Loan; however, a Default under this Loan shall not in itself constitute a Default under the above-described other loans unless and to the extent expressly set forth in the agreements and instruments governing such other loans.

6.27. Lien Law. This Agreement is subject to the trust fund provision of the Lien Law including, without limitation, Section 13 thereof.

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BORROWER:

P/A-ACADIA PELHAM MANOR, LLC, a  
Delaware limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

Borrower's Address for Notices:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605  
Telephone: 914-288-8100  
Telefax: 914-428-3646  
Email: rmasters@acadiarealty.com

Borrower's Federal Tax Identification Number:  
20-1783373

BANK OF AMERICA, N.A., a national banking  
association, individually as Administrative Agent  
and a Lender

By /s/ Gregory Egli

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Gregory Egli  
Senior Vice President

Lender's Address for Notices:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

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Legal Description of Land

PARCEL 1 - Fee Parcel (Lot 8.3)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING DISTANT 374.53 FEET ON A COURSE OF NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST FROM A POINT AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT, THENCE;
2. ALONG THE DIVIDING LINE BETWEEN LOT 8.3 AND LOT 8.1, BLOCK 1, SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.3 AND LOT 8.1, BLOCK 1, THE FOLLOWING THREE (3) COURSES:
3. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE;
4. NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT OF CURVATURE, THENCE;
5. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 90 DEGREES – 00 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 31.42 FEET, THE CHORD OF WHICH BEARS NORTH 18 DEGREES – 58 MINUTES – 11 SECONDS EAST, A CHORD DISTANCE OF 28.28 FEET TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTIONS IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

PARCEL 2 - Ground Lease Parcel (Lot 8.1)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

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BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 374.53 FEET TO A POINT OF NON-TANGENT CURVATURE, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 8.3, BLOCK 1 THE FOLLOWING THREE (3) COURSES:
2. ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 90 DEGREES – 00 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 31.42 FEET, THE CHORD OF WHICH BEARS SOUTH 18 DEGREES – 58 MINUTES – 11 SECONDS WEST, A CHORD DISTANCE OF 28.28 FEET TO A POINT OF TANGENCY, THENCE;
3. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT, THENCE;
4. NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 8.2, BLOCK 1 THE FOLLOWING THREE (3) COURSES:
5. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 121.90 FEET TO A POINT, THENCE;
6. NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE;
7. NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS WEST, A DISTANCE OF 221.90 FEET TO A POINT ON THE AFOREMENTIONED SOUTHERLY LINE OF SECOR LANE, THENCE;
8. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 449.97 FEET TO A POINT OF CURVATURE, THENCE;
9. CONTINUING ALONG THE SOUTHERLY LINE OF SECOR LANE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 650.00 FEET, TURNING A CENTRAL ANGLE OF 11 DEGREES – 45 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 133.30 FEET, THE CHORD OF WHICH BEARS NORTH 69 DEGREES – 50 MINUTES – 19 SECONDS EAST, A CHORD DISTANCE OF 133.06 FEET TO A POINT, THENCE; ALONG THE WESTERLY LINE OF HUTCHINSON RIVER PARKWAY (VARIABLE WIDTH) THE FOLLOWING SEVEN (7) COURSES:

10. SOUTH 10 DEGREES – 37 MINUTES – 00 SECONDS EAST, A DISTANCE OF 406.03 FEET TO A POINT, THENCE;
11. SOUTH 08 DEGREES – 04 MINUTES – 18 SECONDS EAST, A DISTANCE OF 152.58 FEET TO A POINT, THENCE;
12. SOUTH 81 DEGREES – 55 MINUTES – 42 SECONDS WEST, A DISTANCE OF 125.00 FEET TO A POINT, THENCE;
13. SOUTH 08 DEGREES – 04 MINUTES – 18 SECONDS EAST, A DISTANCE OF 350.40 FEET TO A POINT OF NON-TANGENT CURVATURE, THENCE;
14. ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 375.00 FEET, TURNING A CENTRAL ANGLE OF 15 DEGREES – 22 MINUTES – 08 SECONDS, WITH AN ARC LENGTH OF 100.59 FEET, THE CHORD OF WHICH BEARS SOUTH 72 DEGREES – 19 MINUTES – 21 SECONDS WEST, A CHORD DISTANCE OF 100.29 FEET TO A POINT OF TANGENCY, THENCE;
15. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 4.45 FEET TO A POINT, THENCE;
16. SOUTH 26 DEGREES – 04 MINUTES – 30 SECONDS EAST, A DISTANCE OF 188.85 FEET TO A POINT, THENCE;
17. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 8.1 AND LOT 4, BLOCK 1 AND THE WESTERLY LINE OF HUTCHINSON RIVER PARKWAY, SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 156.73 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 3, BLOCK 1 THE FOLLOWING EIGHT (8) COURSES:
18. NORTH 24 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 82.31 FEET TO A POINT, THENCE;
19. NORTH 63 DEGREES – 55 MINUTES – 30 SECONDS EAST, A DISTANCE OF 10.33 FEET TO A POINT, THENCE;
20. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 19.84 FEET TO A POINT, THENCE;
21. SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 10.33 FEET TO A POINT, THENCE;
22. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 90.59 FEET TO A POINT, THENCE;
23. NORTH 63 DEGREES – 55 MINUTES – 30 SECONDS EAST, A DISTANCE OF 4.05 FEET TO A POINT, THENCE;

24. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 9.55 FEET TO A POINT, THENCE;
25. SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 227.32 FEET TO A POINT ON THE AFOREMENTIONED EASTERLY LINE OF PELHAM PARKWAY, THENCE;
26. ALONG THE EASTERLY LINE OF PELHAM PARKWAY, NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 296.81 FEET TO A POINT, THENCE;
27. CONTINUING ALONG THE EASTERLY LINE OF PELHAM PARKWAY, NORTH 62 DEGREES – 43 MINUTES – 40 SECONDS WEST, A DISTANCE OF 609.10 FEET TO A POINT OF CURVATURE, THENCE;
28. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 126 DEGREES – 41 MINUTES – 30 SECONDS, WITH AN ARC LENGTH OF 44.22 FEET, THE CHORD OF WHICH BEARS NORTH 00 DEGREES – 37 MINUTES – 42 SECONDS EAST, A CHORD DISTANCE OF 35.75 FEET TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTION IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

PARCEL 3 - Ground Lease Parcel (Lot 8.2)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING DISTANT 454.53 FEET ON A COURSE OF NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST FROM A POINT AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 60 SECONDS EAST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.2 AND LOT 8.1, BLOCK 1 THE FOLLOWING TWO (2) COURSES:
2. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 221.90 FEET TO A POINT, THENCE;
3. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE;

4. ALONG THE DIVIDING LINE BETWEEN LOT 8.2 AND LOTS 8.1 AND 8.3, BLOCK 1, NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 221.90 FEET THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTION IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

BLANKET DESCRIPTION - LOTS 8.1, 8.2 and 8.3:

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a rebar with cap set on the southerly line of Secor Lane (50 foot wide), said point being at the northeasterly terminus of a curve connecting the southerly line of Secor Lane with the easterly line of Pelham Parkway (a/k/a C.R. 70) and from said beginning point, running thence

1. Along the southerly line of Secor Lane, north 63 degrees 57 minutes 50 seconds east, a distance of 1081.42 feet to a rebar with cap set at a point of curvature in the same, thence
2. Continuing along the same, along a curve to the right, having a radius of 650.00 feet, turning a central angle of 11 degrees 45 minutes 00 seconds with an arc length of 133.30 feet, the chord of which bears north 69 degrees 50 minutes 19 seconds east, a chord distance of 133.06 feet to a rebar with cap set, thence the following seven (7) courses along the dividing line between Lot 8 Block 1 and the westerly line of the Hutchinson River Parkway;
3. South 10 degrees 37 minutes 00 seconds east, a distance of 406.03 feet to a rebar with cap set, thence
4. South 08 degrees 04 minutes 18 seconds east, a distance of 152.58 feet to a rebar with cap set, thence
5. South 81 degrees 55 minutes 42 seconds west, a distance of 125.00 feet to a rebar with cap set, thence
6. South 08 degrees 04 minutes 18 seconds east, a distance of 350.40 feet to a rebar with cap set at a point of non-tangent curvature, thence
7. Along a curve to the left, having a radius of 375.00 feet, turning a central angle of 15 degrees 22 minutes 08 seconds with an arc length of 100.59 feet, the chord of which bears south 72 degrees 19 minutes 21 seconds west, a chord distance of 100.29 feet to a rebar with cap set at a point of tangency, thence
8. South 63 degrees 57 minutes 50 seconds west, a distance of 4.45 feet to a rebar with cap set, thence



9. South 26 degrees 04 minutes 30 seconds east, a distance of 188.85 feet to a point, thence
10. Along the common dividing line between Lot 8 and Lot 5, Block 1 and the westerly line of the Hutchinson River Parkway, south 63 degrees 55 minutes 30 seconds west, a distance of 156.73 feet to a point; thence the following eight (8) courses along the dividing line between Lot 8 and Lot 3, Block 1.
11. North 26 degrees 04 minutes 30 seconds west, a distance of 82.31 feet to a pk nail set, thence
12. North 63 degrees 55 minutes 30 seconds east, a distance of 10.33 feet to a pk nail set, thence
13. North 26 degrees 04 minutes 30 seconds west, a distance of 19.84 feet to a pk nail set, thence
14. South 63 degrees 55 minutes 30 seconds west, a distance of 10.33 feet to a pk nail set, thence
15. North 26 degrees 04 minutes 30 seconds west, a distance of 90.59 feet to a rebar with cap set, thence
16. North 63 degrees 55 minutes 30 seconds east, a distance of 4.05 feet to a pk nail set, thence
17. North 26 degrees 04 minutes 30 seconds west, a distance of 9.55 feet to a pk nail set, thence
18. South 63 degrees 55 minutes 30 seconds west, a distance of 227.32 feet to a pk nail set on the aforementioned easterly line of Pelham Parkway, thence
19. North 26 degrees 04 minutes 30 seconds west, a distance of 296.81 feet to a pk nail, thence
20. Continuing along the easterly line of Pelham Parkway, north 62 degrees 43 minutes 40 seconds west, a distance of 609.10 feet to a pk nail set a point of curvature, thence
21. Along a curve to the right, having a radius of 2.00 feet, turning a central angle of 126 degrees 41 minutes 30 seconds with an arc length of 44.22 feet to a point, the chord of which bears north 00 degrees 37 minutes 24 seconds east, a chord distance of 35.75 feet to the point and place of BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTIONS IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/12/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

SUCH REAL PROPERTY ALSO CONTAINS ALL OF THE CONDOMINIUM UNITS IN THE P/A ACADIA CONDOMINIUM MADE BY P/A-ACADIA PELHAM MANOR, LLC DATED 9/17/07 AND RECORDED 10/23/07 AS CONTROL NUMBER 472850497.

For information only: Said premises are known as 798-858 Pelham Parkway, Pelham, NY and designated as Section 166.26 Block 1 Lots 8.1, 8.2 and 8.3 as shown on the Westchester County Land and Tax Map.

Definitions and Financial Statements

1. Definitions: As used in this Agreement and the attached exhibits, the following terms shall have the following meanings:

"Acadia Realty Trust" means Acadia Realty Trust, a Maryland real estate investment trust, which is an indirect principal in Borrower and Guarantor.

"Additional Interest" means all payments required to be made by Borrower under a Swap Contract.

"Adjusted Net Operating Income" means Operating Income less the sum of (i) Adjusted Operating Expenses plus (ii) the Vacancy and Credit Loss Factor.

"Adjusted Operating Expenses" means the aggregate amount of all actual operating expenses of the Property paid by Borrower in the most recently ended six (6) month period for which Borrower has delivered financial statements to Administrative Agent, annualized, provided that the amount of management fees included in Adjusted Operating Expenses shall be equal to the greater of (x) actual management fees paid by Borrower with respect to such period or (y) 3.0% of the operating income received by Borrower during such period. Adjusted Operating Expenses shall exclude from expenses payments of principal and interest under the Loan Documents and other expenses payable to Administrative Agent and Lenders pursuant to the Loan Documents, capital expenditures, Tenant Improvement Costs, leasing commissions and extraordinary items of expense.

"Administrative Agent" means Bank of America, N.A., in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent Advances" has the meaning set forth in Section 1.14 of this Agreement.

"Administrative Agent's Office" means Administrative Agent's address and, as appropriate, account as set forth on the Schedule of Lenders, or such other address or account as Administrative Agent hereafter may from time to time notify Borrower and Lenders.

"Administrative Agent's Time" means the time of day observed in the city where Administrative Agent's Office is located.

"Advance Amount" has the meaning set forth in Section 1.13 of this Agreement.

"Affiliate" means any person directly or indirectly through one or more intermediaries controlling, controlled by, or under direct or indirect common control with, such person. A person shall be deemed to be "controlled by" any other person if such other person possesses, directly or indirectly, power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general

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partners or the equivalent; or (b) to direct or cause the direction of the management and policies of such person whether by contract or otherwise.

“Agent-Related Persons” means Administrative Agent, together with its Affiliates (including Arranger), and the officers, directors, employees, agents and attorneys-in-fact of such persons and Affiliates.

“Aggregate Commitments” means the Commitments of all Lenders.

“Agreement” has the meaning set forth in the introductory paragraph of this Agreement, and includes all exhibits attached hereto and referenced in Section 1.1.

“Amortization Date” has the meaning set forth in Section 1.12 of this Agreement.

“Appraised Value” means the value shown on the appraisal of the Property delivered to Administrative Agent prior to the date hereof.

“Arranger” means Banc of America Securities LLC, in its capacity as sole arranger and sole book manager.

“Assignment and Assumption” means an Assignment and Assumption substantially in the form of Exhibit “L”.

“Association” means the Condominium Association of the Property.

“Base Rate” means, on any day, a simple rate per annum equal to the sum of the Prime Rate for that day plus the Base Rate Margin. Without notice to Borrower or anyone else, the Base Rate shall automatically fluctuate upward and downward as and in the amount by which the Prime Rate fluctuates.

“Base Rate Margin” means 2.75% per annum.

“Base Rate Principal” means, at any time, the Principal Debt minus the portion, if any, of such Principal Debt which is LIBOR Rate Principal.

“BBA LIBOR Daily Floating Rate” has the meaning set forth in Section 1.7.1 of this Agreement.

“Borrower” has the meaning set forth in the introductory paragraph of this Agreement.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where Administrative Agent’s Office is located.

“Closing Checklist” means that certain Closing Requirements and Checklist setting forth the conditions for closing the Loan and recording the Mortgage.

“Code” has the meaning set forth in Section 2.15.

“Commitment” means, as to each Lender, its obligation to advance its Pro Rata Share of the Loan in an aggregate principal amount not exceeding the amount set forth opposite such Lender’s name on the Schedule of Lenders at any one time outstanding, as such amount may be adjusted from time to time in accordance with this Agreement.

“Condominium” means the P/A Acadia Pelham Manor Condominium established pursuant to the Declaration.

“Condominium Assessment” means all Assessments (as such term is defined in the Declaration) and all other assessments for common charges against the Property.

“Condominium Board” means the Board of Directors or the Association of an Individual Property.

“Condominium Documents” means, the Declaration, the by-laws attached thereto, and all other constituent documents establishing or governing the condominium regime governing the Property, and all filings with the office of the New York State Attorney General related hereto, all as may be amended from time to time.

“Debt” means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any capital stock of or other ownership or profit interest in such Person or any other Person or any warrants, rights or options to acquire such capital stock, (h) all obligations of such Person in respect of interest rate hedge agreements, (i) all debt of others referred to in clauses (a) through (h) above or clause (j) below guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such debt or to fund or supply monies for the payment or purchase of such debt, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such debt or to assure the holder of such debt against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss, and (j) all debt referred to in clauses (a) through (h) above of another Person secured by (or for which the holder of such debt has an existing right, contingent or otherwise, to be secured by) any lien on property (including, without limitation, accounts, contract rights or inventory) owned by such Person, even though such Person has not assumed or become liable for the payment of such debt.

“Debt Service Coverage Ratio” means the ratio, as of any date of calculation, of (a) the Adjusted Net Operating Income to (b) the annual Debt Service Payments.

“Debt Service Payments” means the annual amount of principal and interest payments that would be payable on the Total Loan based upon a thirty (30) year self liquidating mortgage amortization schedule at an annual assumed interest rate equal to the greatest of (i) 7.50%, (ii) the “Ten Year Treasury Rate Obligation” (as hereinafter defined) as of any date of calculation plus 2.75% and (iii) the actual interest applicable to the Loan as of any date of calculation. The “Ten Year Treasury Rate Obligation” shall mean the rate determined by Administrative Agent to be the week ending yield on United States treasury securities, adjusted to a constant maturity of ten years, as published by the United States Federal Reserve Board in the then most currently available Statistical Release H.15 (519) (or, if not published at such time, such other comparable statistical release then published by the United States Federal Reserve Board) rounded to the next highest 1/8 of 1%.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declaration” means that certain Declaration of P/A-Acadia Pelham Manor Condominium (the “Declaration”), dated September 17, 2007, recorded October 23, 2007 as Document number 472850497 for the creation and establishment of the Condominium with respect to the Property.

“Default” has the meaning set forth in Section 4.1 of this Agreement.

“Defaulting Lender” means a Lender that fails to pay its Pro Rata Share of a Payment Amount within five (5) Business Days after notice from Administrative Agent, until such Lender cures such failure as permitted in this Agreement.

“Defaulting Lender Amount” means the Defaulting Lender’s Pro Rata Share of a Payment Amount.

“Defaulting Lender Payment Amounts” means a Defaulting Lender Amount plus interest from the date such Defaulting Lender Amount was funded by Administrative Agent and/or an Electing Lender, as applicable, to the date such amount is repaid to Administrative Agent and/or such Electing Lender, as applicable, at the rate per annum applicable to such Defaulting Lender Amount under the Loan or otherwise at the Base Rate.

“Draw Request” has the meaning set forth in Section 1 of Exhibit “F”.

“Eligible Assignee” has the meaning set forth in Section 6.5.

“Environmental Agreement” means the Environmental Indemnity Agreement of even date herewith by and among Borrower, Guarantor and Administrative Agent for the benefit of Lenders.

“Excusable Delay” means a delay, not to exceed a total of thirty (30) days, caused by unusually adverse weather conditions which have not been taken into account in the construction schedule, fire, earthquake or other acts of God, strikes, lockouts, acts of public enemy, riots or insurrections or any other unforeseen circumstances or events beyond the control of Borrower (except financial circumstances or events or matters which may be resolved by the payment of money), and as to which Borrower notifies Administrative Agent in writing within five (5) days after such occurrence; provided, however, no Excusable Delay shall extend the Maturity Date or suspend or abate any obligation of Borrower or any Guarantor or any other person to pay any money.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upwards to the next higher 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by Administrative Agent.

“Financial Statements” means (i) for each reporting party other than an individual, a balance sheet, income statement, statements of cash flow and amounts and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and unless Administrative Agent otherwise consents, consolidated statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities, sources and uses of cash and liquidity verification and, unless Administrative Agent otherwise consents, Financial Statements for each entity owned or jointly owned by the reporting party. For purposes of this definition and any covenant requiring the delivery of Financial Statements, each party for whom Financial Statements are required is a “reporting party” and a specified period to which the required Financial Statements relate is a “reporting period”.

“Funding Date” means the date on which an advance of Loan proceeds shall occur.

“Ground Lease” means that certain Ground Lease dated October 1, 2004 between Ground Lessor, as landlord, and Ground Lessor, as tenant, as to which a Memorandum of Ground Lease dated October 1, 2004 between Ground Lessor and Borrower was recorded in the office of the Clerk of the County of Westchester on February 23, 2004 in Control No. 443010050, as modified by letter agreement dated January 30, 2006 between Ground Lessor and Borrower, as modified by First Amendment to Ground Lease dated June 28, 2006 between Ground Lessor and Borrower, as modified by letter agreement dated November 28, 2006 between Ground Lessor and Borrower and as modified by Second Amendment to Ground Lease dated December 6, 2007 between Ground Lessor and Borrower.

“Ground Lessor” means, collectively, Rusciano & Son Corp. and Secor Lane Corp. and their successors and assigns as owners of the fee interest in the Land.

“Guarantor” means Acadia Realty Limited Partnership, a Delaware limited partnership, whether one or more, and if more than one, each one individually or all collectively.

“Improvements” means all buildings and other improvements constructed on the Land, together with all fixtures, tenant improvements, and appurtenances now or later to be located on the Land and/or in such improvements.

“Indebtedness” means any and all indebtedness to Administrative Agent or Lenders evidenced, governed or secured by, or arising under, any of the Loan Documents, including the Loan.

“Indemnified Liabilities” has the meaning set forth in Section 6.1.

“Initial Advance” means the first advance of proceeds of the Loan under this Agreement.

“Land” means the real property described in Exhibit “A”.

“Laws” means all constitutions, treaties, statutes, laws, ordinances, regulations, rules, orders, writs, injunctions, or decrees of the United States of America, any state or commonwealth, any municipality, any foreign country, any territory or possession, or any Tribunal.

“Leasing Commissions” means any commissions payable by Borrower in connection with any leases of space in the Improvements executed after the date hereof and/or extensions or renewals of existing leases of space in the Improvements not to exceed such commissions as are reasonable and customary for properties in Westchester County, New York similar to the Property as determined by Administrative Agent.

“Lender” means each lender from time to time party to this Agreement.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such on the Schedule of Lenders, or such other office or offices as such Lender may from time to time notify Borrower and Administrative Agent.

“LIBOR Business Day” means a Business Day which is also a London Banking Day.

“LIBOR Margin” means 2.75% per annum.

“LIBOR Rate Principal” means any portion of the Principal Debt which bears interest at an applicable BBA Daily Floating LIBOR Rate at the time in question.

“Leases” means any lease, sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to



which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“Lien Law” means the Lien Law of the State of New York.

“Loan” means the loan by Lenders to Borrower, in the maximum amount of the Loan Amount.

“Loan Amount” means \$2,446,298.11.

“Loan Documents” means this Agreement (including all exhibits), the Mortgage, any Note, the Environmental Agreement, any guaranty, financing statements and such other documents evidencing, securing or pertaining to the Loan as shall, from time to time, be executed and/or delivered by Borrower, Guarantor, or any other party to Administrative Agent or any Lender pursuant to this Agreement, as they may be amended, modified, restated, replaced and supplemented from time to time.

“Loan to Value Ratio” is defined in Section 2.5.

“London Banking Day” means a day on which dealings in dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the Project, or the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of Borrower or Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any party to the Loan Documents to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any party to the Loan Documents of any Loan Document to which it is a party.

“Material Contract” means any contract for the performance of any work or the supplying of any labor, materials or services which exceeds \$100,000 per annum.

“Maturity Date” means December 1, 2013, as it may be earlier terminated or extended in accordance with the terms hereof.

“Mortgage” means that certain Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement in the Loan Amount dated as of the date hereof from Borrower to Administrative Agent, securing repayment of the Indebtedness and Borrower’s performance of its other obligations to Administrative Agent and Lenders under the Loan Documents, as amended, modified, supplemented, restated and replaced from time to time.

“Notes” means, collectively, the Notes in the maximum principal amount of the Loan, substantially in the form of Exhibit “M” as amended, modified, replaced, restated, extended or renewed from time to time.

“Obligations” means all liabilities, obligations, covenants and duties (including, without limitation, paying all Additional Interest) of, any party to a Loan Document arising under or otherwise with respect to any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any party to a Loan Document or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceedings.

“Operating Income” means the sum of (x) the aggregate rentals and all other revenue (unless excluded pursuant hereto) of the Property actually received from only executed bona fide leases, licenses and other occupancy agreements of the Property which are in full force and effect as to which the tenant thereunder is not the subject of any bankruptcy proceeding and is not in default under its lease, beyond any applicable notice or cure periods set forth therein for the six (6) months preceding the date of calculation and (y) the aggregate rentals and all other revenue (unless excluded pursuant hereto) of the Property as projected by Borrower and approved by Administrative Agent from only executed bona fide leases, licenses and other occupancy agreements of the Property which are in full force and effect as to which the tenant thereunder is not the subject of any bankruptcy proceeding and is not in default under its lease (including tenants who have not commenced payment of full base rent but who are obligated to do so within six (6) months), beyond any applicable notice or cure periods set forth therein for the six (6) months following the date of calculation as projected by Administrative Agent. Operating Income shall exclude all extraordinary items of income, all amounts paid to Borrower for tenant alterations in connection with the leasing of space at the Property, all amounts payable to Borrower under leases with affiliates of Borrower, as tenant, or with Borrower, as tenant (unless Administrative Agent otherwise agrees) and, with respect to any lease providing for a reduction in the rentals payable under such lease at any time during the term thereof, base rentals in excess of the lowest base rentals payable under such lease (other than during any period of rent concessions made with respect to consecutive monthly periods commencing with the first month of the term of such lease), but notwithstanding the preceding, including reimbursements for operating expenses and percentage rent pursuant to executed leases, provided a sales report is provided by the applicable tenant.

“Other Loan” means the loan from Lenders to Borrower in the aggregate amount of the Other Loan Amount.

“Other Loan Agreement” means the Transfer Loan Agreement of even date herewith between Lenders, Administrative Agent and Borrower setting forth certain terms and conditions for advancing the Other Loan.

“Other Loan Amount” means a loan in the amount of \$31,553,701.89.

“Other Loan Mortgage” means the mortgages referred to in, and consolidated and modified by, that certain Mortgage Consolidation and Modification Agreement dated the date hereof between Borrower and Administrative Agent for the benefit of Lenders in the amount of the Other Loan.

“Other Note” means, collectively, the notes dated the date hereof made by Borrower, one to each Lender, evidencing the aggregate amount of the Other Loan.

“Payment Amount” means an advance of the Loan, an unreimbursed Administrative Agent Advance, an unreimbursed Indemnified Liability or any other amount that a Lender is required to fund under this Agreement.

“Person” means an individual, partnership, limited liability company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture or other entity of whatever nature.

“Plans” means the plans and specifications related to any Tenant Improvements or the Improvements.

“Potential Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become a Default.

“Prime Rate” means, on any day, the rate of interest per annum then most recently established by Administrative Agent as its “prime rate”, it being understood and agreed that such rate is set by Administrative Agent as a general reference rate of interest, taking into account such factors as Administrative Agent may deem appropriate, that it is not necessarily the lowest or best rate actually charged to any customer or a favored rate, that it may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that Administrative Agent may make various business or other loans at rates of interest having no relationship to such rate. If Administrative Agent (including any subsequent Administrative Agent) ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

“Principal Debt” means the aggregate unpaid principal balance of this Loan at the time in question.

“Pro Rata Share” means, with respect to each Lender at any time, a fraction expressed as a percentage, the numerator of which is the amount of the Commitment of such Lender at such time and the denominator of which is the amount of the Aggregate Commitments at such time or, if the Aggregate Commitments have been terminated, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the total outstanding amount of all Indebtedness held by such Lender at such time and the denominator of which is the total outstanding amount of all Indebtedness at such time. The initial Pro Rata Share of each Lender named on the signature pages hereto is set forth opposite the name of that Lender on the Schedule of Lenders.

“Project” means the acquisition of the Land, the construction of the Improvements, and if applicable, the leasing and operation of the Improvements.

“Property” means the Land, the Improvements and all other property constituting the “Mortgage Property”, as described in the Mortgage, or subject to a right, lien or security interest to secure the Loan pursuant to any other Loan Document.

“Proxy” shall mean that certain Condominium Proxy, dated as of the date hereof, from Borrower to Lender, pursuant to which Borrower granted Lender a proxy to vote its interest with respect to all matters affecting the Condominium upon the occurrence and during the continuance of a Default and which includes conditional resignations of each of the representatives elected or appointed by Borrower to the Condominium Board.

“Required Lenders” means as of any date of determination at least two Lenders having more than 50% of the Aggregate Commitments or, if the Aggregate Commitments have been terminated, at least two Lenders holding in the aggregate more than 50% of the total outstanding amount of all Indebtedness; provided that the Commitment of, and the portion of the total outstanding amount of all Indebtedness held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Schedule of Lenders” means the schedule of Lenders party to this Agreement as set forth on Exhibit “N”, as it may be modified from time to time in accordance with this Agreement.

“Self Storage Facility” has the meaning set forth in Section 2.17.

“Storage Facility Master Lease” has the meaning set forth in Section 2.17.

“Storage Facility Rent” has the meaning set forth in Section 2.17.

“Storage Facility Tenant” has the meaning set forth in Section 2.17.

“Subsidiary” means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries.

“Survey” means a survey prepared in accordance with Exhibit “G” or as otherwise approved by Administrative Agent in its sole discretion.

“Swap Contract” means any agreement, whether or not in writing, relating to any Swap Transaction, including, unless the context otherwise clearly requires, any form of master agreement (the “Master Agreement”) published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into prior to the date hereof or any time after the date hereof, between Swap Counterparty and Borrower (or its Affiliate), together with

any related schedule and confirmation, as amended, supplemented, superseded or replaced from time to time.

“Swap Counterparty” means Lender or its Affiliate, in its capacity as counterparty under any Swap Contract.

“Swap Transaction” means any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, note or bill option, interest rate option, forward foreign exchange transaction, cap transaction, collar transaction, floor transaction, currency swap transaction, cross-currency rate swap transaction, swap option, currency option, credit swap or default transaction, T-lock, or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, entered into prior to the date hereof or anytime after the date hereof between Swap Counterparty and Borrower (or its Affiliate) so long as a writing, such as a Swap Contract, evidences the parties’ intent that such obligations shall be secured by the Mortgage.

“Taxes” has the meaning set forth in Section 1.11.

“Tenant Improvements” means all work to be completed by Borrower pursuant to any Lease.

“Tenant Improvement Costs” means the costs required to be paid by Borrower, including tenant allowances paid to a tenant, under any Leases and/or extensions or renewals of existing leases of space in the Improvements (excluding any costs for which Borrower requisitioned funds prior to the date hereof under the construction financing for the Property).

“Title Company” means Stewart Title Insurance Company.

“Title Insurance” means the loan policy or policies of title insurance issued to Administrative Agent for the benefit of Lenders by the Title Company, in an amount equal to the maximum principal amount of the Loan, insuring the validity and priority of the Mortgage encumbering the Land and Improvements for the benefit of Administrative Agent and Lenders.

“Transfer Tax” has the meaning set forth in Section 2.19.

“Tribunal” means any state, commonwealth, federal, foreign, territorial or other court or governmental department, commission, board, bureau, district, authority, agency, central bank, or instrumentality, or any arbitration authority.

“Vacancy and Credit Loss Factor” means an amount (which amount can be \$0 but cannot be less than \$0) determined by multiplying Operating Income by the lesser of (i) 5% or (ii) the amount, stated as a percentage of total rentable retail area, by which total rented retail area at the time of calculation exceeds 95% of total rentable retail area.

## 2. Financial Statements:

Borrower shall provide or cause to be provided to Administrative Agent with a copy for each Lender all of the following:

(a) Financial Statements of Borrower: (i) for each fiscal year of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year; and (ii) for each fiscal quarter of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal quarter.

(b) Financial Statements of each Guarantor: (i) for each fiscal year of such Guarantor, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year, and for Acadia Realty Trust, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each such reporting period; or (ii) for each fiscal quarter of such Guarantor, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal quarter, and for Acadia Realty Trust, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each such reporting period; upon proper filing of the applicable annual form 10K and quarterly form 10Q by Guarantor with the Securities and Exchange Commission, such statements shall be deemed delivered to Administrative Agent and Lenders hereunder.

(c) (i) Prior to the beginning of each fiscal year of Borrower, a capital and operating budget for the Property and (ii) for each calendar quarter (and for the fiscal year through the end of that month) (A) a statement of all income and expenses in connection with the Property and (B) a current leasing status report (including tenants' names, occupied tenant space, lease terms, rents, vacant space and proposed rents), including in each case a comparison to the budget, as soon as reasonably practicable but in any event within fifteen (15) days after the end of each such quarter, certified in writing as true and correct by a representative of Borrower satisfactory to Administrative Agent. Items provided under this paragraph shall be in form and detail satisfactory to Administrative Agent.

(d) At the time of submitting, and together with, Borrower's quarterly financial statements, Borrower shall submit a certificate representing and warranting (i) that no Default or Potential Default exists, or specifying any and all Defaults or Potential Defaults which do exist at the time and (ii), commencing with the delivery of financial statements for the period in which the Debt Service Coverage Ratio Covenant in Section 2.5(b) applies, whether or not the financial covenants set forth in Section 2.5 are in compliance, including a reasonably detailed calculation of such compliance or non-compliance. At the time of submitting (or prior to the date due, in the case of deemed submission by virtue of filings with the Securities and Exchange Commission as set forth above), and together with, Guarantor's quarterly financial statements, Guarantor shall submit a detailed certificate of the compliance of the financial covenants set forth in the Guaranty.

(e) From time to time promptly after Administrative Agent's request, such additional information, reports and statements respecting the Property and the Improvements, or the business operations and financial condition of each reporting party, as Administrative Agent may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Administrative Agent and shall contain or be attached to the signed and dated written certification of the reporting party in form specified by Administrative Agent to certify that the Financial Statements are furnished to Administrative Agent in connection with the extension of credit by Lenders and constitute a true and correct statement of the reporting party's financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the reporting party satisfactory to Administrative Agent. All Financial Statements for a reporting party who is an individual shall be on Administrative Agent's then-current personal financial statement form or in another form satisfactory to Administrative Agent. All fiscal year-end Financial Statements of Borrower, Guarantor and Acadia Realty Trust shall be audited and certified, without any qualification or exception not acceptable to Administrative Agent, by independent certified public accountants acceptable to Administrative Agent, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation. All quarterly Financial Statements shall be compiled or reviewed by independent certified public accountants acceptable to Administrative Agent, or may be prepared by the reporting party.

CONDITIONS PRECEDENT TO THE INITIAL ADVANCE

As conditions precedent to the Initial Advance, if and to the extent required by Administrative Agent, Administrative Agent shall have received and approved the following:

1. Fees and Expenses. Any and all required commitment and other fees, and evidence satisfactory to Administrative Agent that Borrower has paid all other fees, costs and expenses (including the fees and costs of Administrative Agent's counsel) then required to be paid pursuant to this Agreement and all other Loan Documents, including, without limitation, all fees, costs and expenses that Borrower is required to pay pursuant to any loan application or commitment.

2. Financial Statements. The Financial Statements of Borrower and Guarantor or any other party required by any loan application or commitment or otherwise required by Administrative Agent.

3. Appraisal. A market value appraisal of the Property made within one hundred eighty (180) days prior to the date of this Agreement, which appraises the Property on a "completed value" basis at not less than the Appraised Value. The appraiser and appraisal must be satisfactory to Administrative Agent (including satisfaction of applicable regulatory requirements) and the appraiser must be engaged directly by Administrative Agent.

4. Authorization. Evidence Administrative Agent requires of the existence, good standing, authority and capacity of Borrower, each Guarantor, and their respective constituent partners, members, managers and owners (however remote) to execute, deliver and perform their respective obligations to Administrative Agent and Lenders under the Loan Documents, including:

(a) For each partnership (including a joint venture or limited partnership): (i) a true and complete copy of an executed partnership agreement or limited partnership agreement, and all amendments thereto; (ii) for each limited partnership, a copy of the certificate of limited partnership and all amendments thereto accompanied by a certificate issued by the appropriate governmental official of the jurisdiction of formation that the copy is true and complete, and evidence Administrative Agent requires of registration or qualification to do business in the state where Borrower's principal place of business is located and the state where the Project is located, and (iii) a partnership affidavit certifying who will be authorized to execute or attest any of the Loan Documents, and a true and complete copy of the partnership resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents.

(b) For each corporation: (i) a true and complete copy of its articles of incorporation and by-laws, and all amendments thereto, a certificate of incumbency of all of its officers who are authorized to execute or attest to any of the Loan Documents, and

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a true and complete copy of resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents; and (ii) certificates of existence, good standing and qualification to do business issued by the appropriate governmental officials in the state of its formation and, if different, the state in which the Project is located.

(c) For each limited liability company or limited liability partnership: (i) a true and complete copy of the articles of organization and operating agreement, and all amendments thereto, a certificate of incumbency of all of its members who are authorized to execute or attest to any of the Loan Documents, and a true and complete copy of resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents; and (ii) certificates of existence, good standing and qualification to do business issued by appropriate governmental officials in the state of its formation and, if different, the state in which the Property is located.

(d) For each entity or organization that is not a corporation, partnership, limited partnership, joint venture, limited liability company or limited liability partnership, a copy of each document creating it or governing the existence, operation, power or authority of it or its representatives.

(e) All certificates, resolutions, and consents required by Administrative Agent applicable to the foregoing.

5. Loan Documents. From Borrower, Guarantor and each other person required by Administrative Agent, duly executed, acknowledged and/or sworn to as required, and delivered to Administrative Agent (with a copy for each Lender) all Loan Documents then required by Administrative Agent, dated the date of this Agreement, each in form and content satisfactory to Administrative Agent, and evidence Administrative Agent requires that the Mortgage has been recorded in the official records of the city or county in which the Property is located and UCC-1 financing statements have been filed in all filing offices that Administrative Agent may require.

6. Opinions. The written opinion of counsel satisfactory to Administrative Agent for Borrower, each Guarantor, and any other persons or entities addressed to Administrative Agent for the benefit of Lenders, dated the date of this Agreement.

7. Survey; No Special Flood Hazard. (a) two (2) prints of an original survey (with a copy for each Lender) of the Land and improvements thereon dated not more than sixty (60) days prior to the date of this Agreement (or dated such earlier date, if any, as is satisfactory to the Title Company, but in any event not more than one hundred eighty (180) days prior to the date of this Agreement) satisfactory to Administrative Agent and the Title Company and otherwise, to the extent required by Administrative Agent, complying with Exhibit "G", and (b) a flood insurance policy (with a copy for each Lender) in an amount equal to the lesser of the maximum Loan amount or the maximum amount of flood insurance available under the Flood Disaster Protection Act of 1973, as amended, and otherwise in compliance with the requirements of the Loan Documents, or evidence satisfactory to Administrative Agent that none of the Land is located in a flood hazard area.

8. Title Insurance. An ALTA title insurance policy, issued by the Title Company (which shall be approved by Administrative Agent) in the maximum amount of the Loan plus any other amount secured by the Mortgage, on a coinsurance and/or reinsurance basis if and as required by Administrative Agent, insuring without exclusion or exception for creditors' rights that the Mortgage constitutes a valid lien covering the Land and all Improvements thereon, having the priority required by Administrative Agent and subject only to those exceptions and encumbrances (regardless of rank or priority) Administrative Agent approves, in a form acceptable to Administrative Agent, and with all "standard" exceptions which can be deleted, including the exception for matters which a current survey would show, deleted to the fullest extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor permitted; containing no exception for standby fees or real estate taxes or assessments other than those for the year in which the closing occurs to the extent the same are not then due and payable and endorsed "not yet due and payable" and no exception for subsequent assessments for prior years; providing full coverage against mechanics' and materialmen's liens to the extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; insuring that no restrictive covenants shown in the Title Insurance have been violated, and that no violation of the restrictions will result in a reversion or forfeiture of title; insuring all appurtenant easements; insuring that fee simple indefeasible or marketable (as coverage is available) fee simple title to the Land and Improvements is vested in Borrower; containing such affirmative coverage and endorsements (including the standard New York endorsements) as Administrative Agent may require and are available under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; insuring any easements, leasehold estates or other matters appurtenant to or benefiting the Land and/or the Improvements as part of the insured estate; insuring the right of access to the Land to the extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; and containing provisions acceptable to Administrative Agent regarding advances and/or readvances of Loan funds after closing. Borrower and Borrower's counsel shall not have any interest, direct or indirect, in the Title Company (or its agent) or any portion of the premium paid for the Title Insurance. The policy shall contain a pending disbursement clause in Lender's standard form or such other form approved by Lender.

9. Insurance Policies. The insurance policies initially required by Administrative Agent, pursuant to the Loan Documents, together with evidence satisfactory to Administrative Agent that all premiums therefor have been paid for a period of not less than one (1) year from the date of this Agreement and that the policies are in full force and effect.

10. Leases. If Exhibit "I" is attached hereto, (i) true and correct copies of all leases and subleases, and guarantees thereof; (ii) estoppel certificates and subordination and attornment agreements (including nondisturbance agreements if and to the extent agreed by Administrative Agent in its discretion), dated within thirty (30) days prior to this Agreement and in the respective forms attached as exhibits to the Closing Checklist, or otherwise in form and content satisfactory to Administrative Agent, from the tenants and subtenants as Administrative Agent requires; (iii) evidence satisfactory to Administrative Agent of Borrower's compliance with the leases; and (iv) evidence satisfactory to Administrative Agent of the tenants' approval of all matters requiring their approval.

11. Environmental Compliance/Report. Evidence satisfactory to Administrative Agent that no portion of the Land is “wetlands” under any applicable Law and that the Land does not contain and is not within or near any area designated as a hazardous waste site by any Tribunal, that neither the Property nor any adjoining property contains or has ever contained any substance classified as hazardous or toxic (or otherwise regulated, such as, without limitation, asbestos, radon and/or petroleum products) under any Law or governmental requirement pertaining to health or the environment, and that neither the Property nor any use or activity thereon violates or is or could be subject to any response, remediation, clean-up or other obligation under any Law or governmental requirement pertaining to health or the environment including without limitation, a written report of an environmental assessment of the Property, made within twelve (12) months prior to the date of this Agreement, by an engineering firm, and of a scope and in form and content satisfactory to Administrative Agent, complying with Administrative Agent’s established guidelines, showing that there is no evidence of any such substance which has been generated, treated, stored, released or disposed of in the Property, and such additional evidence as may be required by Administrative Agent. All reports, drafts of reports, and recommendations, whether written or oral, from such engineering firm shall be made available and communicated to Administrative Agent.

12. Laws. (a) Evidence satisfactory to Administrative Agent that all applicable zoning ordinances, restrictive covenants and governmental requirements affecting the Property permit the use for which the Property is intended and have been or will be complied with without the existence of any variance, non-complying use, nonconforming use or other special exception; (b) evidence satisfactory to Administrative Agent that the Land and Improvements comply and will comply with all Laws and governmental requirements regarding subdivision and platting and would so comply if the Land and the Improvements thereon were conveyed as a separate parcel; (c) a true and correct copy of valid certificates of occupancy for the Improvements, together with all other consents, licenses, permits and approvals necessary for operation of the Improvements, all in assignable form (to the extent appropriate) and in full force and effect; (d) evidence satisfactory to Administrative Agent of compliance by Borrower and the Property, use and occupancy of the Improvements, with such other applicable Laws and governmental requirements as Administrative Agent may request, including all Laws and governmental requirements regarding access and facilities for handicapped or disabled persons including, without limitation and to the extent applicable, The Federal Architectural Barriers Act (42 U.S.C. § 4151 et seq.), The Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 et seq.), The Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), The Rehabilitation Act of 1973 (29 U.S.C. § 794), and any applicable state requirements; and (e) written evidence satisfactory to Administrative Agent that construction of the Improvements on the Land is permissible under all federal, state and local statutes, regulations and rulings protecting tidal and non-tidal wetlands and other environmentally protected areas.

13. Priority. (a) evidence satisfactory to Administrative Agent that prior to and as of the time the Mortgage was filed for record no mechanic’s or materialman’s lien claim or notice, lis pendens, judgment, or other claim or encumbrance against the Property has been filed for record in the county where the Property is located or in any other public record which by Law provides notice of claims or encumbrances regarding the Property; (b) a certificate or certificates of a reporting service acceptable to Administrative Agent, reflecting the results of searches made not earlier than ten (10) days prior to the date of this Agreement, (i) of the central and local

Uniform Commercial Code records, showing no filings against any of the collateral for the Loan or against Borrower otherwise except as consented to by Administrative Agent; and (ii) if required by Administrative Agent, of the appropriate judgment and tax lien records, showing no outstanding judgment or tax lien against Borrower or any Guarantor.

14. Tax and Standby Fee Certificates. Evidence satisfactory to Administrative Agent (a) of the identity of all taxing authorities and utility districts (or similar authorities) having jurisdiction over the Property or any portion thereof; (b) that all taxes, standby fees and any other similar charges have been paid, including copies of receipts or statements marked "paid" by the appropriate authority; and (c) that the Land is a separate tax lot or lots with separate assessment or assessments of the Land and Improvements, independent of any other land or improvements and that the Land is a separate legally subdivided parcel.

15. Ground Lease and Premises Documents. Certified copies of all documents comprising the Ground Lease, the Storage Facility Master Lease and the Condominium Documents, accompanied by, in the case of the Ground Lease, an estoppel certificate from Ground Lessor and in the case of the Storage Facility Master Lease, an estoppel from the tenant thereunder, estoppel certificates from the other parties to the Condominium Documents, all in form and substance satisfactory to Administrative Agent.

16. Other Documents. Such other documents and certificates as Administrative Agent may reasonably request from Borrower, any Guarantor, and any other person or entity, in form and content satisfactory to Administrative Agent.

17. Borrower Identification Due Diligence. Administrative Agent and each Lender shall have received all due diligence materials they deem necessary with respect to verifying Borrower's identity and background information in a manner satisfactory to each of them.

CONDITIONS PRECEDENT TO ADVANCES IN EXCESS OF THE INITIAL ADVANCE

As conditions precedent to any advance in excess of the Initial Advance, if and to the extent required by Administrative Agent, Administrative Agent shall have received and approved the items under Exhibit "C" and Exhibit "F".

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## EXHIBIT "D"

MONTHLY AMORTIZATION SCHEDULE**Loan summary**

Loan amount	\$	2,446,298.11
Annual interest rate		7.50%
Amortization period in years		30
Number of payments per year		12
Start date of amortization		6/1/2012

<b>Principal Payment Number</b>	<b>Principal Payment Date</b>	<b>Beginning Balance</b>	<b>Principal Payment</b>
1	6/1/2012	\$ 2,446,298.11	\$ 1,815.51
2	7/1/2012	2,444,482.60	1,826.86
3	8/1/2012	2,442,655.75	1,838.27
4	9/1/2012	2,440,817.47	1,849.76
5	10/1/2012	2,438,967.71	1,861.32
6	11/1/2012	2,437,106.39	1,872.96
7	12/1/2012	2,435,233.43	1,884.66
8	1/1/2013	2,433,348.77	1,896.44
9	2/1/2013	2,431,452.33	1,908.29
10	3/1/2013	2,429,544.03	1,920.22
11	4/1/2013	2,427,623.81	1,932.22
12	5/1/2013	2,425,691.59	1,944.30
13	6/1/2013	2,423,747.29	1,956.45
14	7/1/2013	2,421,790.84	1,968.68
15	8/1/2013	2,419,822.16	1,980.98
16	9/1/2013	2,417,841.18	1,993.36
17	10/1/2013	2,415,847.82	2,005.82
18	11/1/2013	2,413,841.99	2,018.36

EXHIBIT "E"

INTENTIONALLY OMITTED

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ADVANCES

1. Draw Request. A "Draw Request" means a properly completed and executed written application by Borrower to Administrative Agent in the form of Exhibit "F-1" (or in another form satisfactory to Administrative Agent) setting forth the amount of Loan proceeds desired, together with the related AIA Document G-702 and G-703 or such other forms approved by Administrative Agent and such schedules, affidavits, releases, waivers, statements, paid invoices, paid bills, and other documents, certificates and information satisfactory to Administrative Agent, provided that, with respect to any item of Tenant Improvement Costs for which the tenant, rather than Borrower, is performing the work, the foregoing documents shall only be required to the extent that the applicable lease requires such tenant to deliver same. Notwithstanding the foregoing, with respect to any tenant of the Improvements who has accepted occupancy and is paying rent, in lieu of the foregoing conditions in this Section 1, Borrower may deliver to Administrative Agent the following: (i) final lien waivers and proof of payment by Borrower and (ii) an executed estoppel or rent commencement agreement from the tenant confirming that all of Borrower's tenant improvement obligations have been satisfied. At least five (5) Business Days before the requested date of each advance made from the Loan, Borrower shall deliver a Draw Request to Administrative Agent. Borrower shall be entitled to an advance only in an amount approved by Administrative Agent in accordance with the terms of this Agreement and the Loan Documents. Lenders shall not be required to make advances more frequently than once each calendar month. Lenders shall, only upon the satisfaction, as determined by Administrative Agent in its sole discretion, of all applicable conditions of this Agreement and the Loan Documents, be required to make the requested advance to Borrower on a Funding Date which is a Business Day within five (5), or if any portion of such advance is LIBOR Rate Principal, eight (8), Business Days after such satisfaction. Each Draw Request, and Borrower's acceptance of any advance, shall be deemed to ratify and confirm, as of the date of the Draw Request and the advance, respectively, that, except as specified in the Draw Request, (a) all representations and warranties in the Loan Documents remain true and correct, and all covenants and agreements in the Loan Documents remain satisfied, (b) there is no uncured Default existing under the Loan Documents, (c) all conditions to the advance, whether or not evidence thereof is required by Administrative Agent, are satisfied, (d) the waivers, statements, paid invoices, paid bills, and/or other documents, certificates and information required as set forth above submitted for the Draw Request are complete and correct, and in all respects what they purport and appear to be for the amount and period applicable to the Draw Request, (e) all advances previously made to Borrower were disbursed, and the proceeds of the advance requested in the Draw Request will immediately be disbursed, for reimbursement to Borrower for, the costs and expenses specified in the Draw Request for which the advances were made, and for no other purpose, and (f) after the advance, all obligations for work and other costs heretofore incurred by Borrower in connection with the Project and which are due and payable will be fully paid and satisfied.

2. Advances. Borrower shall disburse all advances, other than the Initial Advance made to Borrower, for reimbursement of payments of the Tenant Improvement Costs or Leasing Commissions only, specified in the Draw Request for which the advances were made,

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and for no other purpose. Following receipt and approval of a Draw Request, all supporting documentation and information required by Administrative Agent, Administrative Agent will determine the amount of the advance Lenders shall make in accordance with this Agreement, the Loan Documents, and if and to the extent required by Administrative Agent, to Administrative Agent's satisfaction, the following standards:

For tenant improvement work, advances on the basis of 100% of the Tenant Improvement Costs paid by Borrower, provided that **if required by Administrative Agent** (i) an application for payment may be submitted only after all applicable tenant improvements have been completed, (ii) all provisions of the Loan Documents, including, without limitation, Sections 3 and 4 of this Exhibit "F", have been satisfied, (iii) the term of the applicable lease has commenced, (iv) Administrative Agent has received from the applicable tenant a tenant estoppel certificate in the form attached as an exhibit to the Closing Checklist, or otherwise in form and content satisfactory to Administrative Agent, (v) Administrative Agent has received two (2) sets of as-built plans for the applicable tenant improvements, and (vi) Administrative Agent has received evidence of satisfaction of all applicable legal requirements, including but not limited to applicable certificates of occupancy and evidence that the plans comply with all legal requirements regarding access and facilities for handicapped or disabled persons.

3. Conditions to the Initial Advance. As conditions precedent to the Initial Advance hereunder, if and to the extent required by Administrative Agent, to Administrative Agent's satisfaction, Borrower must have satisfied the conditions required under this Agreement, including all of those conditions set forth in Exhibit "C" and Section 4 below.

4. Conditions to All Advances. As conditions precedent to each advance made pursuant to a Draw Request, in addition to all other requirements contained in this Agreement, if and to the extent required by Administrative Agent, Administrative Agent shall have received and approved the following:

(i) Evidence satisfactory to Administrative Agent of the continued satisfaction of all conditions to the Initial Advance and, as to advances after the Initial Advance, Exhibit "C-1".

(ii) A Draw Request.

(iii) Evidence satisfactory to Administrative Agent that no Default or any event which, with the giving of notice or the lapse of time, or both, could become a Default, exists.

(iv) Evidence satisfactory to Administrative Agent that the representations and warranties made in the Loan Documents must be true and correct on and as of the date of each advance and no event shall have occurred or condition or circumstance shall exist which, if known to Borrower, would render any such representation or warranty incorrect or misleading.

(v) To the extent requested by Administrative Agent, a true and complete copy of each contract to which Borrower is a party, if applicable, for labor, materials, services and/or other work included in a Draw Request duly executed and delivered by all

parties thereto and effective, and a true and complete copy of a fully executed copy of each such subcontract or other contract as Administrative Agent may have requested.

(vi) Evidence satisfactory to Administrative Agent that no mechanic's or materialmen's lien or other encumbrance has been filed and remain in effect against the Property, no stop notices shall have been served on Lenders that have not been bonded by Borrower in a manner and amount satisfactory to Administrative Agent, and releases or waivers of mechanics' liens and receipted bills showing payment of all amounts due to all parties who have furnished materials or services or performed labor of any kind in connection with the Property.

(vii) Evidence satisfactory to Administrative Agent that the Title Insurance has been endorsed and brought to date in a manner satisfactory to Administrative Agent to increase the coverage by the amount of each advance through the date of each such advance with no additional title change or exception not approved by Administrative Agent.

(viii) A copy of the Lease to which any requested advance for Tenant Improvement Costs and/or Leasing Commissions has been requested, certified to be accurate, complete, unmodified and in full force and effect, which lease shall be in compliance with the terms of this Agreement and the other Loan Documents, including, without limitation, approved by Administrative Agent to the extent required herein or therein.

(ix) Evidence satisfactory to Administrative Agent that the Improvements shall not have been damaged and not repaired and shall not be the subject of any pending or threatened condemnation or adverse zoning proceeding.

5. Conditions and Waivers. All conditions precedent to the obligation of Lenders to make any advance are imposed hereby solely for the benefit of Administrative Agent and Lenders, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Lenders will refuse to make any advance in the absence of strict compliance with such conditions precedent. No advance shall constitute an approval or acceptance by Administrative Agent of any construction work, or a waiver of any condition precedent to any further advance, or preclude Administrative Agent from thereafter declaring the failure of Borrower to satisfy such condition precedent to be a Default. No waiver by Administrative Agent of any condition precedent or obligation shall preclude Administrative Agent from requiring such condition or obligation to be met prior to making any other advance or from thereafter declaring the failure to satisfy such condition or obligation to be a Default.

DRAW REQUEST

[BORROWER'S LETTERHEAD]

DRAW REQUEST NO. \_\_\_\_\_

TO: BANK OF AMERICA, N.A. ("Administrative Agent")

LOAN NO. \_\_\_\_\_

DATE: \_\_\_\_\_

PROJECT: Pelham Manor Shopping Center

LOCATION: Pelham Manor, New York

BORROWER: P/A-Acadia Pelham Manor, LLC

FOR PERIOD ENDING: \_\_\_\_\_

In accordance with the Loan Agreement in the amount of \$\_\_\_\_\_ dated December 1 2010 between Borrower, Administrative Agent and Lenders, Borrower requests that \$\_\_\_\_\_ be advanced from Loan proceeds. The proceeds should be credited to the account of \_\_\_\_\_, Account No. \_\_\_\_\_, at \_\_\_\_\_.

- 1. CURRENT DRAW REQUEST FOR TENANT IMPROVEMENT COSTS \$ \_\_\_\_\_
- 2. TOTAL DRAW REQUEST \$ \_\_\_\_\_

AUTHORIZED SIGNER:

\_\_\_\_\_

Dated: \_\_\_\_\_



SURVEY REQUIREMENTS

1. Requirements. The Survey shall be made in accordance with, and meet the requirements of, the certification below by a registered professional engineer or registered professional land surveyor. The description shall be a single metes and bounds perimeter description of the entire Land, and a separate metes and bounds description of the perimeter of each constituent tract or parcel out of the Land. The total acreage and square footage of the Land and each constituent tract or parcel of the Land shall be certified. If the Land has been recorded on a map or plat as part of an abstract or subdivision, all survey lines must be shown, and all lot and block lines (with distances and bearings) and numbers, must be shown. The date of any revisions subsequent to the initial survey prepared pursuant to these requirements must also be shown.

2. Certification. The certification for the property description and the map or plat shall be addressed to Administrative Agent for Lenders, Borrower and the Title Company, signed by the surveyor (a registered professional land surveyor or registered professional engineer), bearing current date, registration number, and seal, and shall be in the following form or its substantial equivalent:

This is to certify to Bank of America, N.A., as Administrative Agent for certain Lenders, \_\_\_\_\_, as Borrower and \_\_\_\_\_, as the Title Company that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA and NSPS in 2005, and include optional items 1, 2, 4 (in square feet or acres), 6, 8, 10, 11(b), 16, 17, 18, and if buildings are located on the land, optional items 7(a), 7(b)(1), 7(b)(2) and 9 of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, the undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of \_\_\_\_\_, the maximum Relative Positional Accuracy resulting from the measurements made on the survey does not exceed the Allowable Relative Positional Accuracy for Measurements Controlling Land Boundaries on ALTA/ACSM Land Title Surveys (0.07 feet or 20 mm + 50 ppm). The undersigned additionally certifies that (a) this survey was made on the ground under my supervision; (b) I have received and examined a copy of the Title Insurance Commitment No. \_\_\_\_\_ issued by the Title Company as well as a copy of each instrument listed therein, and the subject land and each tract or parcel thereof described in this survey is the same land as described in the Title Commitment; (c) if the subject land consists of two or more tracts or parcels having common boundaries, those tracts and parcels are contiguous along the common boundaries; (d) the subject land and each tract or parcel thereof has a tax map designation separate and distinct from that of any other land and the subject land and each tract or parcel thereof is a separate, legally subdivided parcel; (e) this survey correctly shows all matters of record, (and to the extent they can be located, their location and dimensions) of which I have been advised affecting the subject land according to the legal description in such matters (with instrument, book,

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and page number indicated); (f) except as shown on this survey, no part of the subject land is located in a 100-year Flood Plain or in an identified “flood prone area”, as defined pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map Panel #\_\_\_\_\_ dated \_\_\_\_\_, which such map panel covers the area in which the Property is situated and this survey correctly indicates the zone designation of any area as being in the 100-year Flood Plain or “flood prone area”; (g) to the best of my knowledge, this survey shows the relation of and distance of all substantial, visible buildings, sidewalks and other improvements to easements and setback lines; and (h) to the best of my knowledge, except as shown on this survey, neither the subject land nor any tract or parcel thereof serves any adjoining land for drainage, utilities, or ingress or egress.

EXHIBIT "H"

INTENTIONALLY OMITTED

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LEASING AND TENANT MATTERS

Borrower and Lenders agree as follows:

1. Approved Leases. Borrower shall not enter into any tenant lease of space in the Improvements unless satisfactory to or deemed satisfactory to Administrative Agent prior to execution. Borrower's standard form of tenant lease, and any revisions thereto, must have the prior written approval of Administrative Agent. Any tenant lease shall be "deemed" satisfactory to Administrative Agent that (a) is on the standard form lease approved by Administrative Agent, with no deviations except as satisfactory to Administrative Agent; (b) is entered into in the ordinary course of business with a bona fide unrelated third party tenant, and Borrower, acting in good faith and exercising due diligence, has determined that the tenant is financially capable of performing its obligations under the lease; (c) is received by Administrative Agent (together with each guarantee thereof (if any) and financial information regarding the tenant and each guarantor (if any) received by Borrower) within fifteen (15) days after execution; (d) reflects an arms-length transaction at then current market rate for comparable space; (e) contains no right to purchase the Property, or any present or future interest therein; (f) does not cover in excess of 25% of the aggregate net rentable area of the Improvements; and (g) is expressly subordinate to the Mortgage. Borrower shall provide to Administrative Agent a correct and complete copy of each tenant lease, including any exhibits, and each guarantee thereof (if any), prior to execution unless the lease in question is reasonably satisfactory to Administrative Agent under the foregoing requirements. Borrower shall, throughout the term of this Agreement, pay all reasonable costs incurred by Administrative Agent in connection with Administrative Agent's review and approval of tenant leases and each guarantee thereof (if any), including reasonable attorneys' fees and costs.

2. Effect of Lease Approval. No approval of any lease by Administrative Agent shall be for any purpose other than to protect Lenders' security, and to preserve Lenders' rights under the Loan Documents. No approval by Administrative Agent shall result in a waiver of any default of Borrower. In no event shall any approval by Administrative Agent of a lease be a representation of any kind, with regard to the lease or its adequacy or enforceability, or the financial capacity of any tenant or guarantor.

3. Representations Concerning Leases. Borrower represents and warrants to Administrative Agent and Lenders that Borrower has delivered to Administrative Agent a true and correct copy of all tenant leases and each guarantee thereof (if any), affecting any part of the Improvements, together with an accurate and complete rent roll for the Project, and no such lease or guarantee contains any option to purchase all or any portion of the Property or any interest therein or contains any right of first refusal relating to any sale of the Property or any portion thereof or interest therein.

4. Delivery of Leasing Information and Documents. Borrower shall promptly (a) deliver to Administrative Agent such quarterly rent rolls, leasing schedules and reports, operating statements, financial statements for tenants other than residential tenants with a

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lease term for less than one year and other information regarding tenants and prospective tenants or other leasing information as Administrative Agent from time to time may request, and (b) obtain and deliver to Administrative Agent such estoppel certificates and subordination and attornment agreements executed by such tenants (and guarantors, if any) in the respective forms attached as exhibits to the Closing Checklist, or otherwise in such forms as Administrative Agent from time to time may reasonably require.

5. Income from the Property. Borrower shall first apply all income from leases, and all other income derived from the Property, to pay costs and expenses associated with the ownership, maintenance, development, operating, and marketing of the Land and Improvements, including all amounts then required to be paid under the Loan Documents, before using or applying such income for any other purpose.

6. Compliance and Default. As additional conditions to Lenders' obligations under this Agreement, all tenants having the right to do so must approve all plans and all changes thereto, the construction of the Improvements, and all other aspects of the Project requiring tenants' approval. A default by Borrower under or any failure by Borrower to satisfy any of the conditions of a lease shall constitute a Default under this Agreement. Borrower shall promptly notify Administrative Agent in writing of any failure by any party to perform any material obligation under any lease, any event or condition which would permit a tenant to terminate or cancel a lease, or any notice given by a tenant with respect to the foregoing, specifying in each case the action Borrower has taken or will take with respect thereto.



EXHIBIT "J"

INTENTIONALLY OMITTED

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EXHIBIT "K"

INTENTIONALLY OMITTED

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ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment") is dated as of the Effective Date set forth below and is entered into by and between \_\_\_\_\_ ("Assignor") and \_\_\_\_\_ ("Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (the "Loan Agreement"), receipt of a copy of which is hereby acknowledged by Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, Assignor hereby irrevocably sells and assigns to Assignee, and Assignee hereby irrevocably purchases and assumes from Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below, (i) all of Assignor's rights and obligations as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of Assignor under the respective facilities identified below (including, without limitation, [**Letters of Credit and**] Guarantees), and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of Assignor (in its capacity as a Lender) against any person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or in any way based on or related to any of the foregoing, including, but not limited to contract claims, tort claims, malpractice claims, statutory claims and all other claims at Law or in equity, related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to Assignor and, except as expressly provided in this Assignment, without representation or warranty by Assignor.

1. Assignor: \_\_\_\_\_
  2. Assignee: \_\_\_\_\_ [, **an Affiliate/Approved Fund of** \_\_\_\_\_]
  3. Borrower(s): \_\_\_\_\_
  4. Administrative Agent: \_\_\_\_\_, as administrative agent under the Loan Agreement
  5. Loan Agreement: The Loan Agreement, dated as of \_\_\_\_\_, among \_\_\_\_\_, Lenders parties thereto, [**and**] Bank of America, N.A., as Administrative Agent [, **and the other agents parties thereto**]
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6. Assigned Interest:

Aggregate Amount of Commitment/ Loans for all Lenders	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/Loans
_____	_____	_____
\$ _____	\$ _____	_____ %

Effective Date: \_\_\_\_\_, 20\_\_ **[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]**

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR:

\_\_\_\_\_

By

\_\_\_\_\_

Name:

Title:

ASSIGNEE:

\_\_\_\_\_

By

\_\_\_\_\_

Name:

Title:

[CONSENTED TO AND] ACCEPTED:

BANK OF AMERICA, N.A., as Administrative Agent

By \_\_\_\_\_

Name:

Title:

[CONSENTED TO]:

\_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

STANDARD TERMS AND CONDITIONS  
FOR ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, or any collateral thereunder, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other person obligated in respect of any Loan Document or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other person of any of their respective obligations under any Loan Document.

1.2. Assignee. Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all requirements of an Eligible Assignee under the Loan Agreement (subject to receipt of such consents as may be required under the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to Section \_\_\_ thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision independently and without reliance on Administrative Agent or any other Lender to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision, and (v) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

1.3 Assignee's Address for Notices, etc. Attached hereto as Schedule 1 is all contact information, address, account and other administrative information relating to Assignee.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to Assignee whether such amounts have accrued prior to or on or after

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the Effective Date. Assignor and Assignee shall make all appropriate adjustments in payments by Administrative Agent for periods prior to the Effective Date or with respect to the making of this Assignment directly between themselves.

3. General Provisions. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment. This Assignment shall be governed by, and construed in accordance with, the Law of the State of \_\_\_\_\_ [**confirm that choice of law provision parallels the Loan Agreement**].

ADMINISTRATIVE DETAILS

(Assignee to list names of credit contacts, addresses, phone and facsimile numbers, electronic mail addresses and account and payment information)

(a) LIBOR Lending Office:

Assignee name: Bank of America, N.A.  
Address: One Bryant Park, 35th Floor  
New York, New York 10036  
Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Electronic Mail: gregory.w.egli@bankofamerica.com

(b) Domestic Lending Office:

Assignee name: Bank of America, N.A.  
Address: One Bryant Park, 35th Floor  
New York, New York 10036  
Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Electronic Mail: gregory.w.egli@bankofamerica.com

(c) Notice Address:

Assignee name: Bank of America, N.A.  
Address: One Bryant Park, 35th Floor  
New York, New York 10036  
Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Electronic Mail: gregory.w.egli@bankofamerica.com

(d) Payment Instructions:

Account No. GL#-1366211723000  
Attention: Angela Kelly  
Reference: P/A Acadia Pelham Manor LLC #01254436

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NOTE

\$ \_\_\_\_\_

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, \_\_\_\_\_ ("Borrower", whether one or more) hereby promises to pay to the order of [\_\_\_\_\_] ("**Lender**") **under that certain Loan Agreement (defined below) among Borrower,**] Bank of America N.A., a national banking association and administrative agent (together with any and all of its successors and assigns, "Administrative Agent") for the benefit of Lenders from time to time a party to that certain Loan Agreement (the "Loan Agreement") [**dated** \_\_\_\_\_, 20\_\_] of even date herewith, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent's Office as defined in the Loan Agreement, the principal sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. **Note; Interest; Payment Schedule and Maturity Date.** This Note is one of the Notes referred to in Loan Agreement and is entitled to the benefits thereof. The entire principal balance of this Note then unpaid shall be due and payable at the times as set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate as set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and if applicable a late charge as set forth in the Loan Agreement.

2. **Security; Loan Documents.** The security for this Note includes a Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$[\_\_\_\_\_] (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Mortgage") dated \_\_\_\_\_, 20\_\_ from Borrower to Administrative Agent covering certain property in Pelham Manor, Westchester County, New York described therein (the "Property"). This Note, the Mortgage, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), are, as the same have been or may be amended, restated, modified or supplemented from time to time, herein sometimes called individually a "Loan Document" and together the "Loan Documents".

3. **Defaults.**

(a) It shall be a default ("Default") under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full when due, regardless of how such amount may have become due; (ii) any covenant, agreement, condition, representation or warranty herein or in any other Loan Documents is not fully and timely performed, observed or kept; or (iii) there shall occur any default or event of default under the Mortgage or any other Loan Document. Upon the occurrence of a Default,

Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lenders hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Mortgage and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said

parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in the first paragraph of Page 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

7. No Usury. It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and all Lenders at all times to comply with applicable state Law or applicable United States federal Law (to the extent that it permits a Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state Law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal Law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Administrative Agent's exercise of the option to accelerate the Maturity Date, or if any

prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable Law, then it is Administrative Agent's and each Lender's express intent that all excess amounts theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of this Note and all other indebtedness and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lenders for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has duly executed this Note under seal as of the date first above written.

P/A-ACADIA PELHAM MANOR, LLC, a  
Delaware limited liability company

By

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Robert Masters  
Senior Vice President

SCHEDULE OF LENDERS AND OTHER PARTIES

BANK OF AMERICA, N.A., as Administrative Agent:

Notices:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Email: gregory.w.egli@bankofamerica.com

Payment Instructions:

ABA No.: 026009593  
Account No.: GL#-1366211723000  
Attention: Angela Kelly  
Reference: P/A Acadia Pelham Manor, LLC #01254436

BANK OF AMERICA, N.A., as Lender:

Commitment Amount: \$2,446,298.11  
Pro Rata Share: 100%

Domestic and LIBOR Lending Office:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Email: gregory.w.egli@bankofamerica.com

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Notices:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

Attention: Mr. Gregory Egli  
Telephone: 646-855-2630  
Facsimile: 212-293-8197  
Email: gregory.w.egli@bankofamerica.com

Payment Instructions:

ABA No.: 026009593  
Account No.: GL#-1366211723000  
Attention: Angela Kelly  
Reference: P/A Acadia Pelham Manor, LLC #01254436

SWAP CONTRACTS

1. Swap Documentation. Within the timeframes required by Lender and Swap Counterparty, Borrower shall deliver to Swap Counterparty the following documents and other items, executed and acknowledged as appropriate, all in form and substance satisfactory to Lender and Swap Counterparty: (a) Master Agreement in the form published by the International Swaps and Derivatives Association, Inc. and related schedule in the form agreed upon between Borrower (or its Affiliate) and Swap Counterparty; (b) a confirmation under the foregoing, if applicable; (c) a Guaranty; (d) if Borrower (or its Affiliate) is anything other than a natural person, evidence of due authorization to enter into transactions under the foregoing Swap Contract with Swap Counterparty, together with evidence of due authorization and execution of any Swap Contract; and such other title endorsements, documents, instruments and agreements as Lender and Swap Counterparty may require to evidence satisfaction of the conditions set forth in this Section, including a swap endorsement to Lender's title policy in form and substance satisfactory to Lender.

2. Conveyance and Security Interest. To secure Borrower's Obligations, Borrower hereby transfers, assigns and transfers to Lender, and grants to Lender a security interest in, all of Borrower's right, title and interest, but not its obligations, duties or liabilities for any breach, in, under and to the Swap Contract, any and all amounts received by Borrower in connection therewith or to which Borrower is entitled thereunder, and all proceeds of the foregoing. All amounts payable to Borrower under the Swap Contract shall be paid to Lender and shall be applied to pay interest or other amounts under the Loan.

3. Intentionally Omitted.

4. Cross-Default. It shall be a Default under this Agreement if any default (beyond any applicable notice or cure periods) occurs as defined under any Swap Contract as to which Borrower (or its Affiliate) is the Defaulting Party, or if any Termination Event occurs under any Swap Contract as to which Borrower (or its Affiliate) is an Affected Party. As used in this Section, the terms "Defaulting Party", "Termination Event" and "Affected Party" have the meanings ascribed to them in the Swap Contract.

5. Remedies; Cure Rights. In addition to any and all other remedies to which Lender and Swap Counterparty are entitled at law or in equity, Swap Counterparty shall have the right, to the extent so provided in any Swap Contract or any Master Agreement relating thereto, (a) to declare an event of default, termination event or other similar event thereunder and to designate an Early Termination Date as defined under the Master Agreement, and (b) to determine net termination amounts in accordance with the Swap Contract and to setoff amounts between Swap Contracts. Lender shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower (or its Affiliate) such action as Lender may at any time determine to be necessary or advisable to cure any default under any Swap Contract or to protect the rights of Borrower (or its Affiliate) or Swap Counterparty thereunder; provided, however, that before the occurrence of a Default under this Agreement, Lender shall give prior



written notice to Borrower before taking any such action. For this purpose, Borrower hereby constitutes Lender its true and lawful attorney-in-fact with full power of substitution, which power of attorney is coupled with an interest and irrevocable, to exercise, at the election of Lender, any and all rights and remedies of Borrower (or its Affiliate) under the Swap Contract, including making any payments thereunder and consummating any transactions contemplated thereby, and to take any action that Lender may deem proper in order to collect, assert or enforce any claim, right or title, in and to the Swap Contract hereby assigned and conveyed, and generally to take any and all such action in relation thereto as Lender shall deem advisable. Lender shall not incur any liability if any action so taken by Lender or on its behalf shall prove to be inadequate or invalid. Borrower expressly understands and agrees that Lender is not hereby assuming any duties or obligations of Borrower (or its Affiliate) to make payments to Swap Counterparty under any Swap Contract or under any other Loan Document. Such payment duties and obligations remain the responsibility of Borrower (or its Affiliate) notwithstanding any language in this Agreement.

NOTE

\$2,446,298.11

December 1, 2010

FOR VALUE RECEIVED, P/A-ACADIA PELHAM MANOR LLC (“Borrower”, whether one or more) hereby promises to pay to the order of Bank of America, N.A. (“Lender”) under that certain Loan Agreement (defined below) among Borrower, Bank of America N.A., a national banking association and administrative agent (together with any and all of its successors and assigns, “Administrative Agent”) for the benefit of Lenders from time to time a party to that certain Loan Agreement (the “Loan Agreement”) dated of even date herewith, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent’s Office as defined in the Loan Agreement, the principal sum of Two Million Four Hundred Forty-Six Thousand Two Hundred Ninety-Eight and 11/100 Dollars (\$2,446,298.11) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Notes referred to in Loan Agreement and is entitled to the benefits thereof. The entire principal balance of this Note then unpaid shall be due and payable at the times as set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate as set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and if applicable a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$2,446,298.11 (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the “Mortgage”) dated as of the date hereof from Borrower to Administrative Agent covering certain property in Pelham Manor, Westchester County, New York described therein (the “Property”). This Note, the Mortgage, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the “Loan”), are, as the same have been or may be amended, restated, modified or supplemented from time to time, herein sometimes called individually a “Loan Document” and together the “Loan Documents”.

3. Defaults.

(a) It shall be a default (“Default”) under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full when due, regardless of how such amount may have become due; (ii) any covenant, agreement, condition, representation or warranty herein or in any other Loan Documents is not fully and timely performed, observed or kept; or (iii) there shall occur any default or event of default under the Mortgage or any other Loan Document. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal

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balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lenders hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Mortgage and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby.

Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in the first paragraph of Page 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

7. No Usury. It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and all Lenders at all times to comply with applicable state Law or applicable United States federal Law (to the extent that it permits a Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state Law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal Law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Administrative Agent's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted

by applicable Law, then it is Administrative Agent's and each Lender's express intent that all excess amounts theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of this Note and all other indebtedness and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lenders for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has duly executed this Note under seal as of the date first above written.

P/A-ACADIA PELHAM MANOR, LLC, a  
Delaware limited liability company

By: /s/ Robert Masters

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Robert Masters  
Senior Vice President

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NOTE

\$31,553,701.89

December 1, 2010

FOR VALUE RECEIVED, P/A-ACADIA PELHAM MANOR LLC (“Borrower”, whether one or more) hereby promises to pay to the order of Bank of America, N.A. (“Lender”) under that certain Loan Agreement (defined below) among Borrower, Bank of America N.A., a national banking association and administrative agent (together with any and all of its successors and assigns, “Administrative Agent”) for the benefit of Lenders from time to time a party to that certain Transfer Loan Agreement (the “Loan Agreement”) dated of even date herewith, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent’s Office as defined in the Loan Agreement, the principal sum of Thirty-One Million Five Hundred Fifty-Three Thousand Seven Hundred One and 89/100 Dollars (\$31,553,701.89) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Notes referred to in Loan Agreement and is entitled to the benefits thereof. The entire principal balance of this Note then unpaid shall be due and payable at the times as set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate as set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and if applicable a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a consolidated mortgage in the amount of \$31,553,701.89 (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the “Mortgage”) dated as of the date hereof from Borrower to Administrative Agent covering certain property in Pelham Manor, Westchester County, New York described therein (the “Property”). This Note, the Mortgage, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the “Loan”), are, as the same have been or may be amended, restated, modified or supplemented from time to time, herein sometimes called individually a “Loan Document” and together the “Loan Documents”.

3. Defaults.

(a) It shall be a default (“Default”) under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full when due, regardless of how such amount may have become due; (ii) any covenant, agreement, condition, representation or warranty herein or in any other Loan Documents is not fully and timely performed, observed or kept; or (iii) there shall occur any default or event of default under the Mortgage or any other Loan Document. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and

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under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lenders hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Mortgage and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for



the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in the first paragraph of Page 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

7. No Usury. It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and all Lenders at all times to comply with applicable state Law or applicable United States federal Law (to the extent that it permits a Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state Law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal Law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Administrative Agent's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable Law, then it is Administrative Agent's and each Lender's express intent that all

excess amounts theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of this Note and all other indebtedness and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lenders for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has duly executed this Note under seal as of the date first above written.

P/A-ACADIA PELHAM MANOR, LLC, a  
Delaware limited liability company

By: /s/ Robert Masters

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Robert Masters  
Senior Vice President

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NOTE CONSOLIDATION AND MODIFICATION AGREEMENT

(Transfer Loan)

NOTE CONSOLIDATION AND MODIFICATION AGREEMENT made as of the 1st day of December, 2010 by and between BANK OF AMERICA, N.A., as Administrative Agent (“Administrative Agent”), pursuant to the Loan Agreement defined below, having an office at One Bryant Park, 35th Floor, New York, New York 10036 (“Lender”), and P/A-ACADIA PELHAM MANOR, LLC, a Delaware limited liability company having an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 (“Mortgagor”).

Administrative Agent, on behalf of Lenders (as defined below), is now the present owner and holder of certain note(s) (as the same may have been modified, collectively the “Notes”) secured by the mortgages more particularly described on Exhibit A hereto (collectively, the “Mortgages”). The Notes evidence an aggregate outstanding principal indebtedness of \$31,553,701.89.

Administrative Agent, on behalf of Lender, acquired the Notes pursuant to that certain Transfer Loan Agreement dated as of the date hereof (the “Loan Agreement”) by and between Administrative Agent, Borrower, Bank of America, N.A., as Lender (“BofA”; BofA, together with each other entity which may become a Lender pursuant to the Loan Agreement, collectively, “Lenders”).

Administrative Agent, on behalf of Lenders, the holder of the Notes, and Borrower, the owner of the premises encumbered by the Mortgage, have agreed to consolidate, modify and restate the terms of the Note in the manner hereinafter set forth.

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NOW, THEREFORE, in consideration of mutual promises and agreements contained herein, the parties hereto covenant and agree as follows:

1. Borrower hereby acknowledges that on the date hereof the outstanding principal balance of the Notes is \$31,553,701.89 (the "Indebtedness").

2. All of the terms, covenants and conditions of the Notes are hereby consolidated, modified and restated in their entirety on the terms and conditions set forth in the Loan Agreement; and the Notes as consolidated, modified and restated in their entirety shall be evidenced by one or more replacement transfer loans note in the aggregate principal amount of \$31,553,701.89, issued as a "Note" under the Loan Agreement (collectively, the "Replacement Note").

3. Borrower acknowledges that it is indebted to Lender in accordance with the Replacement Note and assumes, covenants and agrees to pay the Indebtedness in accordance with the terms, covenants and conditions of the Loan Agreement and the Replacement Note.

4. Borrower warrants and represents that as of the date hereof there exist no counterclaims, offsets or defenses with respect to its obligations under the Replacement Note.

5. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their heirs, representatives, successors and assigns.

6. This Agreement and the rights and obligations of the parties hereto shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York.

7. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BANK OF AMERICA, N.A.

By /s/ Gregory Egli

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Gregory Egli  
Senior Vice President

P/A-ACADIA PELHAM MANOR, LLC, a  
Delaware limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

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Mortgage Schedule

1. Building Loan Fee and Leasehold Loan Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$23,026,906.60 made by Mortgagor to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee of Bear Stearns Commercial Mortgage, Inc. ("Bear Stearns") dated December 10, 2007 and recorded in the office of the County Clerk of Westchester County, New York (the "Office") on January 23, 2008 as Control No. 480160019 (the "Original BL Mortgage") **upon which a mortgage recording tax of \$299,359.70 was duly paid**, which Original BL Mortgage was assigned by MERS as a nominee of U.S. Bank National Association, not individually but solely as trustee for the Maiden Lane Commercial Mortgage-Backed Securities Trust 2008-1, as successor to Bear Stearns, to Mortgagee by Assignment of Building Loan Fee and Leasehold Mortgage and Security Agreement dated December 1, 2010 and to be recorded in the Office immediately prior hereto. Outstanding principal amount: \$20,022,204.11
  2. Project Loan Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$12,637,093.40 made by Mortgagor to MERS as nominee of Bear Stearns dated December 10, 2007 and recorded in the Office on January 23, 2008 as Control No. 480160029 (the "Original PL Mortgage") **upon which a mortgage recording tax of \$164,282.30 was duly paid**, which Original PL Mortgage was assigned by MERS as a nominee of U.S. Bank National Association, not individually but solely as trustee for the Maiden Lane Commercial Mortgage-Backed Securities Trust 2008-1, as successor to Bear Stearns, to Mortgagee by Assignment of Project Loan Fee and Leasehold Mortgage and Security Agreement dated December 1, 2010 and to be recorded in the Office immediately prior hereto. Outstanding principal amount: \$11,531,497.78
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LOCATION: 2 Penn Place  
VILLAGE: Pelham Manor  
TOWN: Pelham  
COUNTY: Westchester  
SECTION: 166.26  
BLOCK: 1  
LOTS: 8.1, 8.2 and 8.3

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Date: As of December 1, 2010

FEE AND LEASEHOLD MORTGAGE,  
ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT  
("this Mortgage")

FROM

P/A-ACADIA PELHAM MANOR, LLC,  
a limited liability company organized and existing under the laws of Delaware  
("Mortgagor")

Address and Chief  
Executive Office of Mortgagor:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605

TO

BANK OF AMERICA, N.A.,  
a national banking association,  
as Administrative Agent  
("Mortgagee")

Address of Mortgagee:

One Bryant Park, 35th Floor  
New York, New York 10036

Mortgage Amount: \$2,446,298.11

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This instrument prepared by, and after recording please return to:  
Schiff Hardin LLP  
900 Third Avenue, 23rd Floor  
New York, New York 10022  
Attention: Paul G. Mackey, Esq.

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FEE AND LEASEHOLD MORTGAGE,  
ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

THIS FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Mortgage") is made as of the 1st day of December, 2010, by P/A-ACADIA PELHAM MANOR, LLC, a Delaware limited liability company, ("Mortgagor"), in favor of and for the benefit of BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for itself and other lenders pursuant to the Loan Agreement defined below (together with its successors and assigns, "Mortgagee").

ARTICLE 1

Definitions; Granting Clauses; Secured Indebtedness

Section 1.1. Principal Secured. This Mortgage secures the aggregate principal amount of up to \$2,446,298.11 plus such additional amounts as Mortgagee may from time to time advance subsequent to a default by Mortgagor pursuant to the terms and conditions of this Mortgage, with respect to an obligation secured by a lien or encumbrance prior to the lien of this Mortgage or for the protection of the lien of this Mortgage, together with interest thereon. In the event that all or any part of the Premises is located in the State of New York, then, notwithstanding the language in the Granting Clause and Section 2.2 or anything else contained herein to the contrary, the maximum amount secured hereby at execution or which under any contingency may become secured hereby at any time hereafter is the Mortgage Amount and all interest, additional interest and late payment and prepayment charges in respect thereof, plus all amounts expended by Mortgagee following a default hereunder in respect of insurance premiums and real estate taxes, and all legal costs or expenses of collection of the debt secured hereby or of the defense or prosecution of the rights and lien created hereby.

Section 1.2. Definitions.

(a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

"Additional Interest": Additional Interest as defined in the Loan Agreement.

"Fee Parcel" means the portion of the Land identified on Exhibit A as Parcel 1.

"Ground Lease" means that certain Ground Lease dated October 1, 2004 between Ground Lessor, as landlord, and Ground Lessor, as tenant, as to which a Memorandum of Ground Lease dated October 1, 2004 between Ground Lessor and Borrower was recorded in the office of the Clerk of the County of Westchester on February 23, 2004 in Control No. 443010050, as

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modified by letter agreement dated January 30, 2006 between Ground Lessor and Borrower, as modified by First Amendment to Ground Lease dated June 28, 2006 between Ground Lessor and Borrower, as modified by letter agreement dated November 28, 2006 between Ground Lessor and Borrower and as modified by Second Amendment to Ground Lease dated December 6, 2007 between Ground Lessor and Borrower.

“Ground Lease Parcels” means the portion of the Land identified on Exhibit A as Parcels 2 and 3.

“Ground Lessor” means, collectively, Rusciano & Son Corp. and Secor Lane Corp. and their successors and assigns as owners of the fee interest in the Land.

“Loan Agreement”: Loan Agreement dated of even date herewith between Mortgagor and Mortgagee, as it may be from time to time amended, restated, modified, extended or supplemented.

“Mortgagor”: P/A-Acadia Pelham Manor, LLC, a Delaware limited liability company, whose address is c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and its permitted successors and assigns.

“Promissory Note”: Collectively, the Notes, as defined in the Loan Agreement.

Capitalized terms used herein which are not otherwise defined but which are defined in the Loan Agreement shall have the meaning ascribed to them in the Loan Agreement.

Section 1.3. Granting Clause. In consideration of the provisions of this Mortgage and of the sum of \$10.00 cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by Mortgagor, Mortgagor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN, MORTGAGE, HYPOTHECATE, PLEDGE, DEPOSIT and SET OVER to Mortgagee, with all estate, right, title and interest of Mortgagor in and to the Property (as hereinafter defined), whether now owned or held or hereafter acquired by Mortgagor, to have and hold the Property unto Mortgagee, its successors and assigns forever; and to hold the Property unto Mortgagee in fee simple forever (except as to Mortgagor’s interest in the Ground Lease Parcels pursuant to the Ground Lease, as to which such interest is a valid leasehold interest); provided that Mortgagor may retain possession of the Property until the occurrence of an Event of Default; (a) the real property described in Exhibit A which is attached hereto and incorporated herein by reference (the “Land”) together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the “Improvements”); and (ii) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase or lease the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being

herein sometimes collectively called the "Premises"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); (c) all (i) plans and specifications for the Improvements; (ii) Mortgagor's rights, but not liability for any breach by Mortgagor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), Swap Transactions (as hereinafter defined), contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Mortgagor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (hereinafter defined) for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan or any Swap Transaction, all rights to the payment of money from Mortgagee under any Swap Transaction, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Transaction; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest; and (d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any

rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; (iii) all commercial tort claims Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Mortgagor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the lease creating the leasehold estate; TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Mortgagee, its successors and assigns, in trust, in fee simple forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Mortgagor under the Note and Loan Documents (as hereinafter defined) and all other indebtedness and matters defined as "Secured Indebtedness" in Section 1.5 of this Mortgage; PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee (as hereinafter defined) the principal sum, including all additional advances and all other sums payable by Mortgagor to Mortgagee under the terms of the Loan Documents and shall perform or cause to be performed all the other terms, conditions, agreements and provisions contained in the Loan Documents, all without fraud or delay or deduction or abatement of anything or for any reason, then this Mortgage and the estate hereby granted shall cease, terminate and become void.

Section 1.4. Security Interest. Mortgagor hereby grants to Mortgagee a security interest in all of the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "Collateral") to secure the obligations of Mortgagor under the Note and Loan Documents and all other indebtedness and matters defined as Secured Indebtedness in Section 1.5 of this Mortgage. In addition to its rights hereunder or otherwise, Mortgagee shall have all of the rights of a secured party under the New York Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law.

Section 1.5. Secured Indebtedness, Note, Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively the "Secured Indebtedness"): (a) the Promissory Note and all other promissory notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or

in part (such promissory note or promissory notes, whether one or more, as from time to time renewed, extended, supplemented, increased or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "Note", and Mortgagee, or the subsequent Mortgagee at the time in question of the Note or any of the Secured Indebtedness, as hereinafter defined, such Mortgagee continuing to be defined herein as "Mortgagee"); and (b) all interest, Additional Interest, indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Mortgagor to Mortgagee now or hereafter incurred or arising pursuant to or permitted by the provisions of the Note, this Mortgage, the Loan Agreement or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the loan evidenced by the Note, including but not limited to any loan or credit agreement, letter of credit or reimbursement agreement, tri-party financing agreement, Master Agreement relating to any Swap Transactions or other agreement between Mortgagor and Mortgagee, or among Mortgagor, Mortgagee and any other party or parties, pertaining to the repayment or use of the proceeds of the loan evidenced by the Note (the Note, the Mortgage, the Loan Agreement, any Master Agreement relating to any Swap Transactions and any such documents as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the "Loan Documents"). "Swap Transaction" means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement (the "Master Agreement") published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Mortgagee (or its affiliates) and Mortgagor (or its affiliates), together with any related schedules, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.

## ARTICLE 2

### Representations, Warranties and Covenants

Section 2.1. Mortgagor represents, warrants, and covenants as follows:

(a) Payment and Performance. Mortgagor will make due and punctual payment of the Secured Indebtedness. Mortgagor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Mortgage and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this Mortgage.

(b) Title and Permitted Encumbrances. Mortgagor has, in Mortgagor's own right, and Mortgagor covenants to maintain, lawful, good and marketable title to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any, set forth under the heading "Permitted Encumbrances" in Exhibit B hereto,

which are Permitted Encumbrances only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of Mortgagee (the matters described in the foregoing clauses (i), (ii), (iii) and (iv) being herein called the "Permitted Encumbrances"). Mortgagor owns and holds the Fee Parcel in fee simple absolute. Mortgagor is the owner of a valid and subsisting interest as tenant under the Ground Lease, that the Ground Lease is in full force and effect, there are no defaults thereunder and no event has occurred or is occurring which after notice or passage of time or both will result in such a default, that the Ground Lease is subject to no lien, charge or encumbrance of any kind and is prior to all liens, charges and encumbrances whatsoever on the fee interest of the lessor thereunder except such as are listed as exceptions to title in the title policy insuring the lien hereof. Mortgagor, and Mortgagor's successors and assigns, will warrant generally and forever defend title to the Property, subject as aforesaid, to Mortgagee and his successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Mortgagor will preserve the leasehold estate created in it by the Ground Lease, and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Mortgagor will perform or cause to be performed all of the covenants and conditions required to be performed by it under the Ground Lease, will do all things necessary to preserve unimpaired its rights thereunder, and will not enter into any agreement modifying or amending the Ground Lease or releasing the lessor thereunder from any obligations imposed upon it thereby. If Mortgagor receives a notice of default under the Ground Lease, it shall immediately cause a copy of such notice to be sent by registered United States mail to Mortgagee. Mortgagor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Mortgagee. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Mortgagee of any existing or future violation or other breach thereof by Mortgagor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Mortgagor if Mortgagor is an individual. If any right or interest of Mortgagee in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Mortgagee and Mortgagee, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Mortgagee, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee or Mortgagee (as the case may be), and the party (Mortgagee or Mortgagee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions/Condominium Charges. Mortgagor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all real estate taxes assessed against the Property or any part thereof, and shall deliver

promptly to Mortgagee such evidence of the payment thereof as Mortgagee may require. Any lien for Condominium Assessments, whenever accruing, shall, pursuant to the Declaration, be subordinate to the lien of this Mortgage.

(d) **Insurance.** Mortgagor shall obtain and maintain at Mortgagor's sole expense: (1) mortgagee title insurance issued to Mortgagee covering the Premises as required by Mortgagee, without exception for mechanics' liens; (2) property insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against any and all acts of terrorism and such other insurable hazards as Mortgagee may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Mortgagor and Mortgagee from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non-reporting) form during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises; (3) if and to the extent any portion of the Improvements is, under the Flood Disaster Protection Act of 1973 ("FDPA"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by Mortgagee, but in no event less than the amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; (4) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of Mortgagor as named insured and Mortgagee as additional insured; (5) statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of Mortgagor and any contractor; (6) if there is a general contractor, during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in clause (4) above, for the benefit of the general contractor as named insured and Mortgagor and Mortgagee as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of the general contractor any contractor; and (7) such other insurance on the Property and endorsements as may from time to time be required by Mortgagee (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance, wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to Mortgagee, and shall require not less than ten (10) days' prior written notice to Mortgagee of any cancellation for nonpayment of premiums, and not less than thirty (30) days' prior written notice to Mortgagee of any other cancellation or any change of coverage. All insurance companies must be licensed to do business in the state in which the Property is located and must have an A.M. Best Company financial and performance ratings of A-:IX or better. All insurance policies maintained, or caused to be maintained, by Mortgagor with respect to the Property, except for general liability



insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Mortgagor or Mortgagee and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Mortgage or any other Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any Debtor Relief Law, or if in Mortgagee's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Mortgagor shall, in each instance promptly upon its discovery thereof or upon the request of Mortgagee therefor, and at Mortgagor's expense, promptly obtain and deliver to Mortgagee a like policy (or, if and to the extent permitted by Mortgagee, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this Mortgage or such other Loan Document, as the case may be. Without limiting the discretion of Mortgagee with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Mortgagee as mortgagee with loss proceeds payable to Mortgagee notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named or additional insured; (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Mortgagee under the Loan Documents; or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. The originals of each initial insurance policy (or to the extent permitted by Mortgagee, a copy of the original policy and such evidence of insurance acceptable to Mortgagee) shall be delivered to Mortgagee at the time of execution of this Mortgage, with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to Mortgagee, with all premiums fully paid current, at least ten (10) days before the termination of the policy it renews or replaces. Mortgagor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Mortgagee evidence satisfactory to Mortgagee of the timely payment thereof. If any loss occurs at any time when Mortgagor has failed to perform Mortgagor's covenants and agreements in this paragraph with respect to any insurance payable because of loss sustained to any part of the Property whether or not such insurance is required by Mortgagee, Mortgagee shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Mortgagor, to the same extent as if it had been made payable to Mortgagee. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Secured Indebtedness, all of Mortgagor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Mortgagee shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property where the loss is estimated by Mortgagee to be \$1,000,000 or more, regardless of whether or not such insurance policies are required by Mortgagee, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be a part of the Secured Indebtedness and shall be due and payable to Mortgagee on demand. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application

of any amount paid over to Mortgagor. Any such proceeds received by Mortgagee shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration, either partly or entirely, of the Property so damaged, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(e) Application of Insurance Proceeds. Notwithstanding anything to the contrary set forth in the preceding Section 2.1(d), if the Property is damaged or destroyed and Mortgagee determines that all of the conditions specified hereinafter in this Section have been satisfied, then Mortgagee shall apply the proceeds of insurance (i) first to reimbursing itself for all costs incurred by it in the collection of such proceeds and (ii) second to reimbursing Mortgagor for such actual costs as shall have been incurred by Mortgagor in restoring the Property and shall be approved by Mortgagee. Insurance proceeds shall be applied to such restoration solely if (A) Mortgagee determines that: (i) the Property is capable of being suitably restored in accordance with applicable Legal Requirements to the value, condition, character and general utility existing prior to such damage or destruction, and, in any event, to a Loan to Value Ratio of not greater than 70%, provided that this clause (i) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (ii) sufficient funds are unconditionally available (from proceeds of insurance and/or from funds of Mortgagee) to enable Mortgagor promptly to commence, and thereafter diligently to prosecute to completion, such restoration, provided that this clause (ii) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (iii) Mortgagor is not in default or in breach of any obligations under any Loan Document, no uncured Default exists under any Loan Document and no facts or circumstances exist that would constitute a Default with the passage of time or the giving of notice or both; and (iv) neither the validity, enforceability nor priority of the lien of this Mortgage shall be adversely affected; (B) Mortgagor has entered into a written agreement, satisfactory in form and substance to Mortgagee, containing such conditions to disbursements as are employed at the time by Mortgagee for construction loans; (C) Mortgagor has delivered to Mortgagee such security as Mortgagee might have reasonably required to assure completion of restoration in accordance with the standards specified above; and (D) Mortgagor has complied with such further reasonable requirements as Mortgagee might have specified.

(f) Reserve for Insurance, Taxes and Assessments. Upon request of Mortgagee, to secure the payment and performance of the Secured Indebtedness, but not in lieu of such payment and performance, Mortgagor will deposit with Mortgagee a sum equal to real estate taxes, assessments and charges (which charges for the purposes of this paragraph shall include without limitation any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Mortgagee and prorated to the end of the calendar month following the month during which Mortgagee's request is made, and thereafter will deposit with Mortgagee, on

each date when an installment of principal and/or interest is due on the Note, sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay at least fifteen (15) days prior to the due date thereof, the next maturing real estate taxes, assessments and charges and premiums for such policies of insurance. Mortgagee shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Mortgagee for future use, applied to any Secured Indebtedness or refunded to Mortgagor, at Mortgagee's option, and any deficiency in such funds so deposited shall be made up by Mortgagor upon demand of Mortgagee. All such funds so deposited shall bear no interest, may be commingled with the general funds of Mortgagee and shall be applied by Mortgagee toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Mortgagee by Mortgagor (which statements shall be presented by Mortgagor to Mortgagee a reasonable time before the applicable amount is due); provided, however, that, if a Default shall have occurred hereunder, such funds may at Mortgagee's option be applied to the payment of the Secured Indebtedness in the order determined by Mortgagee in its sole discretion, and that Mortgagee may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Mortgagor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Mortgagor's interest in and rights to such funds held by Mortgagee under this paragraph but subject to the rights of Mortgagee hereunder.

(g) Condemnation. Mortgagor shall notify Mortgagee immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Mortgagor shall, at Mortgagor's expense, diligently prosecute any such proceedings. Mortgagee shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Mortgagee shall be entitled to receive all sums which may be awarded or become payable to Mortgagor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for injury or damage to the Property. Mortgagor shall, promptly upon request of Mortgagee, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Mortgagee to collect and receipt for any such sums. All such sums are hereby assigned to Mortgagee, and shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration of the Property so affected, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Mortgagor. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All costs and expenses (including but not limited to attorneys' fees) incurred

by Mortgagee in connection with any condemnation shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(h) Compliance with Legal Requirements. The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Legal Requirements (hereinafter defined). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Mortgagor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Mortgage to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. No improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Mortgagor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property.

If Mortgagor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Mortgagor will promptly furnish a copy of such notice or claim to Mortgagee. Mortgagor has received no notice and has no knowledge of any such noncompliance. As used in this Mortgage: (i) the term "Legal Requirement" means any Law (hereinafter defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(i) Maintenance, Repair and Restoration. Mortgagor will keep the Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Mortgagor will not, without the prior written consent of Mortgagee, (i) remove from the Property any fixtures or personal property covered by this Mortgage except such as is replaced by Mortgagor by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest (except that created by this Mortgage), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Mortgagor shall give prompt notice thereof to Mortgagee and Mortgagor shall promptly, at Mortgagor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(j) No Other Liens. Mortgagor will not, without the prior written consent of Mortgagee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, voluntary or involuntary lien,

whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Mortgagee, Mortgagor will cause the same to be promptly discharged and released. Mortgagor will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Mortgagee. If Mortgagee consents to the voluntary grant by Mortgagor of any mortgage, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Mortgage and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Mortgagee; (3) Rents (hereinafter defined), if collected by or for Mortgagee of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Mortgagee may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Mortgagee with or immediately after the occurrence of any such default or commencement; and (5) neither Mortgagee of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Mortgagor's rights hereunder without the prior written consent of Mortgagee.

(k) Operation of Property. Mortgagor will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Mortgagor will keep the Property occupied so as not to impair the insurance carried thereon. Mortgagor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Mortgagor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Mortgagor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Mortgagee. Mortgagor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened. Mortgagor will preserve, protect, renew,

extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Mortgagee, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Mortgagor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid.

(l) Financial Matters. Mortgagor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law (hereinafter defined) is pending (or, to Mortgagor's knowledge, threatened) by or against Mortgagor, or any affiliate of Mortgagor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Mortgagor to Mortgagee in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Mortgagor or, to Mortgagor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Mortgagor" shall also include any person liable directly or indirectly for the Secured Indebtedness or any part thereof and any joint venturer or general partner of Mortgagor.

(m) Status of Mortgagor; Suits and Claims; Loan Documents. If Mortgagor is a corporation, partnership, limited liability company, or other legal entity, Mortgagor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Mortgagor has been duly authorized, executed and delivered by Mortgagor, and the obligations thereunder and the performance thereof by Mortgagor in accordance with their terms are and will continue to be within Mortgagor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement or any other document or agreement to which Mortgagor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Mortgagor, or any other person liable, directly or indirectly, for any of the Secured Indebtedness, except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Mortgagor's knowledge, threatened) against Mortgagor (other than the lawsuit commenced by The Omni Health & Fitness Complex of Pelham, Inc., et al. in the Westchester County Supreme Court under index no. 24678/2008) or against any other person liable directly or indirectly for the Secured Indebtedness or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Mortgagor's title to the Property) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Mortgagor's knowledge, threatened) against Mortgagor, or against any other person liable

directly or indirectly for the Secured Indebtedness, except as has been disclosed in writing to Mortgagee in connection with the loan evidenced by the Note. The Loan Documents constitute legal, valid and binding obligations of Mortgagor enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws (hereinafter defined) and except as the availability of certain remedies may be limited by general principles of equity. Mortgagor is not a “foreign person” within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Mortgagor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The loan evidenced by the Note is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Mortgagor further warrants that the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan. Mortgagor’s exact legal name is correctly set forth at the end of this Mortgage. If Mortgagor is not an individual, Mortgagor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Mortgage. If Mortgagor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the introductory paragraph of this Mortgage. Mortgagor will not cause or permit any change to be made in its name, identity (including its trade name or names), or corporate or partnership structure, unless Mortgagor shall have notified Mortgagee in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Mortgagee for the purpose of further perfecting or protecting the lien and security interest of Mortgagee in the Property. In addition, Mortgagor shall not change its corporate or partnership structure without first obtaining the prior written consent of Mortgagee. Mortgagor’s principal place of business and chief executive office, and the place where Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Mortgagor) been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of Mortgagor set forth at the end of this Mortgage. If Mortgagor is an individual, Mortgagor’s principal residence has for the preceding four months been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of the principal residence of Mortgagor set forth at the end of this Mortgage. Mortgagor’s organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage. Mortgagor shall promptly notify Mortgagee (i) of any change of its organizational identification number, or (ii) if Mortgagor does not now have an organization identification number and later obtains one, of such organizational identification number.

(n) Certain Environmental Matters. Mortgagor shall comply with the terms and covenants of that certain Environmental Indemnity Agreement dated of even date herewith (the “Environmental Agreement”).

(o) Further Assurances. Mortgagor will, promptly on request of Mortgagee, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage or any other Loan Document; (ii) execute, acknowledge,

deliver, procure and record and/or file such further documents (including, without limitation, further mortgages of trust, security agreements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Mortgagee to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Mortgagee to enable Mortgagee to comply with the requirements or requests of any agency having jurisdiction over Mortgagee or any examiners of such agencies with respect to the indebtedness secured hereby, Mortgagor or the Property. Mortgagor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(p) Fees and Expenses. Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Mortgagee and/or Mortgagee on demand to the extent paid by Mortgagee and/or Mortgagee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, reasonable attorneys' fees, reasonable architect fees, reasonable engineer fees, reasonable construction consultant fees, reasonable environmental inspection fees, survey fees, and all other reasonable costs and expenses of every character incurred by Mortgagor or Mortgagee and/or Mortgagee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all amendments and supplements to this Mortgage, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Mortgagor as owner of the Property; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Mortgagor, hereunder or under any other Loan Document.

(q) Indemnification.

(i) Mortgagor will indemnify and hold harmless Mortgagee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (p), the term "Mortgagee" shall include and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Mortgagee. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this paragraph (p)



by Mortgagor to Mortgagee shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Mortgagee (including without limitation any rights of contribution or indemnification) against Mortgagor or any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Mortgagee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date (hereinafter defined), any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Mortgagor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein, any claim under or with respect to any Lease (hereinafter defined) or arising under the Environmental Agreement. The term "Release Date" as used herein means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Mortgage has been released, or (ii) the date on which the lien of this Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Mortgagor and Mortgagor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (p) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness, the termination of any and all Swap Transactions, the discharge and release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(r) Records and Financial Reports. Mortgagor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Property and the operation thereof, and will permit all such

books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics to be inspected and copied, and the Property to be inspected and photographed, by Mortgagee and its representatives during normal business hours and at any other reasonable times. Without limitation of other or additional requirements in any of the other Loan Documents, Mortgagor will furnish to Mortgagee the financial statements required under the Loan Agreement. Mortgagor will furnish to Mortgagee at Mortgagor's expense all evidence which Mortgagee may from time to time reasonably request as to compliance with all provisions of the Loan Documents. Any inspection or audit of the Property or the books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics of Mortgagor, or the procuring of documents and financial and other information, by or on behalf of Mortgagee shall be for Mortgagee's protection only, and shall not constitute any assumption of responsibility to Mortgagor or anyone else with regard to the condition, construction, maintenance or operation of the Property nor Mortgagee's approval of any certification given to Mortgagee nor relieve Mortgagor of any of Mortgagor's obligations. Mortgagee may from time to time assign or grant participations in the Secured Indebtedness and Mortgagor consents to the delivery by Mortgagee to any acquirer or prospective acquirer of any interest or participation in or with respect to all or part of the Secured Indebtedness such information as Mortgagee now or hereafter has relating to the Property, Mortgagor, any party obligated for payment of any part of the Secured Indebtedness, any tenant or guarantor under any lease affecting any part of the Property and any agent or guarantor under any management agreement affecting any part of the Property.

(s) Taxes on Note or Mortgage. Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Mortgagor is prohibited by law) which may be required to be paid with respect to the Note, this Mortgage or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Mortgagee, the Note, the Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the Secured Indebtedness or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Secured Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

(t) Statement Concerning Note or Mortgage. Mortgagor shall at any time and from time to time furnish within seven (7) days of request by Mortgagee a written statement in such form as may be required by Mortgagee stating that (i) the Note, this Mortgage and the other Loan

Documents are valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms; (ii) the unpaid principal balance of the Note; (iii) the date to which interest on the Note is paid; (iv) the Note, this Mortgage and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other Loan Document. If any of the foregoing statements are untrue, Mortgagor shall, alternatively, specify the reasons therefor. Mortgagee shall at any time and from time to time furnish within seven (7) days of request by Mortgagor a written statement stating (i) the unpaid principal balance of the Note and (ii) the date to which interest on the Note is paid.

(u) Trust Fund; Lien Laws. Mortgagor will receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the “cost of improvement”, as such quoted term is defined in the New York Lien Law) and will apply the same first to the payment of such costs before using any part of the total of the same for any other purpose and, will comply with Section 13 of the New York Lien Law. Mortgagor will indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, reasonable attorney’s fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagor of any applicable lien law including, without limitation, any section of Article 3-A of the New York Lien Law.

Section 2.2. Performance by Mortgagee on Mortgagor’s Behalf. Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which under any Loan Document Mortgagor is required to perform or take, or to pay any money which under any Loan Document Mortgagor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the Secured Indebtedness has been accelerated, Mortgagee, in Mortgagor’s name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Mortgagee, with interest thereon at the Default Rate set forth in the Note, and any money so paid by Mortgagee shall be a demand obligation owing by Mortgagor to Mortgagee (which obligation Mortgagor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Mortgagee and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Mortgagee shall waive or cure any default or waive any right, remedy or recourse of Mortgagee. Any such payment may be made by Mortgagee in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Mortgagor to Mortgagee pursuant to this Mortgage shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Note for interest on past due principal owed on the Note but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Mortgagee on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Mortgagee hereunder and the time when paid shall be fully established by the certificate of Mortgagee or any of Mortgagee’s officers or agents.

Section 2.3. Absence of Obligations of Mortgagee with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of “Property” and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Mortgagor’s rights, title and interests therein but not Mortgagor’s obligations, duties or liabilities pertaining thereto, (ii) Mortgagee neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of “Property” herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Mortgagee may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Mortgagee’s interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Mortgagee shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Mortgagee elects otherwise by written notification.

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, required by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. For purposes of such filings, Mortgagor agrees to furnish any information requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Mortgage. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor’s own name to execute in Mortgagor’s name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Mortgagor’s authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorney-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

Section 2.5. Ground Lease Covenant. Mortgagor shall (a) pay all rents, additional rents and other sums required to be paid by Mortgagor, as tenant under and pursuant to the provisions of the Ground Lease as and when such rent or other charge is payable, (b) diligently perform and observe all of the terms, covenants and conditions of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed and observed prior to the expiration of any applicable grace period therein provided, and (c) promptly notify Mortgagee of the giving of any notice by the Ground Lessor to Mortgagor of any default by Mortgagor in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed and deliver to Mortgagee a true copy of each such notice. Mortgagor shall not, without the prior consent of Mortgagee, surrender the leasehold estate created by the Ground Lease or terminate or cancel the Ground Lease or, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, modify, change, supplement, alter or amend the Ground Lease,

in any respect, either orally or in writing, and Mortgagor hereby assigns to Mortgagee, as further security for the payment of the Secured Indebtedness and for the performance and observance of the terms, covenants and conditions of this Mortgage and the Loan Agreement, all of the rights, privileges and prerogatives of Mortgagor, which rights, privileges and prerogatives may be exercised by Mortgagee upon a Default, as tenant under the Ground Lease, to surrender the leasehold estate created by the Ground Lease or to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease, which consent, in the case of a change, supplement, modification, alteration or amendment, shall not be unreasonably withheld or delayed, and any such surrender of the leasehold estate created by the Ground Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease without the prior consent of Mortgagee shall be void and of no force and effect. If Mortgagor shall default in the performance or observance of any term, covenant or condition of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed, and such default shall remain uncured after the expiration of any applicable cure or grace period, then, without limiting the generality of the other provisions of this Mortgage and the Loan Agreement, and without waiving or releasing Mortgagor from any of its obligations hereunder or thereunder, Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed or to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under the Ground Lease shall be kept unimpaired and free from default. If Mortgagee shall make any payment or perform any act or take action in accordance with the preceding sentence, Mortgagee will notify Mortgagor of the making of any such payment, the performance of any such act, or the taking of any such action. In any such event, subject to the rights of tenants, subtenants and other occupants under the Leases, Mortgagee and any person designated by Mortgagee shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time after such default by Mortgagor, which remains uncured after the expiration of any applicable cure or grace period, for the purpose of taking any such action. Mortgagee may pay and expend such sums of money as Mortgagee deems reasonably necessary for any such purpose and upon so doing shall be subrogated to any and all rights of the Ground Lessor. Mortgagor hereby agrees to pay to Mortgagee immediately upon demand therefor, all such sums so paid and expended by Mortgagee, together with interest thereon from the day of such demand at the Default Rate. All sums so paid and expended by Mortgagee and the interest thereon shall be secured by the legal operation and effect of this Mortgage. If the Ground Lessor shall deliver to Mortgagee a copy of any notice of default sent by said Ground Lessor to Mortgagor, as tenant under the Ground Lease, such notice shall constitute full protection to Mortgagee for any action taken or omitted to be taken by Mortgagee, in good faith, in reliance thereon. Mortgagor will not subordinate or consent to the subordination of the Ground Lease to any mortgage, security deed, lease or other interest on or in the Ground Lessor's interest in all or any part of the Property, unless, in each such case, the written consent of Mortgagee shall have been first had and obtained..

Section 2.6. No Merger of Fee and Leasehold Estates. So long as any portion of the Secured Indebtedness shall remain unpaid, unless Mortgagee shall otherwise consent, the fee title to the Ground Lease Parcels and the leasehold estate therein created pursuant to the provisions of the Ground Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, Mortgagee, or in any other person by purchase, operation

of law or otherwise. Mortgagee reserves the right, at any time, to release portions of the Property, including, but not limited to, all of any part of the leasehold estate created by the Ground Lease, with or without consideration, at Mortgagee's election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents and any such release shall not affect Mortgagee's rights in connection with the portion of the Property not so released.

Section 2.7. Mortgagor's Acquisition of Fee Estate. In the event that Mortgagor, so long as any portion of the Secured Indebtedness remains unpaid, shall be the owner and holder of the fee title to all or any portion of the Ground Lease Parcels, the lien of the Mortgage shall be spread to cover Mortgagor's fee title to such of the Ground Lease Parcels and said fee title shall be deemed to be included in the Property without any further action. Mortgagor agrees, at its sole cost and expense, including without limitation Mortgagee's reasonable attorneys' fees, to (a) execute any and all documents or instruments necessary to subject its fee title to the Property to the lien of this Mortgage; and (b) provide a title insurance policy which shall insure that the lien of the Mortgage is a first lien on Mortgagor's fee title to the Property. Notwithstanding the foregoing, if the Ground Lease is for any reason whatsoever terminated prior to the natural expiration of its term, and if, pursuant to any provisions of the Ground Lease or otherwise, Mortgagee or its designee shall acquire from the Ground Lessor thereunder another lease of the Property, Mortgagor shall have no right, title or interest in or to such other lease or the leasehold estate created thereby.

Section 2.8. Rejection of the Ground Lease.

(a) If the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the Bankruptcy Code, or any other law affecting creditor's rights, (i) Mortgagor, immediately after obtaining notice thereof, shall give notice thereto to Mortgagee, (ii) Mortgagor, without the prior written consent of Mortgagee, shall not elect to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Mortgagor made without such consent shall be void and (iii) this Mortgage and the Loan Agreement and all the liens, terms, covenants and conditions of this Mortgage and the Loan Agreement hereby extends to and covers Mortgagor's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection of the Ground Lease or other termination of the Ground Lease. In addition, Mortgagor hereby assigns irrevocably to Mortgagee Mortgagor's rights to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under such Ground Lease in the event any case, proceeding or other action is commenced by or against the Ground Lessor under the Bankruptcy Code or any comparable federal or state statute or law.

(b) Mortgagor hereby assigns to Mortgagee (i) Mortgagor's right to reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Mortgagor under the Bankruptcy Code or comparable federal or state statute or law and (ii) Mortgagor's right to seek an extension of the sixty (60)-day period within which Mortgagor must accept or reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against

Mortgagor under the Bankruptcy Code or comparable federal or state statute or law. Further, if the foregoing assignment is not effective under applicable law and Mortgagor shall desire to so reject the Ground Lease, at Mortgagee's request, Mortgagor shall assign its interest in the Ground Lease to Mortgagee in lieu of rejecting the Ground Lease, upon receipt by Mortgagor of notice from Mortgagee of such request together with Mortgagee's agreement to cure any existing defaults of Mortgagor under the Ground Lease.

(c) Mortgagor hereby agrees that if the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the Bankruptcy Code or any other law affecting creditor's rights, any property not removed by Mortgagor as permitted or required by the Ground Lease, shall at the option of Mortgagee be deemed abandoned by Mortgagor, provided that Mortgagee may remove any such property required to be removed by Mortgagor pursuant to the Ground Lease and all costs and expenses associated with such removal shall be paid by Mortgagor within five (5) days of receipt by Mortgagor of an invoice for such removal costs and expenses.

### ARTICLE 3

#### Assignment of Rents and Leases

Section 3.1. Assignment. Mortgagor hereby assigns to Mortgagee all Rents (hereinafter defined) and all of Mortgagor's rights in and under all Leases (hereinafter defined). So long as no Default (hereinafter defined) has occurred, Mortgagor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of a Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Mortgagee, and to otherwise deal with all Leases as permitted by this Mortgage. Each month, provided no Default has occurred, Mortgagor may retain such Rents as were collected that month and held in trust for Mortgagee; provided, however, that all Rents collected by Mortgagor shall be applied solely to the ordinary and necessary expenses of owning and operating the Property or paid to Mortgagee. Upon the revocation of such license, all Rents shall be paid directly to Mortgagee and not through Mortgagor, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payments to Mortgagee shall constitute payments to Mortgagor under the Leases, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to do all things, after a Default, which Mortgagor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of Mortgagee, all in such manner as may be determined by Mortgagee, or at the option of Mortgagee, holding the same as security for

the payment of the Secured Indebtedness, (ii) leasing, in the name of Mortgagor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Default, unless other Defaults also then exist, shall entitle Mortgagor to recover its aforesaid license to do any such things which Mortgagor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Mortgagee to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Mortgagee for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this Mortgage. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Mortgagor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by damage to any part of the Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents. Mortgagor covenants, represents and warrants that: (a) Mortgagor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) neither Mortgagor nor any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Mortgagor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Mortgagor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent



enforcement is prudent under the circumstances; (h) Mortgagor will not without the prior written consent of Mortgagee, enter into any Lease after the date hereof except in accordance with the terms of Exhibit I to the Loan Agreement, or waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant (except in accordance with the terms of Exhibit I to the Loan Agreement), reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with the terms of Exhibit I to the Loan Agreement or in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease (except with respect to leases of 5,000 square feet of rentable space or less), or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise (except with respect to leases of 5,000 square feet of rentable space or less); (i) Mortgagor will not, without the prior written consent of Mortgagee, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more unless promptly after the cancellation or surrender a new Lease of such premises is made with a new tenant having a credit standing that is satisfactory to Mortgagee, in Mortgagee's judgment, on terms not materially less favorable to lessor than the terms of the terminated or cancelled Lease; (j) Mortgagor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (k) Mortgagor shall give prompt notice to Mortgagee, as soon as Mortgagor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Mortgagor shall defend, at Mortgagor's expense, any proceeding pertaining to any Lease, including, if Mortgagee so requests, any such proceeding to which Mortgagee is a party; (l) Mortgagor shall as often as requested by Mortgagee, within ten (10) days of each request, deliver to Mortgagee a complete rent roll of the Property in such detail as Mortgagee may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Mortgagor, and deliver to such of the tenants and others obligated under the Leases specified by Mortgagee written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Mortgagee; (m) promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee executed originals of all Leases and copies of all records in its possession or control relating thereto; (n) there shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Mortgagee; and (o) Mortgagee may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lien Mortgagee; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

Section 3.3. Estoppel Certificates. All Leases executed after the date hereof shall require the tenant to execute and deliver to Mortgagee an estoppel certificate in form and substance acceptable to Mortgagee not more than thirty (30) days after notice from Mortgagee.

Section 3.4. No Liability of Mortgagee. Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate

Mortgagee to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Property, or for Mortgagee's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Mortgagee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the same), shall render Mortgagee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Mortgagee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Mortgagee under this Article 3 shall be cumulative of all other rights of Mortgagee under the Loan Documents or otherwise.

Reference is hereby made to Section 291-f of the Real Property Law of the State of New York for the purpose of obtaining for Mortgagee the benefits of said Section in connection herewith.

#### ARTICLE 4

##### Default

Section 4.1. Events of Default. The occurrence of any one of the following shall be a default under this Mortgage ("default" or "Default"):

(a) Failure to Pay Indebtedness. Any of the Secured Indebtedness or any indebtedness evidenced by the other "Notes" (as defined in the Loan Agreement) is not paid when due, regardless of how such amount may have become due and such default shall have continued for a period of ten (10) days.

(b) Nonperformance of Covenants. Any covenant, agreement or condition herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept and such failure shall have continued for a period of thirty (30) days after notice thereof shall have been given to Mortgagor by Mortgagee (or such other cure period as may be specified elsewhere in this Mortgage or the other Loan Documents with respect to specific provisions), provided, however, if such default is not susceptible of being cured within such thirty (30) day period and Mortgagor has commenced such cure within such thirty (30) day period and is diligently pursuing such cure to Mortgagee's satisfaction, such thirty (30) day cure period shall be extended, but in no event shall such cure period exceed sixty (60) days, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein.

(c) Default under other Loan Documents. The occurrence of a Default under any other Loan Document, including an Early Termination Event as defined in any Master Agreement relating to any Swap Transaction.

(d) Representations. Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Mortgagee in connection with the Secured Indebtedness is false, misleading or erroneous in any material respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(e) Bankruptcy or Insolvency. The owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness (or any general partner or joint venturer of such owner or other person):

(i) (A) Executes an assignment for the benefit of creditors, or takes any action in furtherance thereof; or (B) admits in writing its inability to pay, or fails to pay, its debts generally as they become due; or (C) as a debtor, files a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, Title 11 of the United States Code as now or hereafter in effect or any other federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors (Title 11 of the United States Code and such other laws being herein called "Debtor Relief Laws"), or takes any action in furtherance thereof; or (D) seeks the appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property; or

(ii) Suffers the filing of a petition, case, proceeding or other action against it as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property, and (A) admits, acquiesces in or fails to contest diligently the material allegations thereof, or (B) the petition, case, proceeding or other action results in entry of any order for relief or order granting relief sought against it, or (C) in a proceeding under Debtor Relief Laws, the case is converted from one chapter to another, or (D) fails to have the petition, case, proceeding or other action permanently dismissed or discharged on or before the earlier of trial thereon or ninety (90) days next following the date of its filing; or

(iii) Conceals, removes, or permits to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or makes any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffers or permits, while insolvent, any creditor to obtain a lien (other than as described in subparagraph (iv) below) upon any of its property through legal proceedings which are not vacated and such lien discharged prior to enforcement thereof and in any event within sixty (60) days from the date thereof; or

(iv) Fails to have discharged within a period of thirty (30) days any attachment, sequestration, or similar writ levied upon any of its property; or

(v) Fails to pay immediately any final money judgment against it.

(f) Transfer of the Property. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Mortgagor, having a value equal to or greater than the replaced items when new; and (ii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Mortgage or of any other Loan Document. Mortgagee may, in its sole discretion, waive a default under this paragraph, but it shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which Mortgagee may require: the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Mortgagee in its sole judgment and grantee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Mortgagee may require, a principal paydown on the Note, an increase in the rate of interest payable under the Note, a transfer fee, a modification of the term of the Note, and any other modification of the Loan Documents which Mortgagee may require. : NOTICE - - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL AND ANY AND ALL SWAP TRANSACTIONS ARE SUBJECT TO TERMINATION, OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

(g) Transfer of Assets. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the other assets of Mortgagor, excluding the Property, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers in the ordinary course of Mortgagor's business; and (ii) sales or transfers for which Mortgagor receives consideration substantially equivalent to the fair market value of the transferred asset.

(h) Transfer of Ownership of Mortgagor. Any of the following:

(i) the sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Mortgagor (if Mortgagor is not a natural person but is a corporation, partnership, limited liability company, trust or other legal entity), without the prior written consent of Mortgagee (including, without limitation, if Mortgagor is a partnership or joint venture, the withdrawal from or admission into it of any general partner or joint venturer); or

(ii) if Mortgagor or Guarantor (or a general partner, member or co-venturer of either of them) is a partnership, joint venture, limited liability company, trust or closely-held corporation, any sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of any class of the issued and outstanding capital stock of such closely-held corporation or of the beneficial interest of such partnership, venture, limited liability

company or trust, or a change of any general partner, joint venturer, member or beneficiary, as the case may be, or, in the event Mortgagor or Guarantor (or a general partner, co-venturer, member or beneficiary, as the case may be, of either of them) is a publicly-held corporation, the sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of the stock-holdings of any of the five (5) individuals or entities that own the greatest number of shares of each class of issued and outstanding stock, or effectuates or permits a reduction in the aggregate direct and indirect ownership interests of Guarantor in Mortgagor below 50.1%, or effectuates or causes Acadia Realty Trust to fail to control the management of Guarantor and Mortgagor.

(i) Grant of Easement, Etc. Without the prior written consent of Mortgagee, Mortgagor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(j) Abandonment. The owner of the Property abandons any of the Property.

(k) Default Under Other Lien. A default or event of default occurs under any lien, security interest or assignment covering the Property or any part thereof (whether or not Mortgagee has consented, and without hereby implying Mortgagee's consent, to any such lien, security interest or assignment not created hereunder), or Mortgagee of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) Destruction. The Property is so demolished, destroyed or damaged that, in the reasonable opinion of Mortgagee, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time and in any event, prior to the final maturity date of the Note.

(m) Condemnation. (i) Any governmental authority shall require, or commence any proceeding for, the demolition of any building or structure comprising a part of the Premises, or (ii) there is commenced any proceeding to condemn or otherwise take pursuant to the power of eminent domain, or a contract for sale or a conveyance in lieu of such a taking is executed which provides for the transfer of, a material portion of the Premises, including but not limited to the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement.

(n) Liquidation, Etc. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of New York and/or the state of incorporation or organization, if different (or in the case of an individual, the death or legal incapacity) of Mortgagor, any owner of the Property or any person obligated to pay any part of the Secured Indebtedness.

(o) Material, Adverse Change. In Mortgagee's reasonable opinion, the prospect of payment of all or any part of the Secured Indebtedness has been impaired because of a material,

adverse change in the financial condition, results of operations, business or properties of Mortgagor, any owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness, or of any general partner or joint venturer thereof (if such owner or other person is a partnership or joint venture).

(p) Enforceability; Priority. Any Loan Document shall for any reason without Mortgagee's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by any party thereto other than Mortgagee; or the liens, mortgages or security interests of Mortgagee in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Mortgagor or any person obligated to pay any part of the Secured Indebtedness.

(q) Other Indebtedness. A default or event of default occurs under any document executed and delivered in connection with any other indebtedness (to Mortgagee or any other person or entity) of Mortgagor, the owner of the Property, any person obligated to pay any part of the Secured Indebtedness, or any person or entity which guarantees such other indebtedness.

(r) Ground Lease. (A) A breach or default by Mortgagor under any condition or obligation contained in the Ground Lease shall occur, (B) there occurs any event or condition that gives Ground Lessor under the Ground Lease a right to terminate or cancel the Ground Lease, (C) the Ground Lease shall be surrendered or the Ground Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever or (D) any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered or amended without the prior written consent of Mortgagee.

(s) Fee Interest. This Mortgage shall fail to encumber the fee interest of the landlord under the Ground Lease if Mortgagor, Guarantor or any affiliate thereof shall become the owner of such fee interest.

(t) Certain Other Agreements. (A) A breach or default by Mortgagor or Storage Facility Tenant under any condition or obligation contained in the Storage Facility Master Lease shall occur, (B) there occurs any event or condition that gives Mortgagor or Storage Facility Tenant under the Storage Facility Master Lease a right to terminate or cancel the Storage Facility Master Lease, (C) the Storage Facility Master Lease shall be surrendered or the Storage Facility Master Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever, except as specifically permitted herein, or (D) any of the terms, covenants or conditions of the Storage Facility Master Lease shall in any manner be modified, changed, supplemented, altered or amended without the prior written consent of Mortgagee.

(u) Storage Facility Tenant. Storage Facility Tenant shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of the Loan Agreement.

(v) Condominium Assessments. The Condominium Association shall file a lien against any of the Property for unpaid Condominium Assessments.

Section 4.2. Notice and Cure. If any provision of this Mortgage or any other Loan Document provides for Mortgagee to give to Mortgagor any notice regarding a default or incipient default, then if Mortgagee shall fail to give such notice to Mortgagor as provided, the sole and exclusive remedy of Mortgagor for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Note and the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such default in the manner and during the period of time permitted by such agreement, if any, and Mortgagor shall have no right to damages or any other type of relief not herein specifically set out against Mortgagee, all of which damages or other relief are hereby waived by Mortgagor. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

## ARTICLE 5

### Remedies

Section 5.1. Certain Remedies. If a Default shall occur, Mortgagee may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration. Mortgagee may at any time and from time to time declare any or all of the Secured Indebtedness immediately due and payable and may terminate any and all Swap Transactions. Upon any such declaration, such Secured Indebtedness shall thereupon be immediately due and payable, and such Swap Transactions shall immediately terminate, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Mortgagor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (A), (C) or (D) of subparagraph (i) of paragraph (d) of Section 4.1, hereof, all of the Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Mortgagor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Mortgagee under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Mortgagee may: (1) collect and/or sue for the Rents in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the Secured Indebtedness in such manner and order as Mortgagee may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.

(c) Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(i) Mortgagee may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession to Mortgagee, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(iii) Mortgagee may from time to time: (A) continue and complete construction of, hold, store, use, operate, manage and control the Property and conduct the business thereof; (B) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional personal property; (C) insure or keep the Property insured; (D) exercise all the rights and powers of Mortgagor in its name or otherwise with respect to the same; and (E) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.

(d) Uniform Commercial Code. Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code as adopted by the State of New York as in effect from time to time, (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law) or other applicable law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Property or other place where the collateral may be located without legal process, and to take possession of such personal property without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State of New York. Upon demand by Mortgagee, Mortgagor shall make such personal property available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may proceed under the Uniform Commercial Code as to all or any part of such personal property, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of such personal property. Mortgagee may choose to dispose of some or all of the property, in any combination consisting of both personal property and Property, in one or more public or private sales to be held in accordance with the Law and procedures applicable to real property, as



permitted by Article 9 of the Uniform Commercial Code. Mortgagor agrees that such a sale of such personal property together with Property constitutes a commercially reasonable sale of such personal property.

(e) Lawsuits. Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction. Mortgagor hereby assents to the passage of a decree for the sale of the Property by any equity court having jurisdiction.

(f) Foreclosure. Mortgagee may:

(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law (including, without limitation, in accordance with Article 14 of the New York Real Property Actions and Proceedings Law, regarding which Mortgagor hereby consents and agrees that notices thereunder (including notices of sale) may be given to Mortgagor in any of the manners specified for the giving of notices set forth in Section 6.13, and all estate, right, title and interest, claim and demand thereof, at one (1) or more sales as an entity or in parcels or parts, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(2) institute proceedings for the complete or partial foreclosure hereof; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, the Loan Agreement or herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

Any sale made hereunder may be as an entirety or in such parcels as Mortgagee may request. To the extent permitted by applicable law, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. If the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Secured Indebtedness, this Mortgage and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made and the rights of Mortgagee to foreclose hereunder shall also apply to any future sales. A sale may cover not only the Property but also personal property and other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or the sale may be of any part of the Property separately from the remainder of the Property. After each sale, Mortgagee shall make to the purchaser or purchasers at such sale good and sufficient conveyances, conveying the property so sold to the purchaser or purchasers in fee simple, subject to the Permitted Encumbrances (and to such leases and other matters, if any), and shall receive the proceeds of said sale or sales and apply the same as herein provided. In the event any sale hereunder is not completed or is defective in the opinion of Mortgagee, such sale shall not exhaust the rights hereunder and Mortgagee shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or

deeds or other conveyances given by Mortgagee as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Mortgagee's having declared all of said indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee shall be taken as prima facie evidence of the truth of the facts so stated and recited.

(g) Receiver. Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State of New York. To the extent permitted by law, the right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate under the Note, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Mortgage to Mortgagee, and Mortgagee shall have the right to offset the unpaid Secured Indebtedness against any such cash or deposits in such order as Mortgagee may elect.

(h) Termination of Commitment to Lend. Mortgagee may terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement to or for the benefit of Mortgagor.

(i) Other Rights and Remedies. Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. Application of Proceeds. Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article 5 and any other proceeds received by Mortgagee from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Secured Indebtedness, in such manner and order as Mortgagee may elect.

Section 5.3. Remedies Cumulative and Concurrent. No right, power or remedy of Mortgagee as provided in the Note, this Mortgage, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, or any endorser, co-maker, surety or guarantor of the Secured Indebtedness, or the Property or any part thereof, or any one or more of them, at the sole discretion of Mortgagee. The failure of Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

Section 5.4. Waiver, Delay or Omission. No waiver of any Default hereunder shall extend to or affect any subsequent or any other Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Default or to constitute acquiescence therein.

Section 5.5. Credit of Mortgagee. To the maximum extent permitted by the laws of the State of New York, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Secured Indebtedness in such order as Mortgagee may elect.

Section 5.6. Sale. Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of Mortgagor and all persons, except tenants pursuant to Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others.

Section 5.7. Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting Mortgagor, any endorser, co-maker, surety, or guarantor of the Secured Indebtedness, or any of their respective properties, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Secured Indebtedness at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

Section 5.8. Waiver of Redemption, Notice, Marshalling, Etc. Mortgagor hereby waives and releases, for itself and anyone claiming through, by, or under it, to the maximum extent permitted by the laws of the State of New York:

(i) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment,

(ii) unless specifically required herein, all notices of default, or Mortgagee's actual exercise of any option or remedy under the Loan Documents, or otherwise, and

(iii) any right to have the Property marshaled.

Section 5.9. Discontinuance of Proceedings. If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgagor and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

Section 5.10. Mortgagee's Actions. Mortgagee may, at any time without notice to any person and without consideration, do or refrain from doing any or all of the following actions, and neither Mortgagor, any endorser, co-maker, surety or guarantor of the Secured Indebtedness, nor any other person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Secured Indebtedness shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew, extend or modify the terms of the Note, this Mortgage and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Secured Indebtedness; (c) apply payments by any Obligor to the reduction of the unpaid Secured Indebtedness in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Secured Indebtedness without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage upon the Property which is not released or substituted, or the validity and priority of any security interest of Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Mortgage or the lien of any other security interest in any other collateral now or hereafter held as security for the Secured Indebtedness; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee will join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any obligor or any other party as Mortgagee may see fit.

Section 5.11. Other Remedies. Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws.

## ARTICLE 6

### Miscellaneous

Section 6.1. Scope of Mortgage. This Mortgage is a Mortgage of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the New York Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Mortgage shall also be effective as a financing

statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor and Mortgagee are set forth in the preamble of this Mortgage and the address of Mortgagee from which information concerning the security interests hereunder may be obtained is the address of Mortgagee set forth at the end of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Mortgagee may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Mortgagee directly.

Section 6.4. Waiver by Mortgagee. Mortgagee may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing; (b) consent to Mortgagor's doing any act which hereunder Mortgagor is prohibited from doing, or to Mortgagor's failing to do any act which hereunder Mortgagor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Mortgage, without the joinder of Mortgagee; or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Mortgagee or Mortgagee hereunder except to the extent specifically agreed to by Mortgagee in such writing.

Section 6.5. No Impairment of Security. The lien, security interest and other security rights of Mortgagee hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Mortgagee including, but not limited to, any renewal, extension or modification which Mortgagee may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Mortgagee shall not release or impair the lien, security interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any junior lien Mortgagee in the Property (without implying hereby Mortgagee's consent to any junior lien).

Section 6.6. Acts Not Constituting Waiver by Mortgagee. Mortgagee may waive any default without waiving any other prior or subsequent default. Mortgagee may remedy any default without waiving the default remedied. Neither failure by Mortgagee to exercise, nor delay by Mortgagee in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or

waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Mortgagor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Secured Indebtedness in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Secured Indebtedness given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Mortgagee and any subsequent owner of the Property, with or without notice to such Mortgagor, and no such modifications shall impair the obligations of such Mortgagor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Mortgagee's consent to any transfer of the Property.

Section 6.8. Place of Payment. All Secured Indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place designated in the Note (or if no such designation is made, at the address of Mortgagor indicated at the end of this Mortgage).

Section 6.9. Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or Mortgagee of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Mortgagee is subrogated hereunder. It is expressly understood that, in consideration of the payment of such

indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loan evidenced by the Note or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's lien is waived; and Mortgagee shall have, and is hereby granted, a vendor's lien on the Property as cumulative additional security for the secured indebtedness. Mortgagee may foreclose under this Mortgage or under the vendor's lien without waiving the other or may foreclose under both.

Section 6.10. Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 6.11. Nature of Loan; Compliance with Usury Laws. The loan evidenced by the Note is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Mortgagor and Mortgagee and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Mortgagee and Mortgagor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Mortgagee shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Mortgagor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of New York or the federal laws of the United

States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12. Releases.

(a) Release of Mortgage. If all of the Secured Indebtedness is paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all Swap Transactions and all other obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Mortgagee in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Mortgagee or Mortgagee shall survive discharge of the Secured Indebtedness, the termination of any and all Swap Transactions and any foreclosure, release or termination of this Mortgage.

(b) Partial Releases; No Release in Default. Partial releases of the lien of this Mortgage shall be made in accordance with the terms and provisions of Exhibit C attached hereto and by this reference made a part hereof, or in accordance with such other terms and conditions as may subsequently be agreed to by Mortgagee. If no such Exhibit C is attached hereto, then there are no terms and provisions for partial releases, to which Mortgagee and Mortgagor have agreed at this time. In any event, no partial release shall be sought, requested or required if any Default has occurred which has not been cured.

(c) Effect of Partial Release. Mortgagee may, regardless of consideration, cause the release of any part of the Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Property.

(d) Release Fee. If permitted by applicable law Mortgagor shall pay to Mortgagee, at the time of each partial or complete release of the lien of this Mortgage, a release fee in the amount of \$25.00 if the release instrument is delivered to Mortgagee for execution or \$50.00, if Mortgagee is required to prepare the release instrument. In addition, Mortgagor shall pay to Mortgagee a fee in the amount of \$25.00 for each other document or instrument which Mortgagor requires Mortgagee to execute.

Section 6.13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case



of facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.14. Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.15. Gender; Titles; Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words “herein,” “hereof,” “hereunder” and other similar compounds of the word “here” shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term “person” and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.16. Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Mortgagee to furnish Mortgagee with evidence of such compliance.

Section 6.17. Mortgagee’s Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Mortgagee is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Mortgagee’s judgment, and (b) no approval or consent of Mortgagee shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Mortgagee.

Section 6.18. Mortgagor. Unless the context clearly indicates otherwise, as used in this Mortgage, “Mortgagor” means Mortgagors named in Section 1.1 hereof or any of them. The

obligations of Mortgagor hereunder shall be joint and several. If any Mortgagor, or any signatory who signs on behalf of any Mortgagor, is a corporation, partnership or other legal entity, Mortgagor and any such signatory, and the person or persons signing for it, represent and warrant to Mortgagee that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives. If Mortgagor is an individual, no power of attorney granted by Mortgagor herein shall terminate on Mortgagor's disability.

Section 6.19. Execution; Recording. This Mortgage has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as or Mortgagee shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.20. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the heirs, devisees, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee and shall constitute covenants running with the Land. All references in this Mortgage to Mortgagor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagor.

Section 6.21. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.22. No Partnership, Etc. The relationship between Mortgagee and Mortgagor is solely that of mortgagee and mortgagor. Mortgagee has no fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Mortgagee or in any way make Mortgagee a co-principal with Mortgagor with reference to the Property. All agreed contractual duties between or among Mortgagee and Mortgagor and are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.23. Priority of Lien. This Mortgage shall be, and shall at all times remain, subject and subordinate to the mortgages described in, and consolidated and modified by, that certain Fee and Leasehold Mortgage Consolidation and Modification Agreement by and between Mortgagor and Mortgagee in the amount of \$31,553,701.89 dated as of the date hereof, as the same may be modified, amended and/or restated from time to time, and the lien imposed by such mortgage.

Section 6.24. Applicable Law. THIS MORTGAGE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 6.25. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.26. Forum. Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State of New York and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located, over any Dispute. Mortgagor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the State of New York may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address for notice set forth in this Mortgage, or at a subsequent address of which Mortgagee received actual notice from Mortgagor in accordance with the notice section of this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by Law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction.

Section 6.27. **WAIVER OF JURY TRIAL**. **WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY DISPUTE AS SET FORTH IN THIS MORTGAGE, TO THE EXTENT ANY DISPUTE IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, MORTGAGOR AND MORTGAGEE WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGEE, AND MORTGAGOR AND MORTGAGEE HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON**

**OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

Section 6.28. Cross-Default. The Loan shall be cross-defaulted with all other loans which Mortgagor shall have from Lenders during the term of the Loan, whether existing as of the date of this Agreement subsequently made. A default under any of the above-described loans shall constitute a Default under the Loan. A Default under the Loan shall constitute a Default under the above-described other loans. To the extent not prohibited by applicable law, if Mortgagee, at its option, avails itself of this cross-default provision, Mortgagee shall have the option to pursue its remedies in any combinations and against any or all of Mortgagee's security for the aforesaid loans, whether successively, concurrently or otherwise.

Section 6.29. Substitute Mortgages. Mortgagor and Mortgagee shall, upon their mutual agreement to do so, execute such documents as may be necessary in order to effectuate the modification hereof, including the execution of substitute mortgages, so as to create two (2) or more liens on the Mortgaged Property in such amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the Mortgage Amount; in such event, Mortgagor covenants and agrees to pay the reasonable fees and expenses of Mortgagee and its counsel in connection with any such modification.

Section 6.30. Satisfaction or Assignment of Mortgage. Upon payment in full of all sums, and the performance of all obligations, secured hereby in accordance with the terms and conditions of this Mortgage and the other Loan documents, Mortgagee shall deliver a satisfaction or release of this Mortgage or, at Mortgagor's option to be exercised in writing, an assignment hereof, in either case in proper form of recording. As a condition to any such satisfaction or assignment, Mortgagor covenants and agrees to pay Mortgagee's reasonable fees and expenses (including attorneys' fees and expenses) in connection therewith. Upon any such satisfaction or assignment, Mortgagee shall, automatically and without the need for any other further documentation, be absolutely and unconditionally released from any and all claims or liabilities in connection with the Loan. In addition, Mortgagor hereby indemnifies and agrees to hold Mortgagee harmless from and against any and all claims and liabilities arising out of the satisfaction or assignment hereof, such indemnification to survive any such satisfaction or assignment.

Section 6.31. New York Provisions. (a) Mortgagor hereby makes the following statement: "This Mortgage does not cover real property principally improved or to be improved by one (1) or more structures containing in the aggregate not more than six (6) residential

dwelling, each having its own separate cooking facilities.” and (b) the covenants and conditions contained herein, other than those included in the New York Statutory Short Form of Mortgage, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of Section 254 of the Real Property Law of the State of New York.

Section 6.32. Ground Lease Required Provision. This Mortgage is executed upon the condition that no purchaser at any foreclosure sale shall acquire any right, title or interest in and to the lease hereby mortgaged (the Ground Lease), unless the said purchaser, or the person, firm or corporation to whom or to which such purchaser’s right has been assigned, assumes and agrees to perform all of the terms, covenants and conditions of said lease (the Ground Lease) thereafter to be observed or performed on the part of tenant thereunder, and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged of such purchaser or such assignee and in recordable form, is delivered to Ground Lessor under said lease within seven (7) days after the consummation of such sale and, in any event, prior to taking possession of the Premises demised thereby. No further or additional mortgage or assignment of said lease shall be made except in accordance with the provisions in Article Eleven of said lease (the Ground Lease).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as an instrument under seal as of the date first written on page 1 hereof.

P/A-ACADIA PELHAM MANOR, LLC, a Delaware limited liability  
company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

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STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF WESTCHESTER    )

On the 22<sup>nd</sup> day of November in the year 2010, before me, the undersigned, a notary public in and for said state, personally appeared Robert Masters, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/ Debra Leibler-Jones

Notary Public

My Commission Expires:

4/20/14

Debra Leibler-Jones  
State of New York  
No. 01LE6005995  
Qualified in Dutchess County

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Land

PARCEL 1 - Fee Parcel (Lot 8.3)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING DISTANT 374.53 FEET ON A COURSE OF NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST FROM A POINT AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT, THENCE;
2. ALONG THE DIVIDING LINE BETWEEN LOT 8.3 AND LOT 8.1, BLOCK 1, SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.3 AND LOT 8.1, BLOCK 1, THE FOLLOWING THREE (3) COURSES:
3. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE;
4. NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT OF CURVATURE, THENCE;
5. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 90 DEGREES – 00 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 31.42 FEET, THE CHORD OF WHICH BEARS NORTH 18 DEGREES – 58 MINUTES – 11 SECONDS EAST, A CHORD DISTANCE OF 28.28 FEET TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTIONS IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

PARCEL 2 - Ground Lease Parcel (Lot 8.1)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

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BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 374.53 FEET TO A POINT OF NON-TANGENT CURVATURE, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 8.3, BLOCK 1 THE FOLLOWING THREE (3) COURSES:
2. ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 90 DEGREES – 00 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 31.42 FEET, THE CHORD OF WHICH BEARS SOUTH 18 DEGREES – 58 MINUTES – 11 SECONDS WEST, A CHORD DISTANCE OF 28.28 FEET TO A POINT OF TANGENCY, THENCE;
3. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT, THENCE;
4. NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 8.2, BLOCK 1 THE FOLLOWING THREE (3) COURSES:
5. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 121.90 FEET TO A POINT, THENCE;
6. NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE;
7. NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS WEST, A DISTANCE OF 221.90 FEET TO A POINT ON THE AFOREMENTIONED SOUTHERLY LINE OF SECOR LANE, THENCE;
8. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 449.97 FEET TO A POINT OF CURVATURE, THENCE;
9. CONTINUING ALONG THE SOUTHERLY LINE OF SECOR LANE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 650.00 FEET, TURNING A CENTRAL ANGLE OF 11 DEGREES – 45 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 133.30 FEET, THE CHORD OF WHICH BEARS NORTH 69 DEGREES – 50 MINUTES – 19 SECONDS EAST, A CHORD DISTANCE OF 133.06 FEET TO A POINT, THENCE; ALONG THE WESTERLY LINE OF HUTCHINSON RIVER PARKWAY (VARIABLE WIDTH) THE FOLLOWING SEVEN (7) COURSES:

10. SOUTH 10 DEGREES – 37 MINUTES – 00 SECONDS EAST, A DISTANCE OF 406.03 FEET TO A POINT, THENCE;
11. SOUTH 08 DEGREES – 04 MINUTES – 18 SECONDS EAST, A DISTANCE OF 152.58 FEET TO A POINT, THENCE;
12. SOUTH 81 DEGREES – 55 MINUTES – 42 SECONDS WEST, A DISTANCE OF 125.00 FEET TO A POINT, THENCE;
13. SOUTH 08 DEGREES – 04 MINUTES – 18 SECONDS EAST, A DISTANCE OF 350.40 FEET TO A POINT OF NON-TANGENT CURVATURE, THENCE;
14. ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 375.00 FEET, TURNING A CENTRAL ANGLE OF 15 DEGREES – 22 MINUTES – 08 SECONDS, WITH AN ARC LENGTH OF 100.59 FEET, THE CHORD OF WHICH BEARS SOUTH 72 DEGREES – 19 MINUTES – 21 SECONDS WEST, A CHORD DISTANCE OF 100.29 FEET TO A POINT OF TANGENCY, THENCE;
15. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 4.45 FEET TO A POINT, THENCE;
16. SOUTH 26 DEGREES – 04 MINUTES – 30 SECONDS EAST, A DISTANCE OF 188.85 FEET TO A POINT, THENCE;
17. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 8.1 AND LOT 4, BLOCK 1 AND THE WESTERLY LINE OF HUTCHINSON RIVER PARKWAY, SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 156.73 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 3, BLOCK 1 THE FOLLOWING EIGHT (8) COURSES:
18. NORTH 24 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 82.31 FEET TO A POINT, THENCE;
19. NORTH 63 DEGREES – 55 MINUTES – 30 SECONDS EAST, A DISTANCE OF 10.33 FEET TO A POINT, THENCE;
20. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 19.84 FEET TO A POINT, THENCE;
21. SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 10.33 FEET TO A POINT, THENCE;
22. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 90.59 FEET TO A POINT, THENCE;
23. NORTH 63 DEGREES – 55 MINUTES – 30 SECONDS EAST, A DISTANCE OF 4.05 FEET TO A POINT, THENCE;

24. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 9.55 FEET TO A POINT, THENCE;
25. SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 227.32 FEET TO A POINT ON THE AFOREMENTIONED EASTERLY LINE OF PELHAM PARKWAY, THENCE;
26. ALONG THE EASTERLY LINE OF PELHAM PARKWAY, NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 296.81 FEET TO A POINT, THENCE;
27. CONTINUING ALONG THE EASTERLY LINE OF PELHAM PARKWAY, NORTH 62 DEGREES – 43 MINUTES – 40 SECONDS WEST, A DISTANCE OF 609.10 FEET TO A POINT OF CURVATURE, THENCE;
28. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 126 DEGREES – 41 MINUTES – 30 SECONDS, WITH AN ARC LENGTH OF 44.22 FEET, THE CHORD OF WHICH BEARS NORTH 00 DEGREES – 37 MINUTES – 42 SECONDS EAST, A CHORD DISTANCE OF 35.75 FEET TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTION IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

PARCEL 3 - Ground Lease Parcel (Lot 8.2)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING DISTANT 454.53 FEET ON A COURSE OF NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST FROM A POINT AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 60 SECONDS EAST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.2 AND LOT 8.1, BLOCK 1 THE FOLLOWING TWO (2) COURSES:
2. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 221.90 FEET TO A POINT, THENCE;
3. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE;

4. ALONG THE DIVIDING LINE BETWEEN LOT 8.2 AND LOTS 8.1 AND 8.3, BLOCK 1, NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 221.90 FEET THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTION IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

BLANKET DESCRIPTION - LOTS 8.1, 8.2 and 8.3:

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a rebar with cap set on the southerly line of Secor Lane (50 foot wide), said point being at the northeasterly terminus of a curve connecting the southerly line of Secor Lane with the easterly line of Pelham Parkway (a/k/a C.R. 70) and from said beginning point, running thence

1. Along the southerly line of Secor Lane, north 63 degrees 57 minutes 50 seconds east, a distance of 1081.42 feet to a rebar with cap set at a point of curvature in the same, thence
2. Continuing along the same, along a curve to the right, having a radius of 650.00 feet, turning a central angle of 11 degrees 45 minutes 00 seconds with an arc length of 133.30 feet, the chord of which bears north 69 degrees 50 minutes 19 seconds east, a chord distance of 133.06 feet to a rebar with cap set, thence the following seven (7) courses along the dividing line between Lot 8 Block 1 and the westerly line of the Hutchinson River Parkway;
3. South 10 degrees 37 minutes 00 seconds east, a distance of 406.03 feet to a rebar with cap set, thence
4. South 08 degrees 04 minutes 18 seconds east, a distance of 152.58 feet to a rebar with cap set, thence
5. South 81 degrees 55 minutes 42 seconds west, a distance of 125.00 feet to a rebar with cap set, thence
6. South 08 degrees 04 minutes 18 seconds east, a distance of 350.40 feet to a rebar with cap set at a point of non-tangent curvature, thence
7. Along a curve to the left, having a radius of 375.00 feet, turning a central angle of 15 degrees 22 minutes 08 seconds with an arc length of 100.59 feet, the chord of which bears south 72 degrees 19 minutes 21 seconds west, a chord distance of 100.29 feet to a rebar with cap set at a point of tangency, thence
8. South 63 degrees 57 minutes 50 seconds west, a distance of 4.45 feet to a rebar with cap set, thence

9. South 26 degrees 04 minutes 30 seconds east, a distance of 188.85 feet to a point, thence
10. Along the common dividing line between Lot 8 and Lot 5, Block 1 and the westerly line of the Hutchinson River Parkway, south 63 degrees 55 minutes 30 seconds west, a distance of 156.73 feet to a point; thence the following eight (8) courses along the dividing line between Lot 8 and Lot 3, Block 1.
11. North 26 degrees 04 minutes 30 seconds west, a distance of 82.31 feet to a pk nail set, thence
12. North 63 degrees 55 minutes 30 seconds east, a distance of 10.33 feet to a pk nail set, thence
13. North 26 degrees 04 minutes 30 seconds west, a distance of 19.84 feet to a pk nail set, thence
14. South 63 degrees 55 minutes 30 seconds west, a distance of 10.33 feet to a pk nail set, thence
15. North 26 degrees 04 minutes 30 seconds west, a distance of 90.59 feet to a rebar with cap set, thence
16. North 63 degrees 55 minutes 30 seconds east, a distance of 4.05 feet to a pk nail set, thence
17. North 26 degrees 04 minutes 30 seconds west, a distance of 9.55 feet to a pk nail set, thence
18. South 63 degrees 55 minutes 30 seconds west, a distance of 227.32 feet to a pk nail set on the aforementioned easterly line of Pelham Parkway, thence
19. North 26 degrees 04 minutes 30 seconds west, a distance of 296.81 feet to a pk nail, thence
20. Continuing along the easterly line of Pelham Parkway, north 62 degrees 43 minutes 40 seconds west, a distance of 609.10 feet to a pk nail set a point of curvature, thence
21. Along a curve to the right, having a radius of 2.00 feet, turning a central angle of 126 degrees 41 minutes 30 seconds with an arc length of 44.22 feet to a point, the chord of which bears north 00 degrees 37 minutes 24 seconds east, a chord distance of 35.75 feet to the point and place of BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTIONS IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/12/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

SUCH REAL PROPERTY ALSO CONTAINS ALL OF THE CONDOMINIUM UNITS IN THE P/A ACADIA CONDOMINIUM MADE BY P/A-ACADIA PELHAM MANOR, LLC DATED 9/17/07 AND RECORDED 10/23/07 AS CONTROL NUMBER 472850497.

For information only: Said premises are known as 798-858 Pelham Parkway, Pelham, NY and designated as Section 166.26 Block 1 Lots 8.1, 8.2 and 8.3 as shown on the Westchester County Land and Tax Map.

EXHIBIT B

Permitted Encumbrances

Those exceptions set forth in Schedule B of that certain title insurance policy issued by Stewart Title Insurance Company through their agent, Royal Abstract of New York LLC, under their title no. 832899 insuring the lien of this Mortgage.

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EXHIBIT C

Partial Release

NONE

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LOCATION: 2 Penn Place  
VILLAGE: Pelham Manor  
TOWN: Pelham  
COUNTY: Westchester  
SECTION: 166.26  
BLOCK: 1  
LOTS: 8.1, 8.2 and 8.3

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As of December 1, 2010

FEE AND LEASEHOLD  
MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT  
(Transfer Mortgage)

by and between

P/A-ACADIA PELHAM MANOR, LLC,  
as Mortgagor

and

BANK OF AMERICA, N.A.,  
a national banking association, as Administrative Agent for Lenders,  
as Mortgagee

---

This instrument prepared by, and after recording please return to:

Schiff Hardin LLP  
900 Third Avenue, 23rd Floor  
New York, New York 10022  
Attention: Paul G. Mackey, Esq.

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FEE AND LEASEHOLD  
MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT

FEE AND LEASEHOLD MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT (this "Agreement") made as of the 1st day of December, 2010 by and between BANK OF AMERICA, N.A., as Administrative Agent, having an office at One Bryant Park, 35th Floor, New York, New York 10036 ("Mortgagee"), and P/A-ACADIA PELHAM MANOR, LLC, a Delaware limited liability company having an address c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 ("Mortgagor").

WITNESSETH:

WHEREAS, Mortgagee is now the lawful owner and holder of the mortgages (collectively, the "Mortgage") more particularly described in Exhibit A attached hereto and made a part hereof, and of the notes (collectively, the "Note") and other obligations secured thereby;

WHEREAS, the maximum outstanding principal amount which is or under any contingency may be secured by the Mortgage is \$31,553,701.89 (the "Indebtedness"), plus interest thereon and all additional interest and late payment and prepayment charges in respect thereof, plus all amounts expended by Mortgagee following a default thereunder in respect of insurance premiums and real estate taxes, and all legal costs or expenses of collection of the note(s) secured thereby or of the defense or prosecution of the rights and lien created thereby;

WHEREAS, the Mortgage is presently a valid lien on all of the real property described in Schedule A attached hereto and made a part hereof (the "Premises");

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WHEREAS, Mortgagor is the lawful owner of the Premises; and

WHEREAS, Mortgagee and Mortgagor have agreed to consolidate, modify, amend and restate the Mortgage as a single first lien on the entire Premises and to modify the terms of the Mortgage in the manner hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein expressed, the parties hereto covenant and agree as follows:

1. Mortgagor hereby assumes the payment and performance of all obligations, conditions and covenants under, and agrees to be bound by all of the terms of, the Mortgage, as herein modified. The lien of the Mortgage is hereby consolidated and modified to encumber all of the "Mortgaged Property" (as such term is defined in the Mortgage, as modified hereby), so that together they shall hereafter constitute in law but one first mortgage, a valid and enforceable single lien upon the Premises, securing the Indebtedness, together with interest accrued and to accrue thereon and all other sums secured thereby.

2. Mortgagor hereby assumes and agrees to pay the Indebtedness and interest thereon at the rate(s) of interest and on the terms provided for the payment of principal and interest in the Note, as consolidated and modified by that certain note consolidation and modification agreement, dated the date hereof, between Mortgagee and Mortgagor (the "Note Agreement").

3. The Mortgage is hereby consolidated, amended and restated in its entirety by Exhibit B attached hereto and made a part hereof including any exculpatory provisions contained in said Exhibit B, and Mortgagor hereby agrees to comply with and be bound by all of the terms, covenants and conditions set forth in said Exhibit B.

4. Mortgagor hereby certifies that this Agreement secures the same indebtedness evidenced by the Note, as consolidated and modified by the Note Agreement, and secured by the Mortgage, as consolidated and modified hereby, and secures no new or further indebtedness or obligation.

5. Mortgagor represents and warrants that there exist no defenses, offsets or counterclaims with respect to its obligations under the Mortgage, as consolidated and modified hereby, or under the Note, as consolidated and modified by the Note Agreement, including its obligation for the payment of the Indebtedness.

6. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, representatives, successors and assigns.

7. This Agreement and the rights and obligations of the parties hereto shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to New York's choice of law principles).

8. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and together which shall constitute but one and the same instrument.

9. The information set forth on the cover hereof is incorporated herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by each of the parties hereto as of the day and year first above written.

BANK OF AMERICA, N.A.  
(as a Lender and as Administrative Agent)

By /s/ Gregory Egli

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Gregory Egli  
Senior Vice President

P/A-ACADIA PELHAM MANOR, LLC, a  
Delaware limited liability company

By /s/ Robert Masters

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Robert Masters  
Senior Vice President

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STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF WESTCHESTER    )

On the 22<sup>nd</sup> day of November in the year 2010, before me, the undersigned, a notary public in and for said state, personally appeared Gregory Egli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/ Debra Leibler-Jones

\_\_\_\_\_  
Notary Public

Debra Leibler-Jones  
State of New York  
No. 01LE6005995  
Qualified in Dutchess County

My Commission Expires:

4/20/14  
\_\_\_\_\_

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STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF NASSAU         )

On the 30<sup>th</sup> day of November in the year 2010, before me, the undersigned, a notary public in and for said state, personally appeared Robert Masters, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/ Elizabeth R. Cava

\_\_\_\_\_  
Notary Public

Elizabeth R. Cava  
Notary Public, State of New York  
No. 30-01CA4712233  
Qualified in Nassau County

Certificate File in New York County  
Commission Expires February 28, 2011

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My Commission Expires:  
\_\_\_\_\_

SCHEDULE A

Property Description

PARCEL 1 - Fee Parcel (Lot 8.3)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING DISTANT 374.53 FEET ON A COURSE OF NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST FROM A POINT AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT, THENCE;
2. ALONG THE DIVIDING LINE BETWEEN LOT 8.3 AND LOT 8.1, BLOCK 1, SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.3 AND LOT 8.1, BLOCK 1, THE FOLLOWING THREE (3) COURSES:
3. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE;
4. NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT OF CURVATURE, THENCE;
5. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 90 DEGREES – 00 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 31.42 FEET, THE CHORD OF WHICH BEARS NORTH 18 DEGREES – 58 MINUTES – 11 SECONDS EAST, A CHORD DISTANCE OF 28.28 FEET TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTIONS IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

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PARCEL 2 - Ground Lease Parcel (Lot 8.1)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 374.53 FEET TO A POINT OF NON-TANGENT CURVATURE, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 8.3, BLOCK 1 THE FOLLOWING THREE (3) COURSES:
2. ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 90 DEGREES – 00 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 31.42 FEET, THE CHORD OF WHICH BEARS SOUTH 18 DEGREES – 58 MINUTES – 11 SECONDS WEST, A CHORD DISTANCE OF 28.28 FEET TO A POINT OF TANGENCY, THENCE;
3. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT, THENCE;
4. NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 8.2, BLOCK 1 THE FOLLOWING THREE (3) COURSES:
5. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 121.90 FEET TO A POINT, THENCE;
6. NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE;
7. NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS WEST, A DISTANCE OF 221.90 FEET TO A POINT ON THE AFOREMENTIONED SOUTHERLY LINE OF SECOR LANE, THENCE;
8. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 449.97 FEET TO A POINT OF CURVATURE, THENCE;
9. CONTINUING ALONG THE SOUTHERLY LINE OF SECOR LANE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 650.00 FEET, TURNING A

CENTRAL ANGLE OF 11 DEGREES – 45 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 133.30 FEET, THE CHORD OF WHICH BEARS NORTH 69 DEGREES – 50 MINUTES – 19 SECONDS EAST, A CHORD DISTANCE OF 133.06 FEET TO A POINT, THENCE; ALONG THE WESTERLY LINE OF HUTCHINSON RIVER PARKWAY (VARIABLE WIDTH) THE FOLLOWING SEVEN (7) COURSES:

10. SOUTH 10 DEGREES – 37 MINUTES – 00 SECONDS EAST, A DISTANCE OF 406.03 FEET TO A POINT, THENCE;
11. SOUTH 08 DEGREES – 04 MINUTES – 18 SECONDS EAST, A DISTANCE OF 152.58 FEET TO A POINT, THENCE;
12. SOUTH 81 DEGREES – 55 MINUTES – 42 SECONDS WEST, A DISTANCE OF 125.00 FEET TO A POINT, THENCE;
13. SOUTH 08 DEGREES – 04 MINUTES – 18 SECONDS EAST, A DISTANCE OF 350.40 FEET TO A POINT OF NON-TANGENT CURVATURE, THENCE;
14. ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 375.00 FEET, TURNING A CENTRAL ANGLE OF 15 DEGREES – 22 MINUTES – 08 SECONDS, WITH AN ARC LENGTH OF 100.59 FEET, THE CHORD OF WHICH BEARS SOUTH 72 DEGREES – 19 MINUTES – 21 SECONDS WEST, A CHORD DISTANCE OF 100.29 FEET TO A POINT OF TANGENCY, THENCE;
15. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 4.45 FEET TO A POINT, THENCE;
16. SOUTH 26 DEGREES – 04 MINUTES – 30 SECONDS EAST, A DISTANCE OF 188.85 FEET TO A POINT, THENCE;
17. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 8.1 AND LOT 4, BLOCK 1 AND THE WESTERLY LINE OF HUTCHINSON RIVER PARKWAY, SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 156.73 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 3, BLOCK 1 THE FOLLOWING EIGHT (8) COURSES:
18. NORTH 24 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 82.31 FEET TO A POINT, THENCE;
19. NORTH 63 DEGREES – 55 MINUTES – 30 SECONDS EAST, A DISTANCE OF 10.33 FEET TO A POINT, THENCE;
20. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 19.84 FEET TO A POINT, THENCE;

21. SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 10.33 FEET TO A POINT, THENCE;
22. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 90.59 FEET TO A POINT, THENCE;
23. NORTH 63 DEGREES – 55 MINUTES – 30 SECONDS EAST, A DISTANCE OF 4.05 FEET TO A POINT, THENCE;
24. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 9.55 FEET TO A POINT, THENCE;
25. SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 227.32 FEET TO A POINT ON THE AFOREMENTIONED EASTERLY LINE OF PELHAM PARKWAY, THENCE;
26. ALONG THE EASTERLY LINE OF PELHAM PARKWAY, NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 296.81 FEET TO A POINT, THENCE;
27. CONTINUING ALONG THE EASTERLY LINE OF PELHAM PARKWAY, NORTH 62 DEGREES – 43 MINUTES – 40 SECONDS WEST, A DISTANCE OF 609.10 FEET TO A POINT OF CURVATURE, THENCE;
28. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 126 DEGREES – 41 MINUTES – 30 SECONDS, WITH AN ARC LENGTH OF 44.22 FEET, THE CHORD OF WHICH BEARS NORTH 00 DEGREES – 37 MINUTES – 42 SECONDS EAST, A CHORD DISTANCE OF 35.75 FEET TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTION IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

PARCEL 3 - Ground Lease Parcel (Lot 8.2)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING DISTANT 454.53 FEET ON A COURSE OF NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST FROM A POINT AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 60 SECONDS EAST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.2 AND LOT 8.1, BLOCK 1 THE FOLLOWING TWO (2) COURSES:
2. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 221.90 FEET TO A POINT, THENCE;
3. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE;
4. ALONG THE DIVIDING LINE BETWEEN LOT 8.2 AND LOTS 8.1 AND 8.3, BLOCK 1, NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 221.90 FEET THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTION IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

BLANKET DESCRIPTION - LOTS 8.1, 8.2 and 8.3:

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a rebar with cap set on the southerly line of Secor Lane (50 foot wide), said point being at the northeasterly terminus of a curve connecting the southerly line of Secor Lane with the easterly line of Pelham Parkway (a/k/a C.R. 70) and from said beginning point, running thence

1. Along the southerly line of Secor Lane, north 63 degrees 57 minutes 50 seconds east, a distance of 1081.42 feet to a rebar with cap set at a point of curvature in the same, thence
2. Continuing along the same, along a curve to the right, having a radius of 650.00 feet, turning a central angle of 11 degrees 45 minutes 00 seconds with an arc length of 133.30 feet, the chord of which bears north 69 degrees 50 minutes 19 seconds east, a chord distance of 133.06 feet to a rebar with cap set, thence the following seven (7) courses along the dividing line between Lot 8 Block 1 and the westerly line of the Hutchinson River Parkway;
3. South 10 degrees 37 minutes 00 seconds east, a distance of 406.03 feet to a rebar with cap set, thence
4. South 08 degrees 04 minutes 18 seconds east, a distance of 152.58 feet to a rebar with cap set, thence

5. South 81 degrees 55 minutes 42 seconds west, a distance of 125.00 feet to a rebar with cap set, thence
6. South 08 degrees 04 minutes 18 seconds east, a distance of 350.40 feet to a rebar with cap set at a point of non-tangent curvature, thence
7. Along a curve to the left, having a radius of 375.00 feet, turning a central angle of 15 degrees 22 minutes 08 seconds with an arc length of 100.59 feet, the chord of which bears south 72 degrees 19 minutes 21 seconds west, a chord distance of 100.29 feet to a rebar with cap set at a point of tangency, thence
8. South 63 degrees 57 minutes 50 seconds west, a distance of 4.45 feet to a rebar with cap set, thence
9. South 26 degrees 04 minutes 30 seconds east, a distance of 188.85 feet to a point, thence
10. Along the common dividing line between Lot 8 and Lot 5, Block 1 and the westerly line of the Hutchinson River Parkway, south 63 degrees 55 minutes 30 seconds west, a distance of 156.73 feet to a point; thence the following eight (8) courses along the dividing line between Lot 8 and Lot 3, Block 1.
11. North 26 degrees 04 minutes 30 seconds west, a distance of 82.31 feet to a pk nail set, thence
12. North 63 degrees 55 minutes 30 seconds east, a distance of 10.33 feet to a pk nail set, thence
13. North 26 degrees 04 minutes 30 seconds west, a distance of 19.84 feet to a pk nail set, thence
14. South 63 degrees 55 minutes 30 seconds west, a distance of 10.33 feet to a pk nail set, thence
15. North 26 degrees 04 minutes 30 seconds west, a distance of 90.59 feet to a rebar with cap set, thence
16. North 63 degrees 55 minutes 30 seconds east, a distance of 4.05 feet to a pk nail set, thence
17. North 26 degrees 04 minutes 30 seconds west, a distance of 9.55 feet to a pk nail set, thence
18. South 63 degrees 55 minutes 30 seconds west, a distance of 227.32 feet to a pk nail set on the aforementioned easterly line of Pelham Parkway, thence
19. North 26 degrees 04 minutes 30 seconds west, a distance of 296.81 feet to a pk nail, thence

20. Continuing along the easterly line of Pelham Parkway, north 62 degrees 43 minutes 40 seconds west, a distance of 609.10 feet to a pk nail set a point of curvature, thence
21. Along a curve to the right, having a radius of 2.00 feet, turning a central angle of 126 degrees 41 minutes 30 seconds with an arc length of 44.22 feet to a point, the chord of which bears north 00 degrees 37 minutes 24 seconds east, a chord distance of 35.75 feet to the point and place of BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTIONS IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/12/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

SUCH REAL PROPERTY ALSO CONTAINS ALL OF THE CONDOMINIUM UNITS IN THE P/A ACADIA CONDOMINIUM MADE BY P/A-ACADIA PELHAM MANOR, LLC DATED 9/17/07 AND RECORDED 10/23/07 AS CONTROL NUMBER 472850497.

For information only: Said premises are known as 798-858 Pelham Parkway, Pelham, NY and designated as Section 166.26 Block 1 Lots 8.1, 8.2 and 8.3 as shown on the Westchester County Land and Tax Map.

Mortgage

1. Building Loan Fee and Leasehold Loan Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$23,026,906.60 made by Mortgagor to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee of Bear Stearns Commercial Mortgage, Inc. ("Bear Stearns") dated December 10, 2007 and recorded in the office of the County Clerk of Westchester County, New York (the "Office") on January 23, 2008 as Control No. 480160019 (the "Original BL Mortgage") **upon which a mortgage recording tax of \$299,359.70 was duly paid**, which Original BL Mortgage was assigned by MERS as a nominee of U.S. Bank National Association, not individually but solely as trustee for the Maiden Lane Commercial Mortgage-Backed Securities Trust 2008-1, as successor to Bear Stearns, to Mortgagee by Assignment of Building Loan Fee and Leasehold Mortgage and Security Agreement dated December 1, 2010 and to be recorded in the Office immediately prior hereto. Outstanding principal amount: \$20,022,204.11
  2. Project Loan Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$12,637,093.40 made by Mortgagor to MERS as nominee of Bear Stearns dated December 10, 2007 and recorded in the Office on January 23, 2008 as Control No. 480160029 (the "Original PL Mortgage") **upon which a mortgage recording tax of \$164,282.30 was duly paid**, which Original PL Mortgage was assigned by MERS as a nominee of U.S. Bank National Association, not individually but solely as trustee for the Maiden Lane Commercial Mortgage-Backed Securities Trust 2008-1, as successor to Bear Stearns, to Mortgagee by Assignment of Project Loan Fee and Leasehold Mortgage and Security Agreement dated December 1, 2010 and to be recorded in the Office immediately prior hereto. Outstanding principal amount: \$11,531,497.78
-

Form of Amended and Restated Consolidated Mortgage

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EXHIBIT B

LOCATION: 2 Penn Place  
VILLAGE: Pelham Manor  
TOWN: Pelham  
COUNTY: Westchester  
SECTION: 166.26  
BLOCK: 1  
LOTS: 8.1, 8.2 and 8.3

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Date: As of December 1, 2010

FEE AND LEASEHOLD MORTGAGE,  
ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT  
("this Mortgage")

FROM

P/A-ACADIA PELHAM MANOR, LLC,  
a limited liability company organized and existing under the laws of Delaware  
("Mortgagor")

Address and Chief  
Executive Office of Mortgagor:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605

TO

BANK OF AMERICA, N.A.,  
a national banking association,  
as Administrative Agent  
("Mortgagee")

Address of Mortgagee:

One Bryant Park, 35th Floor  
New York, New York 10036

Mortgage Amount: \$31,553,701.89

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This instrument prepared by, and after recording please return to:  
Schiff Hardin LLP  
900 Third Avenue, 23rd Floor  
New York, New York 10022  
Attention: Paul G. Mackey, Esq.

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FEE AND LEASEHOLD MORTGAGE,  
ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

THIS FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Mortgage") is made as of the 1st day of December, 2010, by P/A-ACADIA PELHAM MANOR, LLC, a Delaware limited liability company, ("Mortgagor"), in favor of and for the benefit of BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for itself and other lenders pursuant to the Loan Agreement defined below (together with its successors and assigns, "Mortgagee").

ARTICLE 1

Definitions; Granting Clauses; Secured Indebtedness

Section 1.1. Principal Secured. This Mortgage secures the aggregate principal amount of up to \$31,553,701.89 plus such additional amounts as Mortgagee may from time to time advance subsequent to a default by Mortgagor pursuant to the terms and conditions of this Mortgage, with respect to an obligation secured by a lien or encumbrance prior to the lien of this Mortgage or for the protection of the lien of this Mortgage, together with interest thereon. In the event that all or any part of the Premises is located in the State of New York, then, notwithstanding the language in the Granting Clause and Section 2.2 or anything else contained herein to the contrary, the maximum amount secured hereby at execution or which under any contingency may become secured hereby at any time hereafter is the Mortgage Amount and all interest, additional interest and late payment and prepayment charges in respect thereof, plus all amounts expended by Mortgagee following a default hereunder in respect of insurance premiums and real estate taxes, and all legal costs or expenses of collection of the debt secured hereby or of the defense or prosecution of the rights and lien created hereby.

Section 1.2. Definitions.

(a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

"Additional Interest": Additional Interest as defined in the Loan Agreement.

"Fee Parcel" means the portion of the Land identified on Exhibit A as Parcel 1.

"Ground Lease" means that certain Ground Lease dated October 1, 2004 between Ground Lessor, as landlord, and Ground Lessor, as tenant, as to which a Memorandum of Ground Lease dated October 1, 2004 between Ground Lessor and Borrower was recorded in the office of the Clerk of the County of Westchester on February 23, 2004 in Control No. 443010050, as

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modified by letter agreement dated January 30, 2006 between Ground Lessor and Borrower, as modified by First Amendment to Ground Lease dated June 28, 2006 between Ground Lessor and Borrower, as modified by letter agreement dated November 28, 2006 between Ground Lessor and Borrower and as modified by Second Amendment to Ground Lease dated December 6, 2007 between Ground Lessor and Borrower.

“Ground Lease Parcels” means the portion of the Land identified on Exhibit A as Parcels 2 and 3.

“Ground Lessor” means, collectively, Rusciano & Son Corp. and Secor Lane Corp. and their successors and assigns as owners of the fee interest in the Land.

“Loan Agreement”: Transfer Loan Agreement dated of even date herewith between Mortgagor and Mortgagee, as it may be from time to time amended, restated, modified, extended or supplemented.

“Mortgagor”: P/A-Acadia Pelham Manor, LLC, a Delaware limited liability company, whose address is c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and its permitted successors and assigns.

“Promissory Note”: Collectively, the Notes, as defined in the Loan Agreement.

Capitalized terms used herein which are not otherwise defined but which are defined in the Loan Agreement shall have the meaning ascribed to them in the Loan Agreement.

Section 1.3. Granting Clause. In consideration of the provisions of this Mortgage and of the sum of \$10.00 cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by Mortgagor, Mortgagor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN, MORTGAGE, HYPOTHECATE, PLEDGE, DEPOSIT and SET OVER to Mortgagee, with all estate, right, title and interest of Mortgagor in and to the Property (as hereinafter defined), whether now owned or held or hereafter acquired by Mortgagor, to have and hold the Property unto Mortgagee, its successors and assigns forever; and to hold the Property unto Mortgagee in fee simple forever (except as to Mortgagor’s interest in the Ground Lease Parcels pursuant to the Ground Lease, as to which such interest is a valid leasehold interest); provided that Mortgagor may retain possession of the Property until the occurrence of an Event of Default; (a) the real property described in Exhibit A which is attached hereto and incorporated herein by reference (the “Land”) together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the “Improvements”); and (ii) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase or lease the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being

herein sometimes collectively called the "Premises"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); (c) all (i) plans and specifications for the Improvements; (ii) Mortgagor's rights, but not liability for any breach by Mortgagor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), Swap Transactions (as hereinafter defined), contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Mortgagor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (hereinafter defined) for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan or any Swap Transaction, all rights to the payment of money from Mortgagee under any Swap Transaction, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Transaction; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest; and (d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any

rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; (iii) all commercial tort claims Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Mortgagor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the lease creating the leasehold estate; TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Mortgagee, its successors and assigns, in trust, in fee simple forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Mortgagor under the Note and Loan Documents (as hereinafter defined) and all other indebtedness and matters defined as "Secured Indebtedness" in Section 1.5 of this Mortgage; PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee (as hereinafter defined) the principal sum, including all additional advances and all other sums payable by Mortgagor to Mortgagee under the terms of the Loan Documents and shall perform or cause to be performed all the other terms, conditions, agreements and provisions contained in the Loan Documents, all without fraud or delay or deduction or abatement of anything or for any reason, then this Mortgage and the estate hereby granted shall cease, terminate and become void.

Section 1.4. Security Interest. Mortgagor hereby grants to Mortgagee a security interest in all of the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "Collateral") to secure the obligations of Mortgagor under the Note and Loan Documents and all other indebtedness and matters defined as Secured Indebtedness in Section 1.5 of this Mortgage. In addition to its rights hereunder or otherwise, Mortgagee shall have all of the rights of a secured party under the New York Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law.

Section 1.5. Secured Indebtedness, Note, Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively the "Secured Indebtedness"): (a) the Promissory Note and all other promissory notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part (such promissory note or promissory notes, whether one or more, as from time to time renewed, extended, supplemented, increased or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or

in part, being hereinafter called the “Note”, and Mortgagee, or the subsequent Mortgagee at the time in question of the Note or any of the Secured Indebtedness, as hereinafter defined, such Mortgagee continuing to be defined herein as “Mortgagee”); and (b) all interest, Additional Interest, indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Mortgagor to Mortgagee now or hereafter incurred or arising pursuant to or permitted by the provisions of the Note, this Mortgage, the Loan Agreement or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the loan evidenced by the Note, including but not limited to any loan or credit agreement, letter of credit or reimbursement agreement, tri-party financing agreement, Master Agreement relating to any Swap Transactions or other agreement between Mortgagor and Mortgagee, or among Mortgagor, Mortgagee and any other party or parties, pertaining to the repayment or use of the proceeds of the loan evidenced by the Note (the Note, the Mortgage, the Loan Agreement, any Master Agreement relating to any Swap Transactions and any such documents as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the “Loan Documents”). “Swap Transaction” means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement (the “Master Agreement”) published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Mortgagee (or its affiliates) and Mortgagor (or its affiliates), together with any related schedules, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.

ARTICLE 2

Representations, Warranties and Covenants

Section 2.1. Mortgagor represents, warrants, and covenants as follows:

(a) Payment and Performance. Mortgagor will make due and punctual payment of the Secured Indebtedness. Mortgagor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Mortgage and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this Mortgage.

(b) Title and Permitted Encumbrances. Mortgagor has, in Mortgagor’s own right, and Mortgagor covenants to maintain, lawful, good and marketable title to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any, set forth under the heading “Permitted Encumbrances” in Exhibit B hereto,

which are Permitted Encumbrances only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of Mortgagee (the matters described in the foregoing clauses (i), (ii), (iii) and (iv) being herein called the "Permitted Encumbrances"). Mortgagor owns and holds the Fee Parcel in fee simple absolute. Mortgagor is the owner of a valid and subsisting interest as tenant under the Ground Lease, that the Ground Lease is in full force and effect, there are no defaults thereunder and no event has occurred or is occurring which after notice or passage of time or both will result in such a default, that the Ground Lease is subject to no lien, charge or encumbrance of any kind and is prior to all liens, charges and encumbrances whatsoever on the fee interest of the lessor thereunder except such as are listed as exceptions to title in the title policy insuring the lien hereof. Mortgagor, and Mortgagor's successors and assigns, will warrant generally and forever defend title to the Property, subject as aforesaid, to Mortgagee and his successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Mortgagor will preserve the leasehold estate created in it by the Ground Lease, and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Mortgagor will perform or cause to be performed all of the covenants and conditions required to be performed by it under the Ground Lease, will do all things necessary to preserve unimpaired its rights thereunder, and will not enter into any agreement modifying or amending the Ground Lease or releasing the lessor thereunder from any obligations imposed upon it thereby. If Mortgagor receives a notice of default under the Ground Lease, it shall immediately cause a copy of such notice to be sent by registered United States mail to Mortgagee. Mortgagor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Mortgagee. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Mortgagee of any existing or future violation or other breach thereof by Mortgagor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Mortgagor if Mortgagor is an individual. If any right or interest of Mortgagee in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Mortgagee and Mortgagee, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Mortgagee, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee or Mortgagee (as the case may be), and the party (Mortgagee or Mortgagee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions/Condominium Charges. Mortgagor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all real estate taxes assessed against the Property or any part thereof, and shall deliver

promptly to Mortgagee such evidence of the payment thereof as Mortgagee may require. Any lien for Condominium Assessments, whenever accruing, shall, pursuant to the Declaration, be subordinate to the lien of this Mortgage.

(d) Insurance. Mortgagor shall obtain and maintain at Mortgagor's sole expense: (1) mortgagee title insurance issued to Mortgagee covering the Premises as required by Mortgagee, without exception for mechanics' liens; (2) property insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against any and all acts of terrorism and such other insurable hazards as Mortgagee may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Mortgagor and Mortgagee from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non-reporting) form during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises; (3) if and to the extent any portion of the Improvements is, under the Flood Disaster Protection Act of 1973 ("FDPA"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by Mortgagee, but in no event less than the amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; (4) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of Mortgagor as named insured and Mortgagee as additional insured; (5) statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of Mortgagor and any contractor; (6) if there is a general contractor, during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in clause (4) above, for the benefit of the general contractor as named insured and Mortgagor and Mortgagee as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of the general contractor any contractor; and (7) such other insurance on the Property and endorsements as may from time to time be required by Mortgagee (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance, wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to Mortgagee, and shall require not less than ten (10) days' prior written notice to Mortgagee of any cancellation for nonpayment of premiums, and not less than thirty (30) days' prior written notice to Mortgagee of any other cancellation or any change of coverage. All insurance companies must be licensed to do business in the state in which the Property is located and must have an A.M. Best Company financial and performance ratings of A-:IX or better. All insurance policies maintained, or caused to be maintained, by Mortgagor with respect to the Property, except for general liability



insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Mortgagor or Mortgagee and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Mortgage or any other Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any Debtor Relief Law, or if in Mortgagee's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Mortgagor shall, in each instance promptly upon its discovery thereof or upon the request of Mortgagee therefor, and at Mortgagor's expense, promptly obtain and deliver to Mortgagee a like policy (or, if and to the extent permitted by Mortgagee, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this Mortgage or such other Loan Document, as the case may be. Without limiting the discretion of Mortgagee with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Mortgagee as mortgagee with loss proceeds payable to Mortgagee notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named or additional insured; (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Mortgagee under the Loan Documents; or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. The originals of each initial insurance policy (or to the extent permitted by Mortgagee, a copy of the original policy and such evidence of insurance acceptable to Mortgagee) shall be delivered to Mortgagee at the time of execution of this Mortgage, with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to Mortgagee, with all premiums fully paid current, at least ten (10) days before the termination of the policy it renews or replaces. Mortgagor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Mortgagee evidence satisfactory to Mortgagee of the timely payment thereof. If any loss occurs at any time when Mortgagor has failed to perform Mortgagor's covenants and agreements in this paragraph with respect to any insurance payable because of loss sustained to any part of the Property whether or not such insurance is required by Mortgagee, Mortgagee shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Mortgagor, to the same extent as if it had been made payable to Mortgagee. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Secured Indebtedness, all of Mortgagor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Mortgagee shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property where the loss is estimated by Mortgagee to be \$1,000,000 or more, regardless of whether or not such insurance policies are required by Mortgagee, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be a part of the Secured Indebtedness and shall be due and payable to Mortgagee on demand. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application

of any amount paid over to Mortgagor. Any such proceeds received by Mortgagee shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration, either partly or entirely, of the Property so damaged, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(e) Application of Insurance Proceeds. Notwithstanding anything to the contrary set forth in the preceding Section 2.1(d), if the Property is damaged or destroyed and Mortgagee determines that all of the conditions specified hereinafter in this Section have been satisfied, then Mortgagee shall apply the proceeds of insurance (i) first to reimbursing itself for all costs incurred by it in the collection of such proceeds and (ii) second to reimbursing Mortgagor for such actual costs as shall have been incurred by Mortgagor in restoring the Property and shall be approved by Mortgagee. Insurance proceeds shall be applied to such restoration solely if (A) Mortgagee determines that: (i) the Property is capable of being suitably restored in accordance with applicable Legal Requirements to the value, condition, character and general utility existing prior to such damage or destruction, and, in any event, to a Loan to Value Ratio of not greater than 70%, provided that this clause (i) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (ii) sufficient funds are unconditionally available (from proceeds of insurance and/or from funds of Mortgagee) to enable Mortgagor promptly to commence, and thereafter diligently to prosecute to completion, such restoration, provided that this clause (ii) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (iii) Mortgagor is not in default or in breach of any obligations under any Loan Document, no uncured Default exists under any Loan Document and no facts or circumstances exist that would constitute a Default with the passage of time or the giving of notice or both; and (iv) neither the validity, enforceability nor priority of the lien of this Mortgage shall be adversely affected; (B) Mortgagor has entered into a written agreement, satisfactory in form and substance to Mortgagee, containing such conditions to disbursements as are employed at the time by Mortgagee for construction loans; (C) Mortgagor has delivered to Mortgagee such security as Mortgagee might have reasonably required to assure completion of restoration in accordance with the standards specified above; and (D) Mortgagor has complied with such further reasonable requirements as Mortgagee might have specified.

(f) Reserve for Insurance, Taxes and Assessments. Upon request of Mortgagee, to secure the payment and performance of the Secured Indebtedness, but not in lieu of such payment and performance, Mortgagor will deposit with Mortgagee a sum equal to real estate taxes, assessments and charges (which charges for the purposes of this paragraph shall include without limitation any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Mortgagee and prorated to the end of the calendar month following the month during which Mortgagee's request is made, and thereafter will deposit with Mortgagee, on

each date when an installment of principal and/or interest is due on the Note, sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay at least fifteen (15) days prior to the due date thereof, the next maturing real estate taxes, assessments and charges and premiums for such policies of insurance. Mortgagee shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Mortgagee for future use, applied to any Secured Indebtedness or refunded to Mortgagor, at Mortgagee's option, and any deficiency in such funds so deposited shall be made up by Mortgagor upon demand of Mortgagee. All such funds so deposited shall bear no interest, may be commingled with the general funds of Mortgagee and shall be applied by Mortgagee toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Mortgagee by Mortgagor (which statements shall be presented by Mortgagor to Mortgagee a reasonable time before the applicable amount is due); provided, however, that, if a Default shall have occurred hereunder, such funds may at Mortgagee's option be applied to the payment of the Secured Indebtedness in the order determined by Mortgagee in its sole discretion, and that Mortgagee may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Mortgagor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Mortgagor's interest in and rights to such funds held by Mortgagee under this paragraph but subject to the rights of Mortgagee hereunder.

(g) Condemnation. Mortgagor shall notify Mortgagee immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Mortgagor shall, at Mortgagor's expense, diligently prosecute any such proceedings. Mortgagee shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Mortgagee shall be entitled to receive all sums which may be awarded or become payable to Mortgagor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for injury or damage to the Property. Mortgagor shall, promptly upon request of Mortgagee, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Mortgagee to collect and receipt for any such sums. All such sums are hereby assigned to Mortgagee, and shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration of the Property so affected, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Mortgagor. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All costs and expenses (including but not limited to attorneys' fees) incurred

by Mortgagee in connection with any condemnation shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(h) Compliance with Legal Requirements. The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Legal Requirements (hereinafter defined). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Mortgagor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Mortgage to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. No improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Mortgagor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property.

If Mortgagor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Mortgagor will promptly furnish a copy of such notice or claim to Mortgagee. Mortgagor has received no notice and has no knowledge of any such noncompliance. As used in this Mortgage: (i) the term "Legal Requirement" means any Law (hereinafter defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(i) Maintenance, Repair and Restoration. Mortgagor will keep the Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Mortgagor will not, without the prior written consent of Mortgagee, (i) remove from the Property any fixtures or personal property covered by this Mortgage except such as is replaced by Mortgagor by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest (except that created by this Mortgage), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Mortgagor shall give prompt notice thereof to Mortgagee and Mortgagor shall promptly, at Mortgagor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(j) No Other Liens. Mortgagor will not, without the prior written consent of Mortgagee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, voluntary or involuntary lien,

whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Mortgagee, Mortgagor will cause the same to be promptly discharged and released. Mortgagor will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Mortgagee. If Mortgagee consents to the voluntary grant by Mortgagor of any mortgage, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Mortgage and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Mortgagee; (3) Rents (hereinafter defined), if collected by or for Mortgagee of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Mortgagee may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Mortgagee with or immediately after the occurrence of any such default or commencement; and (5) neither Mortgagee of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Mortgagor's rights hereunder without the prior written consent of Mortgagee.

(k) Operation of Property. Mortgagor will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Mortgagor will keep the Property occupied so as not to impair the insurance carried thereon. Mortgagor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Mortgagor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Mortgagor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Mortgagee. Mortgagor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened. Mortgagor will preserve, protect, renew,

extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Mortgagee, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Mortgagor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid.

(l) Financial Matters. Mortgagor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law (hereinafter defined) is pending (or, to Mortgagor's knowledge, threatened) by or against Mortgagor, or any affiliate of Mortgagor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Mortgagor to Mortgagee in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Mortgagor or, to Mortgagor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Mortgagor" shall also include any person liable directly or indirectly for the Secured Indebtedness or any part thereof and any joint venturer or general partner of Mortgagor.

(m) Status of Mortgagor; Suits and Claims; Loan Documents. If Mortgagor is a corporation, partnership, limited liability company, or other legal entity, Mortgagor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Mortgagor has been duly authorized, executed and delivered by Mortgagor, and the obligations thereunder and the performance thereof by Mortgagor in accordance with their terms are and will continue to be within Mortgagor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement or any other document or agreement to which Mortgagor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Mortgagor, or any other person liable, directly or indirectly, for any of the Secured Indebtedness, except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Mortgagor's knowledge, threatened) against Mortgagor (other than the lawsuit commenced by The Omni Health & Fitness Complex of Pelham, Inc., et al. in the Westchester County Supreme Court under index no. 24678/2008) or against any other person liable directly or indirectly for the Secured Indebtedness or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Mortgagor's title to the Property) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Mortgagor's knowledge, threatened) against Mortgagor, or against any other person liable

directly or indirectly for the Secured Indebtedness, except as has been disclosed in writing to Mortgagee in connection with the loan evidenced by the Note. The Loan Documents constitute legal, valid and binding obligations of Mortgagor enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws (hereinafter defined) and except as the availability of certain remedies may be limited by general principles of equity. Mortgagor is not a “foreign person” within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Mortgagor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The loan evidenced by the Note is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Mortgagor further warrants that the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan. Mortgagor’s exact legal name is correctly set forth at the end of this Mortgage. If Mortgagor is not an individual, Mortgagor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Mortgage. If Mortgagor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the introductory paragraph of this Mortgage. Mortgagor will not cause or permit any change to be made in its name, identity (including its trade name or names), or corporate or partnership structure, unless Mortgagor shall have notified Mortgagee in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Mortgagee for the purpose of further perfecting or protecting the lien and security interest of Mortgagee in the Property. In addition, Mortgagor shall not change its corporate or partnership structure without first obtaining the prior written consent of Mortgagee. Mortgagor’s principal place of business and chief executive office, and the place where Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Mortgagor) been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of Mortgagor set forth at the end of this Mortgage. If Mortgagor is an individual, Mortgagor’s principal residence has for the preceding four months been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of the principal residence of Mortgagor set forth at the end of this Mortgage. Mortgagor’s organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage. Mortgagor shall promptly notify Mortgagee (i) of any change of its organizational identification number, or (ii) if Mortgagor does not now have an organization identification number and later obtains one, of such organizational identification number.

(n) Certain Environmental Matters. Mortgagor shall comply with the terms and covenants of that certain Environmental Indemnity Agreement dated of even date herewith (the “Environmental Agreement”).

(o) Further Assurances. Mortgagor will, promptly on request of Mortgagee, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage or any other Loan Document; (ii) execute, acknowledge,

deliver, procure and record and/or file such further documents (including, without limitation, further mortgages of trust, security agreements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Mortgagee to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Mortgagee to enable Mortgagee to comply with the requirements or requests of any agency having jurisdiction over Mortgagee or any examiners of such agencies with respect to the indebtedness secured hereby, Mortgagor or the Property. Mortgagor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(p) Fees and Expenses. Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Mortgagee and/or Mortgagee on demand to the extent paid by Mortgagee and/or Mortgagee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, reasonable attorneys' fees, reasonable architect fees, reasonable engineer fees, reasonable construction consultant fees, reasonable environmental inspection fees, survey fees, and all other reasonable costs and expenses of every character incurred by Mortgagor or Mortgagee and/or Mortgagee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all amendments and supplements to this Mortgage, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Mortgagor as owner of the Property; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Mortgagor, hereunder or under any other Loan Document.

(q) Indemnification.

(i) Mortgagor will indemnify and hold harmless Mortgagee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (p), the term "Mortgagee" shall include and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Mortgagee. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this paragraph (p)



by Mortgagor to Mortgagee shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Mortgagee (including without limitation any rights of contribution or indemnification) against Mortgagor or any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Mortgagee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date (hereinafter defined), any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Mortgagor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein, any claim under or with respect to any Lease (hereinafter defined) or arising under the Environmental Agreement. The term "Release Date" as used herein means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Mortgage has been released, or (ii) the date on which the lien of this Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Mortgagor and Mortgagor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (p) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness, the termination of any and all Swap Transactions, the discharge and release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(r) Records and Financial Reports. Mortgagor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Property and the operation thereof, and will permit all such

books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics to be inspected and copied, and the Property to be inspected and photographed, by Mortgagee and its representatives during normal business hours and at any other reasonable times. Without limitation of other or additional requirements in any of the other Loan Documents, Mortgagor will furnish to Mortgagee the financial statements required under the Loan Agreement. Mortgagor will furnish to Mortgagee at Mortgagor's expense all evidence which Mortgagee may from time to time reasonably request as to compliance with all provisions of the Loan Documents. Any inspection or audit of the Property or the books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics of Mortgagor, or the procuring of documents and financial and other information, by or on behalf of Mortgagee shall be for Mortgagee's protection only, and shall not constitute any assumption of responsibility to Mortgagor or anyone else with regard to the condition, construction, maintenance or operation of the Property nor Mortgagee's approval of any certification given to Mortgagee nor relieve Mortgagor of any of Mortgagor's obligations. Mortgagee may from time to time assign or grant participations in the Secured Indebtedness and Mortgagor consents to the delivery by Mortgagee to any acquirer or prospective acquirer of any interest or participation in or with respect to all or part of the Secured Indebtedness such information as Mortgagee now or hereafter has relating to the Property, Mortgagor, any party obligated for payment of any part of the Secured Indebtedness, any tenant or guarantor under any lease affecting any part of the Property and any agent or guarantor under any management agreement affecting any part of the Property.

(s) Taxes on Note or Mortgage. Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Mortgagor is prohibited by law) which may be required to be paid with respect to the Note, this Mortgage or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Mortgagee, the Note, the Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the Secured Indebtedness or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Secured Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

(t) Statement Concerning Note or Mortgage. Mortgagor shall at any time and from time to time furnish within seven (7) days of request by Mortgagee a written statement in such form as may be required by Mortgagee stating that (i) the Note, this Mortgage and the other Loan

Documents are valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms; (ii) the unpaid principal balance of the Note; (iii) the date to which interest on the Note is paid; (iv) the Note, this Mortgage and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other Loan Document. If any of the foregoing statements are untrue, Mortgagor shall, alternatively, specify the reasons therefor. Mortgagee shall at any time and from time to time furnish within seven (7) days of request by Mortgagor a written statement stating (i) the unpaid principal balance of the Note and (ii) the date to which interest on the Note is paid.

(u) Trust Fund; Lien Laws. Mortgagor will receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the “cost of improvement”, as such quoted term is defined in the New York Lien Law) and will apply the same first to the payment of such costs before using any part of the total of the same for any other purpose and, will comply with Section 13 of the New York Lien Law. Mortgagor will indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, reasonable attorney’s fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagor of any applicable lien law including, without limitation, any section of Article 3-A of the New York Lien Law.

Section 2.2. Performance by Mortgagee on Mortgagor’s Behalf. Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which under any Loan Document Mortgagor is required to perform or take, or to pay any money which under any Loan Document Mortgagor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the Secured Indebtedness has been accelerated, Mortgagee, in Mortgagor’s name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Mortgagee, with interest thereon at the Default Rate set forth in the Note, and any money so paid by Mortgagee shall be a demand obligation owing by Mortgagor to Mortgagee (which obligation Mortgagor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Mortgagee and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Mortgagee shall waive or cure any default or waive any right, remedy or recourse of Mortgagee. Any such payment may be made by Mortgagee in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Mortgagor to Mortgagee pursuant to this Mortgage shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Note for interest on past due principal owed on the Note but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Mortgagee on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Mortgagee hereunder and the time when paid shall be fully established by the certificate of Mortgagee or any of Mortgagee’s officers or agents.

Section 2.3. Absence of Obligations of Mortgagee with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of “Property” and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Mortgagor’s rights, title and interests therein but not Mortgagor’s obligations, duties or liabilities pertaining thereto, (ii) Mortgagee neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of “Property” herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Mortgagee may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Mortgagee’s interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Mortgagee shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Mortgagee elects otherwise by written notification.

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, required by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. For purposes of such filings, Mortgagor agrees to furnish any information requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Mortgage. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor’s own name to execute in Mortgagor’s name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Mortgagor’s authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorney-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

Section 2.5. Ground Lease Covenant. Mortgagor shall (a) pay all rents, additional rents and other sums required to be paid by Mortgagor, as tenant under and pursuant to the provisions of the Ground Lease as and when such rent or other charge is payable, (b) diligently perform and observe all of the terms, covenants and conditions of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed and observed prior to the expiration of any applicable grace period therein provided, and (c) promptly notify Mortgagee of the giving of any notice by the Ground Lessor to Mortgagor of any default by Mortgagor in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed and deliver to Mortgagee a true copy of each such notice. Mortgagor shall not, without the prior consent of Mortgagee, surrender the leasehold estate created by the Ground Lease or terminate or cancel the Ground Lease or, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, modify, change, supplement, alter or amend the Ground Lease,

in any respect, either orally or in writing, and Mortgagor hereby assigns to Mortgagee, as further security for the payment of the Secured Indebtedness and for the performance and observance of the terms, covenants and conditions of this Mortgage and the Loan Agreement, all of the rights, privileges and prerogatives of Mortgagor, which rights, privileges and prerogatives may be exercised by Mortgagee upon a Default, as tenant under the Ground Lease, to surrender the leasehold estate created by the Ground Lease or to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease, which consent, in the case of a change, supplement, modification, alteration or amendment, shall not be unreasonably withheld or delayed, and any such surrender of the leasehold estate created by the Ground Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease without the prior consent of Mortgagee shall be void and of no force and effect. If Mortgagor shall default in the performance or observance of any term, covenant or condition of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed, and such default shall remain uncured after the expiration of any applicable cure or grace period, then, without limiting the generality of the other provisions of this Mortgage and the Loan Agreement, and without waiving or releasing Mortgagor from any of its obligations hereunder or thereunder, Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed or to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under the Ground Lease shall be kept unimpaired and free from default. If Mortgagee shall make any payment or perform any act or take action in accordance with the preceding sentence, Mortgagee will notify Mortgagor of the making of any such payment, the performance of any such act, or the taking of any such action. In any such event, subject to the rights of tenants, subtenants and other occupants under the Leases, Mortgagee and any person designated by Mortgagee shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time after such default by Mortgagor, which remains uncured after the expiration of any applicable cure or grace period, for the purpose of taking any such action. Mortgagee may pay and expend such sums of money as Mortgagee deems reasonably necessary for any such purpose and upon so doing shall be subrogated to any and all rights of the Ground Lessor. Mortgagor hereby agrees to pay to Mortgagee immediately upon demand therefor, all such sums so paid and expended by Mortgagee, together with interest thereon from the day of such demand at the Default Rate. All sums so paid and expended by Mortgagee and the interest thereon shall be secured by the legal operation and effect of this Mortgage. If the Ground Lessor shall deliver to Mortgagee a copy of any notice of default sent by said Ground Lessor to Mortgagor, as tenant under the Ground Lease, such notice shall constitute full protection to Mortgagee for any action taken or omitted to be taken by Mortgagee, in good faith, in reliance thereon. Mortgagor will not subordinate or consent to the subordination of the Ground Lease to any mortgage, security deed, lease or other interest on or in the Ground Lessor's interest in all or any part of the Property, unless, in each such case, the written consent of Mortgagee shall have been first had and obtained..

Section 2.6. No Merger of Fee and Leasehold Estates. So long as any portion of the Secured Indebtedness shall remain unpaid, unless Mortgagee shall otherwise consent, the fee title to the Ground Lease Parcels and the leasehold estate therein created pursuant to the provisions of the Ground Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, Mortgagee, or in any other person by purchase, operation

of law or otherwise. Mortgagee reserves the right, at any time, to release portions of the Property, including, but not limited to, all of any part of the leasehold estate created by the Ground Lease, with or without consideration, at Mortgagee's election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents and any such release shall not affect Mortgagee's rights in connection with the portion of the Property not so released.

Section 2.7. Mortgagor's Acquisition of Fee Estate. In the event that Mortgagor, so long as any portion of the Secured Indebtedness remains unpaid, shall be the owner and holder of the fee title to all or any portion of the Ground Lease Parcels, the lien of the Mortgage shall be spread to cover Mortgagor's fee title to such of the Ground Lease Parcels and said fee title shall be deemed to be included in the Property without any further action. Mortgagor agrees, at its sole cost and expense, including without limitation Mortgagee's reasonable attorneys' fees, to (a) execute any and all documents or instruments necessary to subject its fee title to the Property to the lien of this Mortgage; and (b) provide a title insurance policy which shall insure that the lien of the Mortgage is a first lien on Mortgagor's fee title to the Property. Notwithstanding the foregoing, if the Ground Lease is for any reason whatsoever terminated prior to the natural expiration of its term, and if, pursuant to any provisions of the Ground Lease or otherwise, Mortgagee or its designee shall acquire from the Ground Lessor thereunder another lease of the Property, Mortgagor shall have no right, title or interest in or to such other lease or the leasehold estate created thereby.

Section 2.8. Rejection of the Ground Lease.

(a) If the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the Bankruptcy Code, or any other law affecting creditor's rights, (i) Mortgagor, immediately after obtaining notice thereof, shall give notice thereto to Mortgagee, (ii) Mortgagor, without the prior written consent of Mortgagee, shall not elect to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Mortgagor made without such consent shall be void and (iii) this Mortgage and the Loan Agreement and all the liens, terms, covenants and conditions of this Mortgage and the Loan Agreement hereby extends to and covers Mortgagor's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection of the Ground Lease or other termination of the Ground Lease. In addition, Mortgagor hereby assigns irrevocably to Mortgagee Mortgagor's rights to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under such Ground Lease in the event any case, proceeding or other action is commenced by or against the Ground Lessor under the Bankruptcy Code or any comparable federal or state statute or law.

(b) Mortgagor hereby assigns to Mortgagee (i) Mortgagor's right to reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Mortgagor under the Bankruptcy Code or comparable federal or state statute or law and (ii) Mortgagor's right to seek an extension of the sixty (60)-day period within which Mortgagor must accept or reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against

Mortgagor under the Bankruptcy Code or comparable federal or state statute or law. Further, if the foregoing assignment is not effective under applicable law and Mortgagor shall desire to so reject the Ground Lease, at Mortgagee's request, Mortgagor shall assign its interest in the Ground Lease to Mortgagee in lieu of rejecting the Ground Lease, upon receipt by Mortgagor of notice from Mortgagee of such request together with Mortgagee's agreement to cure any existing defaults of Mortgagor under the Ground Lease.

(c) Mortgagor hereby agrees that if the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the Bankruptcy Code or any other law affecting creditor's rights, any property not removed by Mortgagor as permitted or required by the Ground Lease, shall at the option of Mortgagee be deemed abandoned by Mortgagor, provided that Mortgagee may remove any such property required to be removed by Mortgagor pursuant to the Ground Lease and all costs and expenses associated with such removal shall be paid by Mortgagor within five (5) days of receipt by Mortgagor of an invoice for such removal costs and expenses.

### ARTICLE 3

#### Assignment of Rents and Leases

Section 3.1. Assignment. Mortgagor hereby assigns to Mortgagee all Rents (hereinafter defined) and all of Mortgagor's rights in and under all Leases (hereinafter defined). So long as no Default (hereinafter defined) has occurred, Mortgagor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of a Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Mortgagee, and to otherwise deal with all Leases as permitted by this Mortgage. Each month, provided no Default has occurred, Mortgagor may retain such Rents as were collected that month and held in trust for Mortgagee; provided, however, that all Rents collected by Mortgagor shall be applied solely to the ordinary and necessary expenses of owning and operating the Property or paid to Mortgagee. Upon the revocation of such license, all Rents shall be paid directly to Mortgagee and not through Mortgagor, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payments to Mortgagee shall constitute payments to Mortgagor under the Leases, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to do all things, after a Default, which Mortgagor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of Mortgagee, all in such manner as may be determined by Mortgagee, or at the option of Mortgagee, holding the same as security for

the payment of the Secured Indebtedness, (ii) leasing, in the name of Mortgagor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Default, unless other Defaults also then exist, shall entitle Mortgagor to recover its aforesaid license to do any such things which Mortgagor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Mortgagee to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Mortgagee for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this Mortgage. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Mortgagor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by damage to any part of the Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents. Mortgagor covenants, represents and warrants that: (a) Mortgagor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) neither Mortgagor nor any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Mortgagor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Mortgagor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent



enforcement is prudent under the circumstances; (h) Mortgagor will not without the prior written consent of Mortgagee, enter into any Lease after the date hereof except in accordance with the terms of Exhibit I to the Loan Agreement, or waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant (except in accordance with the terms of Exhibit I to the Loan Agreement), reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with the terms of Exhibit I to the Loan Agreement or in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease (except with respect to leases of 5,000 square feet of rentable space or less), or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise (except with respect to leases of 5,000 square feet of rentable space or less); (i) Mortgagor will not, without the prior written consent of Mortgagee, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more unless promptly after the cancellation or surrender a new Lease of such premises is made with a new tenant having a credit standing that is satisfactory to Mortgagee, in Mortgagee's judgment, on terms not materially less favorable to lessor than the terms of the terminated or cancelled Lease; (j) Mortgagor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (k) Mortgagor shall give prompt notice to Mortgagee, as soon as Mortgagor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Mortgagor shall defend, at Mortgagor's expense, any proceeding pertaining to any Lease, including, if Mortgagee so requests, any such proceeding to which Mortgagee is a party; (l) Mortgagor shall as often as requested by Mortgagee, within ten (10) days of each request, deliver to Mortgagee a complete rent roll of the Property in such detail as Mortgagee may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Mortgagor, and deliver to such of the tenants and others obligated under the Leases specified by Mortgagee written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Mortgagee; (m) promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee executed originals of all Leases and copies of all records in its possession or control relating thereto; (n) there shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Mortgagee; and (o) Mortgagee may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lien Mortgagee; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

Section 3.3. Estoppel Certificates. All Leases executed after the date hereof shall require the tenant to execute and deliver to Mortgagee an estoppel certificate in form and substance acceptable to Mortgagee not more than thirty (30) days after notice from Mortgagee.

Section 3.4. No Liability of Mortgagee. Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate

Mortgagee to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Property, or for Mortgagee's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Mortgagee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the same), shall render Mortgagee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Mortgagee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Mortgagee under this Article 3 shall be cumulative of all other rights of Mortgagee under the Loan Documents or otherwise.

Reference is hereby made to Section 291-f of the Real Property Law of the State of New York for the purpose of obtaining for Mortgagee the benefits of said Section in connection herewith.

#### ARTICLE 4

##### Default

Section 4.1. Events of Default. The occurrence of any one of the following shall be a default under this Mortgage ("default" or "Default"):

(a) Failure to Pay Indebtedness. Any of the Secured Indebtedness or any indebtedness evidenced by the other "Notes" (as defined in the Loan Agreement) is not paid when due, regardless of how such amount may have become due and such default shall have continued for a period of ten (10) days.

(b) Nonperformance of Covenants. Any covenant, agreement or condition herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept and such failure shall have continued for a period of thirty (30) days after notice thereof shall have been given to Mortgagor by Mortgagee (or such other cure period as may be specified elsewhere in this Mortgage or the other Loan Documents with respect to specific provisions), provided, however, if such default is not susceptible of being cured within such thirty (30) day period and Mortgagor has commenced such cure within such thirty (30) day period and is diligently pursuing such cure to Mortgagee's satisfaction, such thirty (30) day cure period shall be extended, but in no event shall such cure period exceed sixty (60) days, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein.

(c) Default under other Loan Documents. The occurrence of a Default under any other Loan Document, including an Early Termination Event as defined in any Master Agreement relating to any Swap Transaction.

(d) Representations. Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Mortgagee in connection with the Secured Indebtedness is false, misleading or erroneous in any material respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(e) Bankruptcy or Insolvency. The owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness (or any general partner or joint venturer of such owner or other person):

(i) (A) Executes an assignment for the benefit of creditors, or takes any action in furtherance thereof; or (B) admits in writing its inability to pay, or fails to pay, its debts generally as they become due; or (C) as a debtor, files a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, Title 11 of the United States Code as now or hereafter in effect or any other federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors (Title 11 of the United States Code and such other laws being herein called "Debtor Relief Laws"), or takes any action in furtherance thereof; or (D) seeks the appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property; or

(ii) Suffers the filing of a petition, case, proceeding or other action against it as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property, and (A) admits, acquiesces in or fails to contest diligently the material allegations thereof, or (B) the petition, case, proceeding or other action results in entry of any order for relief or order granting relief sought against it, or (C) in a proceeding under Debtor Relief Laws, the case is converted from one chapter to another, or (D) fails to have the petition, case, proceeding or other action permanently dismissed or discharged on or before the earlier of trial thereon or ninety (90) days next following the date of its filing; or

(iii) Conceals, removes, or permits to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or makes any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffers or permits, while insolvent, any creditor to obtain a lien (other than as described in subparagraph (iv) below) upon any of its property through legal proceedings which are not vacated and such lien discharged prior to enforcement thereof and in any event within sixty (60) days from the date thereof; or

(iv) Fails to have discharged within a period of thirty (30) days any attachment, sequestration, or similar writ levied upon any of its property; or

(v) Fails to pay immediately any final money judgment against it.

(f) Transfer of the Property. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Mortgagor, having a value equal to or greater than the replaced items when new; and (ii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Mortgage or of any other Loan Document. Mortgagee may, in its sole discretion, waive a default under this paragraph, but it shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which Mortgagee may require: the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Mortgagee in its sole judgment and grantee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Mortgagee may require, a principal paydown on the Note, an increase in the rate of interest payable under the Note, a transfer fee, a modification of the term of the Note, and any other modification of the Loan Documents which Mortgagee may require. : NOTICE - - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL AND ANY AND ALL SWAP TRANSACTIONS ARE SUBJECT TO TERMINATION, OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

(g) Transfer of Assets. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the other assets of Mortgagor, excluding the Property, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers in the ordinary course of Mortgagor's business; and (ii) sales or transfers for which Mortgagor receives consideration substantially equivalent to the fair market value of the transferred asset.

(h) Transfer of Ownership of Mortgagor. Any of the following:

(i) the sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Mortgagor (if Mortgagor is not a natural person but is a corporation, partnership, limited liability company, trust or other legal entity), without the prior written consent of Mortgagee (including, without limitation, if Mortgagor is a partnership or joint venture, the withdrawal from or admission into it of any general partner or joint venturer); or

(ii) if Mortgagor or Guarantor (or a general partner, member or co-venturer of either of them) is a partnership, joint venture, limited liability company, trust or closely-held corporation, any sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of any class of the issued and outstanding capital stock of such closely-held corporation or of the beneficial interest of such partnership, venture, limited liability

company or trust, or a change of any general partner, joint venturer, member or beneficiary, as the case may be, or, in the event Mortgagor or Guarantor (or a general partner, co-venturer, member or beneficiary, as the case may be, of either of them) is a publicly-held corporation, the sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of the stock-holdings of any of the five (5) individuals or entities that own the greatest number of shares of each class of issued and outstanding stock, or effectuates or permits a reduction in the aggregate direct and indirect ownership interests of Guarantor in Mortgagor below 50.1%, or effectuates or causes Acadia Realty Trust to fail to control the management of Guarantor and Mortgagor.

(i) Grant of Easement, Etc. Without the prior written consent of Mortgagee, Mortgagor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(j) Abandonment. The owner of the Property abandons any of the Property.

(k) Default Under Other Lien. A default or event of default occurs under any lien, security interest or assignment covering the Property or any part thereof (whether or not Mortgagee has consented, and without hereby implying Mortgagee's consent, to any such lien, security interest or assignment not created hereunder), or Mortgagee of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) Destruction. The Property is so demolished, destroyed or damaged that, in the reasonable opinion of Mortgagee, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time and in any event, prior to the final maturity date of the Note.

(m) Condemnation. (i) Any governmental authority shall require, or commence any proceeding for, the demolition of any building or structure comprising a part of the Premises, or (ii) there is commenced any proceeding to condemn or otherwise take pursuant to the power of eminent domain, or a contract for sale or a conveyance in lieu of such a taking is executed which provides for the transfer of, a material portion of the Premises, including but not limited to the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement.

(n) Liquidation, Etc. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of New York and/or the state of incorporation or organization, if different (or in the case of an individual, the death or legal incapacity) of Mortgagor, any owner of the Property or any person obligated to pay any part of the Secured Indebtedness.

(o) Material, Adverse Change. In Mortgagee's reasonable opinion, the prospect of payment of all or any part of the Secured Indebtedness has been impaired because of a material,

adverse change in the financial condition, results of operations, business or properties of Mortgagor, any owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness, or of any general partner or joint venturer thereof (if such owner or other person is a partnership or joint venture).

(p) Enforceability; Priority. Any Loan Document shall for any reason without Mortgagee's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by any party thereto other than Mortgagee; or the liens, mortgages or security interests of Mortgagee in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Mortgagor or any person obligated to pay any part of the Secured Indebtedness.

(q) Other Indebtedness. A default or event of default occurs under any document executed and delivered in connection with any other indebtedness (to Mortgagor or any other person or entity) of Mortgagor, the owner of the Property, any person obligated to pay any part of the Secured Indebtedness, or any person or entity which guarantees such other indebtedness.

(r) Ground Lease. (A) A breach or default by Mortgagor under any condition or obligation contained in the Ground Lease shall occur, (B) there occurs any event or condition that gives Ground Lessor under the Ground Lease a right to terminate or cancel the Ground Lease, (C) the Ground Lease shall be surrendered or the Ground Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever or (D) any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered or amended without the prior written consent of Mortgagee.

(s) Fee Interest. This Mortgage shall fail to encumber the fee interest of the landlord under the Ground Lease if Mortgagor, Guarantor or any affiliate thereof shall become the owner of such fee interest.

(t) Certain Other Agreements. (A) A breach or default by Mortgagor or Storage Facility Tenant under any condition or obligation contained in the Storage Facility Master Lease shall occur, (B) there occurs any event or condition that gives Mortgagor or Storage Facility Tenant under the Storage Facility Master Lease a right to terminate or cancel the Storage Facility Master Lease, (C) the Storage Facility Master Lease shall be surrendered or the Storage Facility Master Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever, except as specifically permitted herein, or (D) any of the terms, covenants or conditions of the Storage Facility Master Lease shall in any manner be modified, changed, supplemented, altered or amended without the prior written consent of Mortgagee.

(u) Storage Facility Tenant. Storage Facility Tenant shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of the Loan Agreement.

(v) Condominium Assessments. The Condominium Association shall file a lien against any of the Property for unpaid Condominium Assessments.

Section 4.2. Notice and Cure. If any provision of this Mortgage or any other Loan Document provides for Mortgagee to give to Mortgagor any notice regarding a default or incipient default, then if Mortgagee shall fail to give such notice to Mortgagor as provided, the sole and exclusive remedy of Mortgagor for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Note and the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such default in the manner and during the period of time permitted by such agreement, if any, and Mortgagor shall have no right to damages or any other type of relief not herein specifically set out against Mortgagee, all of which damages or other relief are hereby waived by Mortgagor. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

## ARTICLE 5

### Remedies

Section 5.1. Certain Remedies. If a Default shall occur, Mortgagee may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration. Mortgagee may at any time and from time to time declare any or all of the Secured Indebtedness immediately due and payable and may terminate any and all Swap Transactions. Upon any such declaration, such Secured Indebtedness shall thereupon be immediately due and payable, and such Swap Transactions shall immediately terminate, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Mortgagor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (A), (C) or (D) of subparagraph (i) of paragraph (d) of Section 4.1, hereof, all of the Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Mortgagor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Mortgagee under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Mortgagee may: (1) collect and/or sue for the Rents in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the Secured Indebtedness in such manner and order as Mortgagee may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.

(c) Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(i) Mortgagee may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession to Mortgagee, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(iii) Mortgagee may from time to time: (A) continue and complete construction of, hold, store, use, operate, manage and control the Property and conduct the business thereof; (B) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional personal property; (C) insure or keep the Property insured; (D) exercise all the rights and powers of Mortgagor in its name or otherwise with respect to the same; and (E) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.

(d) Uniform Commercial Code. Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code as adopted by the State of New York as in effect from time to time, (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law) or other applicable law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Property or other place where the collateral may be located without legal process, and to take possession of such personal property without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State of New York. Upon demand by Mortgagee, Mortgagor shall make such personal property available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may proceed under the Uniform Commercial Code as to all or any part of such personal property, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of such personal property. Mortgagee may choose to dispose of some or all of the property, in any combination consisting of both personal property and Property, in one or more public or private sales to be held in accordance with the Law and procedures applicable to real property, as



permitted by Article 9 of the Uniform Commercial Code. Mortgagor agrees that such a sale of such personal property together with Property constitutes a commercially reasonable sale of such personal property.

(e) Lawsuits. Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction. Mortgagor hereby assents to the passage of a decree for the sale of the Property by any equity court having jurisdiction.

(f) Foreclosure. Mortgagee may:

(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law (including, without limitation, in accordance with Article 14 of the New York Real Property Actions and Proceedings Law, regarding which Mortgagor hereby consents and agrees that notices thereunder (including notices of sale) may be given to Mortgagor in any of the manners specified for the giving of notices set forth in Section 6.13, and all estate, right, title and interest, claim and demand thereof, at one (1) or more sales as an entity or in parcels or parts, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(2) institute proceedings for the complete or partial foreclosure hereof; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, the Loan Agreement or herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

Any sale made hereunder may be as an entirety or in such parcels as Mortgagee may request. To the extent permitted by applicable law, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. If the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Secured Indebtedness, this Mortgage and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made and the rights of Mortgagee to foreclose hereunder shall also apply to any future sales. A sale may cover not only the Property but also personal property and other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or the sale may be of any part of the Property separately from the remainder of the Property. After each sale, Mortgagee shall make to the purchaser or purchasers at such sale good and sufficient conveyances, conveying the property so sold to the purchaser or purchasers in fee simple, subject to the Permitted Encumbrances (and to such leases and other matters, if any), and shall receive the proceeds of said sale or sales and apply the same as herein provided. In the event any sale hereunder is not completed or is defective in the opinion of Mortgagee, such sale shall not exhaust the rights hereunder and Mortgagee shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or

deeds or other conveyances given by Mortgagee as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Mortgagee's having declared all of said indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee shall be taken as prima facie evidence of the truth of the facts so stated and recited.

(g) Receiver. Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State of New York. To the extent permitted by law, the right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate under the Note, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Mortgage to Mortgagee, and Mortgagee shall have the right to offset the unpaid Secured Indebtedness against any such cash or deposits in such order as Mortgagee may elect.

(h) Termination of Commitment to Lend. Mortgagee may terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement to or for the benefit of Mortgagor.

(i) Other Rights and Remedies. Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. Application of Proceeds. Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article 5 and any other proceeds received by Mortgagee from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Secured Indebtedness, in such manner and order as Mortgagee may elect.

Section 5.3. Remedies Cumulative and Concurrent. No right, power or remedy of Mortgagee as provided in the Note, this Mortgage, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, or any endorser, co-maker, surety or guarantor of the Secured Indebtedness, or the Property or any part thereof, or any one or more of them, at the sole discretion of Mortgagee. The failure of Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

Section 5.4. Waiver, Delay or Omission. No waiver of any Default hereunder shall extend to or affect any subsequent or any other Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Default or to constitute acquiescence therein.

Section 5.5. Credit of Mortgagee. To the maximum extent permitted by the laws of the State of New York, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Secured Indebtedness in such order as Mortgagee may elect.

Section 5.6. Sale. Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of Mortgagor and all persons, except tenants pursuant to Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others.

Section 5.7. Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting Mortgagor, any endorser, co-maker, surety, or guarantor of the Secured Indebtedness, or any of their respective properties, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Secured Indebtedness at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

Section 5.8. Waiver of Redemption, Notice, Marshalling, Etc. Mortgagor hereby waives and releases, for itself and anyone claiming through, by, or under it, to the maximum extent permitted by the laws of the State of New York:

(i) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment,

(ii) unless specifically required herein, all notices of default, or Mortgagee's actual exercise of any option or remedy under the Loan Documents, or otherwise, and

(iii) any right to have the Property marshaled.

Section 5.9. Discontinuance of Proceedings. If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgagor and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

Section 5.10. Mortgagee's Actions. Mortgagee may, at any time without notice to any person and without consideration, do or refrain from doing any or all of the following actions, and neither Mortgagor, any endorser, co-maker, surety or guarantor of the Secured Indebtedness, nor any other person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Secured Indebtedness shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew, extend or modify the terms of the Note, this Mortgage and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Secured Indebtedness; (c) apply payments by any Obligor to the reduction of the unpaid Secured Indebtedness in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Secured Indebtedness without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage upon the Property which is not released or substituted, or the validity and priority of any security interest of Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Mortgage or the lien of any other security interest in any other collateral now or hereafter held as security for the Secured Indebtedness; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee will join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any obligor or any other party as Mortgagee may see fit.

Section 5.11. Other Remedies. Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws.

## ARTICLE 6

### Miscellaneous

Section 6.1. Scope of Mortgage. This Mortgage is a Mortgage of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the New York Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Mortgage shall also be effective as a financing

statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor and Mortgagee are set forth in the preamble of this Mortgage and the address of Mortgagee from which information concerning the security interests hereunder may be obtained is the address of Mortgagee set forth at the end of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Mortgagee may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Mortgagee directly.

Section 6.4. Waiver by Mortgagee. Mortgagee may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing; (b) consent to Mortgagor's doing any act which hereunder Mortgagor is prohibited from doing, or to Mortgagor's failing to do any act which hereunder Mortgagor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Mortgage, without the joinder of Mortgagee; or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Mortgagee or Mortgagee hereunder except to the extent specifically agreed to by Mortgagee in such writing.

Section 6.5. No Impairment of Security. The lien, security interest and other security rights of Mortgagee hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Mortgagee including, but not limited to, any renewal, extension or modification which Mortgagee may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Mortgagee shall not release or impair the lien, security interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any junior lien Mortgagee in the Property (without implying hereby Mortgagee's consent to any junior lien).

Section 6.6. Acts Not Constituting Waiver by Mortgagee. Mortgagee may waive any default without waiving any other prior or subsequent default. Mortgagee may remedy any default without waiving the default remedied. Neither failure by Mortgagee to exercise, nor delay by Mortgagee in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or

waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Mortgagor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Secured Indebtedness in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Secured Indebtedness given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Mortgagee and any subsequent owner of the Property, with or without notice to such Mortgagor, and no such modifications shall impair the obligations of such Mortgagor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Mortgagee's consent to any transfer of the Property.

Section 6.8. Place of Payment. All Secured Indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place designated in the Note (or if no such designation is made, at the address of Mortgagor indicated at the end of this Mortgage).

Section 6.9. Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or Mortgagee of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Mortgagee is subrogated hereunder. It is expressly understood that, in consideration of the payment of such

indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loan evidenced by the Note or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's lien is waived; and Mortgagee shall have, and is hereby granted, a vendor's lien on the Property as cumulative additional security for the secured indebtedness. Mortgagee may foreclose under this Mortgage or under the vendor's lien without waiving the other or may foreclose under both.

Section 6.10. Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 6.11. Nature of Loan; Compliance with Usury Laws. The loan evidenced by the Note is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Mortgagor and Mortgagee and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Mortgagee and Mortgagor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Mortgagee shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Mortgagor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of New York or the federal laws of the United

States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12. Releases.

(a) Release of Mortgage. If all of the Secured Indebtedness is paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all Swap Transactions and all other obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Mortgagee in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Mortgagee or Mortgagee shall survive discharge of the Secured Indebtedness, the termination of any and all Swap Transactions and any foreclosure, release or termination of this Mortgage.

(b) Partial Releases; No Release in Default. Partial releases of the lien of this Mortgage shall be made in accordance with the terms and provisions of Exhibit C attached hereto and by this reference made a part hereof, or in accordance with such other terms and conditions as may subsequently be agreed to by Mortgagee. If no such Exhibit C is attached hereto, then there are no terms and provisions for partial releases, to which Mortgagee and Mortgagor have agreed at this time. In any event, no partial release shall be sought, requested or required if any Default has occurred which has not been cured.

(c) Effect of Partial Release. Mortgagee may, regardless of consideration, cause the release of any part of the Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Property.

(d) Release Fee. If permitted by applicable law Mortgagor shall pay to Mortgagee, at the time of each partial or complete release of the lien of this Mortgage, a release fee in the amount of \$25.00 if the release instrument is delivered to Mortgagee for execution or \$50.00, if Mortgagee is required to prepare the release instrument. In addition, Mortgagor shall pay to Mortgagee a fee in the amount of \$25.00 for each other document or instrument which Mortgagor requires Mortgagee to execute.

Section 6.13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case



of facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.14. Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.15. Gender; Titles; Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words “herein,” “hereof,” “hereunder” and other similar compounds of the word “here” shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term “person” and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.16. Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Mortgagee to furnish Mortgagee with evidence of such compliance.

Section 6.17. Mortgagee’s Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Mortgagee is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Mortgagee’s judgment, and (b) no approval or consent of Mortgagee shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Mortgagee.

Section 6.18. Mortgagor. Unless the context clearly indicates otherwise, as used in this Mortgage, “Mortgagor” means Mortgagors named in Section 1.1 hereof or any of them. The

obligations of Mortgagor hereunder shall be joint and several. If any Mortgagor, or any signatory who signs on behalf of any Mortgagor, is a corporation, partnership or other legal entity, Mortgagor and any such signatory, and the person or persons signing for it, represent and warrant to Mortgagee that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives. If Mortgagor is an individual, no power of attorney granted by Mortgagor herein shall terminate on Mortgagor's disability.

Section 6.19. Execution; Recording. This Mortgage has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as or Mortgagee shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.20. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the heirs, devisees, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee and shall constitute covenants running with the Land. All references in this Mortgage to Mortgagor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagor.

Section 6.21. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.22. No Partnership, Etc. The relationship between Mortgagee and Mortgagor is solely that of mortgagee and mortgagor. Mortgagee has no fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Mortgagee or in any way make Mortgagee a co-principal with Mortgagor with reference to the Property. All agreed contractual duties between or among Mortgagee and Mortgagor and are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.23. Intentionally Omitted.

Section 6.24. Applicable Law. THIS MORTGAGE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES

FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 6.25. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.26. Forum. Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State of New York and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located, over any Dispute. Mortgagor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the State of New York may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address for notice set forth in this Mortgage, or at a subsequent address of which Mortgagee received actual notice from Mortgagor in accordance with the notice section of this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by Law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction.

Section 6.27. **WAIVER OF JURY TRIAL**. **WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY DISPUTE AS SET FORTH IN THIS MORTGAGE, TO THE EXTENT ANY DISPUTE IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, MORTGAGOR AND MORTGAGEE WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGEE, AND MORTGAGOR AND MORTGAGEE HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF**

**THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

Section 6.28. Cross-Default. The Loan shall be cross-defaulted with all other loans which Mortgagor shall have from Lenders during the term of the Loan, whether existing as of the date of this Agreement subsequently made. A default under any of the above-described loans shall constitute a Default under the Loan. A Default under the Loan shall constitute a Default under the above-described other loans. To the extent not prohibited by applicable law, if Mortgagee, at its option, avails itself of this cross-default provision, Mortgagee shall have the option to pursue its remedies in any combinations and against any or all of Mortgagee's security for the aforesaid loans, whether successively, concurrently or otherwise.

Section 6.29. Substitute Mortgages. Mortgagor and Mortgagee shall, upon their mutual agreement to do so, execute such documents as may be necessary in order to effectuate the modification hereof, including the execution of substitute mortgages, so as to create two (2) or more liens on the Mortgaged Property in such amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the Mortgage Amount; in such event, Mortgagor covenants and agrees to pay the reasonable fees and expenses of Mortgagee and its counsel in connection with any such modification.

Section 6.30. Satisfaction or Assignment of Mortgage. Upon payment in full of all sums, and the performance of all obligations, secured hereby in accordance with the terms and conditions of this Mortgage and the other Loan documents, Mortgagee shall deliver a satisfaction or release of this Mortgage or, at Mortgagor's option to be exercised in writing, an assignment hereof, in either case in proper form of recording. As a condition to any such satisfaction or assignment, Mortgagor covenants and agrees to pay Mortgagee's reasonable fees and expenses (including attorneys' fees and expenses) in connection therewith. Upon any such satisfaction or assignment, Mortgagee shall, automatically and without the need for any other further documentation, be absolutely and unconditionally released from any and all claims or liabilities in connection with the Loan. In addition, Mortgagor hereby indemnifies and agrees to hold Mortgagee harmless from and against any and all claims and liabilities arising out of the satisfaction or assignment hereof, such indemnification to survive any such satisfaction or assignment.

Section 6.31. New York Provisions. (a) Mortgagor hereby makes the following statement: "This Mortgage does not cover real property principally improved or to be improved by one (1) or more structures containing in the aggregate not more than six (6) residential dwelling, each having its own separate cooking facilities." and (b) the covenants and conditions contained herein, other than those included in the New York Statutory Short Form of Mortgage, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of Section 254 of the Real Property Law of the State of New York.

Section 6.32. Ground Lease Required Provision. This Mortgage is executed upon the condition that no purchaser at any foreclosure sale shall acquire any right, title or interest in and to the lease hereby mortgaged (the Ground Lease), unless the said purchaser, or the person, firm or corporation to whom or to which such purchaser's right has been assigned, assumes and agrees to perform all of the terms, covenants and conditions of said lease (the Ground Lease) thereafter to be observed or performed on the part of tenant thereunder, and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged of such purchaser or such assignee and in recordable form, is delivered to Ground Lessor under said lease within seven (7) days after the consummation of such sale and, in any event, prior to taking possession of the Premises demised thereby. No further or additional mortgage or assignment of said lease shall be made except in accordance with the provisions in Article Eleven of said lease (the Ground Lease).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as an instrument under seal as of the date first written on page 1 hereof.

P/A-ACADIA PELHAM MANOR, LLC,  
a Delaware limited liability company

By

---

Robert Masters  
Senior Vice President

---

STATE OF NEW YORK        )  
                                      : ss.:  
COUNTY OF                 )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2010, before me, the undersigned, a notary public in and for said state, personally appeared Robert Masters, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

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Land

PARCEL 1 - Fee Parcel (Lot 8.3)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING DISTANT 374.53 FEET ON A COURSE OF NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST FROM A POINT AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT, THENCE;
2. ALONG THE DIVIDING LINE BETWEEN LOT 8.3 AND LOT 8.1, BLOCK 1, SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.3 AND LOT 8.1, BLOCK 1, THE FOLLOWING THREE (3) COURSES:
3. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE;
4. NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT OF CURVATURE, THENCE;
5. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 90 DEGREES – 00 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 31.42 FEET, THE CHORD OF WHICH BEARS NORTH 18 DEGREES – 58 MINUTES – 11 SECONDS EAST, A CHORD DISTANCE OF 28.28 FEET TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTIONS IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

PARCEL 2 - Ground Lease Parcel (Lot 8.1)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

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BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 374.53 FEET TO A POINT OF NON-TANGENT CURVATURE, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 8.3, BLOCK 1 THE FOLLOWING THREE (3) COURSES:
2. ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 90 DEGREES – 00 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 31.42 FEET, THE CHORD OF WHICH BEARS SOUTH 18 DEGREES – 58 MINUTES – 11 SECONDS WEST, A CHORD DISTANCE OF 28.28 FEET TO A POINT OF TANGENCY, THENCE;
3. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 80.00 FEET TO A POINT, THENCE;
4. NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 100.00 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 8.2, BLOCK 1 THE FOLLOWING THREE (3) COURSES:
5. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 121.90 FEET TO A POINT, THENCE;
6. NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE;
7. NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS WEST, A DISTANCE OF 221.90 FEET TO A POINT ON THE AFOREMENTIONED SOUTHERLY LINE OF SECOR LANE, THENCE;
8. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST, A DISTANCE OF 449.97 FEET TO A POINT OF CURVATURE, THENCE;
9. CONTINUING ALONG THE SOUTHERLY LINE OF SECOR LANE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 650.00 FEET, TURNING A CENTRAL ANGLE OF 11 DEGREES – 45 MINUTES – 00 SECONDS, WITH AN ARC LENGTH OF 133.30 FEET, THE CHORD OF WHICH BEARS NORTH 69 DEGREES – 50 MINUTES – 19 SECONDS EAST, A CHORD DISTANCE OF 133.06 FEET TO A POINT, THENCE; ALONG THE WESTERLY LINE OF HUTCHINSON RIVER PARKWAY (VARIABLE WIDTH) THE FOLLOWING SEVEN (7) COURSES:

10. SOUTH 10 DEGREES – 37 MINUTES – 00 SECONDS EAST, A DISTANCE OF 406.03 FEET TO A POINT, THENCE;
11. SOUTH 08 DEGREES – 04 MINUTES – 18 SECONDS EAST, A DISTANCE OF 152.58 FEET TO A POINT, THENCE;
12. SOUTH 81 DEGREES – 55 MINUTES – 42 SECONDS WEST, A DISTANCE OF 125.00 FEET TO A POINT, THENCE;
13. SOUTH 08 DEGREES – 04 MINUTES – 18 SECONDS EAST, A DISTANCE OF 350.40 FEET TO A POINT OF NON-TANGENT CURVATURE, THENCE;
14. ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 375.00 FEET, TURNING A CENTRAL ANGLE OF 15 DEGREES – 22 MINUTES – 08 SECONDS, WITH AN ARC LENGTH OF 100.59 FEET, THE CHORD OF WHICH BEARS SOUTH 72 DEGREES – 19 MINUTES – 21 SECONDS WEST, A CHORD DISTANCE OF 100.29 FEET TO A POINT OF TANGENCY, THENCE;
15. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 4.45 FEET TO A POINT, THENCE;
16. SOUTH 26 DEGREES – 04 MINUTES – 30 SECONDS EAST, A DISTANCE OF 188.85 FEET TO A POINT, THENCE;
17. ALONG THE COMMON DIVIDING LINE BETWEEN LOT 8.1 AND LOT 4, BLOCK 1 AND THE WESTERLY LINE OF HUTCHINSON RIVER PARKWAY, SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 156.73 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.1 AND LOT 3, BLOCK 1 THE FOLLOWING EIGHT (8) COURSES:
18. NORTH 24 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 82.31 FEET TO A POINT, THENCE;
19. NORTH 63 DEGREES – 55 MINUTES – 30 SECONDS EAST, A DISTANCE OF 10.33 FEET TO A POINT, THENCE;
20. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 19.84 FEET TO A POINT, THENCE;
21. SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 10.33 FEET TO A POINT, THENCE;
22. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 90.59 FEET TO A POINT, THENCE;
23. NORTH 63 DEGREES – 55 MINUTES – 30 SECONDS EAST, A DISTANCE OF 4.05 FEET TO A POINT, THENCE;

24. NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 9.55 FEET TO A POINT, THENCE;
25. SOUTH 63 DEGREES – 55 MINUTES – 30 SECONDS WEST, A DISTANCE OF 227.32 FEET TO A POINT ON THE AFOREMENTIONED EASTERLY LINE OF PELHAM PARKWAY, THENCE;
26. ALONG THE EASTERLY LINE OF PELHAM PARKWAY, NORTH 26 DEGREES – 04 MINUTES – 30 SECONDS WEST, A DISTANCE OF 296.81 FEET TO A POINT, THENCE;
27. CONTINUING ALONG THE EASTERLY LINE OF PELHAM PARKWAY, NORTH 62 DEGREES – 43 MINUTES – 40 SECONDS WEST, A DISTANCE OF 609.10 FEET TO A POINT OF CURVATURE, THENCE;
28. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, TURNING A CENTRAL ANGLE OF 126 DEGREES – 41 MINUTES – 30 SECONDS, WITH AN ARC LENGTH OF 44.22 FEET, THE CHORD OF WHICH BEARS NORTH 00 DEGREES – 37 MINUTES – 42 SECONDS EAST, A CHORD DISTANCE OF 35.75 FEET TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTION IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

PARCEL 3 - Ground Lease Parcel (Lot 8.2)

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SECOR LANE (50 FOOT WIDE), SAID POINT BEING DISTANT 454.53 FEET ON A COURSE OF NORTH 63 DEGREES – 57 MINUTES – 50 SECONDS EAST FROM A POINT AT THE NORTHEASTERLY TERMINUS OF A CURVE CONNECTING THE SOUTHERLY LINE OF SECOR LANE WITH THE EASTERLY LINE OF PELHAM PARKWAY (A.K.A. C.R. 70 – VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING THENCE;

1. ALONG THE SOUTHERLY LINE OF SECOR LANE, NORTH 63 DEGREES – 57 MINUTES – 60 SECONDS EAST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 8.2 AND LOT 8.1, BLOCK 1 THE FOLLOWING TWO (2) COURSES:
2. SOUTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 221.90 FEET TO A POINT, THENCE;
3. SOUTH 63 DEGREES – 57 MINUTES – 50 SECONDS WEST, A DISTANCE OF 176.92 FEET TO A POINT, THENCE;

4. ALONG THE DIVIDING LINE BETWEEN LOT 8.2 AND LOTS 8.1 AND 8.3, BLOCK 1, NORTH 26 DEGREES – 02 MINUTES – 10 SECONDS EAST, A DISTANCE OF 221.90 FEET THE POINT AND PLACE OF BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTION IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/18/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

BLANKET DESCRIPTION - LOTS 8.1, 8.2 and 8.3:

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Village of Pelham Manor, Town of Pelham, Westchester County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a rebar with cap set on the southerly line of Secor Lane (50 foot wide), said point being at the northeasterly terminus of a curve connecting the southerly line of Secor Lane with the easterly line of Pelham Parkway (a/k/a C.R. 70) and from said beginning point, running thence

1. Along the southerly line of Secor Lane, north 63 degrees 57 minutes 50 seconds east, a distance of 1081.42 feet to a rebar with cap set at a point of curvature in the same, thence
2. Continuing along the same, along a curve to the right, having a radius of 650.00 feet, turning a central angle of 11 degrees 45 minutes 00 seconds with an arc length of 133.30 feet, the chord of which bears north 69 degrees 50 minutes 19 seconds east, a chord distance of 133.06 feet to a rebar with cap set, thence the following seven (7) courses along the dividing line between Lot 8 Block 1 and the westerly line of the Hutchinson River Parkway;
3. South 10 degrees 37 minutes 00 seconds east, a distance of 406.03 feet to a rebar with cap set, thence
4. South 08 degrees 04 minutes 18 seconds east, a distance of 152.58 feet to a rebar with cap set, thence
5. South 81 degrees 55 minutes 42 seconds west, a distance of 125.00 feet to a rebar with cap set, thence
6. South 08 degrees 04 minutes 18 seconds east, a distance of 350.40 feet to a rebar with cap set at a point of non-tangent curvature, thence
7. Along a curve to the left, having a radius of 375.00 feet, turning a central angle of 15 degrees 22 minutes 08 seconds with an arc length of 100.59 feet, the chord of which bears south 72 degrees 19 minutes 21 seconds west, a chord distance of 100.29 feet to a rebar with cap set at a point of tangency, thence
8. South 63 degrees 57 minutes 50 seconds west, a distance of 4.45 feet to a rebar with cap set, thence

9. South 26 degrees 04 minutes 30 seconds east, a distance of 188.85 feet to a point, thence
10. Along the common dividing line between Lot 8 and Lot 5, Block 1 and the westerly line of the Hutchinson River Parkway, south 63 degrees 55 minutes 30 seconds west, a distance of 156.73 feet to a point; thence the following eight (8) courses along the dividing line between Lot 8 and Lot 3, Block 1.
11. North 26 degrees 04 minutes 30 seconds west, a distance of 82.31 feet to a pk nail set, thence
12. North 63 degrees 55 minutes 30 seconds east, a distance of 10.33 feet to a pk nail set, thence
13. North 26 degrees 04 minutes 30 seconds west, a distance of 19.84 feet to a pk nail set, thence
14. South 63 degrees 55 minutes 30 seconds west, a distance of 10.33 feet to a pk nail set, thence
15. North 26 degrees 04 minutes 30 seconds west, a distance of 90.59 feet to a rebar with cap set, thence
16. North 63 degrees 55 minutes 30 seconds east, a distance of 4.05 feet to a pk nail set, thence
17. North 26 degrees 04 minutes 30 seconds west, a distance of 9.55 feet to a pk nail set, thence
18. South 63 degrees 55 minutes 30 seconds west, a distance of 227.32 feet to a pk nail set on the aforementioned easterly line of Pelham Parkway, thence
19. North 26 degrees 04 minutes 30 seconds west, a distance of 296.81 feet to a pk nail, thence
20. Continuing along the easterly line of Pelham Parkway, north 62 degrees 43 minutes 40 seconds west, a distance of 609.10 feet to a pk nail set a point of curvature, thence
21. Along a curve to the right, having a radius of 2.00 feet, turning a central angle of 126 degrees 41 minutes 30 seconds with an arc length of 44.22 feet to a point, the chord of which bears north 00 degrees 37 minutes 24 seconds east, a chord distance of 35.75 feet to the point and place of BEGINNING.

THE ABOVE METES AND BOUNDS DESCRIPTIONS IS BASED UPON A SURVEY MADE BY CONTROL POINT ASSOCIATES, INC. DATED 7/7/10 AND AS FURTHER CERTIFIED ON 11/12/10 BY JOHN P. LYNCH (CONTROL POINT ASSOCIATES, INC.)

SUCH REAL PROPERTY ALSO CONTAINS ALL OF THE CONDOMINIUM UNITS IN THE P/A ACADIA CONDOMINIUM MADE BY P/A-ACADIA PELHAM MANOR, LLC DATED 9/17/07 AND RECORDED 10/23/07 AS CONTROL NUMBER 472850497.

For information only: Said premises are known as 798-858 Pelham Parkway, Pelham, NY and designated as Section 166.26 Block 1 Lots 8.1, 8.2 and 8.3 as shown on the Westchester County Land and Tax Map.

EXHIBIT B

Permitted Encumbrances

Those exceptions set forth in Schedule B of that certain title insurance policy issued by Stewart Title Insurance Company through their agent, Royal Abstract of New York LLC, under their title no. 832899 insuring the lien of this Mortgage.

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EXHIBIT C

Partial Release

NONE

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## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "Guaranty") is made as of the 1st day of December, 2010, by ACADIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership ("Guarantor"), in favor of BANK OF AMERICA, N.A., a national banking association (in its individual capacity and not as administrative agent, "BofA"), as Administrative Agent (in such capacity and together with its successors and assigns in such capacity, "Administrative Agent") for Lenders (as defined below).

### Preliminary Statements

BofA and P/A-Acadia Pelham Manor, LLC, a Delaware limited liability company ("Borrower"), have entered into, are entering into concurrently herewith, or contemplate entering into, that certain Loan Agreement dated as of the date hereof (herein called, as it may hereafter be modified, supplemented, restated, extended, or renewed and in effect from time to time, the "TI Loan Agreement") and that certain Transfer Loan Agreement dated as of the date hereof (herein called, as it may hereafter be modified, supplemented, restated, extended, or renewed and in effect from time to time, the "Other Loan Agreement"; and, together with the TI Loan Agreement, collectively, the "Loan Agreement"), which Loan Agreement sets forth the terms and conditions of certain loans (collectively, the "Loan") by BofA and certain other lenders (BofA and such other entities as may become lenders in accordance with the terms of the Loan Agreement, collectively, "Lenders") to Borrower for with respect to land located in the Town of Pelham Manor, Westchester County, New York as more particularly described in the Loan Agreement and identified therein as the Land and the Improvements thereon.

A condition precedent to Lenders' obligation to make the Loan to Borrower is Guarantor's execution and delivery to Administrative Agent of this Guaranty.

The Loan is, or will be, evidenced by one or more notes executed by Borrower pursuant to the Loan Agreement and payable to the order of Lenders in the aggregate principal face amount of up to \$34,000,000 (such note, as it may hereafter be renewed, extended, supplemented, increased or modified and in effect from time to time, and all other notes given in substitution therefor, or in modification, renewal, or extension thereof, in whole or in part, is herein called the "Note").

Borrower and BofA may from time to time enter into one or more "Swap Contracts" as defined in the Loan Agreement.

Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement. This Guaranty is one of the Loan Documents described in the Loan Agreement.

### Statement of Agreements

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lenders to extend credit to Borrower,

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Guarantor hereby guarantees to Administrative Agent and Lenders the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

1. Guaranty of Payment. Guarantor hereby jointly and severally, unconditionally and irrevocably guarantees to Administrative Agent and Lenders the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of (a) all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to the terms of the Note, the Loan Agreement, the Mortgage, the Environmental Agreement, any application, agreement, note or other document executed and delivered in connection with any Swap Contract or any other Loan Documents, including any indemnifications contained in the Loan Documents, now or hereafter existing, and all renewals, extensions, refinancings, modifications, supplements or amendments of such indebtedness, or any of the Loan Documents, or any part thereof, (b) payment by Borrower of all customary or necessary costs and expenses actually incurred by Borrower, Administrative Agent or Lenders in connection with the operation, maintenance and management of the Land and the Improvements, including, without limitation, condominium common charges and assessments, insurance premiums, taxes and assessments, payments in lieu of taxes, utilities, repair, replacement and all other maintenance costs and expenses, equipment lease payments, management fees, professional fees, accounting fees, salaries, fringe and other benefits due to all employees engaged in the operation, maintenance or management of the Land and the Improvements, payroll and related taxes and any and all other customary or necessary operating expenses, (c) any and all transfer taxes which may be due in connection with the foreclosure of the Mortgage or delivery of a deed-in-lieu of foreclosure of the Mortgage, (d) all legal and other costs or expenses paid or incurred by or on behalf of Administrative Agent and/or Lenders in the enforcement thereof or hereof, (e) all leasing commissions, tenant allowances and/or other amounts which Borrower is obligated to pay as landlord under any and all existing leases of the Property and under any and all future leases at the Property executed while Borrower owns the Property and (f) any loss, cost, damage or expense paid or incurred by or on behalf of Administrative Agent and Lenders by reason of (i) any fraud or material misrepresentation, (ii) taxes of any kind (whether characterized as transfer, gains or other taxes) payable in connection with the foreclosure sale of the Property, irrespective of who pays such taxes, (iii) application of any proceeds of the Loan to any purpose other than as provided in the Loan Documents (provided that Guarantor's liability under this clause (iii) shall not apply to distributions made by Borrower more than thirty (30) days prior to a Default provided that such distributions are in the ordinary course of business and Borrower is solvent at the time of such distributions); (iv) the application of any insurance or condemnation proceeds or other funds or payments other than strictly in accordance with the Loan Documents, (v) the misapplication of any security deposits, (vi) rents, sales proceeds, or other sums received after default under the Loan Documents which are not applied to expenses of operating the Property or paid to Administrative Agent or a duly appointed receiver of the Property, (vii) any failure to deliver to Administrative Agent, after demand therefor, any agreements relating to the operation, management, leasing, use, occupancy or construction of the Property, (viii) any intentional physical waste in respect of the Property, (ix) any failure to pay or discharge any real estate tax,

other tax, assessment, fine, penalty or lien against the Property to the extent revenue from leases of the Property was available to pay same, (x) liability as landlord under any lease(s) relating to the Property which liability accrued prior to Administrative Agent's or Lenders' succeeding to such interest of Borrower, which Administrative Agent or Lenders is or becomes obligated for by virtue of Administrative Agent or Lenders succeeding to the interests of Borrower, (xi) any Insolvency Event (as hereinafter defined), (xii) any state of facts or circumstances which are contrary to the representations and warranties set forth in Section 31, (xiii) termination of the Ground Lease as a result of the exercise of any remedies by the holder of any present or future mortgage encumbering the fee interest on the property demised by the Ground Lease or (xiv) Lenders being required by any agreement entered into with a tenant of the Property to release any insurance and/or condemnation award proceeds as to which Borrower is not entitled to have applied to restoration of the Property pursuant to Sections 2.1(d), 2.1(e) and/or 2.1(g), as applicable of each Mortgage (the indebtedness described above in this Section 1 is herein collectively called the "Indebtedness"). Notwithstanding the foregoing, (A) Guarantor's aggregate liability in respect of the principal amount of the Loan (the "Principal Liability") shall be limited to the PL Amount as defined below (the limitation in this proviso being herein referred to as the "Principal Liability Limitation") and (B) Guarantor's liability in respect of interest, fees, penalties and late charges and in respect of clause (b) above shall be equal to the aggregate amount of all such amounts accrued and unpaid as of the Determination Date (as hereinafter defined), provided that (x) in no event shall the Principal Liability Limitation in the foregoing proviso affect Guarantor's liability hereunder as to all interest, fees, penalties, late charges and any other amounts (other than principal) due under the Loan Documents and any amounts due and owing pursuant to clauses (b), (c), (d), (e) and (f) above (collectively, "Guarantor's Non-Principal Liability") and (y) the effectiveness or continuing effectiveness of the Principal Liability Limitation shall be conditioned on the absence of any Insolvency Event, it being understood and agreed that if said condition is not continuously satisfied Guarantor's liability hereunder in respect of the entire principal amount of the Loan and all other amounts due under the Loan Documents shall be in full force and effect and the Principal Liability Limitation shall be void and of no force or effect. As used herein, the term "PL Amount" shall mean the sum of the Initial PL Amount (as hereinafter defined) and the Additional PL Amount (as hereinafter defined). The "Initial PL Amount" shall mean an amount equal to 25% of the outstanding principal balance of the Note on the date of demand for payment hereunder (which demand may not be made prior to the existence of an Default), provided, however, that if Administrative Agent reasonably determines that, as of the first day of any month, the Property has a Debt Service Coverage Ratio (as hereinafter defined) of at least 1.43 to 1.0, then, on the further condition that no Default then exists, the Initial PL Amount shall be reduced to zero. As used herein, the term "Additional PL Amount" shall mean an amount equal to the positive difference, if any, between (x) the Outstanding Principal Balance of the Note on the date of demand less (y) \$31,700,000, but in no event less than zero.

As used herein, the term "Determination Date" shall mean the date which is the last to occur of:

(A) the date of payment in full of Guarantor's Principal Liability and all other amounts due hereunder at the time of such payment, or

(B) the date which is the earliest to occur of (1) the acceptance by Administrative Agent or Administrative Agent's designee of the conveyance of the premises encumbered by the Mortgage by deed or assignment in lieu of foreclosure, or (2) the date upon which a sale (whether made under a power of sale, by virtue of a judicial proceeding or judgment or decree of foreclosure or sale or otherwise) of such mortgaged premises occurs as a result of enforcement of the Mortgage or (3) payment in full of Borrower's obligations under the Note, Mortgage and Loan Agreement.

As used herein, the term "Insolvency Event" shall mean any voluntary or collusive involuntary filing of any bankruptcy, insolvency or similar proceeding by or against Borrower or Guarantor. As used herein, the term "Debt Service Coverage Ratio" means the ratio, as of any date of calculation, of (a) the Projected Net Operating Income to (b) the annual Debt Service Payments (as defined in the Loan Agreement). As used herein, the term "Projected Net Operating Income" means Projected Operating Income less the sum of (i) Adjusted Operating Expenses (as defined in the Loan Agreement) plus (ii) the Vacancy Loss Factor (as defined in the Loan Agreement). As used herein, the term "Projected Operating Income" means the aggregate rentals and all other revenue (unless excluded pursuant hereto) of the Property as projected by Administrative Agent for the ensuing twelve (12) month period from only executed bona fide leases, licenses and other occupancy agreements of the Property which are in full force and effect as to which the tenant thereunder is in occupancy and paying full base rent, is not the subject of any bankruptcy proceeding and is not in default under its lease, beyond any applicable notice or cure periods set forth therein. Projected Operating Income shall exclude all extraordinary items of income, all amounts paid to Borrower for tenant alterations in connection with the leasing of space at the Property, all amounts payable to Borrower under leases with affiliates of Borrower, as tenant, or with Borrower, as tenant (unless Administrative Agent otherwise agrees) and, with respect to any lease providing for a reduction in the rentals payable under such lease at any time during the term thereof, base rentals in excess of the lowest base rentals payable under such lease (other than during any period of rent concessions made with respect to consecutive monthly periods commencing with the first month of the term of such lease), but notwithstanding the preceding, including reimbursements for operating expenses and percentage rent pursuant to executed leases, provided a sales report is provided by the applicable tenant.

In the event of a foreclosure sale, Guarantor agrees that Guarantor's Non-Principal Liability obligation hereunder shall not be reduced out of the proceeds of such sale except to the extent that such proceeds exceed the sum of (x) the unpaid principal amount of the Loan, (y) costs and expenses of such sale and (z) the amount of any taxes or assessments or any similar charges paid out of the proceeds of such sale or subject to which the Property has been sold. Nothing herein is intended to require Administrative Agent to proceed against Borrower or any security for the Loan before proceeding against Guarantor at any time or limit Administrative Agent's right to proceed against Guarantor at any time or from time to time for principal, interest, default interest and late charges guaranteed hereby which are not paid as and when the same become due in accordance with the terms of the Note, Loan Agreement and Mortgage whether or not Administrative Agent shall have declared the principal of the Note and accrued and unpaid interest, default interest and late charges payable thereunder or under the Mortgage or the Loan Agreement to be immediately due and payable.

This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, including all amounts advanced by Lenders in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

2. Guaranty of Performance. Guarantor additionally hereby unconditionally and irrevocably guarantees to Administrative Agent and Lenders the timely performance of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing:

(a) that the tenant improvement work required to be performed by the landlord under any and all leases, both existing and future, of space in the Improvements (the "TI Work") will be constructed in accordance with such leases and the Loan Agreement; and

(b) that the TI Work will be completed, lien free, and ready for occupancy, including delivery of any permits, certificates or governmental approvals required by law or the applicable lease, on or before the date required in such lease.

If any of such obligations of Borrower are not complied with, in any respect whatsoever, and without the necessity of any notice from Administrative Agent or Lenders to Guarantor, Guarantor agrees to (i) assume all responsibility for the completion of the TI Work and, at Guarantor's own cost and expense, cause the TI Work to be fully completed in accordance with the leases of the Property and the Loan Documents; (ii) pay all bills in connection with the construction of the TI Work; and (iii) indemnify and hold Administrative Agent and Lenders harmless from any and all loss, cost, liability or expense that Administrative Agent and Lenders may suffer by reason of any such non-compliance. So long as all of such obligations are being performed by Borrower or Guarantor and no Default exists, Lenders will make the Loan proceeds, if any, available under and subject to the terms of the Loan Agreement. If after the occurrence of a Default, and without limiting the rights and remedies of Administrative Agent and Lenders, Administrative Agent, in its sole and absolute discretion, is dissatisfied with the progress of construction by Borrower and/or Guarantor, Administrative Agent may, at its option, without notice to Guarantor or anyone else, complete the TI Work either before or after commencement of foreclosure proceedings or before or after exercise of any other right or remedy of Administrative Agent against Borrower or Guarantor and expend such sums as Administrative Agent, in its sole and absolute discretion, deems necessary or advisable to complete the TI Work, and Guarantor hereby waives any right to contest any such expenditures by Administrative Agent and/or Lenders. The amount of any and all expenditures made by Administrative Agent for the foregoing purposes shall bear interest from the date made until repaid to Administrative Agent, at a rate per annum equal to the interest rate provided for in the Note and, together with such interest, shall be due and payable by Guarantor to Administrative Agent upon demand. Neither Lenders nor Administrative Agent have nor shall they ever have any obligation to complete the TI Work or take any such action. The obligations and liability of Guarantor under this Section 2 shall not be limited or restricted by the existence of (or any terms of) the guaranty of payment under Section 1.

### 3. Primary Liability of Guarantor.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Administrative Agent or Lenders to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever.

(b) Guarantor hereby agrees that in the event of (i) default by Borrower in payment or performance of the Guaranteed Obligations, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate; (ii) the failure of Guarantor to perform completely and satisfactorily the covenants, terms and conditions of any of the Guaranteed Obligations; (iii) the death, incompetency, dissolution or insolvency of Guarantor, provided, however, that the death of a Guarantor shall not be an Event of Default if a new guarantor satisfactory to Administrative Agent in its sole discretion assumes the deceased Guarantor's obligations within sixty (60) days of the death of such Guarantor; (iv) the inability of Guarantor to pay debts as they mature; (v) an assignment by Guarantor for the benefit of creditors; (vi) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for any of them or for any of their respective properties; (vii) the breach of any of the covenants set forth in Sections 18 or 19; (viii) the entry of a judgment against Guarantor for an amount in excess of \$1,000,000 and Guarantor shall not discharge the same or cause it to be discharged within sixty (60) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal; (ix) a writ or order of attachment, levy or garnishment is issued against Guarantor; (x) the falsity in any material respect of, or any material omission in, any representation made to Administrative Agent and/or Lenders by Guarantor; or (xi) any transfer of assets of any Guarantor, without Administrative Agent's prior consent (except for transfers in the ordinary course of Guarantor's business provided that any such transfer is in compliance with applicable Laws and all covenants and agreements by which Guarantor is bound, customary political and charitable contributions, and transfers for which Guarantor receives consideration substantially equivalent to the fair market value of the transferred asset) (individually and collectively an "Event of Default"); then upon the occurrence of such Event of Default, the Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of Administrative Agent, and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Administrative Agent and/or Lenders of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the amount due to Administrative Agent or perform or observe the agreement, covenant, term or condition, as the case may be, and pay all damages and all costs and expenses

that may arise in consequence of such Event of Default (including, without limitation, all attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses incurred by Administrative Agent in connection with the collection and enforcement of the Note, this Guaranty or any other Loan Document), whether or not suit is filed thereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal. It shall not be necessary for Administrative Agent, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or others liable on such indebtedness or for such performance, or to enforce any rights against any security that shall ever have been given to secure such indebtedness or performance, or to join Borrower or any others liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Administrative Agent from suing on the Note or foreclosing the Mortgage or from exercising any other rights thereunder, and if such foreclosure or other remedy is availed of, only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Mortgage, and Administrative Agent shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the Property or other collateral given for the Indebtedness or any part thereof, whether by foreclosure or otherwise, Administrative Agent may at its discretion purchase all or any part of the Property or collateral so sold or offered for sale for its own account and may, in payment of the amount bid therefor, deduct such amount from the balance due it pursuant to the terms of the Note, Mortgage and other Loan Documents.

(c) Suit may be brought or demand may be made against Borrower or against all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Administrative Agent and/or Lenders against any party hereto. Any time that Administrative Agent is entitled to exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Administrative Agent elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Administrative Agent elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

#### 4. Certain Agreements and Waivers by Guarantor.

(a) Guarantor hereby agrees that neither the rights or remedies of Administrative Agent and Lenders nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

- (1) any limitation of liability or recourse in any other Loan Document or arising under any law;

(2) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;

(3) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(4) any homestead exemption or any other exemption that is waivable under applicable law;

(5) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, including any impairment of Guarantor's recourse against any Person or collateral;

(6) whether express or by operation of law, any partial release of the liability of Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Administrative Agent and/or Lenders covering all or any part of the Guaranteed Obligations, any complete or partial release of any one or more of such guarantors under any such other guaranty, or any complete or partial release of Borrower or any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(7) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(8) either with or without notice to or consent of Guarantor: any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Administrative Agent and/or Lenders to Borrower, Guarantor, and/or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(9) any neglect, lack of diligence, delay, omission, failure, or refusal of Administrative Agent and/or Lenders to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or



prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(10) any failure of Administrative Agent and/or Lenders to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Administrative Agent and/or Lenders against Borrower or any security or other recourse, or of any new agreement between Administrative Agent and/or Lenders and Borrower, it being understood that Administrative Agent and/or Lenders shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and Guarantor shall be responsible for obtaining for itself information regarding Borrower, including, but not limited to, any changes in the business or financial condition of Borrower, and Guarantor acknowledges and agrees that Administrative Agent and/or Lenders shall have no duty to notify Guarantor of any information which Administrative Agent and/or Lenders may have concerning Borrower;

(11) if for any reason Administrative Agent and/or Lenders is required to refund any payment by Borrower to any other party liable for the payment or performance of any or all of the Guaranteed Obligations or pay the amount thereof to someone else;

(12) the making of advances by Administrative Agent and/or Lenders to protect their interest in the Property, preserve the value of the Property or for the purpose of performing any term or covenant contained in any of the Loan Documents;

(13) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Administrative Agent, any Lender, or any other Person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement, or any other Loan Document;

(14) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or because the officers or Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any

other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(15) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender; or

(16) any other condition, event, omission, action or inaction that would in the absence of this paragraph result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement.

(17) any early termination of any of the Guaranteed Obligations;

(18) Administrative Agent's and/or Lenders' enforcement or forbearance from enforcement of the Guaranteed Obligations on a net or gross basis; or

(19) any invalidity, irregularity or unenforceability in whole or in part (including with respect to any netting provision) of any Swap Contract or any confirmation, instrument or agreement required thereunder or related thereto, or any transaction entered into thereunder, or any limitation on the liability of Borrower thereunder or any limitation on the method or terms of payment thereunder which may now or hereafter be caused or imposed in any manner whatsoever.

(b) In the event any payment by Borrower or any other Person to Administrative Agent and/or Lenders is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason Administrative Agent and/or Lenders is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Administrative Agent and/or Lenders shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Administrative Agent and/or Lenders of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Administrative Agent and/or Lenders or paid by Administrative Agent and/or Lenders to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Administrative Agent and/or Lenders and any attorneys' fees, costs and expenses paid or incurred by Administrative Agent and/or Lenders in connection with any such event. It is the intent of Guarantor, Administrative Agent and Lenders that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. Administrative Agent and/or Lenders shall be entitled to continue to hold this Guaranty in its possession for the longer of (i) the period after which any performance of obligations under the Environmental Agreement shall accrue, or (ii) a

period of one year from the date the Guaranteed Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of Guarantor hereunder and/or to exercise any right or remedy of Administrative Agent and/or Lenders hereunder.

(c) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement, any Swap Contract or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Administrative Agent and/or Lenders.

5. Subordination. If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Administrative Agent for the benefit of Lenders a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Administrative Agent shall have the right to prove the claim of Administrative Agent and/or Lenders in any such proceeding so as to establish their rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Administrative Agent immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Administrative Agent and Lenders and shall have absolutely no dominion over the same except to pay it immediately to Administrative Agent; and

(d) Guarantor shall promptly upon request of Administrative Agent from time to time execute such documents and perform such acts as Administrative Agent may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including, but not limited to, execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Administrative Agent of any promissory notes or other instruments evidencing

indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

6. Other Liability of Guarantor or Borrower. If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Administrative Agent and/or Lenders other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Administrative Agent and/or Lenders hereunder shall be cumulative of any and all other rights that Administrative Agent and/or Lenders may have against Guarantor. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including without limitation, its capacity as a general partner.

7. Lender Assigns. This Guaranty is for the benefit of Administrative Agent and Lenders and their successors and assigns, subject to the terms of the Loan Agreement, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations, or any part thereof, and agrees that failure to give notice of any such transfer or assignment will not affect the liabilities of Guarantor hereunder.

8. Binding Effect. This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

9. Governing Law; Forum; Consent to Jurisdiction. This Guaranty is an agreement executed under seal. The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of New York and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. If any Guarantor is a corporation, the designation "(SEAL)" on this Guaranty shall be effective as the affixing of such Guarantor's corporate seal physically to this Guaranty. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable. Guarantor hereby irrevocably submits generally and unconditionally for Guarantor and in respect of Guarantor's property to the nonexclusive jurisdiction of any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section and to the jurisdiction of any state or United States federal court sitting in the state in

which any of the Land is located, over any suit, action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations. Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon Guarantor and may be enforced in any court in which Guarantor is subject to jurisdiction. Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address set forth at the end of this Guaranty, or at a subsequent address of which Administrative Agent receives actual notice from Guarantor in accordance with the notice provisions hereof, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Administrative Agent to serve process in any manner permitted by law or limit the right of Administrative Agent to bring proceedings against Guarantor in any other court or jurisdiction. Guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which Guarantor may otherwise be entitled under the laws of the United States of America or any State or possession of the United States of America now in force or which may hereinafter be enacted. The authority and power to appear for and enter judgment against the Guarantor shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdiction as often as the Administrative Agent shall deem necessary and desirable.

10. Invalidity of Certain Provisions. If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

11. Attorneys' Fees and Costs of Collection. Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by Administrative Agent and/or Lenders in the enforcement of or preservation of Administrative Agent's and/or Lenders' rights under this Guaranty including, without limitation, all attorneys' fees and expenses, investigation costs, and all court costs, whether or not suit is filed hereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guaranty against any other Guarantor, if there be more than one. Guarantor agrees to pay interest on any expenses or other sums due to Administrative Agent and/or Lenders under this Section 11 that are not paid when due, at a rate per annum equal to the interest rate provided for in the Note. Guarantor's obligations and liabilities under this Section 11 shall survive any payment or discharge in full of the Guaranteed Obligations.

12. Payments. All sums payable under this Guaranty shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

13. Controlling Agreement. It is not the intention of Administrative Agent, Lenders or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section 13 shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor, Administrative Agent and Lenders.

14. Representations, Warranties, and Covenants of Guarantor. Guarantor hereby represents, warrants, and covenants that: (a) Guarantor has a financial interest in Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which Guarantor is bound or affected; (d) Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and under Delaware laws, is lawfully doing business in New York, and has full power and authority to enter into and perform this Guaranty; (e) Guarantor will indemnify Administrative Agent and Lenders from any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect; (f) there is no litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor other than litigation which, if adversely determined, would not have a material adverse effect on the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) of Guarantor; (g) all financial statements and information heretofore furnished to Administrative Agent and Lenders by Guarantor do, and all financial statements and information hereafter furnished to Administrative Agent and Lenders by Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Administrative Agent, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Administrative Agent, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (h) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (i) Administrative Agent and Lenders have no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower's financial and business condition; (j) Guarantor acknowledges and agrees that

Guarantor may be required to pay and perform the Guaranteed Obligations in full without assistance or support from Borrower or any other Person; and (k) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Mortgage, the Environmental Agreement, and the other Loan Documents. Guarantor's representations, warranties and covenants are a material inducement to Administrative Agent and Lenders to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

Guarantor further represents, warrants and covenants that if any Swap Contract shall at any time be in effect, (x) Guarantor has received and examined copies of each such Swap Contract, the observance and performance of which by Borrower is hereby guaranteed; (y) Guarantor will benefit from Administrative Agent's and/or any Lender's entering into each such Swap Contract and any transaction thereunder with Borrower, and Guarantor has determined that the execution and delivery by Guarantor of this Guaranty are necessary and convenient to the conduct, promotion and attainment of the business of Guarantor; and (z) Administrative Agent and Lenders have no duty to determine whether any Swap Contract, or any other transaction relating to or arising under any Swap Contract, will be or has been entered into by Borrower for purposes of hedging interest rate, currency exchange rate, or other risks arising in its businesses or affairs and not for purposes of speculation or is otherwise inappropriate for Borrower. Guarantor's representations, warranties and covenants are a material inducement to Administrative Agent to enter into the other Loan Documents and any Swap Contract shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

15. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in any Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

16. Cumulative Rights. The exercise by Administrative Agent and/or Lenders of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Administrative

Agent and Lenders shall have all rights, remedies and recourses afforded to Administrative Agent and Lenders by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole and absolute discretion of Administrative Agent, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Administrative Agent and/or Lenders shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right, remedy or recourse of Administrative Agent and/or Lenders with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by Administrative Agent.

17. Term of Guaranty. This Guaranty shall continue in effect until all the Guaranteed Obligations are fully and finally paid, performed and discharged, except that, and notwithstanding any return of this Guaranty to Guarantor, this Guaranty shall continue in effect (i) with respect to any of the Guaranteed Obligations that survive the full and final payment of the indebtedness evidenced by the Note, (ii) with respect to all obligations and liabilities of Guarantor under Section 11 and (iii) as provided in Section 4(b).

18. Financial Statements. As used in this Section, "Financial Statements" means (i) for each reporting party other than an individual, a balance sheet, income statement, statements of cash flow and amount and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and, unless Administrative Agent otherwise consents, consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities, sources and uses of cash and liquidity verification, and, unless Administrative Agent otherwise consents, Financial Statements for each entity owned or jointly owned by the reporting party. Each party for whom Financial Statements are required is a "reporting party" and a specified period to which the required Financial Statements relate is a "reporting period". Guarantor shall provide or cause to be provided to Administrative Agent the following:



(a) Financial Statements of Parent, and copies of filed federal and state income tax returns of Guarantor and its Parent as and when required under the Loan Agreement;

(b) As soon as available and in any event within thirty (30) days of the end of each fiscal quarter of Parent a certificate of the principal financial or accounting officer of Guarantor or Parent in the form attached hereto as Exhibit A setting forth the detailed calculations of compliance or non-compliance with each of the covenants set forth in Section 19;

(c) As soon as available and in any event within thirty (30) days of the end of each fiscal quarter of Parent the Quarterly Reporting Supplement (as hereinafter defined) of Parent and Guarantor, prepared and presented in a manner consistent with the current practices of Parent and Guarantor; and

(d) From time to time promptly after Administrative Agent's request, such additional information, reports and statements regarding the business operations and financial condition of each reporting party as Administrative Agent may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Administrative Agent and shall contain or be attached to the signed and dated written certification of the reporting party in form satisfactory to Administrative Agent to certify that the Financial Statements are furnished to Administrative Agent in connection with the extension of credit by Lenders and constitute a true and correct statement of the reporting party's financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the entity satisfactory to Administrative Agent. All Financial Statements for a reporting party who is an individual shall be on Administrative Agent's then-current personal financial statement form or in another form satisfactory to Administrative Agent. All fiscal year-end Financial Statements shall be audited or certified, as required by Administrative Agent, without any qualification or exception not acceptable to Administrative Agent, by independent certified public accountants acceptable to Administrative Agent, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation. All fiscal year-end Financial Statements of the following reporting parties shall be compiled or reviewed by independent certified public accountants acceptable to Administrative Agent.

Guarantor represents and warrants to Administrative Agent and Lenders that the financial information in the current and future Quarterly Reporting Supplements shall accurately reflect the financial condition of Guarantor. All assets shown on the Financial Statements provided by Guarantor and/or its Parent, unless clearly designated to the contrary shall, be conclusively deemed to be free and clear of any exemption or any claim of exemption of Guarantor and/or its Parent at the date of the Financial Statements and at all times thereafter. Acceptance of any Financial Statement by Administrative Agent and/or Lenders, whether or not in the form prescribed herein, shall be relied upon by Administrative Agent and Lenders in the administration, enforcement, and extension of the Guaranteed Obligations.

19. Financial Covenants.

(a) Defined Terms. As used herein, the following terms shall have the following meanings:

“Adjusted Net Income” means, for any period, as to Guarantor and the Consolidated Entities, Consolidated Net Income; provided that there shall be excluded the income (or deficit) of any Person other than Guarantor accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Guarantor or any of its Subsidiaries.

“Adjusted Tangible Net Worth” means, for any Person as of any date of determination, the sum of (x) consolidated stockholders’ equity of such Person determined in accordance with GAAP, less (without duplication), the sum of all intangibles determined in accordance with GAAP (including, without limitation, goodwill and deferred or capitalized acquisition costs) and less the equity in non-controlled subsidiaries plus (y) accumulated depreciation determined in accordance with GAAP. For Guarantor, the components of Adjusted Tangible Net Worth shall be taken from the Quarterly Reporting Supplement.

“Adjusted Total Asset Value” means as of any date the Total Asset Value recalculated by reducing the amount of the aggregate of (a) the book value of construction in progress owned by Guarantor and its Consolidated Entities plus (b) the net value of real estate under development of Guarantor and its Consolidated Entities plus (c) 50% of the book value of notes receivable of Guarantor and its Consolidated Entities plus (d) 50% of the book value of preferred equity investments of Guarantor and its Consolidated Entities, to the extent necessary so that such aggregate amount of the amounts in the preceding clauses (a) through (d) does not exceed 50% of the Total Asset Value as of such date.

“Consolidated Entities” means, as of any date of determination, any entities whose financial results are consolidated with those of Guarantor in accordance with GAAP.

“Consolidated Net Income” means, for any period, net income (or loss) of Parent and the Consolidated Entities for such period determined on a consolidated basis in accordance with GAAP.

“Consolidated Adjusted Tangible Net Worth” means, as of any date of determination, Adjusted Tangible Net Worth of Guarantor and its Consolidated Entities, on a consolidated basis determined in accordance with GAAP

“Debt” means, of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), to the extent such obligations constitute indebtedness for the purposes of GAAP, (c) any other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (d) all obligations of such Person under any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of such lessee, (e) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (f) all Guaranty Obligations of such Person, (g) all reimbursement obligations for

letters of credit and other contingent liabilities, (h) all liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, and (i) the net obligations (contingent or otherwise) of such Person at such date under interest rate hedging agreements.

“Equity Issuance” means the issuance or sale by Guarantor, Parent or any Subsidiary of Parent of any Stock.

“GAAP” means generally accepted accounting principles in the United States of America.

“Guaranty Obligation” means, as to any Person (the “guaranteeing person”), any obligation (determined without duplication) of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counter-indemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Debt, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided that the term “Guaranty Obligation” shall not include (A) endorsements of instruments for deposit or collection in the ordinary course of business or (B) indemnities regarding liability for environmental concerns or compliance with particular laws, indemnities covering actions of Guarantors and its officers, employees and agents and similar indemnities in the ordinary course of business which do not relate to repayment of debt. The amount of any Guaranty Obligation of any guaranteeing person shall be deemed to be the maximum stated amount of the primary obligation relating to such Guaranty Obligation (or, if less, the maximum stated liability set forth in the instrument embodying such Guaranty Obligation).

“Leverage Ratio” means, as of any date of determination thereof, the ratio of (a) Total Indebtedness outstanding on such date to (b) the Adjusted Total Asset Value as of such date determined in accordance with GAAP.

“Lien” means any mortgage, pledge, hypothecation, assignment (including any collateral assignment but excluding any assignment of an asset made in lieu of a sale thereof where the assignor is paid the fair market value of such asset by the assignee and the assignee assumes all of the rights and obligations attributable to ownership of such asset), deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any financing lease having substantially the same economic effect as any of the foregoing).

“Net Proceeds” means, with respect to any Equity Issuance, the amount of cash received by Guarantor, Parent or any Subsidiary of Parent in connection with such transaction after deducting therefrom the aggregate, without duplication, of the following amounts to the extent properly attributable to such transaction: (a) reasonable brokerage commissions, attorneys’ fees, finder’s fees, financial advisory fees, accounting fees, underwriting fees, investment banking fees, and other similar commissions and fees (and expenses and disbursements of any of the foregoing), in each case, to the extent paid or payable by Guarantor, Parent or any Subsidiary of Parent; (b) printing and related expenses and filing, recording, or registration fees or charges or similar fees or charges paid by Guarantor, Parent or any Subsidiary of Parent; and (c) taxes paid or payable by Guarantor, Parent or any Subsidiary of Parent to any governmental authority as a direct result of such transaction.

“Parent” means Acadia Realty Trust, a Maryland business trust and the parent company of Guarantor.

“Person” means an individual, partnership, limited liability company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“Quarterly Reporting Supplement” means the quarterly Reporting Supplement prepared and published by Parent to supplement the information filed quarterly with the Securities and Exchange Commission.

“Stock” means all shares, options, warrants, general or limited partnership interests, membership interests, or other ownership interests (regardless of how designated) of or in a corporation, partnership, limited liability company, trust, or other entity, whether voting or nonvoting, including common stock, preferred stock, or any other similar “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended).

“Subsidiary” means, as to any Person, a corporation, limited liability company, partnership or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, limited liability company, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

“Test Period” means each fiscal quarter of Parent and Guarantor.

“Total Adjusted EBITDA” means, for any Test Period, Total EBITDA for such period minus replacement reserves of \$0.20 per square foot of gross leasable area in all improved real estate owned by Parent, Guarantor and the Consolidated Entities (adjusted, in the case of Acadia Strategic Opportunity Fund, L.P., Acadia Strategic Opportunity Fund II LLC and Acadia Strategic Opportunity Fund III LLC to reflect only Guarantor’s percentage interest in each such entity times the total gross leaseable area in all improvements owned by each such fund and its

Subsidiaries) per annum, pro-rated for the applicable period. For Guarantor, the components of Total Adjusted EBITDA shall be taken from the Quarterly Reporting Supplement.

“Total Asset Value” means as of any date the sum (without duplication) of (a) unencumbered cash and cash equivalents of Guarantor and its Consolidated Entities, (b) net operating income of Guarantor and its Consolidated Entities for the most recent Test Period, determined annualized and capitalized at 8.00%, (c) the income from fees of Guarantor and its Consolidated Entities for the most recent Test Period (excluding any provision for income taxes), annualized and capitalized at 20% per annum, (d) the net value of real estate under development of Guarantor and its Consolidated Entities, (e) the book value of construction in progress owned by Guarantor and its Consolidated Entities, (f) notes receivable of Guarantor and its Consolidated Entities discounted at 50% plus, (g) preferred equity investments of Guarantor and its Consolidated Entities discounted at 50%.

“Total Debt Service” means, in respect of any Test Period, interest expense plus scheduled principal debt amortization for Guarantor and the Consolidated Entities on the aggregate principal amount of their respective Debt, plus preferred stock dividends and/or distributions to preferred operating partnership units in Guarantor paid during such Test Period. For Guarantor, the components of Total Debt Service shall be taken from the Quarterly Reporting Supplement.

“Total EBITDA” means, for any period, Adjusted Net Income of Guarantor and the Consolidated Entities before income taxes, interest, depreciation, amortization, gains or losses on sales of operating real estate and marketable securities, any provision or benefit for income taxes, noncash impairment charges, and gains or losses on extraordinary items in accordance with GAAP and gains or losses on early extinguishment of debt.

“Total Indebtedness” means, as of any date of determination, all Debt of Guarantor, Parent and its Consolidated Entities outstanding at such date. The components of Total Indebtedness, other than contingent liabilities, shall be taken from the Quarterly Reporting Supplement.

(b) Minimum Tangible Net Worth. Guarantor shall not permit the Consolidated Adjusted Tangible Net Worth of Guarantor, as of the last day of any fiscal quarter of Parent, commencing with the fiscal quarter ending September 30, 2010, to be less than (i) \$350,000,000 plus (ii) 80% of the amount of Net Proceeds from any Equity Issuance subsequent to September 30, 2010.

(c) Leverage Ratio. Guarantor shall not permit the Leverage Ratio of Guarantor (expressed as a percent), as of the last day of any fiscal quarter of Guarantor, to be greater than 65%.

(d) Fixed Charge Coverage Ratio. Guarantor shall not permit, for any Test Period, the ratio of Total Adjusted EBITDA of Parent for such period to Total Debt Service of Parent for such period to be less than 1.50 to 1.00.

(e) Notifications. Guarantor shall notify Administrative Agent:

(i) Notice of Litigation. Promptly after the commencement and knowledge thereof, notice of all material actions, suits and proceedings before any court or arbitrator or any governmental authorities, affecting Guarantor or Parent;

(ii) Notices of Defaults. After Guarantor becomes aware of the occurrence of a Default, providing to Administrative Agent a written notice setting forth the details of such Default; and

(iii) Contractual Obligations. Promptly of (i) any matter that has resulted or would reasonably be expected to result in a material change to Guarantors' ability to fulfill its obligations hereunder (a "Material Change"; in the event that the parties hereto are in dispute as to whether a change is a "material change" for the purposes of this definition, the materiality of such change shall be in Administrative Agent's reasonable discretion), including, to the extent so applicable, (ii) any breach or non-performance of, or any default under, a contractual obligation of Guarantor; (iii) any dispute, litigation, investigation, proceeding or suspension between Guarantor and any court, arbitrator or Governmental Authority; or (iv) the commencement of, or any material development in, any litigation, proceeding or investigation affecting Guarantor.

(f) Conduct of Business and Maintenance of Existence. Guarantor will continue (i) to be a majority owned subsidiary of Parent through whom Parent conducts substantially all of its activities, (ii) engage in business of the same general type as now conducted by Guarantor on the date hereof, and preserve, renew and keep in full force and effect its legal existence and (iii) to comply with all contractual obligations and Laws, except to the extent that failure to comply therewith would not in the aggregate constitute a Material Change.

(g) Compliance with Laws. Guarantor shall comply, and shall cause each of its subsidiaries, if any, to comply, with all Laws, except to the extent that failure to comply therewith would not in the aggregate constitutes a Material Change.

20. Disclosure of Information. In accordance with the Loan Agreement Lenders may sell or offer to sell the Loan or interests in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant, to Lenders' affiliates, including without limitation Banc of America Securities LLC, to any regulatory body having jurisdiction over Administrative Agent or any Lender and to any other parties as necessary or appropriate in Lenders' reasonable judgment, any information Lenders now have or hereafter obtain pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including, without limitation, information regarding any security for the Guaranteed Obligations or for this Guaranty, credit or other information on Guarantor, Borrower, and/or any other party liable, directly or indirectly, for any part of the Guaranteed Obligations.

21. Right of Set-Off. Upon the occurrence and during the continuance of any Default, however defined, in the payment or performance when due of any of the Guaranteed Obligations, Lenders are hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, without notice to any Person (any such notice being expressly waived by Guarantor to the fullest extent permitted by applicable law), to set off and apply any and all deposits, funds, or assets at any time held and other indebtedness at any time

owing by any Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, whether or not any such Lender or Administrative Agent shall have made any demand under this Guaranty or exercised any other right or remedy hereunder. Lenders will promptly notify Administrative Agent, the other Lenders and Guarantor after any such set-off and application made by any such Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lenders under this Section 21 are in addition to the other rights and remedies (including other rights of set-off) that Administrative Agent and Lenders may have and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Administrative Agent.

22. Subrogation. Notwithstanding anything to the contrary contained herein, Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Indebtedness or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Indebtedness has been fully and finally paid. This waiver is given to induce Administrative Agent and Lenders to make the Loan to Borrower.

23. Further Assurances. Guarantor at Guarantor's expense will promptly execute and deliver to Administrative Agent upon Administrative Agent's request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

24. No Fiduciary Relationship. The relationship between Administrative Agent, Lenders and Guarantor is solely that of lenders (acting through Administrative Agent) and guarantor. Administrative Agent and Lenders have no fiduciary or other special relationship with or duty to Guarantor and none is created hereby or may be inferred from any course of dealing or act or omission of Administrative Agent and/or Lenders.

25. Interpretation. If this Guaranty is signed by more than one Person as "Guarantor", then the term "Guarantor" as used in this Guaranty shall refer to all such Persons, jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guaranty are made by and shall be binding upon each and every such Person, jointly and severally and Administrative Agent may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Mortgage and/or applicable law with respect to the Property or any other Loan Documents. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other gender. Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents. All references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms "herein", "hereof", "hereto", "hereunder" and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms "include" and "including" shall be interpreted as if followed by the words "without limitation". All references in this Guaranty to sums

denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. For purposes of this Guaranty, "Person" or "Persons" shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including governmental bodies, agencies, or instrumentalities, as well as natural persons.

26. Time of Essence. Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

27. Counterparts. This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which taken together shall constitute but one and the same agreement.

28. Entire Agreement. This Guaranty embodies the entire agreement between Administrative Agent, Lenders and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. No condition or conditions precedent to the effectiveness of this Guaranty exist. This Guaranty shall be effective upon execution by Guarantor and delivery to Administrative Agent. This Guaranty may not be modified, amended or superseded except in a writing signed by Administrative Agent and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded.

29. **WAIVER OF JURY TRIAL.** WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY "DISPUTE" (FOR PURPOSES OF THIS SECTION, AS DEFINED BELOW) AS SET FORTH IN THIS GUARANTY, TO THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS, AND GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.



30. Credit Verification. Each legal entity and individual obligated on this Guaranty, whether as a Guarantor, a general partner of a Guarantor or in any other capacity, hereby authorizes Administrative Agent and Lenders to check any credit references, verify his/her employment and obtain credit reports from credit reporting agencies of Administrative Agent's and Lenders' choice in connection with any monitoring, collection or future transaction concerning the Loan, including any modification, extension or renewal of the Loan. Also in connection with any such monitoring, collection or future transaction, Administrative Agent and Lender are hereby authorized to check credit references, verify employment and obtain a third party credit report for the spouse of any married person obligated on this Guaranty, if such person lives in a community property state.

31. Special Representation and Warranty as to Leases. Guarantor hereby represents and warrants to Administrative Agent and Lenders that all of the statements contained in any and all estoppels regarding the leases from Borrower to Lenders (the "Borrower Estoppels") are true and correct as of the date hereof, including, without limitation, that all tenants are not in default in the payment of rent as of the date hereof, there is no default by landlord or tenant under any of the leases at the Property as of the date hereof and no amounts due by Borrower to any tenant at the Property (except as may be expressly set forth in the Borrower Estoppels).

**THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as an instrument *under seal* as of the date first written above.

GUARANTOR:

ACADIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

By: Acadia Realty Trust, a Maryland real estate  
investment trust, its general partner

By: /s/ Robert Masters

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Robert Masters  
Senior Vice President

Address of Guarantor:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605

This is to certify that this Guaranty was executed in my presence on the date hereof by the party whose signature appears above in the capacity indicated.

/s/ Debra Leibler-Jones

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Notary Public

Debra Leibler-Jones  
State of New York  
No. 01LE6005994  
Qualified in Dutchess County

My Commission Expires:

4/20/14

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Address of Lender:

Bank of America, N.A.  
One Bryant Park, 35th Floor  
New York, New York 10036

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Attention: Mr. Gregory Egli  
Telefax: 212-293-8197

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## EXHIBIT A

Form of Compliance Certificate

[For the Fiscal Quarter ended \_\_\_\_\_]

[For the Fiscal Year ended \_\_\_\_\_]

This Compliance Certificate is furnished pursuant to Section 18(b) of the Guaranty Agreement dated as of November \_\_, 2010 from Acadia Realty Limited Partnership ("ARLP") to Bank of America, N.A., as Administrative Agent. Unless otherwise defined herein, the terms used in this Compliance Certificate have the meanings ascribed thereto in the Guaranty Agreement.

The undersigned officer of Acadia Realty Trust hereby certifies as follows:

1. The financial statements referred to in Sections 18(a) and 18(c), as the case may be, of the Guaranty Agreement which are delivered concurrently with the delivery of this Compliance Certificate are complete and correct in all material respects and have been prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods.

	Quarterly Reporting Supplement Page(s)	Quarterly Compliance
1. Minimum Tangible Net Worth (Section 19(b))		As of _____
Shareholders' equity	15	\$ _____
+ Accumulated Depreciation	15	\$ _____
- Intangibles	15	\$ _____
Adjusted Shareholders' Equity		\$ _____
Covenant Requirement		
*+ 80% of net proceeds from equity insurances		\$350,000,000*
Excess or <Shortfall>		\$ _____
2. Maximum Leverage Ratio (Section 19(c))		As of _____
Unencumbered Cash and Cash Equivalents	15	\$ _____
Net Operating Income	5	\$ _____
annualized		\$ _____
/ cap rate		8%
Value of Income Producing Properties		\$ _____
Fee Income (excluding any provision for income taxes)	5	\$ _____
annualized		\$ _____
x multiple		5
Value of Fee Income		\$ _____
Construction in Progress	15	\$ _____
Net Real Estate under Development	15	\$ _____

	Quarterly Reporting Supplement Page(s)	Quarterly Compliance
Book Value of Non-Income Producing Properties (footnote (1))		\$ _____
Notes Receivable	15	\$ _____
Preferred Equity Investment	15	\$ _____
Book Value of Real Estate Loans (sum of Notes Rec. and Preferred Equity Inv.)		\$ _____
adjust for 50% discount		50%
Adjusted Book Value of Real Estate Loans (footnote (1))		\$ _____
Total Asset Value		\$ _____
Mortgage Notes Payable	15	\$ _____
Notes Payable	15	\$ _____
Contingent Liabilities (footnote (2))		\$ _____
Adjusted Total Liabilities		\$ _____
Leverage Ratio		_____ %
Covenant Requirement		65%
3. Minimum Fixed Charge Coverage (Section 19(d))		As of _____
EBITDA	10	\$ _____
annualized		\$ _____
Adjustment for Capital Expenditure Reserve (footnote (3))		\$ _____
Adjusted EBITDA		\$ _____
Interest Expense	5 10	\$ _____
Scheduled Principal Repayments	9	\$ _____
Preferred Dividends (Distributions on Preferred OP Units)	9 23	\$ _____
Fixed Charges		\$ _____
annualized		\$ _____
Fixed Charge Coverage Ratio		_____
Covenant Requirement (no less than 1.15 to 1.00)		1.50

**Footnotes:**

(1) Combined value of Non-Income Producing Properties and Real Estate Loans not to exceed 50% of		
Total Asset Value		As of _____
Book Value of Non-Income Producing Properties		\$ _____
Adjusted Book Value of Real Estate Loans		\$ _____
Total Asset Value		\$ _____
% of Total Asset Value		_____ %

(2) Contingent Liabilities		As of _____
Letters of Credit		\$ _____
Guaranty of Derivatives		\$ _____
Guaranty of Fund II Loan*		\$ _____
Guaranty of Pelham Manor Loan		\$ _____
*Fund II Loan Outstanding	19	\$ _____
Parent's Share (included in Mortgage Notes Payable)	19	\$ _____
Net Additional Contingency		\$ _____
(3) Capital Expenditure Reserve		As of _____
Total Core Operating Properties, SF	30	\$ _____
Fund I Operating Properties, SF	36	\$ _____
Less, Kroger Safeway (NNN)	36	\$ _____
Less, Sterling Heights third party	36	\$ _____
Fund II Operating Properties, SF	36	\$ _____
Less, Oakbrook (NNN)	36	\$ _____
Less, third party	36	\$ _____
Fund III Operating Expenses, SF	36	\$ _____
Total Opportunity Fund Operating Properties, SF	36	\$ _____
ARLP Ownership %**		\$ _____
Total Operating Properties, SF		\$ _____
Capital Expenditure Reserve (\$0.20 p.s.f.)		\$ _____
**Fund I - 37.78%		
Fund II - 20%		
Fund III - 19.905%		

2. To the best of such officer's knowledge, each of Parent, Guarantor and Borrower has, during the period referred to above, observed or performed all of its covenants and other agreements, and satisfied every condition contained in the Guaranty Agreement and the Credit Agreement and the other Credit Documents to which it is a party to be observed, performed or satisfied by it, and as of the date hereof such officer has obtained no knowledge of any Default or Event of Default except as follows: NONE.

IN WITNESS WHEREOF, I have hereto set my name.

\_\_\_\_\_  
Name:  
Title: [Chief Financial Officer]  
[Chief Account Officer]

**LIST OF AFFILIATES OF  
ACADIA REALTY TRUST**

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**Last Revised 2/1/2011**

Acadia Realty Trust  
Acadia Realty Limited Partnership

125 Main Street Associates LLC  
239 Greenwich Associates Limited Partnership  
ABR Amboy Road LLC  
Acadia 239 Greenwich Avenue, LLC  
Acadia 2914 Third Avenue LLC  
Acadia 3319 Atlantic Avenue LLC  
Acadia 5-7 East 17<sup>th</sup> Street LLC  
Acadia Absecon LLC  
Acadia Albertson's Add-on, LLC  
Acadia Albertsons Investors LLC  
Acadia Atlantic Avenue LLC  
Acadia Bartow Avenue, LLC  
Acadia Berlin LLC  
Acadia Boonton LLC  
Acadia Brandywine Condominium, LLC  
Acadia Brandywine Holdings, LLC  
Acadia Brandywine Subsidiary, LLC  
Acadia Brandywine Town Center, LLC  
Acadia Chestnut LLC  
Acadia Clark-Diversey LLC  
Acadia Cortlandt LLC  
Acadia Crescent Plaza LLC  
Acadia Crossroads, LLC  
Acadia Cub Foods Investors LLC  
Acadia D.R. Management LLC  
Acadia Elmwood Park LLC  
Acadia Georgetown LLC  
Acadia Granville, LLC  
Acadia Heathcote, LLC  
Acadia Hendon Hitchcock Plaza, LLC  
Acadia Hobson LLC  
Acadia K-H, LLC  
Acadia Ledgewood LLC

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Acadia Lincoln Road LLC  
Acadia Mad River Property LLC  
Acadia Mark Plaza LLC  
Acadia Market Square, LLC  
Acadia Marsh Investors, LLC  
Acadia MCB 127 LLC  
Acadia MCB 216TH Street LLC  
Acadia MCB Holding Company LLC  
Acadia MCB Sea Plum Town Center LLC  
Acadia Merrillville Realty, Inc.  
Acadia Merrillville Realty, L.P.  
Acadia Mervyn I, LLC  
Acadia Mervyn II, LLC  
Acadia Mervyn Investors I, LLC  
Acadia Mervyn Investors II, LLC  
Acadia Mervyn Promote Member I, LLC  
Acadia Mervyn Promote Member II, LLC  
Acadia Naamans Road LLC  
Acadia New Loudon, LLC  
Acadia Pacesetter LLC  
Acadia Property Holdings, LLC  
Acadia Realty Acquisition I, LLC  
Acadia Realty Acquisition II, LLC  
Acadia Realty Acquisition III LLC  
Acadia Rex LLC  
Acadia Self Storage LLC  
Acadia Self Storage Management Company LLC  
Acadia Self Storage Management Investment Company LLC  
Acadia Sheepshead Bay LLC  
Acadia Shopko Investors LLC  
Acadia SPE Boonton LLC  
Acadia Storage Company LLC  
Acadia Storage Post LLC  
Acadia Storage Post Metropolitan Avenue LLC  
Acadia Storage Post Portfolio Company LLC  
Acadia Strategic Opportunity Fund II, LLC  
Acadia Strategic Opportunity Fund III LLC  
Acadia Strategic Opportunity Fund III Special Member LLC  
Acadia Strategic Opportunity Fund, LP  
Acadia Suffern LLC  
Acadia Tarrytown, LLC  
Acadia Town Line, LLC  
Acadia Walnut Hill LLC  
Acadia Washington Street LLC  
Acadia West 54<sup>th</sup> Street LLC  
Acadia West Shore Expressway LLC

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Acadia Westport LLC  
Acadia-P/A 161<sup>st</sup> Street LLC  
Acadia-P/A Albee LLC  
Acadia-P/A Canarsie, LLC  
Acadia-P/A Holding Company, LLC  
Acadia-P/A Liberty LLC  
Acadia-P/A Sherman Avenue, LLC  
Acadia-P/A/T Albee Commercial LLC  
Acadia-P/A/T Albee LLC  
Acadia-P/A/T Albee Residential LLC  
Acadia-PA East Fordham Acquisitions, LLC  
ACRS II LLC  
ACRS, Inc.  
Albee Development LLC  
Albee Office Development LLC  
Albee Retail Development LLC  
AmCap Acadia 9<sup>th</sup> Addition, LLC  
AmCap Acadia Agent, LLC  
AmCap Acadia Batesville, LLC  
AmCap Acadia Benton, LLC  
AmCap Acadia Carthage GP, Inc.  
AmCap Acadia Carthage LP  
AmCap Acadia Cary, LLC  
AmCap Acadia Cincinnati, LLC  
AmCap Acadia Conroe GP, Inc.  
AmCap Acadia Conroe LP  
AmCap Acadia Indianapolis, LLC  
AmCap Acadia Irving GP, Inc.  
AmCap Acadia Irving LP  
AmCap Acadia K-H Holding, LLC  
AmCap Acadia K-H, LLC  
AmCap Acadia Little Rock, LLC  
AmCap Acadia Longview, LLC  
AmCap Acadia Mustang, LLC  
AmCap Acadia Roswell, LLC  
AmCap Acadia Ruidoso, LLC  
AmCap Acadia San Ramon, LLC  
AmCap Acadia Springerville, LLC  
AmCap Acadia Tucson, LLC  
AmCap Acadia Tulsa, LLC  
APA 216th Street LLC  
Aspen Cove Apartments, LLC  
Blackman Fifty L.P.  
Blackman Fifty Realty Corp.  
BTS Boonton, L.L.C.  
Canarsie Plaza LLC

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Crossroads II  
Crossroads II, LLC  
Crossroads Joint Venture  
Crossroads Joint Venture, LLC  
Fordham Place Office LLC  
GDC Beechwood, LLC  
GDC SMG, LLC  
Heathcote Associates, L.P.  
Mark Plaza Fifty L.P.  
Mark Twelve Associates, L.P.  
Mervyn Opportunities, LLC  
P/A-Acadia Pelham Manor, LLC  
Pacesetter/Ramapo Associates  
RD Abington Associates Limited Partnership  
RD Absecon Associates, L.P.  
RD Bloomfield Associates Limited Partnership  
RD Branch Associates L.P.  
RD Elmwood Associates, L.P.  
RD Hobson Associates, L.P.  
RD Methuen Associates Limited Partnership  
RD Smithtown, LLC  
RD Woonsocket Associates Limited Partnership  
Self Storage Management LLC  
SMG Celebration, LLC  
White City Partners Holding Company LLC  
White City East Partners LLC  
White City Partners LLC

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Consent of Independent Registered Public Accounting Firm

Acadia Realty Trust  
White Plains, New York

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-157886, 333-31630, 333-139950, 333-114785 and 333-126712) and Form S-8 (Nos. 33-95966, 333-87993 and 333-106758) of Acadia Realty Trust of our reports dated February 28, 2011, relating to the consolidated financial statements and financial statement schedule, and the effectiveness of Acadia Realty Trust's internal control over financial reporting, which appear in this Form 10-K.

BDO USA, LLP  
New York, New York

February 28, 2011

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**EXHIBIT 31.1**

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO RULE 13a — 14(a) (SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002)**

I, Kenneth F. Bernstein, certify that:

1. I have reviewed this annual report on Form 10-K of Acadia Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Kenneth F. Bernstein

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Kenneth F. Bernstein  
President and Chief Executive Officer  
February 28, 2011

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CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO RULE 13a — 14(a) (SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002)

I, Michael Nelsen, certify that:

1. I have reviewed this annual report on Form 10-K of Acadia Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Michael Nelsen

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Michael Nelsen  
Senior Vice President and  
Chief Financial Officer  
February 28, 2011

**EXHIBIT 32.1**

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 (SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

In connection with the Annual Report of Acadia Realty Trust (the "Company") on Form 10-K for the year ended December 31, 2010, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kenneth F. Bernstein, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Kenneth F. Bernstein

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Kenneth F. Bernstein  
President and Chief Executive Officer  
February 28, 2011

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**EXHIBIT 32.2**

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 (SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

In connection with the Annual Report of Acadia Realty Trust (the "Company") on Form 10-K for the year ended December 31, 2010, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Nelsen, Sr. Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Michael Nelsen

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Michael Nelsen  
Senior Vice President and  
Chief Financial Officer  
February 28, 2011

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