

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2010

or

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 in its charter)

MARYLAND
(State or other jurisdiction of
incorporation or organization)

23-2715194
(I.R.S. Employer
Identification No.)

1311 MAMARONECK AVENUE, SUITE 260 WHITE PLAINS, NY
(Address of principal executive offices)

10605
(Zip Code)

(914) 288-8100

(Registrant's telephone number, including area code)

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 whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange 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

As of November 8, 2010 there were 40,253,877 common shares of beneficial interest, par value \$.001 per share, outstanding.

ACADIA REALTY TRUST AND SUBSIDIARIES

FORM 10-Q

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Part I. Financial Information**Item 1. Financial Statements.****ACADIA REALTY TRUST AND SUBSIDIARIES****CONSOLIDATED BALANCE SHEETS**

(dollars in thousands)

	September 30, 2010	December 31, 2009
	(unaudited)	
ASSETS		
Operating real estate		
Land	\$ 200,354	\$ 221,740
Building and improvements	855,333	845,751
Construction in progress	2,842	2,575
	<u>1,058,529</u>	<u>1,070,066</u>
Less: accumulated depreciation	214,909	193,745
Net operating real estate	843,620	876,321
Real estate under development	314,565	137,340
Notes receivable and preferred equity investment, net	87,600	125,221
Investments in and advances to unconsolidated affiliates	16,095	51,712
Cash and cash equivalents	110,703	93,808
Cash in escrow	29,559	8,582
Rents receivable, net	17,956	16,782
Deferred charges, net of amortization	28,098	28,311
Acquired lease intangibles, net of amortization	19,527	22,382
Prepaid expenses and other assets	23,025	22,005
Total assets	<u>\$ 1,490,748</u>	<u>\$ 1,382,464</u>
LIABILITIES		
Mortgages payable	\$ 783,467	\$ 732,287
Notes payable, net of unamortized discount of \$1,331 and \$2,105, respectively	48,684	47,910
Distributions in excess of income from, and investments in, unconsolidated affiliates	20,802	20,589
Accounts payable and accrued expenses	31,102	17,548
Dividends and distributions payable	7,427	7,377
Acquired lease and other intangibles, net of amortization	5,992	6,753
Other liabilities	19,434	17,523
Total liabilities	<u>916,908</u>	<u>849,987</u>
SHAREHOLDERS' EQUITY		
Common shares, \$.001 par value, authorized 100,000,000 shares; issued and outstanding 40,247,415 and 39,787,018 shares, respectively	40	40
Additional paid-in capital	303,192	299,014
Accumulated other comprehensive loss	(3,366)	(2,994)
Retained earnings	17,449	16,125
Total shareholders' equity	<u>317,315</u>	<u>312,185</u>
Noncontrolling interests	256,525	220,292
Total equity	<u>573,840</u>	<u>532,477</u>
Total liabilities and equity	<u>\$ 1,490,748</u>	<u>\$ 1,382,464</u>

See accompanying notes

ACADIA REALTY TRUST AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF INCOME
FOR THE THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2010 AND 2009

(unaudited)

(dollars in thousands, except per share amounts)

	Three months ended September 30,		Nine months ended September 30,	
	2010	2009	2010	2009
Revenues				
Rental income	\$ 28,041	\$ 25,941	\$ 79,734	\$ 71,314
Mortgage interest income	5,206	4,908	15,437	14,867
Expense reimbursements	4,939	4,868	15,839	15,252
Lease termination income	—	2,500	65	2,726
Management fee income	346	316	1,182	1,517
Other	729	362	1,663	3,250
Total revenues	39,261	38,895	113,920	108,926
Operating Expenses				
Property operating	7,255	6,419	21,671	20,965
Real estate taxes	4,771	4,552	13,644	12,305
General and administrative	5,317	5,226	15,852	16,575
Depreciation and amortization	10,341	10,377	28,546	27,412
Other expense	—	53	3	4,218
Total operating expenses	27,684	26,627	79,716	81,475
Operating income	11,577	12,268	34,204	27,451
Other interest income	175	161	462	373
Equity in earnings (losses) of unconsolidated affiliates	143	(193)	610	(3,451)
Impairment of investment in unconsolidated affiliate	—	(3,655)	—	(3,655)
Interest and other finance expense	(8,829)	(8,329)	(25,927)	(23,782)
Gain on bargain purchase	—	—	33,805	—
Gain on debt extinguishment	—	11	—	7,057
Income from continuing operations before income taxes	3,066	263	43,154	3,993
Income tax provision	(785)	273	(1,869)	(1,349)
Income from continuing operations	2,281	536	41,285	2,644
Discontinued Operations				
Operating income from discontinued operations	—	32	—	225
Gain on sale of property	—	—	—	5,637
Income from discontinued operations	—	32	—	5,862
Net income	2,281	568	41,285	8,506
Loss (income) attributable to noncontrolling interests:				
Continuing operations	2,836	6,740	(18,240)	21,101
Discontinued operations	—	(1)	—	(4,866)
Net loss (income) attributable to noncontrolling interests	2,836	6,739	(18,240)	16,235
Net income attributable to Common Shareholders	\$ 5,117	\$ 7,307	\$ 23,045	\$ 24,741
Basic Earnings per Share				
Income from continuing operations	\$ 0.13	\$ 0.18	\$ 0.57	\$ 0.63
Income from discontinued operations	—	—	—	0.03
Basic earnings per share	\$ 0.13	\$ 0.18	\$ 0.57	\$ 0.66
Diluted Earnings per Share				
Income from continuing operations	\$ 0.13	\$ 0.18	\$ 0.57	\$ 0.63
Income from discontinued operations	—	—	—	0.03
Diluted earnings per share	\$ 0.13	\$ 0.18	\$ 0.57	\$ 0.66

See accompanying notes

ACADIA REALTY TRUST AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY AND COMPREHENSIVE INCOME
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2010 AND 2009

(unaudited)

(dollars in thousands, except per share amounts)	Common Shares		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Shareholders' Equity	Noncontrolling Interests	Total Equity
	Shares	Amount						
Balance at December 31, 2009	39,787	\$ 40	\$ 299,014	\$ (2,994)	\$ 16,125	\$ 312,185	\$ 220,292	\$ 532,477
Conversion of 358,967 OP Units to Common Shares by limited partners of the Operating Partnership	359	-	3,179	-	-	3,179	(3,179)	-
Dividends declared (\$0.54 per Common Share)	-	-	-	-	(21,721)	(21,721)	(553)	(22,274)
Employee Restricted Share awards	133	-	1,561	-	-	1,561	1,333	2,894
Common Shares issued under Employee Share Purchase Plan	5	-	75	-	-	75	-	75
Issuance of Common Shares to Trustees	13	-	228	-	-	228	-	228
Exercise of Trustees options	7	-	101	-	-	101	-	101
Employee Restricted Shares cancelled	(57)	-	(966)	-	-	(966)	-	(966)
Noncontrolling interest distributions	-	-	-	-	-	-	(856)	(856)
Noncontrolling interest contributions	-	-	-	-	-	-	21,076	21,076
	40,247	40	303,192	(2,994)	(5,596)	294,642	238,113	532,755
Comprehensive income:								
Net income	-	-	-	-	23,045	23,045	18,240	41,285
Unrealized loss on valuation of swap agreements	-	-	-	(2,263)	-	(2,263)	(73)	(2,336)
Reclassification of realized interest on swap agreements	-	-	-	1,891	-	1,891	245	2,136
Total comprehensive income	-	-	-	(372)	23,045	22,673	18,412	41,085
Balance at September 30, 2010	40,247	\$ 40	\$ 303,192	\$ (3,366)	\$ 17,449	\$ 317,315	\$ 256,525	\$ 573,840
Balance at December 31, 2008	32,357	\$ 32	\$ 218,527	\$ (4,508)	\$ 13,671	\$ 227,722	\$ 214,506	\$ 442,228
Dividends declared (\$0.57 per Common Share)	-	-	-	-	(21,491)	(21,491)	(607)	(22,098)
Issuance of Common Shares	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	443	-	2,289	-	-	2,289	667	2,956
Common Shares issued under Employee Share Purchase Plan	7	-	80	-	-	80	-	80
Issuance of Common Shares to Trustees	25	-	603	-	-	603	-	603
Employee exercise of options to purchase common shares	8	-	69	-	-	69	-	69
Employee Restricted Shares cancelled	(191)	-	(2,715)	-	-	(2,715)	-	(2,715)
Conversion options on Convertible Notes purchased	-	-	(840)	-	-	(840)	-	(840)
Noncontrolling interest distributions	-	-	-	-	-	-	(915)	(915)
Noncontrolling interest contributions	-	-	-	-	-	-	7,200	7,200
	39,686	40	299,419	(4,508)	(7,820)	287,131	220,851	507,982
Comprehensive income (loss):								
Net income (loss)	-	-	-	-	24,741	24,741	(16,235)	8,506
Unrealized loss on valuation of swap agreements	-	-	-	(815)	-	(815)	(108)	(923)
Reclassification of realized interest on swap agreements	-	-	-	1,905	-	1,905	222	2,127
Total comprehensive income (loss)	-	-	-	1,090	24,741	25,831	(16,121)	9,710
Balance at September 30, 2009	39,686	\$ 40	\$ 299,419	\$ (3,418)	\$ 16,921	\$ 312,962	\$ 204,730	\$ 517,692

See accompanying notes

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2010 AND 2009

(unaudited)

(dollars in thousands)

	Nine months ended September 30,	
	2010	2009
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 41,285	\$ 8,506
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	28,546	27,437
Gain on bargain purchase	(33,805)	-
Gain on sale of property	-	(5,637)
Gain on debt extinguishment	-	(7,057)
Non-cash accretion of notes receivable	(4,513)	(3,914)
Share compensation expense	3,121	3,045
Equity in (earnings) losses of unconsolidated affiliates	(610)	3,451
Impairment of investment in unconsolidated affiliate	-	3,655
Other, net	3,995	12,951
Changes in assets and liabilities		
Cash in escrow	(20,977)	(2,103)
Rents receivable, net	(2,891)	(5,818)
Prepaid expenses and other assets, net	1,443	8,507
Accounts payable and accrued expenses	5,285	(4,971)
Other liabilities	1,713	1,062
Net cash provided by operating activities	22,592	39,114
CASH FLOWS FROM INVESTING ACTIVITIES:		
Investment in real estate	(60,552)	(112,913)
Deferred acquisition and leasing costs	(2,442)	(11,654)
Investments in and advances to unconsolidated affiliates	(2,915)	(5,137)
Return of capital from unconsolidated affiliates	753	1,798
Repayments of notes receivable	42,011	8,831
Increase in notes receivable	-	(756)
Proceeds from sale of property	-	9,481
Net cash used in investing activities	(23,145)	(110,350)

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2010 AND 2009

(unaudited)

(dollars in thousands)

	Nine months ended September 30,	
	2010	2009
CASH FLOWS FROM FINANCING ACTIVITIES:		
Principal payments on mortgage notes	(33,698)	(150,357)
Proceeds received on mortgage notes	58,914	255,065
Redemption of notes payable	-	(46,736)
Increase in deferred financing and other costs	(4,973)	(480)
Capital contributions from noncontrolling interests	21,076	7,200
Distributions to noncontrolling interests	(1,426)	(1,979)
Dividends paid to Common Shareholders	(21,655)	(22,993)
Proceeds from issuance of Common Shares, net of issuance costs	-	65,222
Repurchase and cancellation of Common Shares	(966)	(2,715)
Common Shares issued under Employee Share Purchase Plan	75	80
Exercise of options to purchase Common Shares	101	69
	17,448	102,376
Net cash provided by financing activities		
Increase in cash and cash equivalents	16,895	31,140
Cash and cash equivalents, beginning of period	93,808	86,691
	\$ 110,703	\$ 117,831
	\$ 110,703	\$ 117,831
Supplemental disclosure of cash flow information		
Cash paid during the period for interest, including capitalized interest of \$1,592 and \$3,005, respectively	\$ 24,981	\$ 24,597
	\$ 1,184	\$ 496
Cash paid for income taxes		
Dividends paid through the issuance of Common Shares	\$ -	\$ 16,192
	\$ -	\$ 16,192
	\$ -	\$ 16,192
Acquisition of interest in unconsolidated affiliate:		
Real estate, net	\$ (108,000)	\$ -
Assumption of mortgage debt	25,990	-
Gain on bargain purchase	33,805	-
Other assets and liabilities	7,532	-
Investment in unconsolidated affiliates	37,824	-
Cash included in investment in real estate	\$ (2,849)	\$ -
	\$ (2,849)	\$ -
	\$ (2,849)	\$ -

See accompanying notes

ACADIA REALTY TRUST AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. ORGANIZATION AND BASIS OF PRESENTATION

Business and Organization

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.

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 September 30, 2010, the Trust controlled approximately 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 primarily represent entities or individuals that 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").

As of September 30, 2010, the Company has ownership interests in 34 properties within its core portfolio ("Core Portfolio") and 44 properties within its three opportunity funds, Acadia Strategic Opportunity Fund I, L.P. ("Fund I"), Acadia Strategic Opportunity Fund II, LLC ("Fund II") and Acadia Strategic Opportunity Fund III, LLC ("Fund III" and together with Fund I and Fund II, the "Opportunity Funds"). The 78 properties consist of commercial properties, primarily neighborhood and community shopping centers, self-storage and mixed-use properties with a retail component. In addition, the Company also invests in operating companies through Acadia Mervyn Investors I, LLC ("Mervyns I") and Acadia Mervyn Investors II, LLC ("Mervyns II") or Fund II, all on a non-recourse basis. These investments comprise and are referred to as the Company's Retailer Controlled Property initiative ("RCP Venture"). The Operating Partnership has the following equity interests in the Opportunity Funds, Mervyns I and Mervyns II:

<u>Entity</u>	<u>Equity Interest Held By Operating Partnership</u>
Fund I and Mervyns I	22.2%
Fund II and Mervyns II	20.0%
Fund III	19.9%

In addition, with respect to each of the Opportunity Funds, Mervyns I and Mervyns II, the Operating Partnership is entitled to a profit participation in excess of its equity interest percentage based on certain investment return thresholds ("Promote").

Basis of Presentation

The consolidated financial statements include the consolidated accounts of the Company and its investments in partnerships and limited liability companies in which the Company is presumed to have control in accordance with the consolidation guidance of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"). Investments in entities for which the Company has the ability to exercise significant influence but does not have financial or operating control, are accounted for under the equity method of accounting. Accordingly, the Company's share of the net earnings (or losses) of these entities are included in consolidated net income under the caption, Equity in Earnings (Losses) of Unconsolidated Affiliates. Investments in entities for which the Company does not have the ability to exercise any influence are accounted for under the cost method.

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") for interim financial information and with the rules and regulations of the U.S. Securities and Exchange Commission ("SEC"). Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from these estimates. The information furnished in the accompanying consolidated financial statements reflects all adjustments that, in the opinion of management, are necessary for a fair presentation of the aforementioned consolidated financial statements for the interim periods. These consolidated financial statements should be read in conjunction with the Company's 2009 Annual Report on Form 10-K, as filed with the SEC on March 1, 2010.

ACADIA REALTY TRUST AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. ORGANIZATION AND BASIS OF PRESENTATION (continued)

Recent Accounting Pronouncements

In 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.

In 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 an impact on the Company's financial position and results of operations.

In 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.

2. 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. The computation of basic and diluted earnings per Common Share from continuing operations for the periods indicated are as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2010	2009	2010	2009
(dollars in thousands, except per share amounts)				
Numerator:				
Income from continuing operations attributable to Common Shareholders	\$ 5,117	\$ 7,276	\$ 23,045	\$ 23,745
Effect of dilutive securities:				
Preferred OP Unit distributions	—	5	14	14
Numerator for diluted earnings per Common Share	\$ 5,117	\$ 7,281	\$ 23,059	\$ 23,759
Denominator:				
Weighted average shares for basic earnings per share	40,169	39,686	40,096	37,415
Effect of dilutive securities:				
Employee share options	262	257	214	189
Convertible Preferred OP Units	—	25	25	25
Dilutive potential Common Shares	262	282	239	214
Denominator for diluted earnings per share	40,431	39,968	40,335	37,629
Basic earnings per Common Share from continuing operations attributable to Common Shareholders	\$ 0.13	\$ 0.18	\$ 0.57	\$ 0.63
Diluted earnings per Common Share from continuing operations attributable to Common Shareholders	\$ 0.13	\$ 0.18	\$ 0.57	\$ 0.63

The weighted average shares used in the computation of diluted earnings per share include unvested restricted Common Shares ("Restricted Shares") and restricted OP units ("LTIP Units") (Note 13) 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 interests 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 current market price of the Common Shares, would be settled with cash.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

2. EARNINGS PER COMMON SHARE, continued

The effect of the assumed conversion of 188 Series A Preferred OP Units into 25,067 Series A Preferred OP Units to Common Shares would be anti-dilutive for the three months ended September 30, 2010 and they are not included in the table. The effect of the assumed conversion of 188 Series A Preferred OP Units into 25,067 Common Shares is dilutive for the three months ended September 30, 2009 and nine months ended September 30, 2010 and September 30, 2009 and, accordingly, they are included in the table.

3. NONCONTROLLING INTERESTS

Noncontrolling interests represent the portion of equity that the Company does not own in entities that it consolidates. Such noncontrolling interests are reported on the Consolidated Balance Sheets within equity, separately from the Company's equity.

Noncontrolling interests include third party interests in the Company's Opportunity Funds and other entities. It also include interests in the Operating Partnership which represent (i) the limited partners' 281,942 and 626,606 Common OP Units at September 30, 2010 and December 31, 2009, respectively, (ii) 188 Series A Preferred OP Units at September 30, 2010 and December 31, 2009, respectively, and (iii) 646,534 and 393,909 LTIP Units at September 30, 2010 and December 31, 2009, respectively.

4. ACQUISITIONS AND DISPOSITION OF PROPERTIES AND DISCONTINUED OPERATIONS**Acquisitions**

Prior to June 30, 2010, the Company, through Fund II, and an unaffiliated joint venture 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. A June 30, 2010 third-party appraisal valued CityPoint at \$108 million which resulted in Fund II recording a non-cash gain on bargain purchase of approximately \$33.8 million. 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 three and nine months ended September 30, 2010 and 2009.

Discontinued Operations

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

ACADIA REALTY TRUST AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

4. ACQUISITIONS AND DISPOSITION OF PROPERTIES AND DISCONTINUED OPERATIONS, continued

Discontinued Operations, continued

There were no properties sold during the nine months ended September 30, 2010. During 2009, the Company sold Blackman Plaza and six of the remaining Fund I investments in 24 Kroger and Safeway supermarket locations. The combined results of operations of the properties classified as discontinued operations are summarized as follows:

Statements Of Operations (dollars in thousands)	Three months ended September 30, 2009	Nine months ended September 30, 2009
Total revenues	\$ 120	\$ 494
Total expenses	88	269
Operating income	32	225
Gain on sale of property	—	5,637
Income from discontinued operations	32	5,862
Income from discontinued operations attributable to noncontrolling interests in subsidiaries	(1)	(4,866)
Income from discontinued operations attributable to Common Shareholders	\$ 31	\$ 996

5. 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

During January of 2004, 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. 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 September 30, 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").

ACADIA REALTY TRUST AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

5. INVESTMENTS IN AND ADVANCES TO UNCONSOLIDATED AFFILIATES, continued

RCP Venture, continued

The Acadia Investors have non-controlling 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%

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.

The following table summarizes activity related to the RCP Venture investments from inception through September 30, 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	65,969	4,239	13,193
Albertson's Add-On investments	2006/2007	2,412	1,215	387	243
Shopko	2006	1,108	1,475	222	295
Marsh and Add-on investments	2006/2008	2,667	2,639	533	528
Rex Stores	2007	2,701	840	535	168
		\$ 62,180	\$ 119,807	\$ 11,863	\$ 25,961

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 three months ended September 30, 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 4 and, as a result, now consolidates the CityPoint investment.

Fund III Investments

During June 2010, Fund III, together 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. 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.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

5. INVESTMENTS IN AND ADVANCES TO UNCONSOLIDATED AFFILIATES (continued)

Other Opportunity Fund Investments, continued

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)	September 30, 2010	December 31, 2009
Combined/Condensed Balance Sheets		
Assets:		
Rental property, net	\$ 133,461	\$ 142,690
Real estate under development	—	100,346
Investment in unconsolidated affiliates	193,421	209,407
Other assets	17,385	20,951
	<u>\$ 344,267</u>	<u>\$ 473,394</u>
Total assets		
Liabilities and partners' equity		
Mortgage note payable	\$ 227,805	\$ 258,685
Other liabilities	8,215	12,085
Partners' equity	108,247	202,624
	<u>\$ 344,267</u>	<u>\$ 473,394</u>
Total liabilities and partners' equity		
Company's investment in and advances to unconsolidated affiliates	\$ 16,095	\$ 51,712
Share of distributions in excess of share of income and investments in unconsolidated affiliates	\$ 20,802	\$ 20,589

(dollars in thousands)	Three Months Ended		Nine Months Ended	
	September 30, 2010	September 30, 2009	September 30, 2010	September 30, 2009
Combined/Condensed Statements of Operations				
Total revenues	\$ 7,317	\$ 7,130	\$ 21,787	\$ 22,075
Operating and other expenses	2,550	2,019	7,158	6,883
Interest expense	3,392	3,480	10,107	10,332
Equity in (losses) earnings of unconsolidated affiliates	(681)	(2,263)	2,083	(36,527)
Depreciation and amortization	1,057	1,732	3,745	3,964
Loss on sale of property, net	—	—	(2,957)	(390)
Net loss	<u>\$ (363)</u>	<u>\$ (2,364)</u>	<u>\$ (97)</u>	<u>\$ (36,021)</u>
Company's share of net income (loss)	\$ 241	\$ (96)	\$ 904	\$ (3,160)
Impairment Reserve	—	(3,655)	—	(3,655)
Amortization of excess investment	(98)	(97)	(294)	(291)
Company's share of net income (loss)	<u>\$ 143</u>	<u>\$ (3,848)</u>	<u>\$ 610</u>	<u>\$ (7,106)</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

6. NOTES RECEIVABLE

At September 30, 2010, the Company's notes receivable, net, consisted of the following:

Description	Effective interest rate	Maturity date	First Priority liens	Net carrying amount of notes receivable	Extension options
(dollars in thousands)					
72nd Street Georgetown	20.9%	7/2011	\$ 185,000	\$ 45,196	1 x 1 year
Mezzanine Loan	10.2%	11/2010	9,596	8,000	2 x 1 year
Zero coupon Loan	14.5%	12/2010	—	8,585	1 x 6 months
Mezzanine Loan	24.0%	1/2016	166,200	3,153	—
First Mortgage Loan	13.0%	9/2011	—	2,980	—
Individually less than 3%	10.8%	9/2011	—	10,000	—
	10% to 17.5%	Demand note to 1/2017	106,089	9,686	—
Total				\$ 87,600	

During September 2010, one of the Company's Georgetown, Washington D.C. mezzanine investments, which was secured by a portfolio of 18 properties, was fully liquidated. The Company received \$40.0 million of principal along with \$9.4 million of accrued interest.

7. DERIVATIVE FINANCIAL INSTRUMENTS

As of September 30, 2010, the Company's derivative financial instruments consisted of seven interest rate swaps with an aggregate notional value of \$77.3 million, which fix interest at rates ranging from 0.5% to 5.1% and mature between October 2010 and November 2012. The Company also has one derivative financial instrument with a notional value of \$28.9 million which caps LIBOR at 6% and matures in April 2013. The fair value of the net derivative liability of these instruments, which is included in other liabilities in the Consolidated Balance Sheets, totals \$3.4 million and \$3.3 million at September 30, 2010 and December 31, 2009, respectively. 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 September 30, 2010 and 2009, unrealized losses totaling \$3.4 million, respectively, were reflected in accumulated other comprehensive loss.

As of September 30, 2010 and 2009, no derivatives were designated as fair value hedges, hedges of net investments in foreign operations or considered to be ineffective. Additionally, the Company does not use derivatives for trading or speculative purposes.

8. MORTGAGE LOANS

The Company completed the following transactions related to mortgage loans and credit facilities during the nine months ended September 30, 2010:

- i) During January 2010, the Company closed on a \$48.0 million construction loan that bears interest at the greater of (a) LIBOR plus 400 basis points or (b) an interest rate floor of 6.50% which matures on January 12, 2012. As of September 30, 2010, \$19.9 million was drawn on this facility.
- ii) Extended the Fund II subscription line of credit, which is collateralized by a pledge of investors' unfunded capital commitments, which matured on 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. The line of credit's maximum capacity was reduced to \$40.0 million.
- 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) Also during February of 2010, the Company made a \$15.0 million payment on an outstanding \$30.0 million credit facility collateralized by six properties.
- v) During May of 2010, the Company made a \$17.0 million draw on the Fund III subscription line of credit. As of September 30, 2010, the total outstanding amount on this line of credit was \$156.5 million.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

8. MORTGAGE LOANS, continued

vi) Also 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 161st 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 during 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. The servicer of this loan had previously alleged that non-monetary defaults had occurred. The amendment provides for premium-free pre-payment of the loan to the extent that the lender is not in the process of selling the loan. The servicer on behalf of the lender has agreed to dismiss all allegations of default. The loan continues to bear interest at 7.38% and has a maturity date of January 1, 2020.

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 one twelve month extension option and bears interest at LIBOR plus 325 basis points.

xii) During June 2009, the servicer of one of the Company's loans alleged that a non-monetary default had occurred on a construction loan for \$11.5 million collateralized by Atlantic Avenue. The servicer contends 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. Subsequent to September 30, 2010, the Company and the servicer on behalf of the lender have reached an agreement to amend the loan. As part of the agreement, the servicer on behalf of the lender has agreed to waive all alleged events of default. The loan continues to bear interest at 7.34% and has a maturity date of January 1, 2020.

9. CONVERTIBLE NOTES PAYABLE

In December 2006 and January 2007, the Company issued \$115.0 million 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 15th and December 15th of each year. The Convertible Notes are unsecured 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". Holders of the Convertible Notes may require the Company to repurchase the Convertible Notes at par on December 20, 2011, December 15, 2016 and December 15, 2021. The Company deems that the Convertible Notes will mature on December 20, 2011.

The carrying amount of the equity component included in additional paid-in capital totaled \$1.3 million at September 30, 2010 and \$2.1 million at December 31, 2009. The additional non-cash interest expense recognized in the Consolidated Statements of Income was \$0.3 million and \$0.2 million for the three months ended September 30, 2010 and 2009, respectively and \$0.8 million and \$1.0 million for the nine months ended September 30, 2010 and 2009, respectively. The Convertible Notes if-converted value does not exceed its principal amount as of September 30, 2010 and there are no derivative transactions that were entered into in connection with the issuance of the Convertible Notes.

Through September 30, 2010, the Company has purchased \$65.0 million in face amount of its Convertible Notes at an average discount of approximately 19%. The outstanding Convertible Notes face amount as of September 30, 2010 was \$50.0 million.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

10. FAIR VALUE MEASUREMENTS

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 September 30, 2010:

(dollars in thousands)	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<u>Liabilities</u>			
Derivative financial instruments (Note 7)	\$ —	\$ 3,427	\$ —

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.

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)	<u>September 30, 2010</u>		<u>December 31, 2009</u>	
	<u>Carrying Amount</u>	<u>Estimated Fair Value</u>	<u>Carrying Amount</u>	<u>Estimated Fair Value</u>
Notes Receivable and Preferred Equity Investments	\$ 87,600	\$ 87,592	\$ 125,221	\$ 126,403
Mortgage Notes Payable and Convertible Notes Payable	\$ 832,151	\$ 844,718	\$ 780,197	\$ 751,043

11. RELATED PARTY TRANSACTIONS

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

The Company earns 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 has an interest. Fees earned by the Company in connection with this portfolio were \$0.1 million and \$0.04 million for the three months ended September 30, 2010 and 2009, respectively, and \$0.2 million and \$0.3 million for the nine months ended September 30, 2010 and 2009, respectively.

The Company earned property management fees, legal and leasing fees from the Brandywine portfolio totaling \$0.2 million and \$0.1 million for the three months ended September 30, 2010 and September 30, 2009, respectively, and \$0.6 million and \$0.5 million for the nine months ended September 30, 2010 and 2009, respectively.

Lee Wielansky, the Lead Trustee of the Company, was paid a consulting fee of \$25,000 for each of the three months ended September 30, 2010 and 2009, and \$75,000 for each of the nine months ended September 30, 2010 and 2009.

12. 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 tables set forth certain segment information for the Company, reclassified for discontinued operations, as of and for the three and nine months ended September 30, 2010 and 2009 (does not include unconsolidated affiliates):

ACADIA REALTY TRUST AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

12. SEGMENT REPORTING (continued)

Three Months Ended September 30, 2010

(dollars in thousands)	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable	Other	Amounts Eliminated in Consolidation	Total
Revenues	\$ 15,243	\$ 11,782	\$ 6,703	\$ 5,206	\$ 5,441	\$ (5,114)	\$ 39,261
Property operating expenses and real estate taxes	4,617	3,841	3,942	—	—	(374)	12,026
Other expenses	5,910	3,266	19	—	—	(3,878)	5,317
Income before depreciation and amortization	\$ 4,716	\$ 4,675	\$ 2,742	\$ 5,206	\$ 5,441	\$ (862)	\$ 21,918
Depreciation and amortization	\$ 4,342	\$ 4,547	\$ 1,591	\$ —	\$ —	\$ (139)	\$ 10,341
Interest and other finance expense	\$ 4,307	\$ 3,381	\$ 1,141	\$ —	\$ —	\$ —	\$ 8,829
Real estate at cost	\$ 480,137	\$ 695,870	\$ 209,956	\$ —	\$ —	\$ (12,869)	\$ 1,373,094
Total assets	\$ 593,151	\$ 736,523	\$ 195,044	\$ 87,600	\$ —	\$ (121,570)	\$ 1,490,748
Investment in real estate	\$ 1,194	\$ 23,090	\$ 187	\$ —	\$ —	\$ (853)	\$ 23,618
Reconciliation to net income and net income attributable to Common Shareholders							
Net property income before depreciation and amortization							\$ 21,918
Other interest income							175
Depreciation and amortization							(10,341)
Equity in earnings of unconsolidated affiliates							143
Interest and other finance expense							(8,829)
Income tax provision							(785)
Net income							2,281
Net loss attributable to noncontrolling interests							2,836
Net income attributable to Common Shareholders							\$ 5,117

Three Months Ended September 30, 2009

(dollars in thousands)	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable	Other	Amounts Eliminated in Consolidation	Total
Revenues	\$ 19,449	\$ 11,697	\$ 2,581	\$ 4,908	\$ 5,218	\$ (4,958)	\$ 38,895
Property operating expenses and real estate taxes	4,640	4,047	2,585	—	—	(301)	10,971
Other expenses	5,875	2,551	—	—	—	(3,147)	5,279
Income (loss) before depreciation and amortization	\$ 8,934	\$ 5,099	\$ (4)	\$ 4,908	\$ 5,218	\$ (1,510)	\$ 22,645
Depreciation and amortization	\$ 4,975	\$ 4,509	\$ 1,110	\$ —	\$ —	\$ (217)	\$ 10,377
Interest and other finance expense	\$ 4,505	\$ 2,022	\$ 1,802	\$ —	\$ —	\$ —	\$ 8,329
Real estate at cost	\$ 473,667	\$ 521,380	\$ 208,219	\$ —	\$ —	\$ (10,760)	\$ 1,192,506
Total assets	\$ 566,669	\$ 612,775	\$ 199,194	\$ 120,001	\$ —	\$ (101,272)	\$ 1,397,367
Investment in real estate	\$ 1,101	\$ 5,393	\$ 1,566	\$ —	\$ —	\$ (2,951)	\$ 5,109
Reconciliation to net income and net income attributable to Common Shareholders							
Net property income before depreciation and amortization							\$ 22,645
Other interest income							161
Depreciation and amortization							(10,377)
Equity in (losses) of unconsolidated affiliates							(193)
Impairment of investment in unconsolidated affiliate							(3,655)
Interest and other finance expense							(8,329)
Gain on debt extinguishment							11
Income tax provision							273
Income from discontinued operations							32
Net income							568
Net loss attributable to noncontrolling interests							6,739
Net income attributable to Common Shareholders							\$ 7,307

ACADIA REALTY TRUST AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

12. SEGMENT REPORTING (continued)

Nine Months Ended September 30, 2010

(dollars in thousands)	<u>Core Portfolio</u>	<u>Opportunity Funds</u>	<u>Self-Storage Portfolio</u>	<u>Notes Receivable</u>	<u>Other</u>	<u>Amounts Eliminated in Consolidation</u>	<u>Total</u>
Revenues	\$ 46,038	\$ 35,266	\$ 16,016	\$ 15,437	\$ 15,431	\$ (14,268)	\$ 113,920
Property operating expenses and real estate taxes	13,890	12,412	10,101	—	—	(1,088)	35,315
Other expenses	16,972	10,159	53	—	—	(11,329)	15,855
Income before depreciation and amortization	\$ 15,176	\$ 12,695	\$ 5,862	\$ 15,437	\$ 15,431	\$ (1,851)	\$ 62,750
Depreciation and amortization	\$ 12,217	\$ 12,808	\$ 3,904	\$ —	\$ —	\$ (383)	\$ 28,546
Interest and other finance expense	\$ 12,900	\$ 9,770	\$ 3,257	\$ —	\$ —	\$ —	\$ 25,927
Real estate at cost	\$ 480,137	\$ 695,870	\$ 209,956	\$ —	\$ —	\$ (12,869)	\$ 1,373,094
Total assets	\$ 593,151	\$ 736,523	\$ 195,044	\$ 87,600	\$ —	\$ (121,570)	\$ 1,490,748
Investment in real estate	\$ 2,756	\$ 58,318	\$ 1,300	\$ —	\$ —	\$ (1,822)	\$ 60,552
Reconciliation to net income and net income attributable to Common Shareholders							
Net property income before depreciation and amortization							\$ 62,750
Other interest income							462
Depreciation and amortization							(28,546)
Equity in earnings of unconsolidated affiliates							610
Interest and other finance expense							(25,927)
Income tax provision							(1,869)
Gain on bargain purchase							33,805
Net income							41,285
Net (income) attributable to noncontrolling interests							(18,240)
Net income attributable to Common Shareholders							\$ 23,045

Nine Months Ended September 30, 2009

(dollars in thousands)	<u>Core Portfolio</u>	<u>Opportunity Funds</u>	<u>Self-Storage Portfolio</u>	<u>Notes Receivable</u>	<u>Other</u>	<u>Amounts Eliminated in Consolidation</u>	<u>Total</u>
Revenues	\$ 53,863	\$ 31,986	\$ 6,696	\$ 14,867	\$ 18,651	\$ (17,137)	\$ 108,926
Property operating expenses and real estate taxes	15,526	11,191	7,342	—	—	(789)	33,270
Other expenses	18,327	12,609	—	1,734	—	(11,877)	20,793
Income (loss) before depreciation and amortization	\$ 20,010	\$ 8,186	\$ (646)	\$ 13,133	\$ 18,651	\$ (4,471)	\$ 54,863
Depreciation and amortization	\$ 13,191	\$ 12,202	\$ 3,257	\$ —	\$ —	\$ (1,238)	\$ 27,412
Interest and other finance expense	\$ 14,387	\$ 5,304	\$ 4,091	\$ —	\$ —	\$ —	\$ 23,782
Real estate at cost	\$ 473,667	\$ 521,380	\$ 208,219	\$ —	\$ —	\$ (10,760)	\$ 1,192,506
Total assets	\$ 566,669	\$ 612,775	\$ 199,194	\$ 120,001	\$ —	\$ (101,272)	\$ 1,397,367
Investment in real estate	\$ 2,303	\$ 103,435	\$ 10,457	\$ —	\$ —	\$ (3,282)	\$ 112,913
Reconciliation to net income and net income attributable to Common Shareholders							
Net property income before depreciation and amortization							\$ 54,863
Other interest income							373
Depreciation and amortization							(27,412)
Equity in (losses) of unconsolidated affiliates							(3,451)
Impairment of investment in unconsolidated affiliate							(3,655)
Interest and other finance expense							(23,782)
Gain on debt extinguishment							7,057
Income tax provision							(1,349)
Gain on sale of property							5,637
Income from discontinued operations							225
Net income							8,506
Net loss attributable to noncontrolling interests							16,235
Net income attributable to Common Shareholders							\$ 24,741

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

13. LONG-TERM INCENTIVE COMPENSATION**LONG-TERM INCENTIVE COMPENSATION**

The Company maintains two share incentive plans, the 2003 Share Incentive Plan and the 2006 Share Incentive Plan (collectively the "Share Incentive Plans").

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.

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. Compensation expense of \$0.2 million and \$0.7 million has been recognized in the accompanying financial statements related to these awards for the three month and nine months ended September 30, 2010, respectively.

Total long-term incentive compensation expense, including the expense related to the above-mentioned plans, was \$0.9 million and \$0.8 million for the three months ended September 30, 2010 and 2009, respectively and \$2.9 million for each nine month period ended September 30, 2010 and 2009.

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 has been recognized for the nine months ended September 30, 2010 related to these unrestricted Comm on Shares and Restricted Shares.

In 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 September 30, 2010, the Company has awarded units representing 61% of the Program, which were determined to have no value at issuance or as of September 30, 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.

14. SUBSEQUENT EVENTS

During October 2010, the Company paid down \$14.0 million on an outstanding line of credit secured by six Core Portfolio properties. The outstanding balance after the payment is \$1.0 million.

During October 2010, the Company closed on a \$50.0 million loan collateralized by the Cortlandt Town Center. The loan bears interest at LIBOR plus 190 basis points and matures on October 26, 2015. There is an additional \$25.0 million available on this loan which bears interest at LIBOR plus 230 basis points. The proceeds were used to repay the existing \$46.6 million mortgage note payable.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion is based on the consolidated financial statements of the Company as of September 30, 2010 and 2009 and for the three and nine months then ended. This information should be read in conjunction with the accompanying consolidated financial statements and notes thereto.

FORWARD-LOOKING STATEMENTS

Certain statements contained in this report constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results performance or achievements expressed or implied by such forward-looking statements. Such factors are set forth under the heading "Item 1A. Risk Factors" in our Form 10-K for the year ended December 31, 2009 (our "2009 Form 10-K") and include, among others, the following: general economic and business conditions, including the current post-recessionary period, which will, among other things, affect demand for rental space, the availability and creditworthiness of prospective tenants, lease rents and the availability of financing; adverse changes in our real estate markets, including, among other things, competition with other companies; risks of real estate development, acquisition and investment; risks related to our use of leverage; demands placed on our resources due to the growth of our business; risks related to operating through a partnership structure; our limited control over joint venture investments; the risk of loss of key members of management; uninsured losses; REIT distribution requirements and ownership limitations; concentration of ownership by certain institutional investors; governmental actions and initiatives; and environmental/safety requirements. Except as required by law, we do not undertake any obligation to update or revise any forward-looking statements contained in this Form 10-Q.

OVERVIEW

As of September 30, 2010, we operated 78 properties, which we own or have an ownership interest in, within our Core Portfolio or within our three Opportunity Funds. These 78 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. Our Core Portfolio consists of those properties either 100% owned, or partially owned through joint venture interests, by the Operating Partnership, or subsidiaries thereof, not including those properties owned through our Opportunity Funds. 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, seven of which (representing 1.2 million square feet) are currently operating, one is under construction, and two are 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 14 properties totaling approximately 1.8 million square feet, of which 11 locations representing 0.9 million net rentable square feet are self-storage facilities. The majority of our operating income is derived from rental revenues from these 78 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 generally traditional investments in operating rental real estate but investments in operating businesses, the Operating Partnership principally 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 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

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 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. Management bases its 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 the 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 there have been no material changes to the items that we disclosed as our critical accounting policies under Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," in our 2009 Form 10-K.

RESULTS OF OPERATIONS
Comparison of the three months ended September 30, 2010 ("2010") to the three months ended September 30, 2009 ("2009")

Revenues	2010				2009			
	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Rental income	\$ 12.2	\$ 9.7	\$ 6.2	\$ —	\$ 13.8	\$ 9.9	\$ 2.2	\$ —
Mortgage interest income	—	—	—	5.2	—	—	—	4.9
Expense reimbursements	3.0	1.9	—	—	3.1	1.8	—	—
Lease termination income	—	—	—	—	2.5	—	—	—
Management fee income (1)	—	—	—	0.4	—	—	—	0.3
Other	0.1	—	0.6	—	—	—	0.3	—
Total revenues	\$ 15.3	\$ 11.6	\$ 6.8	\$ 5.6	\$ 19.4	\$ 11.7	\$ 2.5	\$ 5.2

(1) Includes fees earned by us as general partner/managing member of the Opportunity Funds that are eliminated in consolidation and adjusts the loss (income) attributable to noncontrolling interests. The balance reflected in the table represents third party fees that are not eliminated in consolidation. Reference is made to Note 12 to the Notes to Consolidated Financial Statements in Part 1, Item 1 of this Form 10-Q for an overview of our five reportable segments.

The decrease in rental income in the Core Portfolio is primarily attributable to the write-off of a lease intangible liability in connection with a lease terminated during 2009 at 3rd Avenue. The increase in rental income in the Storage Portfolio relates to the full amortization of acquired lease intangible costs during 2009, increased occupancy in the Storage Portfolio as well as the Company's 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, the Company reports this activity on a current basis. Accordingly, the three months ended September 30, 2010 reflect four months of storage activity while the three months ended September 30, 2009 reflects three months of storage activity ("Storage Portfolio Activity").

Lease termination income of \$2.5 million in the Core Portfolio for 2009 related to termination fee income received from a former tenant at Absecon Marketplace.

Operating Expenses	2010				2009			
	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Property operating	\$ 2.3	\$ 2.3	\$ 3.0	\$ (0.4)	\$ 2.1	\$ 2.5	\$ 2.1	\$ (0.3)
Real estate taxes	2.4	1.5	0.9	—	2.5	1.5	0.6	—
General and administrative	5.9	3.3	—	(3.9)	5.9	2.5	—	(3.2)
Depreciation and amortization	4.3	4.4	1.6	—	5.0	4.3	1.1	—
Other expense	—	—	—	—	—	0.1	—	—
Total operating expenses	\$ 14.9	\$ 11.5	\$ 5.5	\$ (4.3)	\$ 15.5	\$ 10.9	\$ 3.8	\$ (3.5)

The increase in operating expenses in the Storage Portfolio primarily related to the Storage Portfolio Activity.

The increase in general and administrative expense in the Opportunity Funds related to a 2010 increase in Promote expense for Fund I and Mervyns I. The decrease in general and administrative expense in Other related to the elimination of this Promote expense for consolidated financial statement presentation purposes.

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.

Other

(dollars in millions)	2010				2009			
	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other
Other interest income	\$ —	\$ —	\$ —	\$ 0.2	\$ —	\$ —	\$ —	\$ 0.2
Equity in earnings (losses) of unconsolidated affiliates	0.2	0.4	(0.4)	—	—	(0.2)	—	—
Impairment of investment in unconsolidated affiliate	—	—	—	—	—	(3.7)	—	—
Interest and other finance expense	(4.3)	(3.4)	(1.1)	—	(4.5)	(2.0)	(1.8)	—
Income tax provision	(0.9)	—	0.2	—	0.3	—	—	—
(Income) loss attributable to noncontrolling interests in subsidiaries - Continuing operations	(0.1)	2.3	—	0.6	(0.1)	6.2	0.2	0.4

The \$3.7 million impairment of investment in unconsolidated affiliate in 2009 related to a Fund I unconsolidated investment.

Interest expense in the Opportunity Funds increased \$1.4 million in 2010. This was the result of an increase of \$0.7 million due to higher average interest rates in 2010, \$0.3 million increase attributable to higher outstanding borrowings in 2010 and \$0.4 million of lower capitalized interest in 2010. Interest expense in the Storage Portfolio decreased \$0.7 million in 2010 as a result of lower average interest rates in 2010.

The variance in the income tax provision in the Core Portfolio primarily related to income taxes at the TRS level.

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

Comparison of the nine months ended September 30, 2010 ("2010") to the nine months ended September 30, 2009 ("2009")

Revenues	2010				2009			
	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Rental income	\$ 36.3	\$ 28.7	\$ 14.7	\$ —	\$ 39.0	\$ 26.5	\$ 5.8	\$ —
Mortgage interest income	—	—	—	15.4	—	—	—	14.9
Expense reimbursements	9.5	6.3	—	—	10.3	5.0	—	—
Lease termination income	0.1	—	—	—	2.7	—	—	—
Management fee income (1)	—	—	—	1.2	—	—	—	1.5
Other	0.2	0.2	1.3	—	1.8	0.5	0.9	—
Total revenues	\$ 46.1	\$ 35.2	\$ 16.0	\$ 16.6	\$ 53.8	\$ 32.0	\$ 6.7	\$ 16.4

(1) Includes fees earned by us as general partner/managing member of the Opportunity Funds that are eliminated in consolidation and adjusts the loss (income) attributable to noncontrolling interests. The balance reflected in the table represents third party fees that are not eliminated in consolidation. Reference is made to Note 12 to the Notes to Consolidated Financial Statements in Part 1, Item 1 of this Form 10-Q for an overview of our five reportable segments.

The decrease in rental income in the Core Portfolio was primarily attributable to tenant vacancies and the write-off of a lease intangible liability in connection with a lease terminated during 2009 at 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 \$0.9 million and additional rents at Fordham Place and Pelham Manor for leases that commenced in 2009 ("Fordham and Pelham"). The increase in rental income in the Storage Portfolio relates to the full amortization of acquired lease intangible costs during 2009, increased occupancy in the Storage Portfolio as well as the Storage Portfolio Activity.

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

Lease termination income in the Core Portfolio for 2009 related to a 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 in 2009.

Operating Expenses	2010				2009			
	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Property operating	\$ 7.1	\$ 7.7	\$ 8.0	\$ (1.1)	\$ 8.5	\$ 7.4	\$ 5.9	\$ (0.8)
Real estate taxes	6.8	4.6	2.2	—	7.0	3.8	1.5	—
General and administrative	17.0	10.2	—	(11.3)	18.3	10.1	—	(11.9)
Depreciation and amortization	12.2	12.4	3.9	—	13.2	11.0	3.2	—
Other expense	—	—	—	—	—	2.5	—	1.7
Total operating expenses	\$ 43.1	\$ 34.9	\$ 14.1	\$ (12.4)	\$ 47.0	\$ 34.8	\$ 10.6	\$ (11.0)

The decrease in property operating expenses in the Core Portfolio was primarily attributable to a decrease in tenant receivable reserves in 2010. The increase in property operating expenses in the Storage Portfolio primarily related to higher operating costs in 2010 following increased occupancy, additional tenant receivable reserves in 2010 and 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 Fordham and Pelham. The increase in real estate taxes in the Storage Portfolio was attributable to the Storage Portfolio Activity.

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. Depreciation expense and amortization expense increased \$1.4 million in the Opportunity Funds due to the 2009 Fund Acquisition. Depreciation and amortization expense in the Storage Portfolio increased \$0.7 million as a result of two self storage properties placed in service during the second quarter 2009.

The \$2.5 million in Other expense related to the abandonment of project costs in 2009 based on our determination that we most likely would not participate in a specific future development project. In addition, Other expense included a reserve for notes receivable of \$1.7 million in 2009 due to the loss of an anchor tenant at the underlying collateral property.

Other	2010				2009			
	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Other interest income	\$ —	\$ —	\$ —	\$ 0.5	\$ —	\$ —	\$ —	\$ 0.4
Equity in earnings (losses) of unconsolidated affiliates	0.5	0.6	(0.5)	—	0.4	(3.8)	—	—
Impairment of investment in unconsolidated affiliates	—	—	—	—	—	(3.7)	—	—
Interest and other finance expense	(12.9)	(9.8)	(3.3)	—	(14.4)	(5.3)	(4.1)	—
Gain on bargain purchase	—	33.8	—	—	—	—	—	—
Gain on debt extinguishment	—	—	—	—	7.1	—	—	—
Income tax provision	(2.0)	(0.1)	0.2	—	(1.3)	(0.1)	—	—
Income from discontinued operations	—	—	—	—	—	—	—	5.8
(Income) loss attributable to noncontrolling interests in subsidiaries - Continuing operations	(0.3)	(19.2)	0.1	1.2	(0.4)	19.1	0.4	2.0
(Income) loss attributable to noncontrolling interests in subsidiaries - Discontinued operations	—	—	—	—	—	—	—	(4.9)

Equity in earnings (losses) of unconsolidated affiliates in the Opportunity Funds increased primarily as a result of our pro-rata share of losses from Mervyns in 2009.

The \$3.7 million impairment of investment in unconsolidated affiliate in 2009 related to a Fund I unconsolidated investment.

Total interest expense in the Core Portfolio decreased \$1.5 million in 2010. This was the result of a \$2.0 million decrease attributable to lower average outstanding borrowings in 2010 offset by a \$0.5 million increase attributable to higher average interest rates in 2010. Interest expense in the Opportunity Funds increased \$4.5 million in 2010. This was the result of an increase of \$2.3 million due to higher average interest rates in 2010, \$1.3 million of lower capitalized interest in 2010 and an increase of \$0.9 million due to higher average outstanding borrowings in 2010. Interest expense in the Storage Portfolio decreased \$0.8 million in 2010. This was primarily attributable to a \$1.3 million decrease due to lower average interest rates in 2010 offset by an increase of \$0.2 million due to higher average outstanding borrowings in 2010 and \$0.3 million of lower capitalized interest in 2010.

The \$33.8 million gain on bargain purchase was attributable to Fund II's purchase of CUIP's membership interest in CityPoint in 2010. Reference is made to Note 4 to the Notes to Consolidated Financial Statements in Part 1, Item 1 of this Form 10-Q for an overview of the CityPoint acquisition.

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

Income from discontinued operations represents activity related to 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.

FUNDS FROM OPERATIONS

Consistent with the National Association of Real Estate Investment Trusts ("NAREIT") definition, we define funds from operations ("FFO") as net income attributable to common shareholders (computed in accordance with GAAP), excluding gains (or losses) from sales of depreciated property, plus depreciation and amortization, and after adjustments for unconsolidated partnerships and joint ventures.

We consider FFO 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 (or losses) from sales of operating 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 GAAP and is not indicative of cash available to fund all cash needs, including distributions. FFO 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.

The reconciliation of net income to FFO for the three and nine months ended September 30, 2010 and 2009 is as follows:

(dollars in millions, except per share amounts)	Three months ended September 30,		Nine months ended September 30,	
	2010	2009	2010	2009
Funds From Operations				
Net income attributable to Common Shareholders	\$ 5.1	\$ 7.3	\$ 23.0	\$ 24.7
Depreciation of real estate and amortization of leasing costs (net of noncontrolling interests' share)				
Consolidated affiliates	5.0	5.5	13.8	14.3
Unconsolidated affiliates	0.3	0.5	1.2	1.2
Gain on sale (net of noncontrolling interests' share)				
Consolidated affiliates	—	—	—	(0.9)
Unconsolidated affiliates	—	—	—	—
Income attributable to noncontrolling interests' in Operating Partnership	0.1	0.1	0.3	0.3
Funds from operations	<u>\$ 10.5</u>	<u>\$ 13.4</u>	<u>\$ 38.3</u>	<u>\$ 39.6</u>
Funds From Operations per Share - Diluted				
Weighted average number of Common Shares and OP Units	<u>40.9</u>	<u>40.6</u>	<u>40.8</u>	<u>38.3</u>
Diluted funds from operations, per share	<u>\$ 0.26</u>	<u>\$ 0.33</u>	<u>\$ 0.94</u>	<u>\$ 1.03</u>

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 three and nine months ended September 30, 2010, we paid dividends and distributions on our Common Shares and Common OP Units totaling \$7.4 million and \$22.2 million, respectively.

Investments

Fund I and Mervyns I

During 2001, we formed a partnership, Fund I, and in 2004 formed a limited liability company, Mervyns I, with four institutional investors with \$90.0 million, in the aggregate, of committed discretionary capital. 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 September 30, 2010, \$86.6 million has been invested in Fund I and Mervyns I, of which the Operating Partnership contributed \$19.2 million.

As of September 30, 2010, Fund I currently owned, or had ownership interests in, 20 assets comprising approximately 0.9 million square feet as follows:

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

Reference is made to Note 5 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for a discussion of RCP investments made by Mervyns I to date.

Fund II and Mervyns II

During 2004, we, along with the investors from Fund I as well as two additional institutional investors, formed Fund II, and Mervyns II with \$300.0 million, in the aggregate, of committed discretionary capital. 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 September 30, 2010, \$249.6 million has been invested in Fund II, of which the Operating Partnership contributed \$49.9 million.

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 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	\$ 15.4	\$ —	Completed	125,000
216 th Street	Manhattan	2005	27.7	—	Completed	60,000
Fordham Place	Bronx	2004	123.6	9.8	Completed	276,000
Pelham Manor Shopping Center (1)	Westchester	2004	59.1	4.9	Completed	320,000
161 st Street (2),(3)	Bronx	2005	61.1	4.5	—	230,000
Atlantic Avenue (4)	Brooklyn	2007	21.8	0.3	Completed	110,000
Canarsie Plaza	Brooklyn	2007	67.6	20.0	1 st half 2011	275,000
CityPoint (1),(2)	Brooklyn	2007	78.4	121.6	—	550,000
Sherman Plaza (2)	Manhattan	2005	33.1	—	—	—
Total			\$ 487.8	\$ 161.1		1,946,000

Notes:

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

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 4 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for a further discussion of this transaction.

Retailer Controlled Property Venture

Reference is made to Note 5 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for a discussion of RCP investments made by Fund II and Mervyns II to date.

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 September 30, 2010, \$96.5 million has been invested in Fund III, of which the Operating Partnership contributed \$19.2 million.

New York Urban Infill Redevelopment Initiative

Fund III has invested in one New York Urban/Infill Redevelopment and one Urban/Infill Redevelopment in Westport, Connecticut as follows:

Property	Location	Year acquired	Costs to date	Redevelopment (dollars in millions)		
				Anticipated additional costs	Estimated construction completion	Square feet upon completion
Sheepshead Bay (1)	Brooklyn, NY	2007	\$ 22.8	\$ —	—	-
125 Main Street	Westport, CT	2007	18.7	6.7	2 nd half 2011	26,000
Total			\$ 41.5	\$ 6.7		26,000

Notes:

- (1) 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.

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.

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 September 30, 2010, management may cause the Company to 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 investments in the RCP Venture and New York Urban/Infill Redevelopment Initiative. Additional sources of capital for funding property acquisitions, redevelopment, expansion, 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 property 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 \$26.3 million to fund redevelopment projects and pay down the line of credit of Fund II.

As of September 30, 2010, we had approximately \$104.9 million of additional capacity under existing debt facilities and cash and cash equivalents on hand of \$110.7 million.

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, the Sterling Heights Shopping Center was sold for \$2.3 million. During November 2009, we sold Blackman Plaza for \$2.5 million. During February 2009, The Kroger Co. purchased the fee at six locations in 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.

Notes Receivable and Preferred Equity Investment

Reference is made to Note 6 to the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q 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, one of our Georgetown, Washington D.C. mezzanine investments, which was secured by a portfolio of 18 properties, was fully liquidated. We received \$40.0 million of principal along with \$9.4 million of accrued interest.

Financing and Debt

At September 30, 2010, mortgage and convertible notes payable aggregated \$832.2 million, net of unamortized premium of \$0.1 million and unamortized discount of \$1.3 million, and were collateralized by 29 properties and related tenant leases. Interest rates on our outstanding mortgage indebtedness and convertible notes payable ranged from 0.74% to 7.38% with maturities that ranged from October 2010 to November 2032. Taking into consideration \$77.3 million of notional principal under variable to fixed-rate swap agreements currently in effect, \$452.8 million of the portfolio, or 54.4%, was fixed at a 5.66% weighted average interest rate and \$379.4 million, or 45.6% was floating at a 3.44% weighted average interest rate. There is \$25.5 million of debt maturing in 2010 at weighted average interest rates of 1.66%. Of this amount, \$0.7 million represents scheduled annual amortization. The loans relating to \$24.8 million of the 2010 maturities provide for extension options, which we believe we will be able to exercise. If we are unable to extend these loans, we believe we will be able to repay this debt with existing liquidity. As it relates to maturities after 2010, we may not have sufficient cash on hand to repay such indebtedness, we may have to refinance this indebtedness or select other alternatives based on market conditions at that time.

Reference is made to Note 8 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for an overview of transactions related to mortgage loans, bond financing and credit facilities during the nine months ended September 30, 2010.

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

(dollars in millions) Borrower		Total amount of credit facility	Amount borrowed as of December 31, 2009	Net borrowings (repayments) during the nine months ended September 30, 2010	Amount borrowed as of September 30, 2010	Letters of credit outstanding as of September 30, 2010	Amount available under credit facilities as of September 30, 2010
Acadia Realty, LP (1)	\$	64.5	\$ 30.0	\$ (15.0)	\$ 15.0	\$ 8.6	\$ 40.9
Acadia Realty, LP		—	2.0	(2.0)	—	—	—
Fund II (2)		40.0	48.2	(8.2)	40.0	—	—
Fund III		221.0	139.5	17.0	156.5	0.5	64.0
Total	\$	325.5	\$ 219.7	\$ (8.2)	\$ 211.5	\$ 9.1	\$ 104.9

Notes:

(1) During October 2010, we paid down \$14.0 million on an outstanding line of credit secured by six Core Portfolio properties. The outstanding balance after the payment is \$1.0 million.

(2) During March of 2010, this facility's maturity date was extended from March 1, 2010 to March 1, 2011 and the interest rate was adjusted from LIBOR plus 250 basis points to LIBOR plus 325 basis points. In connection with the extension, we made an \$8.2 million payment on the outstanding \$48.2 million line of credit.

The following table summarizes the Company's mortgage and other secured indebtedness as of September 30, 2010 and December 31, 2009:

(dollars in millions)

Description of Debt and Collateral	September 30, 2010	December 31, 2009	Interest Rate at September 30, 2010	Maturity	Payment Terms
Mortgage notes payable – variable-rate:					
161 st Street	\$ 28.9	\$ 30.0	4.26% (LIBOR +4.00%)	4/1/2013	Interest only monthly.
Liberty Avenue	10.0	10.4	3.51% (LIBOR +3.25%)	9/1/2011	Interest only monthly.
Tarrytown Shopping Center	9.8	9.8	1.91% (LIBOR +1.65%)	10/30/2010	Interest only monthly.
Fordham Place	86.0	86.0	Greater of 1.5%+3.5% or 5.00% (LIBOR +3.5%)	10/4/2011	Interest only monthly.
Branch Shopping Plaza	14.0	14.2	1.56% (LIBOR +1.30%)	12/1/2011	Monthly principal and interest.
Village Commons Shopping Center	9.3	9.5	1.66% (LIBOR +1.40%)	6/29/2012	Monthly principal and interest.
Cortlandt Towne Center	46.6	44.9	4.26% (LIBOR +4.00%)	7/29/2012	Monthly principal and interest.
Canarsie Plaza	19.9	—	Greater of 6.50% or 4.26% (LIBOR +4.00%)	1/12/2012	Interest only monthly.
CityPoint	20.7	—	2.76% (LIBOR +2.50%)	8/12/2013	Interest only monthly.
Sub-total mortgage notes payable	<u>245.2</u>	<u>204.8</u>			
Secured credit facilities – variable-rate:					
Six Core Portfolio properties	15.0	30.0	1.51% (LIBOR +1.25%)	12/1/2010	Annual principal and monthly interest.
Fund II unfunded investor capital commitments	40.0	48.3	3.51% (LIBOR +3.25%)	3/1/2011	Interest only monthly.
Fund III unfunded investor capital commitments	156.5	139.4	0.74% (Commercial Paper +0.50%)	10/9/2011	Interest only monthly.
Ledgewood Mall	—	2.0	1.51% (LIBOR +1.25%)	—	—
Sub-total secured credit facilities	<u>211.5</u>	<u>219.7</u>			
Interest rate swaps (1)	<u>(77.3)</u>	<u>(83.4)</u>			
Total variable-rate debt	<u>379.4</u>	<u>341.1</u>			
Mortgage notes payable – fixed-rate:					
Five Self-Storage properties	41.5	41.5	5.30%	3/16/2011	Interest only monthly.
Chestnut Hill	9.3	9.5	5.45%	6/11/2013	Monthly principal and interest.
Clark Diversey	4.7	4.8	6.35%	7/1/2014	Monthly principal and interest.
New Loudon Center	14.2	14.3	5.64%	9/6/2014	Monthly principal and interest.
Crescent Plaza	17.6	17.6	4.98%	9/6/2015	Monthly principal and interest.
Pacesetter Park Shopping Center	12.2	12.3	5.12%	11/6/2015	Monthly principal and interest.
Elmwood Park Shopping Center	34.3	34.6	5.53%	1/1/2016	Monthly principal and interest.
The Gateway Shopping Center	20.5	20.5	5.44%	3/1/2016	Interest only monthly.
Walnut Hill Plaza	23.5	23.5	6.06%	10/1/2016	Interest only monthly until 10/11; monthly principal and interest thereafter.
239 Greenwich Avenue	26.0	26.0	5.42%	2/11/2017	Interest only monthly.
Merrillville Plaza	26.2	26.2	5.88%	8/1/2017	Interest only monthly until 7/12 monthly principal and interest thereafter.
216 th Street	25.5	25.5	5.80%	10/1/2017	Interest only monthly.
CityPoint	20.0	—	7.25%	11/1/2014	Interest only quarterly.
Pelham Manor Shopping Plaza	31.6	31.7	7.38%	1/1/2020	Monthly principal and interest.
Atlantic Avenue	11.5	11.5	7.34%	1/1/2020	Interest only upon drawdown on construction loan until 1/15 monthly principal and interest thereafter.
A&P Shopping Plaza	8.1	8.2	6.40%	11/1/2032	Monthly principal and interest.
Interest rate swaps (1)	<u>77.3</u>	<u>83.4</u>	5.77%		
Total fixed-rate debt	<u>404.0</u>	<u>391.1</u>			
Unamortized premium	<u>0.1</u>	<u>0.1</u>			
Total	<u>\$ 783.5</u>	<u>\$ 732.3</u>			

(1) Represents the amount of the Company's variable-rate debt that has been fixed through certain cash flow hedge transactions. (Note 7).

CONTRACTUAL OBLIGATIONS AND OTHER COMMITMENTS

At September 30, 2010, maturities on our mortgage notes ranged from October 2010 to November 2032. In addition, we have non-cancelable ground leases at six of our shopping centers. We also lease space for our corporate headquarters for a term expiring in 2015. The following table summarizes our debt maturities and obligations under non-cancelable operating leases as of September 30, 2010:

(dollars in millions)

Contractual obligation	Payments due by period				
	Total	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
Future debt maturities	\$ 833.4	\$ 119.2	\$ 445.0	\$ 58.9	\$ 210.3
Interest obligations on debt	136.1	34.6	42.9	30.3	28.3
Operating lease obligations	108.0	4.5	11.5	9.5	82.5
Construction commitments ⁽¹⁾	26.9	26.9	—	—	—
Total	\$ 1,104.4	\$ 185.2	\$ 499.4	\$ 98.7	\$ 321.1

Notes:

⁽¹⁾ 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 a noncontrolling interest. 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 5 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for a discussion of our unconsolidated investments. Our pro-rata share of unconsolidated debt related to these investments is as follows:

(dollars in millions)

Investment	Pro-rata share of mortgage debt Operating Partnership	Interest rate at September 30, 2010	Maturity Date
Crossroads	\$ 30.2	5.37%	December 2014
Brandywine	36.9	5.99%	July 2016
Total	\$ 67.1		

In addition, we have arranged for the provision of three separate letters of credit in connection with certain leases and investments. As of September 30, 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 our exposure would be \$9.1 million.

HISTORICAL CASH FLOW

The following table compares the historical cash flow for the nine months ended September 30, 2010 ("2010") with the cash flow for the nine months ended September 30, 2009 ("2009")

(dollars in millions)	Nine months ended September 30,		
	2010	2009	Change
Net cash provided by operating activities	\$ 22.6	\$ 39.1	\$ (16.5)
Net cash used in investing activities	(23.1)	(110.4)	87.3
Net cash provided by financing activities	17.4	102.4	(85.0)
Total	\$ 16.9	\$ 31.1	\$ (14.2)

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

The \$16.5 million decrease in net cash provided by operating activities was primarily attributable to cash used during 2010 to fund an escrow account with the proceeds from the CityPoint bond financing and less cash provided from redemptions of auction rate securities during 2010 as all remaining auction rate securities were fully redeemed in 2009. These decreases were partially offset by an increase in 2010 accounts payable and accrued expenses.

The decrease of \$87.3 million in net cash used in investing activities resulted primarily from a \$61.6 million reduction in expenditures for real estate, development and tenant installations in 2010 and an additional \$33.2 million in collections of notes receivable during 2010. These decreases in 2010 cash used were partially offset by \$9.5 million of proceeds from property sales received during 2009.

The \$85.0 million decrease in net cash provided by financing activities was attributable to \$196.2 million of additional cash provided by borrowings during 2009 and proceeds from the 2009 stock offering of \$65.2 million, net of costs. These 2010 cash decreases were offset by the following: (i) \$116.7 million of additional cash used for the repayments of mortgage notes during 2009, (ii) \$46.7 million of cash used for the purchase of convertible notes during 2009, and (iii) \$13.9 million of additional contributions from noncontrolling interests during 2010.

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.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Our primary market risk exposure is to changes in interest rates related to our mortgage debt. See the discussion under Item 2 – Management's Discussion and Analysis of Financial Condition and Results of Operations 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 September 30, 2010, we had total mortgage debt and convertible notes payable of \$832.2 million, net of unamortized premium of \$0.1 million and unamortized discount of \$1.3 million, of which \$452.8 million or 54.4% was fixed-rate, inclusive of interest rate swaps, and \$379.4 million, or 45.6% was variable-rate based upon LIBOR or commercial paper rates plus certain spreads. As of September 30, 2010, we were a party to seven interest rate swap transactions and one interest rate cap to hedge our exposure to changes in interest rates with respect to \$77.3 million of LIBOR-based variable-rate debt.

Of our total consolidated outstanding debt, \$25.5 million and \$400.6 million will become due in 2010 and 2011, respectively. 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 \$4.3 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 consolidated variable-rate debt, net of variable to fixed-rate swap agreements currently in effect, as of September 30, 2010 would increase by \$3.8 million annually 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.

Item 4. Controls and Procedures.

(a) *Evaluation of Disclosure Controls and Procedures.* In accordance with paragraph (b) of Rule 13a-15 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company's Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures were effective.

(b) *Internal Control over Financial Reporting.* There has not been any change in the Company's internal control over financial reporting during the fiscal quarter to which this report relates that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Part II. Other Information

Item 1. Legal Proceedings.

There have been no material legal proceedings beyond those previously disclosed in our 2009 Form 10-K.

Item 1A. Risk Factors.

The most significant risk factors applicable to the Company are described in Item 1A of our 2009 Form 10-K. There have been no material changes to those previously-disclosed risk factors.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None

Item 3. Defaults Upon Senior Securities.

None

Item 4. (Removed and Reserved).

Item 5. Other Information.

None

Item 6. Exhibits.

The information under the heading "Exhibit Index" below is incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of the Securities and Exchange Act of 1934, the registrant has fully caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ACADIA REALTY TRUST

November 8, 2010 /s/ Kenneth F. Bernstein
Kenneth F. Bernstein
President and Chief Executive Officer
(Principal Executive Officer)

November 8, 2010 /s/ Michael Nelsen
Michael Nelsen
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit Index

Exhibit No.	Description
3.1	Declaration of Trust of the Company, as amended (1)
3.2	Fourth Amendment to Declaration of Trust (2)
3.3	Amended and Restated By-Laws of the Company (3)
3.4	Fifth Amendment to Declaration of Trust (9)
3.5	First Amendment the Amended and Restated Bylaws of the Company (9)
4.1	Voting Trust Agreement between the Company and Yale University dated February 27, 2002 (4)
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 A G, 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. (5)
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 (5)
10.30	Amended and Restated Note Agreement made by Albee Development LLC in favor of Bank of America, N.A., dated August 19, 2010 (5)
10.31	Third Loan Extension and Modification Agreement by and among Acadia-P/A 161 ST Street, LLC (Borrower), Acadia-P/A Holdings Company, LLC (Guarantor) and Bank of America, N.A., dated July 9, 2010 (5)
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 (5)
10.35	Second Mortgage Modification Agreement by and between Acadia-P/A Liberty LLC and PNC Bank, National Association dated September 17, 2010 (5)
10.53	Loan Agreement between RD Elmwood Associates, L.P. and Bear Stearns Commercial Finance Mortgage, Inc. dated December 9, 2005 (5)
10.61	Loan Agreement between 239 Greenwich Associates Limited Partnership and Wachovia Bank, National Association dated January 25, 2007. (5)
10.63	Loan Agreement between Acadia Merrillville Realty, L.P. and Bear Stearns Commercial Mortgage, Inc. dated July 2, 2007. (5)
10.67	Acquisition and Project Loan agreement between Acadia – PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch dated October 5, 2007 (5)
10.69	Revolving credit agreement between Acadia Strategic Opportunity Fund III, LLC. and Bank of America, N.A. dated October 10, 2007 (5)
10.70	Mortgage Consolidation and Modification Agreement between Acadia Tarrytown LLC and Anglo Irish Bank Corporation, PLC dated October 30, 2007 (5)
10.71	Project Loan Agreement between P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007 (5)
10.72	Building Loan Agreement P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007 (5)
10.73	Project Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007 (5)
10.74	Building Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007 (5)
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 (5)
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 (5)
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 (5)
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 (5)
99.1	Amended and Restated Agreement of Limited Partnership of the Operating Partnership (6)
99.2	First and Second Amendments to the Amended and Restated Agreement of Limited Partnership of the Operating Partnership (6)
99.3	Third Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (7)
99.4	Fourth Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (7)
99.5	Certificate of Designation of Series A Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (8)
99.6	Certificate of Designation of Series B Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (7)

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 September 30, 1998
- (3) 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.
- (4) Incorporated by reference to the copy thereof filed as an Exhibit to Yale University's Schedule 13D filed on September 25, 2002
- (5) Filed herewith.
- (6) 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
- (7) 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
- (8) 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
- (9) 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 March 31, 2009

CONSOLIDATED, AMENDED AND RESTATED

TERM LOAN AGREEMENT

among

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
as Lead Borrower,

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
and
FORDHAM PLACE OFFICE LLC
a Delaware limited liability company
as Borrower,

The LENDERS Party Hereto,
as Lenders

and

EUROHYPO AG, NEW YORK BRANCH
as Administrative Agent

Date: As of November 4, 2009

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LOAN AGREEMENT

This Loan Agreement (this "**Agreement**") is entered into as of November 4, 2009 among ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("**Lead Borrower**"); FORDHAM PLACE OFFICE LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("**Fordham Office**", hereinafter, jointly and severally with Lead Borrower, and singly and collectively, "**Borrower**"); each of the lenders that is a signatory hereto identified under the caption "**LENDERS**" on the signature pages hereof and each lender that becomes a "Lender" after the date hereof pursuant to Section 12.24(2) (individually, a "**Lender**" and, collectively, the "**Lenders**"); and EUROHYPO AG, NEW YORK BRANCH, as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, "**Administrative Agent**").

RECITALS

A. Lead Borrower and the Fordham Office are the fee owners of that certain tract of land located in the County of Bronx, State of New York and being more fully described in Exhibit A attached hereto (the "**Land**"). Lead Borrower is the fee owner of the condominium unit designated as the "Retail Unit" in the Condominium Declaration along with an undivided 70% interest in the Common Elements (as defined in the Condominium Declaration) constituting a portion of the improvements currently located on the Land, and Fordham Office is the fee owner of the condominium unit designated as the "Office/Community Unit" in the Condominium Declaration along with an undivided 30% interest in the Common Elements (as defined in the Condominium Declaration) constituting a portion of the improvements currently located on the Land.

B. Borrower has entered into (a) that certain Acquisition and Project Loan Agreement dated as of October 5, 2007 by and among Borrower, Lenders and Administrative Agent pursuant to which the Lenders made a Loan to Borrower in the original principal amount of \$19,930,757.00 (the "**Original Acquisition and Project Loan Agreement**"); and (b) that certain Building Loan Agreement dated as of October 5, 2007 by and among Borrower, Lenders and Administrative Agent pursuant to which the Lenders made a Loan to Borrower in the original principal amount of \$75,339,243.00 (the "**Original Building Loan Agreement**") and, with the Original Acquisition and Project Loan Agreement, collectively, the "**Original Loan Agreement**").

C. Pursuant to the Original Loan Agreement, the Lenders have made advances of the loans for the purposes described therein in the amount of \$86,061,835.70 and Borrower will, as of the Closing Date, prepay the loan such that the outstanding principal balance as of the Closing Date will be \$86,000,000.00.

D. Borrower has represented to the Lenders that the Borrower has completed construction of the Improvements (as defined in the Original Acquisition and Project Loan Agreement) and requested that the Lenders amend, reduce and restate and consolidate the Original Loan Agreement to, among other things, extend the maturity date and reflect that no further amounts will be advanced under the Original Loan Agreement, and the Lenders have indicated their willingness to so amend and restate and consolidate the Original Loan Agreement, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the Original Acquisition and Project Loan Agreement and the Original Building Loan Agreement are hereby amended, restated and consolidated in their entirety as follows:

ARTICLE 1

CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. As used herein, the following terms have the meanings indicated:

- (1) “**Additional Cash Collateral Account**” has the meaning assigned to such term in the Cash Management Agreement.
- (2) “**Additional Costs**” has the meaning assigned to such term in Section 2.9(1)(a).
- (3) “**Additional Interest**” means any and all amounts which may become due and payable by Borrower in accordance with the terms and provisions of any Hedge Agreement provided by a Eurohypo Counterparty which is secured by the Mortgage in accordance with Section 9.15 which amounts shall be evidenced by and payable pursuant to the Notes in favor of Eurohypo and/or such Affiliate; provided, however, that Additional Interest shall not include any amounts which may become due and payable pursuant to any Hedge Agreement which is not secured by the Mortgage.
- (4) “**Adjusted LIBOR Rate**” means, for any Interest Period for any LIBOR-based Loan, a rate per annum (rounded upwards to the nearest 1/32 of 1%) determined by Administrative Agent to be equal to the LIBOR Rate for such Interest Period divided by 1 minus the Reserve Requirement (if any) for such Interest Period.
- (5) “**Adjusted Operating Expenses**” means Operating Expenses as determined and adjusted by Administrative Agent in accordance with its then current audit policies and procedures.
- (6) “**Adjusted Operating Revenues**” means Operating Revenues as determined and adjusted by Administrative Agent in accordance with its then current audit policies and procedures.
- (7) “**Administrative Fee**” means the administrative fee agreed to by Borrower and Administrative Agent pursuant to the Fee Letter.

(8) "**Advance Date**" has the meaning assigned to such term in Section 2.8(6).

(9) "**Advanced Amount**" has the meaning assigned to such term in Section 14.12(2).

(10) "**Affiliate**" means with respect to any Person, another Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse, children and siblings) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is controlled by any such member or trust. As used in this definition, "**control**" (including, with its correlative meanings, "**controlled by**," and "**under common control with**") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), provided that, in any event, any Person that owns directly or indirectly securities having 10% or more of the voting power for the election of directors or other governing body of a corporation or 10% or more of the partnership, membership or other ownership interests of any other Person (other than as a limited partner of such other Person) will be deemed to control such corporation or other Person. Notwithstanding the foregoing, no individual shall be an Affiliate solely by reason of his or her being a director, officer, trustee or employee of Borrower.

(11) "**Agreement**" means this Loan Agreement, as the same may be modified, amended and/or supplemented and in effect from time to time.

(12) "**Anti-Terrorism Order**" means Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism).

(13) "**Applicable Lending Office**" means, for each Lender and for each Type of Loan, the "Lending Office" of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan on the respective signature pages hereof 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 its loans of such Type are to be made and maintained.

(14) "**Applicable Margin**" means (a) for Base Rate Loans, 1.50% per annum; and (b) for LIBOR-based Loans, 3.50% per annum.

(15) "**Appraisal**" means an appraisal of the Project prepared by an appraiser satisfactory to Administrative Agent, which appraisal must also (a) satisfy the requirements of Title XI of the Federal Institution Reform, Recovery and Enforcement Act of 1989 and the regulations promulgated thereunder (including the appraiser with respect thereto) and (b) be otherwise in form and substance satisfactory to Administrative Agent.

(16) "**Approved Fund**" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and 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.

- (17) “**Arranger**” means Eurohypo.
- (18) “**Assignment and Acceptance**” means an Assignment and Acceptance, duly executed by the parties thereto, in substantially the form of Exhibit D hereto and consented to by Administrative Agent in accordance with Section 12.24(2).
- (19) “**Award**” means any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Project.
- (20) “**Bankruptcy Party**” has the meaning assigned to such term in Section 10.8.
- (21) “**Base Rate**” means, for any day, a rate per annum equal to the highest of (a) the Federal Funds Rate for such day plus 1/2 of 1%, (b) the Prime Rate for such day or (c) the LIBOR Rate plus 1.50%. Each change in any interest rate provided for herein based upon the Base Rate resulting from a change in the Base Rate shall take effect at the time of such change in the Base Rate.
- (22) “**Base Rate Loans**” means Loans that bear interest at rates based upon the Base Rate.
- (23) “**Basel II Accord**” means the proposals for risk-based capital framework described by the Basel Committee on Banking Regulations and Supervisory Practices in its paper entitled “International Convergence of Capital Measurement and Capital Standards: a Revised Framework – Comprehensive Version” dated June 2006, as amended, modified and supplemented and in effect from time to time or any replacement thereof.
- (24) “**Bifurcation**” has the meaning assigned to such term in Section 12.29(1).
- (25) “**Borrower**” has the meaning assigned to such term in the Preamble. With respect to the definition of “Borrower”, except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.
- (26) “**Borrower Party**” means Borrower, any Guarantor or Managing Member
- (27) “**Business Day**” means (a) any day other than a Saturday, a Sunday, or other day on which commercial banks located in New York City are authorized or required by law to remain closed and (b) in connection with a borrowing of, a payment or prepayment of principal of or interest on, a Conversion of or into, or an Interest Period for, a LIBOR-based Loan or a notice by Lead Borrower with respect to any such borrowing, payment, prepayment or Conversion, the term “Business Day” shall, in addition to the days excluded in subsection (a) above, also exclude a day on which banks are not open for dealings in Dollar deposits in the London interbank market.

- (28) **“Calculated Debt Service”** means, for any period, an amount equal to the outstanding principal balance of the Loans as of the date of calculation multiplied by a loan constant of seven percent (7.0%).
- (29) **“Cash Management Account”** has the meaning assigned to such term in the Cash Management Agreement.
- (30) **“Cash Management Agreement”** means that certain Cash Management and Security Agreement to be executed, dated and delivered by Borrower, Administrative Agent (on behalf of the Lenders) and the Depository Bank subsequent to the Closing Date, as the same may be modified, amended and/or supplemented and in effect from time to time.
- (31) **“Casualty”** has the meaning specified in Section 3.3 hereof.
- (32) **“Casualty Consultant”** has the meaning assigned to such term in Section 3.2(2)(c).
- (33) **“Casualty Retainage”** has the meaning assigned to such term in Section 3.2(2)(d).
- (34) **“Casualty/Taking Account”** has the meaning assigned to such term in the Cash Management Agreement.
- (35) **“Change of Control”** means any transaction, transfer, admission, redemption, withdrawal, change in organizational documents or structure, or otherwise, whether directly or indirectly, as a result of which (a)(i) Sponsor, whether directly or indirectly, owns less than 18% of the membership interests in and rights to distributions from Borrower, or (ii) any Person other than Managing Member has the responsibility for managing and administering the day-to day business and affairs of Borrower or (iii) in any other respects, any Person other than Sponsor directly or indirectly Controls Borrower, (b) (i) Sponsor no longer directly or indirectly owns at least 18% of the membership interests in and rights to distributions from the Managing Member, or (ii) Sponsor no longer directly or indirectly has responsibility for managing and administering the day-to day business and affairs of the Managing Member or (iii) in any other respects, any Person other than Sponsor directly or indirectly Controls the Managing Member, (c)(i) anyone other than Acadia Realty Trust, whether directly or indirectly, owns less than 75% of the partnership interests in Sponsor, or (ii) any Person other than Acadia Realty Trust has the responsibility for managing and administering the day-to day business and affairs of Sponsor or (iii) in any other respects, any Person other than Acadia Realty Trust directly or indirectly Controls Sponsor, or (d) a change in the management control of Acadia Realty Trust such that Kenneth F. Bernstein is no longer the Chief Executive Officer of Acadia Realty Trust or Kenneth F. Bernstein fails to devote a substantial amount of his business time and attention in any consecutive six (6) month period to the affairs of Acadia Realty Trust; provided, however, such occurrence shall not be an Event of Default if within sixty (60) days of the occurrence thereof the Administrative Agent approves, in the exercise of its reasonable judgment, the replacement or successor management of Acadia Realty Trust. As used in this definition, **“Control”** of one Person (the “controlled Person”) by another Person (the **“controlling Person”**) shall mean the possession, directly or indirectly, by the controlling Person of the power or ability to direct or cause the direction of the management or policies of the controlled Person, whether through the ability to exercise voting power, by contract or otherwise (**“Controlled”** and **“Controlling”** each have the meanings correlative thereto).

(36) "**Clearing Account**" means an account with the Clearing Bank into which Borrower and Property Manager shall deposit, or cause to be deposited, all rents and other revenue from the Premises, and, upon the effectiveness of the Cash Management Agreement, shall have the meaning assigned to such term in the Cash Management Agreement.

(37) "**Clearing Bank**" means Bank of America, N.A. and, upon the effectiveness of the Cash Management Agreement, shall have the meaning assigned to such term in the Cash Management Agreement.

(38) "**Closing Date**" means the date of this Agreement.

(39) "**Co-Borrower Documents**" means collectively, the Contribution Agreement, the Co-Borrower Guaranty (Acquisitions) and the Co-Borrower Guaranty (Office).

(40) "**Co-Borrower Guaranty (Acquisitions)**" means the Co-Borrower Guaranty by Lead Borrower in favor of Administrative Agent on the Closing Date, as the same may be modified, supplemented or amended from time to time.

(41) "**Co-Borrower Guaranty (Office)**" means the Co-Borrower Guaranty by Fordham Office in favor of Administrative Agent on the Closing Date, as the same may be modified, supplemented or amended from time to time.

(42) "**Collateral Letter of Credit**" means a clean, irrevocable and unconditional standby letter of credit that is (a) issued for the account of an applicant other than Borrower, (b) issued in favor of Administrative Agent (on behalf of the Lenders) in the amount of any cash required pursuant to the terms of this Agreement or any other Loan Document pursuant to which it is being issued, (c) issued by an issuer having a paying office in the City of New York (or, with respect to Bank of America, N.A. only, such other office as is acceptable to Administrative Agent in its reasonable discretion) and having a rating with respect thereto of "AA" or better by S&P (or any equivalent rating from Moody's) or such other issuer as shall be approved by Administrative Agent in its sole and absolute discretion (Bank of America, N.A. is hereby approved by Administrative Agent, provided that the letter of credit is in form and substance acceptable to Administrative Agent in its reasonable discretion), (d) drawable, in whole or in part from time to time, by Administrative Agent upon the presentment to the issuer of a clean sight-draft demanding such payment, (e) an "evergreen" letter of credit that initially has an expiration date of at least one (1) year from the date of deposit and is automatically renewed from year to year or one which does not expire until at least thirty (30) Business Days after the Maturity Date, and (f) freely assignable upon presentation of customary documents by Administrative Agent at no cost and expense to Administrative Agent.

(43) “**Commitment**” means, as to each Lender, the obligation of such Lender to make a Loan in a principal amount up to but not exceeding the amount set opposite the name of such Lender on Schedule 1 under the caption “Commitment” or, in the case of a Person that becomes a Lender pursuant to an assignment permitted under Section 12.24(2), as specified in the respective instrument of assignment pursuant to which such assignment is affected. The original aggregate principal amount of the Commitments is \$86,000,000.00.

(44) “**Condemnation**” means a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Project, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Project or any part thereof.

(45) “**Condemnation Proceeds**” has the meaning assigned to such term in Section 3.2(2).

(46) “**Condominium**” means that certain condominium established pursuant to the Condominium Declaration.

(47) “**Condominium Act**” means Article 9-B of the Real Property Law of the State of New York (§ 339-d et seq.), and all amendments, modifications or replacements thereof or regulations with respect thereto, now or hereafter enacted or promulgated.

(48) “**Condominium Declaration**” means that certain Condominium Declaration filed with the Attorney General’s Office of the State of New York and approved by Administrative Agent prior to the Closing Date for the purpose of creating the Condominium.

(49) “**Condominium Documents**” means the Condominium Declaration, the by-laws of any owner’s association to be established pursuant to the Condominium Declaration to govern the affairs of the Condominium, and any other document, instrument or agreement creating, governing or affecting the Condominium.

(50) “**Continue**” “**Continuation**” and “**Continued**” refer to the continuation pursuant to Section 2.2 of (a) a LIBOR-based Loan from one Interest Period to the next Interest Period or (b) a Base Rate Loan at the Base Rate.

(51) “**Contribution Agreement**” means the Indemnity, Subrogation and Contribution Agreement among Lead Borrower, Fordham Office and Administrative Agent dated as of October 5, 2007, as the same may be modified, supplemented or amended from time to time.

(52) “**Convert**” “**Conversion**” and “**Converted**” refer to a conversion pursuant to the terms of this Agreement of one Type of Loans into another Type of Loans, which may be accompanied by the transfer by a Lender (at its sole and absolute discretion) of a Loan from one Applicable Lending Office to another.

(53) “**Debt**” means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners, members (or other equity holders) or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person is liable, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

(54) “**Debt Service**” means, with respect to the applicable period of time, the aggregate interest, fixed principal and other payments due under the Loan for such period.

(55) “**Debt Service Coverage Ratio**” means, (a) with respect to the period from the Closing Date through and including the first anniversary of the Closing Date, for the period of time for which calculation is being made, the ratio of Net Operating Income to Debt Service, and (b) from the first day after the first anniversary of the Closing Date through and including the original Maturity Date, for the period of time for which calculation is being made, the ratio of Pro Forma Net Operating Income to Calculated Debt Service. The Debt Service Coverage Ratio shall be as determined by Administrative Agent based upon the most recent reports required to have been submitted by Borrower under Section 8.1 (or, if no such reports have been so submitted, such other information as Administrative Agent shall determine in its sole and absolute discretion), which determination shall be conclusive in the absence of manifest error.

(56) “**Debt Yield**” means, for the period of calculation, the result of (x) Net Operating Income, divided by (y) the outstanding principal balance of the Loans, expressed as a percentage.

(57) “**Declarant**” means Acadia-PA East Fordham Acquisitions, LLC in its capacity as the declarant named in the Condominium Declaration.

(58) “**Default Rate**” means a rate per annum equal to 5% plus the Base Rate as in effect from time to time plus the Applicable Margin for Base Rate Loans, provided that, with respect to principal of a LIBOR-based Loan, the “Default Rate” shall be the greater of (a) 5% plus the interest rate for such Loan as provided in Section 2.3(1)(b) and (b) the rate provided for above in this definition; provided, however, that in no event shall the Default Rate exceed the maximum rate allowed by applicable law.

(59) “**Defaulting Lender**” has the meaning assigned to such term in Section 14.12(1).

(60) “**Deposit Account Control Agreement**” means the Deposit Account Control Agreement among Borrower, Administrative Agent and the Clearing Bank pertaining to the Clearing Account, as the same may be modified, amended and/or supplemented and in effect from time to time.

(61) “**Depository Bank**” has the meaning assigned to such term in the Cash Management Agreement.

(62) “**Dollars**” and “**\$**” means lawful money of the United States of America.

(63) “**Eligible Assignee**” means any of (i) a commercial bank organized under the Laws of the United States, or any State thereof, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined capital and surplus of at least \$250,000,000; (ii) a commercial bank organized under the laws of any other country which is a member of the Organization of Economic Cooperation and Development (“**OECD**”), or a political subdivision of any such country, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined capital and surplus of at least \$250,000,000, 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 OECD; (iii) a life insurance company organized under the Laws of any State of the United States, or organized under the Laws of any country and licensed as a life insurer by any State within the United States and having admitted assets of at least \$1,000,000,000; (iv) a nationally recognized investment banking company or other financial institution in the business of making loans, or an Affiliate thereof (other than any Person which is directly or indirectly a Borrower Party or directly or indirectly an Affiliate of any Borrower Party) organized under the Laws of any State of the United States, and licensed or qualified to conduct such business under the Laws of any such State and having (1) total assets of at least \$1,000,000,000 and (2) a net worth of at least \$250,000,000; (v) an Approved Fund; (vi) any Affiliate of Eurohypo, any other Person into which, or with which, Eurohypo is merged, consolidated or reorganized, or which is otherwise a successor to Eurohypo by operation of law, or which acquires all or substantially all of the assets of Eurohypo, any other Person which is a successor to the business operations of Eurohypo and engages in substantially the same activities, or any Affiliate of any of the foregoing; or (vii) any other Person reasonably acceptable to Borrower (to the extent Borrower’s consent to an assignment is required for an assignment to a Person other than those identified in clauses (i) through (vi) above, pursuant to [Section 12.24\(2\)](#)), and provided that all other applicable conditions to such assignment set forth in [Section 12.24\(2\)](#), have been satisfied, including any applicable consent thereto to be delivered by Administrative Agent.

(64) “**Environmental Claim**” has the meaning assigned to such term in [Article 5](#).

(65) “**Environmental Indemnity**” means that certain Environmental Indemnity Agreement by Borrower and Guarantor in favor of Administrative Agent and each of the Lenders, to be executed, dated and delivered to Administrative Agent (on behalf of the Lenders) on October 5, 2007, as the same may be modified, amended and/or supplemented and in effect from time to time.

(66) “**Environmental Laws**” has the meaning assigned to such term in Article 5.

(67) “**Environmental Liens**” has the meaning assigned to such term in Article 5.

(68) “**Environmental Loss**” has the meaning assigned to such term in Article 5.

(69) “**Eurohypo**” means Eurohypo AG, New York Branch.

(70) “**Eurohypo Counterparty**” means Eurohypo and or (a) any Affiliate of Eurohypo, (b) any other Person into which, or with which, Eurohypo is merged, consolidated or reorganized, or which is otherwise a successor to Eurohypo by operation of law, or which acquires all or substantially all of the assets of Eurohypo, (c) any other Person which is a successor to the business operations of Eurohypo and engages in substantially the same activities, or (d) any Affiliate of any of the Persons described in clauses (b) and (c) of this definition.

(71) “**Event of Default**” has the meaning assigned to such term in Article 10.

(72) “**Exculpated Party**” has the meaning assigned to such term in Section 13.1.

(73) “**Extension Period**” has the meaning assigned to such term in Section 2.5.

(74) “**Extension Notice**” has the meaning assigned to such term in Section 2.5(1).

(75) “**Federal Bankruptcy Code**” shall mean Title 11 of the United States Code entitled “Bankruptcy” as amended from time to time, and any successor statutes and rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditor’s rights.

(76) “**Federal Funds Rate**” means, for any day, the rate per annum (rounded upwards to the nearest 1/32 of 1%) 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 of New York on the Business Day next succeeding such day, provided that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the immediately preceding Business Day as so published on the next succeeding Business Day and (b) if such rate is not so published for any Business Day, the Federal Funds Rate for such Business Day shall be the average rate charged to Eurohypo on such Business Day on such transactions as determined by Administrative Agent, or such other commercial bank as selected by Administrative Agent.

- (77) “**Fee Letter**” means the letter agreement, dated the date hereof, between Borrower and Administrative Agent with respect to certain fees payable by Borrower in connection with the Loans, as the same may be modified or amended from time to time.
- (78) “**Flood Insurance Acts**” has the meaning assigned to such term in [Section 3.1\(1\)\(g\)](#).
- (79) “**GAAP**” means accounting principles generally accepted in the United States of America.
- (80) “**Governmental Authority**” means any governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, federal, state or local, or foreign having jurisdiction over the matter or matters in question.
- (81) “**Guarantor**” means Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company.
- (82) “**Guarantor Documents**” means collectively, the Guaranty and the Environmental Indemnity.
- (83) “**Guaranty**” means the instruments of guaranty, if any, now or hereafter in effect from a Guarantor to Administrative Agent (on behalf of the Lenders).
- (84) “**Hazardous Materials**” has the meaning assigned to such term in [Article 5](#).
- (85) “**Hedge Agreement**” means any swap/cap agreement between Borrower and one or more financial institutions providing for the transfer or mitigation of interest risks either generally or under specific contingencies, as the same may be modified, amended and/or supplemented and in effect from time to time in accordance with [Section 9.15](#); provided, however, that any such agreement may only be secured by the Liens and Security Documents securing the Loans, if, and only if, the protection is provided by one or more Eurohypo Counterparties and otherwise complies with [Section 9.15](#).
- (86) “**Hedge Agreement Pledge**” means that certain Assignment, Pledge and Security Agreement substantially in the form of [Exhibit E](#), attached hereto, to be executed, dated and delivered by Borrower to Administrative Agent (on behalf of the Lenders) in accordance with [Section 9.15](#) and at any other time Borrower elects or is required to enter into a Hedge Agreement, covering Borrower’s right, title and interest in and to any such Hedge Agreement, as the same may be modified, amended and/or supplemented and in effect from time to time.
- (87) “**Improvements**” has the meaning assigned to such term in the Mortgage.
- (88) “**Indebtedness**” has the meaning assigned to such term in the Mortgage.

- (89) **“Independent Manager”** means, in the case of a corporation, limited liability company or limited partnership, a director, member or manager that is a natural person who has no affiliation with any Borrower Party and who is approved by Administrative Agent.
- (90) **“Insurance Premiums”** has the meaning assigned to such term in [Section 3.1\(2\)](#).
- (91) **“Insurance Proceeds Deficiency”** has the meaning assigned to such term in [Section 3.2\(2\)](#).
- (92) **“Interest Period”** means, with respect to any LIBOR-based Loan, each period commencing on the date such LIBOR-based Loan is made or Converted from a Base Rate Loan or (in the event of a Continuation) the last day of the immediately preceding Interest Period for such Loan and ending on the numerically corresponding day in the first calendar month thereafter; provided that (i) each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month; (ii) each Interest Period that would otherwise end on a day that is not a Business Day shall end on the next succeeding Business Day (or, if such next succeeding Business Day falls in the next succeeding calendar month, on the immediately preceding Business Day); (iii) no Interest Period shall have a duration of less than one month and, if the Interest Period for any LIBOR-based Loan would otherwise be a shorter period, such Loan shall bear interest at the Base Rate plus the Applicable Margin for Base Rate Loans; (iv) in no event shall any Interest Period extend beyond the Maturity Date; and (v) there may be no more than one (1) Interest Period in respect of LIBOR based Loans outstanding at any one time.
- (93) **“Interest Rate Hedge Period”** has the meaning assigned to such term in [Section 9.15](#).
- (94) **“Interest Reserve Account”** has the meaning assigned to such term in the Cash Management Agreement.
- (95) **“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended.
- (96) **“Land”** has the meaning assigned to such term in the Recitals.
- (97) **“Leasing Guidelines”** means the Leasing Guidelines described in [Schedule 1.1\(97\)](#) attached hereto.
- (98) **“Lender”** and **“Lenders”** have the respective meanings assigned to such terms in the Preamble.
- (99) **“LIBOR Rate”** means, for any Interest Period for any LIBOR-based Loan, the greater of (a) 1.50% and (b) the rate per annum appearing on Reuters Screen LIBOR01 (formerly operated as Page 3750 of the Dow Jones Market Service (Telerate)) (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m. London time on the date two (2) Business Days prior to the first day of such Interest Period as the rate for the offering of Dollar deposits having a term comparable to such Interest Period, provided that if such rate does not appear on such page, or if such page shall cease to be publicly available, or if the information contained on such page, in the reasonable judgment of Administrative Agent shall cease accurately to reflect the rate offered by leading banks in the London interbank market as reported by any publicly available source of similar market data selected by Administrative Agent, the LIBOR Rate for such Interest Period shall be determined from such substitute financial reporting service as Administrative Agent in its discretion shall determine.

(100) "**LIBOR-based Loans**" means Loans that bear interest at rates based on rates referred to in the definition of "LIBOR Rate."

(101) "**Licenses**" has the meaning assigned to such term in Section 7.20.

(102) "**Lien**" means any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

(103) "**Loans**" means the loans made by the Lenders to Borrower under this Agreement and all other amounts evidenced or secured by the Loan Documents.

(104) "**Loan Documents**" means: (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) any letter of credit provided to Administrative Agent in connection with the Loan, (e) the Mortgage, (f) the Subordination of Property Management Agreement, (g) the Environmental Indemnity, (h) Hedge Agreement Pledge, (i) the Cash Management Agreement, (j) Uniform Commercial Code financing statements, (k) the Co-Borrower Documents, (l) such assignments of management agreements, contracts and other rights as may be required under the Commitment or otherwise requested by Administrative Agent, (m) all other documents evidencing, securing, governing or otherwise pertaining to the Loans; provided, however, that a Hedge Agreement entered into with any counterparty that is not a Eurohypo Counterparty shall not be a Loan Document, and (n) all amendments, modifications, renewals, substitutions and replacements of any of the foregoing.

(105) "**Loan To Value Ratio**" means, at any time, the ratio, expressed as a percentage, of (a) \$86,000,000.00, to (b) the "as is" value of the Project as determined by an Appraisal satisfactory to Administrative Agent.

(106) "**Loan Transactions**" has the meaning assigned to such term in Section 2.8(4).

(107) "**Loan Year**" means the period between the date hereof and October 4, 2010 for the first Loan Year and the period between each succeeding October 5 and October 4 until the Maturity Date.

(108) "**Low DSCR Account**" has the meaning assigned to such term in the Cash Management Agreement.

(109) "**Low DSCR Release Event**" means, at any time after the occurrence of a Low DSCR Trigger Event, that (a) the Debt Service Coverage Ratio shall, for two consecutive calendar or fiscal quarters, be at or above: (i) with respect to the period from the Closing Date through and including the first anniversary of the Closing Date, 1.40:1.00; and (ii) from the first day after the first anniversary of the Closing Date through and including the original Maturity Date, 1.30:1.00; or (b) in the event that Borrower exercises the option to extend the term of the Loan pursuant to Section 2.5 hereof, the Pro Forma Debt Service Coverage Ratio shall, for two consecutive calendar or fiscal quarters, be at or above 1.50:1.00.

(110) "**Low DSCR Trigger Event**" means, at any time prior to the Maturity Date, that: (a) the Debt Service Coverage Ratio for any calendar quarter is less than (i) with respect to the period from the Closing Date through and including the first anniversary of the Closing Date, 1.35:1.00; and (ii) from the first day after the first anniversary of the Closing Date through and including the original Maturity Date, 1.25:1.00; or (b) in the event that Borrower exercises the option to extend the term of the Loan pursuant to Section 2.5 hereof, the Pro Forma Debt Service Coverage Ratio for any calendar quarter during the Extension Period is less than 1.45:1.00.

(111) "**Low DSCR Trigger Period**" means the period of time after a Low DSCR Trigger Event until the occurrence of a Low DSCR Release Event.

(112) "**Major Lease**" means any lease that (a) accounts for five percent (5%) or more of the total gross rental revenue of the Project and/or (b) is for 10,000 rentable square feet or more.

(113) "**Majority Lenders**" means Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate outstanding principal amount of the Loans or, if the Loans shall not have been made, at least 66 $\frac{2}{3}$ % of the Commitments.

(114) "**Managing Member**" means Acadia – P/A Holding Company, LLC, a Delaware limited liability company, as sole member under the organizational documents of Borrower and its successors thereunder as managing member of Borrower as permitted under the Loan Documents.

(115) "**Material Adverse Effect**" means a material adverse effect, as unilaterally determined by Administrative Agent, in its reasonable judgment and discretion, on (a) the Project or the business, operations, financial condition, prospects, liabilities or capitalization of Borrower, (b) the ability of Borrower to perform its obligations under any of the Loan Documents to which it is a party, including the timely payment of the principal of or interest on the Loans or other amounts payable in connection therewith, (c) the ability of the Guarantor or any Borrower Party to perform its obligations under any of the Loan Documents to which it is a party, (d) the validity or enforceability of any of the Loan Documents or (e) the rights and remedies of the Lenders and Administrative Agent under any of the Loan Documents.

- (116) "**Maturity Date**" means the earlier of (a) October 4, 2011, as such date may be extended by the Extension Period, or (b) any earlier date on which all of the Loans are required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Loan Documents.
- (117) "**Mold**" has the meaning assigned to such term in [Section 5.1\(6\)](#).
- (118) "**Mortgage**" means the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Borrower in favor of Administrative Agent (on behalf of the Lenders), covering the Project and any amendments, modifications, renewals, substitutions, consolidations, severances and replacements thereof.
- (119) Intentionally Omitted.
- (120) Intentionally Omitted.
- (121) "**Net Cash Flow**" means, for any period, the amount by which Operating Revenues exceed the sum of (a) Operating Expenses, (b) Debt Service, and (c) any actual payment into impounds, escrows, or reserves required by Administrative Agent, except to the extent included within the definition of Operating Expenses.
- (122) "**Net Operating Income**" means the amount by which Adjusted Operating Revenues exceed Adjusted Operating Expenses.
- (123) "**Net Proceeds**" has the meaning assigned to such term in [Section 3.2\(2\)](#).
- (124) "**Net Proceeds Deficiency**" has the meaning assigned to such term in [Section 3.2\(2\)\(f\)](#).
- (125) "**Notes**" means the four (4) promissory notes of even date herewith as provided for in [Section 2.1\(4\)](#), and in the Note Consolidation, Severance and Modification Agreement of even date herewith between Administrative Agent, and all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, replaced, severed, modified, amended or extended from time to time.
- (126) "**Office Component**" means the portion of the Improvements belonging to Fordham Office consisting of a 14-story Class A office building containing approximately 151,685 square feet of net leaseable space.
- (127) "**Operating Expenses**" means all reasonable and necessary expenses of operating the Project in the ordinary course of business calculated in accordance with GAAP which are directly associated with and fairly allocable to the Project for the applicable period, including annualized ad valorem real estate taxes and assessments, capital expenditures at an imputed rate of \$0.10 per square foot on an annualized basis of gross leasable area at the Project, annualized insurance premiums, regularly scheduled tax impounds paid to Administrative Agent, maintenance costs, management fees and costs in an amount equal to the greater of the management fees and costs actually paid or an imputed rate of four percent (4%) of Operating Revenues, accounting, legal, and other professional fees, fees relating to environmental and Net Cash Flow and Net Operating Income audits, and other expenses incurred by Administrative Agent and reimbursed by Borrower under this Agreement and the other Loan Documents, deposits to any capital replacement reserves required by Administrative Agent, wages, salaries, and personnel expenses, but excluding Debt Service, capital expenditures, any of the foregoing expenses which are paid from deposits to cash reserves previously included as Operating Expenses, any payment or expense for which Borrower was or is to be reimbursed from proceeds of the Loans or insurance or by any third party, and any non-cash charges such as depreciation and amortization. Any management fee or other expense payable to Borrower or to an Affiliate of Borrower shall be included as an Operating Expense only with Administrative Agent's prior approval. Operating Expenses shall not include federal, state or local income taxes or legal and other professional fees unrelated to the operation of the Project.

(128) "**Operating Revenues**" means all cash receipts of Borrower from operation of the Project or otherwise arising in respect of the Project after the date hereof which are properly allocable to the Project for the applicable period (subject to an underwritten market vacancy rate of not less than 8%), including receipts from leases and parking agreements, concession fees and charges and other miscellaneous operating revenues, proceeds from rental or business interruption insurance, withdrawals from cash reserves (except to the extent any operating expenses paid therewith are excluded from Operating Expenses), in all cases, determined in accordance with GAAP but without taking into account straight-lining of rents and extraordinary revenues (including, but not limited to, lease termination payments) and FAS 141R adjustments, but excluding (a) all rent and other revenues received during the applicable period from tenants that, at any time during the applicable period, are subject to a Bankruptcy Proceeding, unless such Bankruptcy Proceeding has been closed, and the subject tenant has not been discharged from its obligations under the subject lease and/or the rental payments due and/or paid by such tenant to Borrower can not be disgorged from Borrower, (b) rent and other revenues from tenants that have been in default on the payment of rent under their respective leases for more than thirty (30) days, (c) rent and other revenues from tenants under leases which have remaining terms of less than twelve (12) months from the date of calculation, (d) security deposits and earnest money deposits until they are forfeited by the depositor; (e) advance rentals (i.e. more than thirty (30) days in advance) until they are earned, (f) lump sum lease buy-out payments made by tenants in connection with any surrender, cancellation or termination of their lease, and (d) proceeds from a sale or other disposition.

(129) "**Participant**" has the meaning assigned to such term in [Section 12.24\(3\)](#).

(130) "**Payment Date**" means the first Business Day of each calendar month.

(131) "**Payor**" has the meaning assigned to such term in [Section 2.8\(6\)](#).

(132) "**Permitted Encumbrances**" has the meaning set forth in the Mortgage.

(133) **"Permitted Transfer"** shall mean any of the following transfers, provided there is no Change of Control as a result of such transfer:

- (a) a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of Borrower or any Affiliate of Borrower, so long as Lead Borrower delivers notice to Administrative Agent as soon as practicable thereafter and that Borrower or such Affiliate is promptly reconstituted, if applicable, following the death of such member partner or shareholder;
- (b) transfers for estate planning purposes of an individual's interest in Borrower or any Affiliate of Borrower to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower or such Affiliate is reconstituted, if required, following such transfer;
- (c) the sale or pledge, in one or a series of transactions, of the stock, limited partnership interests or non-managing membership interests (as the case may be) in Borrower or an Affiliate of Borrower; provided, however, that no such transfers shall result in any sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of the Project, and as a condition to each such transfer, Administrative Agent shall receive no less than thirty (30) days prior written notice of such proposed transfer;
- (d) a transfer by P/A Associates, LLC ("**P/A Associates**") of 100% of its membership interest in Managing Member to Acadia Strategic Opportunity Fund II, LLC ("**Fund II**") or an Affiliate of Fund II; and
- (e) the sale, transfer, or issuance of stock in Acadia Realty Trust (the "**Trust**"), in the ordinary course of business, provided such stock is listed on the NYSE or other nationally recognized stock exchange.

(134) **"Person"** means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

(135) **"Policy"** has the meaning assigned to such term in [Section 3.1\(2\)](#).

(136) **"Potential Default"** means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

(137) **"Prime Rate"** means the rate of interest from time to time announced by Eurohypo at its principal office as its prime commercial lending rate, it being understood that such prime commercial rate is a reference rate and does not necessarily represent the lowest or best rate being charged by Eurohypo to any customer.

(138) **"Prohibited Person"** means any Person:

- (a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "**Executive Order**");

- (b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;
- (c) with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;
- (d) who is known to Borrower to commit, threaten or conspire to commit or support “terrorism”, as defined in the Executive Order;
- (e) that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list; or
- (f) who is known to Borrower to be an Affiliate of or affiliated with a Person listed above.

(139) “**Project**” means that certain mixed use retail/office building consisting of approximately 119,446 square feet of retail space and 151,685 square feet of office space, and all related facilities, amenities, fixtures, and personal property owned by Borrower and any improvements now or hereafter located on the real property described in **Exhibit A**.

(140) “**Project Amenities**” means those areas or elements of, easements over, interests in or licenses or rights to use, those portions of the Project that are granted to Units in the Condominium Declaration.

(141) “**Property Management Agreement**” means that certain Property Management Agreement dated as of August 15, 2007 between Property Manager and Lead Borrower with respect to the management of the Project by the Property Manager, together with any management agreements entered into with future Property Managers in accordance with the terms of this Agreement.

(142) “**Property Manager**” means Acadia – P/A Management Services LLC, which is initially the manager of the Project under the Property Management Agreement, together with any successor property managers appointed for the Project in accordance with the terms of this Agreement.

(143) “**Pro Forma Debt Service Coverage Ratio**” means the ratio of: (a) Pro Forma Net Operating Income for the full calendar quarter immediately preceding the date of calculation, to (b) the Calculated Debt Service for the full calendar quarter immediately preceding the date of calculation. The Pro Forma Debt Service Coverage Ratio shall be as determined by Administrative Agent based upon the most recent reports required to have been submitted by Borrower under **Section 8.1** (or, if no such reports have been so submitted, such other information as Administrative Agent shall determine in its sole and absolute discretion), which determination shall be conclusive in the absence of manifest error.

(144) "**Pro Forma Net Operating Income**" means, for any period, the amount by which Pro Forma Operating Revenues exceed Adjusted Operating Expenses.

(145) "**Pro Forma Operating Revenues**" means, for any period, the sum of (a) Adjusted Operating Revenues and (b) pro forma net effective rental income from tenants who have executed leases, but have yet to commence paying rent for the applicable period; provided, however, that the foregoing calculation shall exclude rent and other revenues from tenants under leases which have remaining terms of less than nine (9) months from the date of calculation.

(146) "**Proportionate Share**" means, with respect to each Lender, initially the percentage set forth opposite such Lender's name on Schedule 1.1(146) attached hereto, as such percentage may be modified from time to time pursuant to Assignment and Acceptances and as recorded in Administrative Agent's register of Lenders for the Loan.

(147) "**Proposed Lender**" has the meaning assigned to such term in Section 2.9(Z).

(148) "**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System of the United States of America (or any successor), as the same may be modified and supplemented and in effect from time to time.

(149) "**Regulatory Change**" means, with respect to any Lender, any change after the date hereof in Federal, state or foreign law or regulations (including, without limitation, Regulation D) or the adoption or making after such date of any interpretation, directive or request applying to a class of banks including such Lender of or under any Federal, state or foreign law or regulations (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

(150) "**Rejecting Lender**" has the meaning set forth in Section 9.1.

(151) "**Related Entity**" means, as to any Person, (a) any Affiliate of such Person; (b) any other Person into which, or with which, such Person is merged, consolidated or reorganized, or which is otherwise a successor to such Person by operation of law, or which acquires all or substantially all of the assets of such Person; (c) any other Person which is a successor to the business operations of such Person and engages in substantially the same activities; or (d) any Affiliate of the Persons described in clauses (b) and (c) of this definition.

(152) "**Replacement Lender**" has the meaning assigned to such term in Section 14.12(6).

(153) "**Requesting Lender**" has the meaning assigned to such term in Section 2.9(Z).

(154) "**Required Payment**" has the meaning assigned to such term in Section 2.8(6).

(155) “**Reserve Account Collateral**” has the meaning assigned to such term in Section 4.4(1).

(156) “**Reserve Funds**” means, the Tax and Insurance Reserve Fund.

(157) “**Reserve Requirement**” means, for any Interest Period for any LIBOR-based Loan, the average maximum rate at which reserves (including, without limitation, any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding \$1,000,000,000 against “Eurocurrency liabilities” (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall include any other reserves required to be maintained by such member banks by reason of any Regulatory Change with respect to (i) any category of liabilities that includes deposits by reference to which the LIBOR Rate for any Interest Period for any LIBOR-based Loans is to be determined as provided in the definition of “LIBOR Rate” or (ii) any category of extensions of credit or other assets that includes LIBOR-based Loans.

(158) “**Restoration**” means the repair and restoration of the Project after a Casualty or Condemnation as nearly as possible to the condition the Project was in immediately prior to such Casualty or Condemnation, with such alterations as may be approved by Administrative Agent.

(159) “**Retail Component**” means the portion of the Improvements belonging to the Lead Borrower consisting of approximately 119,446 square feet of gross leasable retail area.

(160) “**Security Accounts**” means, collectively, the Tax and Insurance Reserve Account, the Casualty/Taking Account, the Additional Cash Collateral Account, the Cash Management Account, the Low DSCR Account and the Reserve Funds.

(161) “**Security Documents**” means collectively, the Mortgage, the Hedge Agreement Pledge, the Deposit Account Control Agreement, the Cash Management Agreement and all Uniform Commercial Code financing statements required by this Agreement, the Mortgage, the Hedge Agreement Pledge, the Deposit Account Control Agreement or the Cash Management Agreement to be filed with respect to the applicable security interests.

(162) “**Single Purpose Entity**” means a corporation, limited partnership or limited liability company which at all times on and after the date hereof, unless otherwise approved in writing by Administrative Agent:

(a) is organized solely for the purpose of one of the following: (a) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Project, entering into this Agreement, refinancing the Project in connection with a permitted repayment of the Loans, and transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing or (b) acting as the sole managing member of Borrower;

(b) is not engaged and will not engage in any business unrelated to (a) the acquisition, development, ownership, management or operation of the Project or (b) acting as the sole managing member of Borrower;

(c) does not have and will not have any assets other than those related to (a) the Project or (b) its membership interest in Borrower;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company), or any amendment of its articles of incorporation, by-laws, limited partnership certificate, limited partnership agreement, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) in the case of Borrower, has and will have, as its only managing member, the Managing Member, which shall be a limited liability company that is a Single Purpose Entity and has at least one (1) Independent Manager;

(f) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a certificate of limited partnership and limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles of incorporation, that in each case provide that such entity shall not, without the unanimous written consent of all of its partners or members (and, in the case of the Managing Member, its Independent Manager(s)): (a) dissolve, merge, liquidate or consolidate itself or any entity in which it has a direct or indirect legal or beneficial ownership interest; (b) sell all or substantially all of its assets or the assets of any other entity in which it has a direct or indirect legal or beneficial ownership interest; (c) engage in any other business activity or permit any entity in which it has a direct or indirect legal or beneficial ownership interest to engage in any other business activity, in each case except as permitted pursuant to the Loan Documents, (d) amend its organizational documents with respect to the matters set forth in this definition without the consent of Administrative Agent; and (e) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest or is the direct or indirect general partner or manager;

(g) if such entity is a limited partnership, has as its only general partner a Single Purpose Entity;

(h) is and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

- (i) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;
- (j) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns, except to the extent that it is required or permitted to file consolidated tax returns by law;
- (k) has not commingled and will not commingle its funds or assets with those of any other Person;
- (l) has held and will hold its assets in its own name;
- (m) has maintained and will maintain financial statements that properly and accurately show its separate assets and liabilities and do not show the assets or liabilities of any other Person, and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity other than an Affiliate (but in such case noting that such entity and the Affiliate are separate entities);
- (n) has paid and will pay its own liabilities and expenses, including, but not limited to, the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees or has entered into appropriate alternative arrangements for workforce services in light of its contemplated business operations;
- (o) has observed and will observe all corporate, partnership or limited liability company formalities, as applicable;
- (p) has not incurred and will not incur any Debt other than (a) with respect to Borrower, the Loans and (b) trade and operational debt which is (i) incurred in the ordinary course of business, (ii) not more than sixty (60) days past due, (iii) with trade creditors, (iv) with respect to Borrower, in the aggregate, in an amount less than \$1,000,000.00, (v) not evidenced by a note, and (vi) paid when due. No Debt other than the Loans may be secured (subordinate or pari passu) by the Project;
- (q) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;
- (r) has not and will not acquire obligations or securities of its members or shareholders or any other Affiliate;
- (s) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including, but not limited to, paying for shared office space and services performed by any officer or employee of an Affiliate;
- (t) maintains and uses and will maintain and use separate invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Single Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Single Purpose Entity's agent;

(u) except in connection with the Loans, has not pledged and will not pledge its assets for the benefit of any other Person;

(v) has conducted business, held itself out and identified itself and will conduct business, hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by a Person other than an Affiliate of Borrower and not as a division or part of any other Person;

(w) has not made and will not make loans to any person or entity or hold evidence of indebtedness issued by another person or entity (other than cash and securities issued by a person or entity that is not an Affiliate or subject to common ownership with such entity);

(x) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(y) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's length transaction with an unrelated third party;

(z) has not and will not have any obligation to indemnify its partners, officers, directors or members, as the case may be, unless such obligation is fully subordinated to the Indebtedness and will not constitute a claim against it in the event that, after payment of the Indebtedness, cash flow is insufficient to pay such obligation;

(aa) if such entity is a corporation, it is required to consider the interests of its creditors in connection with all corporate actions;

(bb) does not and will not have any of its obligations guaranteed by any affiliate.

(163) "**Site Assessment**" means an environmental engineering report for the Project prepared by an engineer engaged by Administrative Agent at Borrower's expense, and in a manner satisfactory to Administrative Agent, based upon an investigation relating to and making appropriate inquiries concerning the existence of Hazardous Materials on or about the Project, and the past or present discharge, disposal, release or escape of any such substances, all consistent with good customary and commercial practice.

(164) "**Special Advance Lender**" has the meaning assigned to such term in Section 14.12(1).

(165) "**Sponsor**" means Acadia Realty Limited Partnership

- (166) “**State**” means the State of New York.
- (167) “**Stub Interest Period**” has the meaning assigned to such term in [Section 2.4\(1\)](#).
- (168) “**Subordination of Property Management Agreement**” means that certain Property Manager’s Consent and Subordination of Property Management Agreement, dated the date hereof, by the Property Manager in favor of Administrative Agent (on behalf of the Lenders), as the same may be modified, amended and/or supplemented and in effect from time to time.
- (169) “**Syndication**” has the meaning assigned to such term to in [Section 12.28](#).
- (170) “**Tax and Insurance Reserve Account**” has the meaning assigned to such term in the Cash Management Agreement.
- (171) “**Tax and Insurance Reserve Fund**” has the meaning assigned to such term in [Section 4.1\(1\)](#).
- (172) “**Taxes**” has the meaning assigned to such term in [Section 9.2](#).
- (173) “**Terrorism Insurance**” has the meaning assigned to such term in [Section 3.1\(2\)](#).
- (174) “**Terrorism Insurance Cap**” has the meaning assigned to such term in [Section 3.1\(2\)](#).
- (175) “**Terrorism Insurance Required Amount**” has the meaning assigned to such term in [Section 3.1\(2\)](#).
- (176) “**Third-Party Counterparty**” has the meaning assigned to such term in [Section 9.15\(3\)](#).
- (177) “**Third-Party Hedge Agreement**” has the meaning assigned to such term in [Section 9.15\(3\)](#).
- (178) “**Threshold Amount**” means \$2,000,000.
- (179) “**TI/LC Letter of Credit**” has the meaning assigned to such term in [Section 4.2](#).
- (180) “**Transfer**” has the meaning assigned to such term in [Section 9.1](#).
- (181) “**Type**” has the meaning assigned to such term in [Section 2.1](#).
- (182) “**Unit**” means each unit of the Condominium, together with all rights, interests and easements in and to the Project Amenities that are held by the owner of such unit as a result of the operation of the terms of the Condominium Declaration.

(183) “**Unit Annual Assessments**” means the assessments allocated to each Unit and collected by Declarant as set forth in the Condominium Declaration.

(184) “**Unpaid Amount**” has the meaning assigned to such term in Section 14.12(2).

Section 1.2 Types of Loans. Loans hereunder are distinguished by “**Type**”. The “**Type**” of a Loan refers to whether such Loan is an Base Rate Loan or a LIBOR-based Loan, each of which constitutes a Type.

ARTICLE 2

LOAN TERMS

Section 2.1 The Commitments, Loans and Notes.

(1) **Loans.** Each Lender severally agrees, on the terms and conditions of this Agreement, to make a term loan to Borrower in Dollars in a principal amount up to but not exceeding the amount of the Commitment of such Lender. The Loans shall be funded in a single advance in the aggregate amount of up to \$86,000,000.00 and repaid in accordance with this Agreement. The precondition to effectiveness of this Agreement shall be Borrower’s satisfaction of the conditions described in Schedule 2.1. Borrower hereby confirms that, notwithstanding the foregoing, the Loans have been fully advanced in the amount of \$86,000,000.00 prior to the date hereof and that no actual advance of the Loans to Borrower shall be made on the date hereof or be required during the term of the Loans.

(2) **Lending Offices.** The Loans of each Lender shall be made and maintained at such Lender’s Applicable Lending Office for Loans of such Type.

(3) **Several Obligations.** The failure of any Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan, but neither any Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Loan to be made by such other Lender.

(4) **Notes.**

(a) **Loan Notes.** The Loans made by each Lender shall be evidenced by a single promissory note of Borrower substantially in the form of Exhibit C, payable to such Lender in a principal amount equal to the amount of its Commitment as originally in effect and otherwise duly completed.

(b) **Endorsements on Notes.** The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by each Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by such Lender on its books and, prior to any transfer of the Note held by it, endorsed by such Lender on the schedule attached to such Note or any continuation thereof; provided that the failure of such Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing hereunder or under such Note in respect of such Loans.

(c) **Substitution, Exchange and Subdivision of Notes.** No Lender shall be entitled to have its Notes substituted or exchanged for any reason, or subdivided for promissory notes of lesser denominations, except in connection with a permitted assignment of all or any portion of such Lender's Commitment, Loans and Note pursuant to Sections 12.10 and 12.24 (and, if requested by any Lender, Borrower agrees to so substitute or exchange any Notes and enter into note splitter agreements in connection therewith).

(d) **Loss, Theft, Destruction or Mutilation of Notes.** In the event of the loss, theft or destruction of any Note, upon Borrower's receipt of a reasonably satisfactory indemnification agreement executed in favor of Borrower by the holder of such Note, or in the event of the mutilation of any Note, upon the surrender of such mutilated Note by the holder thereof to Borrower, Borrower shall execute and deliver to such holder a new replacement Note in lieu of the lost, stolen, destroyed or mutilated Note.

Section 2.2 Conversions or Continuations of Loans.

(1) Subject to Sections 2.8(4), 2.9(2) and 2.9(3), Lead Borrower shall have the right to Convert Loans of one Type into Loans of another Type or Continue Loans of one Type as Loans of the same Type, at any time or from time to time; provided that: (a) Lead Borrower shall give Administrative Agent notice of each such Conversion or Continuation as provided in Section 2.8(5); (b) LIBOR-based Loans may be Converted only on the last day of an Interest Period for such Loans unless Borrower complies with the terms of Section 2.9(5) and (c) subject to Sections 2.9(1) and 2.9(3), any Conversion or Continuation of Loans shall be pro rata among the Lenders. Notwithstanding the foregoing, and without limiting the rights and remedies of Administrative Agent and the Lenders under Article 11, in the event that any Event of Default exists, Administrative Agent may (and at the request of the Majority Lenders shall) suspend the right of Lead Borrower to Convert any Loan into a LIBOR-based Loan, or to Continue any Loan as a LIBOR-based Loan for so long as such Event of Default exists, in which event all Loans shall be Converted (on the last day(s) of the respective Interest Periods therefor) or Continued, as the case may be, as Base Rate Loans. In connection with any such Conversion, a Lender may (at its sole and absolute discretion) transfer a Loan from one Applicable Lending Office to another.

(2) Notwithstanding anything to the contrary contained in this Agreement, at any time that a Hedge Agreement is in effect, Lead Borrower shall have the right to choose only an Interest Period with respect to the principal amount equal to the notional amount under such Hedge Agreement which is the same as the Interest Rate Hedge Period.

Section 2.3 Interest Rate; Late Charge.

(1) Borrower hereby promises to pay to Administrative Agent for account of each Lender interest on the unpaid principal amount of each Loan (which may be Base Rate Loans and/or LIBOR-based Loans) made by such Lender for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full, at the following rates per annum:

(a) during such periods as such Loan is a Base Rate Loan, the Base Rate plus the Applicable Margin; and

(b) during such periods as such Loan is a LIBOR-based Loan, for each Interest Period relating thereto, the Adjusted LIBOR Rate for such Loan for such Interest Period plus the Applicable Margin.

(2) Accrued interest on each Loan shall be payable (i) monthly in arrears on each Payment Date and (ii) in the case of any Loan, upon the payment or prepayment thereof or the Conversion of such Loan to a Loan of another Type (but only on the principal amount so paid, prepaid or Converted), except that interest payable at the Default Rate shall be payable from time to time on demand.

(3) Notwithstanding anything to the contrary contained herein, after the Maturity Date and during any period when an Event of Default exists, Borrower shall pay to Administrative Agent for the account of each Lender interest at the applicable Default Rate on the outstanding principal amount of any Loan made by such Lender, any interest payments (except a late payment of any Additional Interest which shall be governed by the terms of the Hedge Agreement) thereon not paid when due and on any other amount payable by Borrower hereunder, under the Notes and any other Loan Documents.

(4) Promptly after the determination of any interest rate provided for herein or any change therein, Administrative Agent shall give notice thereof to the Lenders to which such interest is payable and to Lead Borrower, but the failure of Administrative Agent to provide such notice shall not affect Borrower's obligation for the payment of interest on the Loans.

(5) In addition to any sums due under this Section 2.3, Borrower shall pay to Administrative Agent for the account of the Lenders a late payment premium in the amount of five percent (5.0%) of (i) any payments of principal under the Loans made and payable after the due date thereof, and (ii) any payments of interest or other sums under the Loans made more than five (5) days after the due date thereof, which late payment premium shall be due with any such late payment or upon demand by Administrative Agent. Such late payment charge represents the reasonable estimate of Borrower and the Lenders of a fair average compensation for the loss that may be sustained by the Lenders due to the failure of Borrower to make timely payments. Such late charge shall be paid without prejudice to the right of Administrative Agent and the Lenders to collect any other amounts provided herein or in the other Loan Documents to be paid or to exercise any other rights or remedies under the Loan Documents.

(6) Borrower shall pay Additional Interest under the Notes in accordance with the terms of any Hedge Agreement provided by a Eurohypo Counterparty.

Section 2.4 Terms of Payment.

The Loans shall be payable as follows:

(1) **Interest.** On the date hereof, Borrower shall make a payment of interest only (covering the period from the date hereof through and including December 1, 2009 (the "Stub Interest Period"), and beginning with the first Business Day of each month thereafter, commencing on January 1, 2010, Borrower shall pay interest in arrears on each Payment Date in accordance with the wire transfer instructions set forth in Schedule 2.4(1) hereto (or such other instructions as Administrative Agent may from time to time provide) until all amounts due under the Loan Documents are paid in full.

(2) **Principal Amortization.** Borrower shall make payments of interest only for the first twelve (12) months of the term of the Loan. Beginning with the first Payment Date following the first anniversary of the Closing Date and continuing through the Maturity Date (including, if the extension option is exercised, through the Extension Period), Borrower shall make payments of principal in the amounts set forth on Schedule 2.4(2) attached hereto and made a part hereof.

(3) **Maturity.** On the Maturity Date, Borrower shall pay to Administrative Agent (on behalf of the Lenders) all outstanding principal, accrued and unpaid interest, and any other amounts due under the Loan Documents.

(4) **Optional Prepayments.** Subject to the provisions of Sections 2.4(6) and 2.9(5), Borrower shall have the right to prepay Loans in whole or in part, without premium or penalty; provided that: (a) Lead Borrower shall give Administrative Agent notice of each such prepayment as provided in Section 2.8(5) (and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable hereunder) and (b) partial prepayments shall be in the minimum aggregate principal amounts specified in Section 2.8(4). Loans that are prepaid cannot be reborrowed.

(5) **Mandatory Prepayments.** If a casualty or condemnation shall occur with respect to the Project, Borrower, upon Borrower's or Administrative Agent's receipt of the applicable insurance proceeds or condemnation award, shall prepay the Loan, if required by the provisions of Article 3, on the dates and in the amounts specified therein without premium (but subject to the provisions of Sections 2.4(6) and 2.9(5)). Nothing in this Section 2.4(5) shall be deemed to limit any obligation of Borrower under the Mortgage or any other Security Document, including any obligation to remit to a collateral or similar account maintained by Administrative Agent pursuant to the Mortgage or any of the other Security Documents the proceeds of insurance, condemnation award or other compensation received in respect of any casualty or condemnation. Prepayments pursuant to this Section 2.4(5), shall be applied to the Loans then outstanding pro rata in the order set forth in Section 2.4(6).

(6) **Interest and Other Charges on Prepayment.** If the Loans are prepaid, in whole or in part, pursuant to Section 2.4(4) or 2.4(5), each such prepayment shall be made on the prepayment date specified in the notice to Administrative Agent pursuant to Section 2.8(5), and (in every case) together with (a) the accrued and unpaid interest (including accrued and unpaid Additional Interest, if applicable) on the principal amount prepaid and (b) any amounts payable to a Lender pursuant to Section 2.9(5) as a result of such prepayment while an Adjusted LIBOR Rate is in effect; provided, however, that any such prepayment shall be applied first, to the prepayment of any portions of the outstanding principal amount that are Base Rate Loans and, second, to the prepayment of any portions of the outstanding principal amount that are LIBOR-based Loans applying such sums first to LIBOR-based Loans of the shortest maturity so as to minimize breakage costs; provided further, however, that if an Event of Default exists, Administrative Agent may distribute such payment to the Lenders for application in such manner as it or the Majority Lenders, subject to Section 2.8(2), may determine to be appropriate.

(7) **Application of Payments.** All payments received by Administrative Agent under the Loan Documents shall be applied: first, to any fees and expenses due to Administrative Agent and the Lenders under the Loan Documents; second, to any Default Rate interest or late charges; third, to accrued and unpaid interest; and fourth, to the principal sum and other amounts due under the Loan Documents; **provided**, however, that, if an Event of Default exists Administrative Agent shall apply such payments in any order or manner as Administrative Agent shall determine.

Section 2.5 Extension of Maturity Date. Borrower may, at its option, extend the term of the then outstanding principal amount for a period of three hundred sixty-four (364) days from the original Maturity Date (the applicable period being, the (“**Extension Period**”), **subject to the satisfaction of the following conditions:**

- (1) Lead Borrower shall notify (the “**Extension Notice**”) Administrative Agent of Borrower’s exercise of such option between sixty (60) and one hundred twenty (120) days prior to the original Maturity Date;
- (2) No Potential Default or Event of Default exists as of the date of the Extension Notice, as of the original Maturity Date or would result from the extension of the maturity of the Loans for the Extension Period;
- (3) The Loan to Value Ratio does not exceed 70%, based on a new Appraisal obtained by Administrative Agent not more than sixty (60) days prior to the original Maturity Date, such Appraisal to be at Borrower’s expense and satisfactory to Administrative Agent in all respects;
- (4) The Pro Forma Debt Service Coverage Ratio as of the original Maturity Date shall be equal to or greater than 1.45:1.00;
- (5) The Debt Yield as of the original Maturity Date shall not be less than ten percent (10.0%).
- (6) The expiration date of any Collateral Letters of Credit, if still outstanding pursuant to the terms of this Agreement or any other Loan Document, shall be extended to a date which is thirty (30) days beyond the end of the Extension Period, or shall otherwise contain evergreen provisions satisfactory to Administrative Agent, in its sole and absolute discretion;
- (7) Current financial statements regarding Borrower (dated not earlier than ninety (90) days prior to the Extension Notice) and all other financial statements and other information as may be required under this Agreement and the Loan Documents regarding Borrower and the Project shall have been submitted promptly to Administrative Agent;
- (8) In the opinion of Administrative Agent, there shall not have occurred any Material Adverse Effect;
- (9) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Administrative Agent and the Lenders in connection with the proposed extension (pre- and post-closing), including appraisal fees and legal fees; all such costs and expenses shall be due and payable upon demand, and any failure to pay such amounts shall constitute a default under this Agreement and the Loan Documents;

(10) Not later than the original Maturity Date, (i) the extension shall have been documented to the Lenders' satisfaction and consented to by Borrower, Administrative Agent and all the Lenders, including the execution and delivery by the Guarantor of reaffirmations of their respective obligations under the Guaranty and (ii) Administrative Agent shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Administrative Agent; and

(11) Borrower shall pay to Administrative Agent (for the benefit of the Lenders in accordance with their proportionate shares) on the original Maturity Date a non-refundable extension fee equal to one-half percent (0.50%) of an amount equal to the outstanding principal amount at such time.

Any such extension shall be otherwise subject to all of the other terms and provisions of this Agreement and the other Loan Documents.

Section 2.6 Reserved.

Section 2.7 Cash Management.

(1) Borrower shall cause all rents from the Project to be deposited into the Clearing Account in accordance with the Deposit Account Control Agreement and the Cash Management Agreement. Without limitation of the foregoing, Borrower shall, and shall cause the Property Manager to, (a) deliver irrevocable written instructions to all tenants under leases to deliver all rents payable thereunder directly to the Clearing Account, and (b) deposit all amounts received by Borrower or the Property Manager constituting rents or other revenue of any kind from the Project into the Clearing Account within one (1) Business Day of receipt thereof. Disbursements from the Clearing Account will be made in accordance with the terms and conditions of this Agreement and the Cash Management Agreement. Administrative Agent shall have sole dominion and control over the Clearing Account and Borrower shall have no rights to make withdrawals therefrom.

(2) Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default exists, Borrower's obligations with respect to the monthly payment of interest and principal (if any) and the deposits to be made into the Security Accounts and any other payment due pursuant to this Agreement or any other Loan Document shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account and are unconditionally available to Administrative Agent (on behalf of the Lenders) to satisfy such obligations in accordance with the terms of this Agreement and the Cash Management Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Administrative Agent.

(3) The insufficiency of funds on deposit in the Clearing Account or the Cash Management Account (or any sub-account thereunder) shall not absolve Borrower of the obligation to make any payments as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

Section 2.8 Payments; Pro Rata Treatment; Etc.

(1) **Payments Generally.**

(a) **Payments by Borrower.** Except to the extent otherwise provided herein, all payments of principal, interest and other amounts to be made by Borrower under this Agreement and the Notes, and, except to the extent otherwise provided therein, all payments to be made by Borrower under any other Loan Document, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Administrative Agent at an account designated by Administrative Agent by notice to Lead Borrower, not later than 2:00 p.m., New York City time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments.** Subject to the provisions of Section 2.4(7), Lead Borrower shall, at the time of making each payment under this Agreement or any Note for the account of any Lender, specify to Administrative Agent (which shall so notify the intended recipient(s) thereof) the Loans or other amounts payable by Borrower hereunder to which such payment is to be applied (and in the event that Lead Borrower fails to so specify, or if an Event of Default has occurred and is continuing, Administrative Agent may distribute such payment to the Lenders for application in such manner as it may determine to be appropriate, subject to Section 2.8(2), and any other agreement among Administrative Agent and the Lenders with respect to such application).

(c) **Forwarding of Payments by Administrative Agent.** Except as otherwise agreed by Administrative Agent and the Lenders, each payment received by Administrative Agent under this Agreement or any Note for account of any Lender shall be paid by Administrative Agent promptly to such Lender, in immediately available funds, for account of such Lender's Applicable Lending Office for the Loan or other obligation in respect of which such payment is made.

(d) **Extensions to Next Business Day.** If the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall be payable for any principal so extended for the period of such extension.

(2) **Pro Rata Treatment.** Except to the extent otherwise provided herein: (a) except as otherwise provided in Section 2.9(4), Loans shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Loans) or their respective Loans (in the case of Conversions or Continuations of Loans); (b) each payment or prepayment of principal of Loans by Borrower shall be made for account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; and (c) each payment of interest on Loans by Borrower shall be made for account of the Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

(3) **Computations.** Interest on all Loans shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

(4) **Minimum Amounts.** Except for (a) mandatory prepayments made pursuant to Section 2.4(5) and (b) Conversions or prepayments made pursuant to Section 2.9(4), each borrowing, Conversion, Continuation and partial prepayment of principal (collectively, "Loan Transactions") of Loans shall be in an aggregate amount at least equal to \$1,000,000 (Loan Transactions of or into Loans of different Types or Interest Periods at the same time hereunder shall be deemed separate Loan Transactions for purposes of the foregoing, one for each Type or Interest Period); provided that if any Loans or borrowings would otherwise be in a lesser principal amount for any period, such Loans shall be Base Rate Loans during such period. Notwithstanding the foregoing, the minimum amount of \$1,000,000 shall not apply to Conversions of lesser amounts into a tranche of Loans that has (or will have upon such Conversion) an aggregate principal amount exceeding such minimum amount and one Interest Period.

(5) **Certain Notices.** Notices by Lead Borrower to Administrative Agent regarding Loan Transactions and the selection of Types of Loans and/or of the duration of Interest Periods shall be irrevocable and shall be effective only if received by Administrative Agent not later than 12:00 noon, New York City time, on the number of Business Days prior to the date of the proposed Loan Transaction or the first day of such Interest Period specified below:

Notice	Number of Business Days Prior
Optional Prepayment	3
Conversions into, Continuations as, or borrowings in Base Rate Loans	3
Conversions into, Continuations as, borrowings in or changes in duration of Interest Period for, LIBOR-based Loans (subject to <u>Section 2.4(6)</u>)	3

Each such notice of a Loan Transaction shall specify the amount (subject to Section 2.8(4)), Type, and Interest Period of such proposed Loan Transaction, and the date (which shall be a Business Day) of such proposed Loan Transaction. Notices for Conversions and Continuations shall be in the form of Exhibit E. Each such notice specifying the duration of an Interest Period shall specify the portion of the Loans to which such Interest Period is to relate. Administrative Agent shall promptly notify the Lenders of the contents of each such notice. If Lead Borrower fails to select (i) the Type of Loan or (ii) the duration of any Interest Period for any LIBOR-based Loan within the time period (i.e., three (3) Business Days prior to the first day of the next applicable Interest Period) and otherwise as provided in this Section 2.8(5), such Loan (if outstanding as a LIBOR Loan) will be automatically Continued as an LIBOR-based Loan with an Interest Period of one (1) month on the last day of the current Interest Period for such Loan (based on a LIBOR-based Rate determined two (2) Business Days prior to the first day of the next Interest Period) or, if outstanding as an Base Rate Loan, will remain as a Base Rate Loan.

(6) **Non-Receipt of Funds by Administrative Agent.** Unless Administrative Agent shall have been notified by a Lender or Lead Borrower (in either case, and along with Borrower, the "**Payor**") prior to the date on which the Payor is to make payment to Administrative Agent of (in the case of a Lender) the proceeds of a Loan to be made by such Lender hereunder or (in the case of Borrower) a payment to Administrative Agent for account of any Lender hereunder (in either case, such payment being herein called the "**Required Payment**"), which notice shall be effective upon receipt, that the Payor does not intend to make the Required Payment to Administrative Agent, Administrative Agent may assume that the Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient(s) on such date; and, if the Payor has not in fact made the Required Payment to Administrative Agent, the recipient(s) of such payment shall, on demand, repay to Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date (the "**Advance Date**") such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount at a rate per annum equal to (a) the Federal Funds Rate for such day in the case of payments returned to Administrative Agent by any of the Lenders or (b) the applicable interest rate due hereunder with respect to payments returned by Borrower to Administrative Agent and, if such recipient(s) shall fail promptly to make such payment, Administrative Agent shall be entitled to recover such amount, on demand, from the Payor, together with interest as aforesaid; provided that if neither the recipient(s) nor the Payor shall return the Required Payment to Administrative Agent within three (3) Business Days of the Advance Date, then, retroactively to the Advance Date, the Payor and the recipient(s) shall each be obligated to pay interest on the Required Payment as follows:

(a) if the Required Payment shall represent a payment to be made by Borrower to the Lenders, Borrower and the recipient(s) shall each be obligated retroactively to the Advance Date to pay interest in respect of the Required Payment at the Default Rate (without duplication of the obligation of Borrower under Section 2.3] 60; to pay interest on the Required Payment at the Default Rate), it being understood that the return by the recipient(s) of the Required Payment to Administrative Agent shall not limit such obligation of Borrower under Section 2.3 to pay interest at the Default Rate in respect of the Required Payment, and

(b) if the Required Payment shall represent proceeds of a Loan to be made by the Lenders to Borrower, the Payor and Borrower shall each be obligated retroactively to the Advance Date to pay interest in respect of the Required Payment pursuant to whichever of the rates specified in Section 2.3 is applicable to the Type of such Loan, it being understood that the return by Borrower of the Required Payment to Administrative Agent shall not limit any claim Borrower may have against the Payor in respect of such Required Payment.

(7) **Sharing of Payments, Etc.**

(a) **Right of Set-off.** Borrower agrees that, in addition to (and without limitation of) any right of set-off, banker's lien or counterclaim a Lender may otherwise have, (subject, as among the Lenders, to Section 12.26), each Lender shall be entitled, at its option (to the fullest extent permitted by law), to set off and apply any deposit (general or special, time or demand, provisional or final), or other indebtedness, held by it for the credit or account of Borrower at any of its offices, in Dollars or in any other currency, against any principal of or interest on any of such Lender's Loans or any other amount payable to such Lender hereunder, that is not paid when due (regardless of whether such deposit or other indebtedness is then due to Borrower), in which case it shall promptly notify Borrower and Administrative Agent thereof, provided that such Lender's failure to give such notice shall not affect the validity thereof.

(b) **Sharing.** If any Lender shall obtain from Borrower payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any other Loan Document through the exercise (subject, as among the Lenders, to Section 12.26) of any right of set-off, banker's lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loans or such other amounts then due hereunder or thereunder by Borrower to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans or such other amounts, respectively, owing to such other Lenders (or in interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) p ro rata in accordance with the unpaid principal of and/or interest on the Loans or such other amounts, respectively, owing to each of the Lenders. To such end all the 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.

(c) **Consent by Borrower.** Borrower agrees that any Lender so purchasing such a participation (or direct interest) may exercise (subject, as among the Lenders, to Section 12.26) all rights of set-off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) **Rights of Lenders; Bankruptcy.** Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which this Section 2.8(Z) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 2.8(Z) to share in the benefits of any recovery on such secured claim.

Section 2.9 Yield Protection; Etc.

(1) **Additional Costs.**

(a) **Costs of Making or Maintaining LIBOR-based Loans.** Borrower shall pay directly to each Lender from time to time such amounts as such Lender may determine to be necessary to compensate such Lender for any costs that such Lender determines are attributable to its making or maintaining of any LIBOR-based Loans or its obligation to make any LIBOR-based Loans hereunder, or any reduction in any amount receivable by such Lender hereunder in respect of any of such Loans or such obligation (such increases in costs and reductions in amounts receivable being herein called "**Additional Costs**"), resulting from any Regulatory Change that:

- (i) shall subject any Lender (or its Applicable Lending Office for any of such Loans) to any tax, duty or other charge in respect of such Loans or its Note or changes the basis of taxation of any amounts payable to such Lender under this Agreement or its Note in respect of any of such Loans (excluding changes in the rate of tax on the overall net income of such Lender or of such Applicable Lending Office by the jurisdiction in which such Lender has its principal office or such Applicable Lending Office); or
- (ii) imposes or modifies any reserve, special deposit or similar requirements (other than the Reserve Requirement used in the determination of the Adjusted LIBOR Rate for any Interest Period for such Loan) relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Lender (including, without limitation, any of such Loans or any deposits referred to in the definition of "LIBOR Rate"), or any commitment of such Lender (including, without limitation, the Commitment of such Lender hereunder); or
- (iii) imposes any other condition affecting this Agreement or its Note (or any of such extensions of credit or liabilities) or its Commitment.

If any Lender requests compensation from Lead Borrower under this paragraph (a), Borrower may, by notice to such Lender (with a copy to Administrative Agent), suspend the obligation of such Lender thereafter to make or Continue LIBOR-based Loans, or to Convert Loans into LIBOR-based Loans, until the Regulatory Change giving rise to such request ceases to be in effect (in which case the provisions of Section 2.9(4) shall be applicable), provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(b) **Costs Attributable to Regulatory Change or Risk-Based Capital Guidelines.** Without limiting the effect of the foregoing provisions of this Section 2.9(1) (but without duplication), Borrower shall pay directly to each Lender from time to time on request such amounts as such Lender may determine to be necessary to compensate such Lender (or, without duplication, the bank holding company of which such Lender is a subsidiary) for any costs that it determines are attributable to the maintenance by such Lender (or any Applicable Lending Office or such bank holding company), pursuant to any law or regulation or any interpretation, directive or request (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) of any court or governmental or monetary authority (i) following any Regulatory Change or (ii) implementing any risk-based capital guideline or other requirement (whether or not having the force of law and whether or not the failure to comply therewith would be unlawful) hereafter issued by any government or governmental or supervisory authority implementing at the national level the Basel II Accord, of capital in respect of its Commitment or Loans (such compensation to include, without limitation, an amount equal to any reduction of the rate of return on assets or equity of such Lender (or any Applicable Lending Office or such bank holding company) to a level below that which such Lender (or any Applicable Lending Office or such bank holding company) could have achieved but for such law, regulation, interpretation, directive or request.

(c) **Notification and Certification.** Each Lender shall notify Lead Borrower of any event occurring after the date hereof entitling such Lender to compensation under paragraph (a) or (b) of this Section 2.9(1) as promptly as practicable, but in any event within sixty (60) days, after such Lender obtains actual knowledge thereof; provided that (i) if any Lender fails to give such notice within sixty (60) days after it obtains actual knowledge of such an event, such Lender shall, with respect to compensation payable pursuant to this Section 2.9(1) in respect of any costs resulting from such event, only be entitled to payment under this Section 2.9(1) for costs incurred from and after the date forty-five (45) days prior to the date that such Lender does give such notice and (ii) each Lender will designate a different Applicable Lending Office for the Loans of such Lender affected by such event if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the sole opinion of such Lender, be disadvantageous to such Lender, except that such Lender shall have no obligation to designate an Applicable Lending Office located in the United States of America. Each Lender will furnish to Lead Borrower a certificate setting forth the basis and amount of each request by such Lender for compensation under paragraph (a) or (b) of this Section 2.9(1). Determinations and allocations by any Lender for purposes of this Section 2.9(1) of the effect of any Regulatory Change pursuant to paragraph (a) of this Section 2.9(1), or of the effect of capital maintained pursuant to paragraph (b) of this Section 2.9(1), on its costs or rate of return of maintaining Loans or its obligation to make Loans, or on amounts receivable by it in respect of Loans, and of the amounts required to compensate such Lender under this Section 2.9(1), shall be conclusive, provided that such determinations and allocations are made on a reasonable basis.

(2) **Limitation on Types of Loans.** Anything herein to the contrary notwithstanding, if, on or prior to the determination of the LIBOR Rate for any Interest Period for any LIBOR-based Loan:

(a) Administrative Agent determines, which determination shall be conclusive, that quotations of interest rates for the relevant deposits referred to in the definition of LIBOR Rate are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR-based Loans as provided herein; or

(b) Any Lender determines, which determination shall be conclusive, and notifies Administrative Agent that the relevant rates of interest referred to in the definition of LIBOR Rate upon the basis of which the rate of interest for LIBOR-based Loans for such Interest Period is to be determined are not likely adequately to cover the cost to such Lenders of making or maintaining LIBOR-based Loans for such Interest Period;

then Administrative Agent shall give Lead Borrower and each Lender prompt notice thereof and, so long as such condition remains in effect, the Lenders shall be under no obligation to make additional LIBOR-based Loans, to Continue LIBOR-based Loans or to Convert Loans of any other Type into LIBOR-based Loans, and Borrower shall, on the last day(s) of the then current Interest Period(s) for the outstanding LIBOR-based Loans, either prepay such Loans or such Loans shall be automatically Converted into Base Rate Loans.

(3) **Illegality.** Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its Applicable Lending Office to honor its obligation to make or maintain LIBOR-based Loans hereunder (and, in the sole opinion of such Lender, the designation of a different Applicable Lending Office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify Lead Borrower thereof (with a copy to Administrative Agent) and such Lender's obligation to make or Continue, or to Convert Loans of any other Type into, LIBOR-based Loans shall be suspended until such time as such Lender may again make and maintain LIBOR-based Loans (in which case the provisions of Section 2.9(4) shall be applicable).

(4) **Treatment of Affected Loans.** If the obligation of any Lender to make LIBOR-based Loans or to Continue, or to Convert Base Rate Loans into, LIBOR-based Loans shall be suspended pursuant to Section 2.9(1) or 2.9(3), such Lender's Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for Loans (or, in the case of a Conversion resulting from a circumstance described in Section 2.9(3), on such earlier date as such Lender may specify to Lead Borrower with a copy to Administrative Agent) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 2.9(1) or 2.9(3) that gave rise to such Conversion no longer exist:

(a) to the extent that such Lender's Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's Loans shall be applied instead to its Base Rate Loans; and

(b) all Loans that would otherwise be made or Continued by such Lender as LIBOR-based Loans shall be made or Continued instead as Base Rate Loans, and all Loans of such Lender that would otherwise be Converted into LIBOR-based Loans shall remain as Base Rate Loans.

If such Lender gives notice to Lead Borrower with a copy to Administrative Agent that the circumstances specified in Section 2.9(1) or 2.9(3) that gave rise to the Conversion of such Lender's Loans pursuant to this Section 2.9(4) no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR-based Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR-based Loans, to the extent necessary so that, after giving effect thereto, all Base Rate Loans and LIBOR-based Loans are allocated among the Lenders ratably (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

(5) **Compensation.** Borrower shall pay to Administrative Agent for account of each Lender, upon the request of such Lender through Administrative Agent, such amount or amounts as shall be sufficient (in the reasonable opinion of such Lender) to compensate it for any loss, cost or expense that such Lender determines is attributable to:

(a) any payment, prepayment or Conversion of a LIBOR-based Loan made by such Lender for any reason (including, without limitation, the acceleration of the Loans pursuant to Administrative Agent's or the Lenders' rights referred to in [Article 11](#)) on a date other than the last day of the Interest Period for such Loan; or

(b) any failure by Borrower for any reason to borrow a LIBOR-based Loan from such Lender on the date for such borrowing specified in the relevant notice of borrowing given to Administrative Agent in accordance with the terms of this Agreement.

Without limiting the effect of the preceding sentence, such compensation shall include an amount equal to the excess, if any, of (i) the amount of interest that otherwise would have accrued on the principal amount so paid, prepaid, Converted or not borrowed for the period from the date of such payment, prepayment, Conversion or failure to borrow to the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, the Interest Period for such Loan that would have commenced on the date specified for such borrowing) at the applicable rate of interest for such Loan provided for herein over (ii) the amount of interest that otherwise would have accrued on such principal amount at a rate per annum equal to the interest component of the amount such Lender would have bid in the London interbank market for Dollar deposits of leading banks in amounts comparable to such principal amount and with maturities comparable to such period (as reasonably determined by such Lender), or if such Lender shall cease to make such bids, the equivalent rate, as reasonably determined by such Lender, derived from Page 3750 of the Dow Jones Markets (Telerate) Service or other publicly available source as described in the definition of LIBOR Rate.

(6) **U.S. Taxes.**

(a) **Gross-up for Deduction or Withholding of U.S. Taxes.** Borrower agrees to pay to each Lender that is not a U.S. Person such additional amounts as are necessary in order that the net payment of any amount due to such non-U.S. Person hereunder after deduction for or withholding in respect of any U.S. Taxes imposed with respect to such payment (or in lieu thereof, payment of such U.S. Taxes by such non-U.S. Person), will not be less than the amount stated herein to be then due and payable, provided that the foregoing obligation to pay such additional amounts shall not apply:

(i) to any payment to any Lender hereunder unless such Lender is, on the date hereof (or on the date it becomes a Lender hereunder as provided in [Section 12.24\(2\)](#)) and on the date of any change in the Applicable Lending Office of such Lender, either entitled to submit a Form W-8BEN (relating to such Lender and entitling it to a complete exemption from withholding on all interest to be received by it hereunder in respect of the Loans) or Form W-8ECI (relating to all interest to be received by such Lender hereunder in respect of the Loans), or

- (ii) to any U.S. Taxes imposed solely by reason of the failure by such non-U.S. Person to comply with applicable certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connections with the United States of America of such non-U.S. Person if such compliance is required by statute or regulation of the United States of America as a precondition to relief or exemption from such U.S. Taxes.

For the purposes hereof, (A) "**U.S. Person**" means a citizen, national or resident of the United States of America, a corporation, limited liability company, partnership or other entity created or organized in or under any laws of the United States of America or any State thereof, or any estate or trust that is subject to Federal income taxation regardless of the source of its income, (B) "**U.S. Taxes**" means any present or future tax, assessment or other charge or levy imposed by or on behalf of the United States of America or any taxing authority thereof or therein, (C) "**Form W-8BEN**" means Form W-8BEN of the Department of the Treasury of the United States of America and (D) "**Form W-8ECI**" means Form W-8ECI of the Department of the Treasury of the United States of America. Each of the Forms referred to in the foregoing clauses (C) and (D) shall include such successor and related forms as may from time to time be adopted by the relevant taxing authorities of the United States of America to document a claim to which such Form relates.

(b) **Evidence of Deduction, Etc.** Within thirty (30) days after paying any amount to Administrative Agent or any Lender from which it is required by law to make any deduction or withholding, and within thirty (30) days after it is required by law to remit such deduction or withholding to any relevant taxing or other authority, Borrower shall deliver to Administrative Agent for delivery to such non-U.S. Person evidence satisfactory to such Person of such deduction, withholding or payment (as the case may be).

(7) **Replacement of Lenders.** If any Lender requests compensation pursuant to Section 2.9(1) or 2.9(6), or any Lender's obligation to Continue Loans of any Type, or to Convert Loans of any Type into the other Type of Loan, shall be suspended pursuant to Section 2.9(2) or 2.9(3) (any such Lender requesting such compensation, or whose obligations are so suspended, being herein called a "**Requesting Lender**"), Lead Borrower, upon three (3) Business Days notice, may require that such Requesting Lender transfer all of its right, title and interest under this Agreement and such Requesting Lender's Note to any bank or other financial institution (a "**Proposed Lender**") identified by Lead Borrower that is satisfactory to Administrative Agent (i) if such Proposed Lender agrees to assume all of the obligations of such Requesting Lender hereunder, and to purchase all of such Requesting Lender's Loans hereunder for consideration equal to the aggregate outstanding principal amount of such Requesting Lender's Loans, together with interest thereon to the date of such purchase (to the extent not paid by Borrower), and satisfactory arrangements are made for payment to such Requesting Lender of all other amounts accrued and payable hereunder to such Requesting Lender as of the date of such transfer (including any fees accrued hereunder and any amounts that would be payable under Section 2.9(5) as if all of such Requesting Lender's Loans were being prepaid in full on such date) and (ii) if such Requesting Lender has requested compensation pursuant to Section 2.9(1) or 2.9(6), such Proposed Lender's aggregate requested compensation, if any, pursuant to Section 2.9(1) or 2.9(6) with respect to such Requesting Lender's Loans is lower than that of the Requesting Lender. Subject to the provisions of Section 12.24(2), such Proposed Lender shall be a "Lender" for all purposes hereunder. Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements of Borrower contained in Sections 2.9(1), 2.9(6) and 12.5 (without duplication of any payments made to such Requesting Lender by Borrower or the Proposed Lender) shall survive for the benefit of such Requesting Lender under this Section 2.9(7) with respect to the time prior to such replacement.

Section 2.10 Administrative Fee.

Until payment in full of all obligations under this Agreement and the other Loan Documents, Borrower shall pay to Administrative Agent, for its sole account (except as agreed in writing between Administrative Agent and any Lender(s)), the Administrative Fee in accordance with the Fee Letter.

Section 2.11 Exit Fee.

With respect to any repayment or prepayment of principal under the Loans made on or prior to the original Maturity Date for any reason whatsoever (whether such repayment or prepayment of the Loans is made voluntarily or involuntarily or as a result of the occurrence of an Event of Default pursuant to which the Administrative Agent has accelerated the obligations of the Borrower under the Loan Documents or otherwise), Borrower shall pay to Administrative Agent (for the account of the Lenders in accordance with their pro rata shares), in addition to all other amounts that may be due hereunder, an amount equal to one quarter of one percent (0.25%) of the amount so repaid or prepaid under the Loans (the "Exit Fee").

ARTICLE 3

INSURANCE, CONDEMNATION, AND IMPOUNDS

Section 3.1 Insurance.

(1) Borrower shall obtain and maintain, or cause to be maintained, Policies for Borrower and the Project providing at least the following coverages:

(a) comprehensive all-risk insurance on the Improvements and the personal property, in each case (i) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, (ii) containing an agreed amount endorsement with respect to the improvements and personal property waiving all co insurance provisions; (iii) providing for no deductible in excess of \$50,000; (iv) providing for repairs and alteration coverage; and (v) providing coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements together with an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Project shall at any time constitute legal non-conforming structures or uses. The Full Replacement Cost shall be redetermined from time to time (but not more frequently than once in any twenty-four (24) calendar months) at the request of Administrative Agent by an appraiser or contractor designated by Borrower and reasonably approved by Administrative Agent, or by an engineer or appraiser in the regular employ of the insurer. The cost of such appraisal shall be paid by Administrative Agent unless an Event of Default shall have occurred and be continuing, in which case such cost shall be paid by Borrower. After the first appraisal, additional appraisals may be based on construction cost indices customarily employed in the trade. No omission on the part of Administrative Agent to request any such ascertainment shall relieve Borrower of any of its obligations under this Section 3.1(a);

(b) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage (including liabilities as a result of repairs and alterations) occurring upon, in or about the Project, such insurance (i) to be on the so called "occurrence" form with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; (ii) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (iii) to cover at least the following hazards: (A) premises and operations; (B) products and completed operations on an "if any" basis and for a period of not less than five (5) years after the completion of construction of the applicable Improvements; (C) independent contractors; (D) blanket contractual liability for all "insured contracts" as defined in the standard general liability policy; and (E) contractual liability covering the indemnities contained in Sections 5.4, 11.3 and 14.5 hereof, to the extent the same is available and falls within the definition of "insured contracts";

(c) business income/loss of rents insurance (i) with loss payable to Administrative Agent (for the benefit of the Lenders); (ii) covering all risks required to be covered by the insurance provided for in Section 3.1(1)(a) hereof; (iii) in an amount equal to 100% of the projected gross income from the Project (on an actual loss sustained basis) for a period continuing until the Restoration of the Project is completed; the amount of such business income/loss of rents insurance shall be determined prior to the date hereof and at least once each year thereafter based on the greater of (x) Borrower's reasonable estimate of the gross income from the Project, and (y) the highest gross income received during the term of the Notes for any full calendar year prior to the date the amount of such insurance is being determined (or such lesser period as may have expired from the date of substantial completion of the applicable Improvements to the date the amount of such insurance is being determined), in each case for the succeeding eighteen (18) month period and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the improvements and the personal property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twenty-four (24) months from the date that the Project is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. All insurance proceeds payable to Administrative Agent (for the benefit of the Lenders) pursuant to this Section 3.1(1)(c) shall be held by Administrative Agent and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Notes and this Agreement; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Notes and this Agreement except to the extent such amounts are actually paid out of the proceeds of such business income/loss of rents insurance;

(d) when required by Administrative Agent or at the discretion of Borrower, at all times during which structural construction, repairs or alterations are being made with respect to the Improvements in connection with any Casualty or Condemnation Event, the insurance provided for in Section 3.1(1)(a) shall be written in a so called builder's risk completed value form or equivalent coverage as part of the "all-risk" insurance (1) on a non reporting basis, (2) against all risks insured against pursuant to Section 3.1(1)(a), (3) shall include permission to occupy the Project, and (4) shall contain an agreed amount endorsement waiving co insurance provisions and shall also include coverage for:

- (i) loss suffered with respect to materials, equipment, machinery, and supplies whether on-site, in transit, or stored off-site and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property;
- (ii) soft costs, plans, specifications, blueprints and models in connection with any restoration following a casualty;
- (iii) demolition and increased cost of construction, including, without limitation, increased costs arising out of changes in applicable law and codes;
- (iv) operation of building laws;
- (v) collapse, transit and testing; and
- (vi) delayed opening coverage on an actual loss sustained basis with extended period of indemnity endorsement consistent with Section 3.1(1)(c).

(e) workers' compensation insurance, as required by any Governmental Authority or legal requirement, subject to the statutory limits of the state of New York;

(f) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Administrative Agent on terms consistent with the commercial property insurance policy required under Section 3.1(1)(a);

(g) if any portion of the Improvements is at any time located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor law (the "**Flood Insurance Acts**"), flood hazard insurance in an amount not less than the greater of (A) the maximum limit of coverage available with respect to the Project, under Policies issued pursuant to the Flood Insurance Acts, subject only to customary deductibles under such Policies, and (B) the maximum limit of coverage available with respect to the Project, under Policies issued by private insurance carriers;

(h) earthquake insurance (based on probable maximum loss) in amounts and in form and substance satisfactory to Administrative Agent, provided that the insurance pursuant to this [Section 3.1\(1\)\(b\)](#) hereof shall be on terms consistent with the all risk insurance policy required under [Section 3.1\(1\)\(a\)](#) hereof;

(i) umbrella liability insurance in an amount not less than \$100,000,000 per occurrence on terms consistent with the commercial general liability insurance policy required under [Section 3.1\(1\)\(b\)](#) hereof;

(j) secured creditor's environmental insurance, insuring against unknown environmental hazards and conditions in amounts and in form and substance satisfactory to Administrative Agent, which shall name the Administrative Agent as a loss payee or additional insured, as applicable; and

(k) such other insurance and in such amounts as Administrative Agent from time to time may request against such other insurable hazards which at the time are available on commercially reasonable terms for properties located in or around the region where the Project is located and are customarily required by institutional lenders with respect to projects similar to the Project.

(2) All insurance provided in compliance with [Section 3.1\(1\)\(a\)](#) hereof shall be obtained under valid and enforceable policies (the "**Policies**" or in the singular, the "**Policy**"), in such forms and, from time to time after the date hereof, in such amounts as may be satisfactory to Administrative Agent, issued by financially sound and responsible insurance companies permitted to do business in the state of New York and reasonably approved by Administrative Agent. The insurance companies must have a claims paying ability/financial strength rating of "AX" (or its equivalent) or better by A.M. Best. No Policy shall contain an exclusion from coverage under such Policy for loss or damage incurred as a result of an act of terrorism or similar acts of sabotage, provided that Borrower may obtain separate Terrorism Insurance coverage subject to and in accordance with the terms of this Section 3.1(2). Borrower will be required to maintain insurance against terrorism, terrorist acts or similar acts of sabotage ("**Terrorism Insurance**") with coverage amounts of not less than an amount equal to the full replacement cost of the improvements and the personal property (the "**Terrorism Insurance Required Amount**"). Notwithstanding the foregoing sentence, Borrower shall not be obligated to expend in any fiscal year on Insurance Premiums for Terrorism Insurance more than two (2.0) times the then-current annual premium paid by Borrower for the comprehensive all-risk insurance required under [subsection 3.1\(1\)\(a\)](#) hereof (the "**Terrorism Insurance Cap**") and if the cost of the Terrorism Insurance Required Amount exceeds the Terrorism Insurance Cap, Borrower shall purchase the maximum amount of Terrorism Insurance available with funds equal to the Terrorism Insurance Cap; provided, however, the Terrorism Insurance Cap shall not apply or restrict the amount of terrorism coverage required to be obtained and maintained by this subsection (x) with respect to the Project if (a) owners and/or operators of mixed-use retail/office buildings in the same class as the Project in Bronx, New York are generally obtaining terrorism insurance, (b) lenders financing such mixed-use retail/office properties in the same class as the Project in Bronx, New York are generally requiring terrorism insurance as a condition of financing, or (c) Borrower or Sponsor or any Affiliate of Borrower or Sponsor, is obtaining terrorism insurance on any other properties in Bronx, New York of which any of the foregoing Persons own or operate. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to [Section 3.1\(1\)](#) hereof, Lead Borrower shall deliver to Administrative Agent insurance certificates showing payment of all premiums (the "**Insurance Premiums**") for such Policies, which certificates shall be in form and substance reasonably satisfactory to Administrative Agent. Within sixty (60) days following the expiration dates of the Policies, Lead Borrower shall deliver to Administrative Agent certified copies of such Policies marked "premium paid" or accompanied by evidence satisfactory to Administrative Agent of payment of the Insurance Premiums.

(3) Borrower shall not obtain (a) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Administrative Agent, and Lenders' interest is included therein as provided in this Agreement, or (b) separate insurance concurrent in form or contributing in the event of loss with that required in Section 3.1(1) to be furnished by, or which may be required to be furnished by, Borrower. In the event Borrower obtains separate insurance or an umbrella or a blanket policy, Lead Borrower shall notify Administrative Agent of the same and shall cause certified copies of each Policy to be delivered as required in Section 3.1(1).

(4) All Policies provided for or contemplated by Section 3.1(1) hereof, except for the Policy referenced in Section 3.1(1)(e), shall name Administrative Agent (for the benefit of the Lenders) as additional insured under liability policies and as mortgagee/loss payee under property policies, as their respective interests may appear, and in the case of property, boiler and machinery, and flood insurance, shall contain a so called New York standard non-contributing mortgagee clause in favor of Administrative Agent providing that the loss thereunder shall be payable to Administrative Agent in accordance with the terms of this Agreement and shall otherwise be in form, substance and content reasonably acceptable to Administrative Agent.

(5) All Policies provided for in Section 3.1(1)(a) hereof shall contain clauses or endorsements to the effect that:

- (i) no willful act or negligence of Borrower, or anyone acting for Borrower, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Administrative Agent is concerned;
- (ii) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or cancelled without at least thirty (30) days' written notice (or ten (10) days' written notice, in the case of non-payment of premium) to Administrative Agent and any other party named therein as an insured;

(iii) each Policy shall provide that the issuers thereof shall give written notice to Administrative Agent if the Policy has not been renewed fifteen (15) days prior to its expiration; and

(iv) Administrative Agent shall not be liable for any insurance premiums thereon or subject to any assessments thereunder.

(6) If at any time Administrative Agent is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Administrative Agent shall have the right, on five (5) Business Days' notice to Lead Borrower to take such action as Administrative Agent deems necessary to protect its interest in the Project, including, without limitation, the obtaining of such insurance coverage as Administrative Agent in its reasonable discretion deems appropriate, and all expenses incurred by Administrative Agent in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Administrative Agent upon demand and until paid shall be secured by the Mortgage and shall bear interest at the Default Rate.

(7) In the event of a foreclosure of the Mortgage, or other transfer of title to the Project in extinguishment in whole or in part of the Loans all right, title and interest of Borrower in and to the Policies then in force and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Administrative Agent for the benefit of the Lenders or other transferee in the event of such other transfer of title.

(8) Lead Borrower shall give immediate written notice of any loss in excess of \$100,000 to the insurance carrier and to Administrative Agent. In connection with losses in excess of \$100,000, but less than or equal to \$2,000,000, Borrower and Administrative Agent shall cooperate in all matters related to the loss including, without limitation, making proof of loss, adjusting and compromising any claim under the insurance policies, appearing in and prosecuting any action arising from such insurance policies, and collecting and receiving insurance proceeds. In connection with losses in excess of \$2,000,000, Borrower hereby irrevocably authorizes and empowers Administrative Agent, as attorney in fact for Borrower coupled with an interest, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Administrative Agent's expenses incurred in the collection of such proceeds. Nothing contained in this Section 3.1(8), however, shall require Administrative Agent or any Lender to incur any expense or take any action hereunder.

Section 3.2 Use and Application of Net Proceeds.

The following provisions shall apply in connection with the Restoration of the Project:

(1) If the Net Proceeds shall be less than the Threshold Amount and the costs of completing the Restoration shall be less than Threshold Amount, the Net Proceeds will be disbursed by Administrative Agent to Borrower upon receipt, provided that (a) no Event of Default and/or Low DSCR Trigger Event has occurred and is continuing and (b) Borrower delivers to Administrative Agent a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(2) If the Net Proceeds are equal to or greater than Threshold Amount or the costs of completing the Restoration is equal to or greater than Threshold Amount Administrative Agent shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 3.2. The term "Net Proceeds" shall mean: (i) the net amount of all insurance proceeds received by Administrative Agent pursuant to Section 3.1(1)(a), (d), (f), (g) and (h) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("Insurance Proceeds"), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("Condemnation Proceeds"), whichever the case may be.

- (a) The Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met:
- (i) no Event of Default shall have occurred and be continuing; except for the Casualty or Condemnation Event;
 - (ii) (1) in the event the Net Proceeds are Insurance Proceeds, less than fifty percent (50%) of the total floor area of the improvements on the Project has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Project is taken, and such land is located along the perimeter or periphery of the Project, and no portion of the improvements is located on such land;
 - (iii) Leases demising in the aggregate a percentage amount equal to or greater than sixty percent (60%) of the total rentable space in the Project which has been demised under executed and delivered leases in effect as of the date of the occurrence of such fire or other casualty or taking, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration, subject to an appropriate rent abatement (covered by loss of rental insurance), notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be;
 - (iv) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than forty-five (45) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion in compliance with all applicable laws, including, without limitation, all applicable Environmental Laws;

- (v) Administrative Agent shall be reasonably satisfied that any operating deficits, including all scheduled payments of principal and interest under the Notes, which will be incurred with respect to the Project as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in (iii), if applicable, or (3) by other funds of Borrower;
- (vi) Administrative Agent shall be reasonably satisfied that the Restoration will be substantially completed in accordance with applicable laws so that the tenants can legally and physically occupy their space on or before the earliest to occur of (1) three (3) months prior to the Maturity Date, (2) twelve (12) months after the occurrence of such Casualty or Condemnation, or (3) such time as may be required under applicable law, in order to repair and restore the Project to the condition it was in immediately prior to such Casualty or Condemnation or (4) the expiration of the insurance coverage referred to in Section 3.1(1)(c);
- (vii) the Project and the use thereof after the Restoration will be in compliance with and permitted under all applicable laws;
- (viii) Administrative Agent shall be satisfied that the Debt Service Coverage Ratio after the completion of the Restoration shall be equal to or greater than the Debt Service Coverage Ratio immediately prior to the Casualty or Condemnation, as applicable;
- (ix) such Casualty or Condemnation, as applicable, does not result in the total and permanent (following the Restoration) loss of access to the Project or the related improvements;
- (x) Borrower shall deliver, or cause to be delivered, to Administrative Agent a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be acceptable to Administrative Agent;
- (xi) the Net Proceeds together with any cash or letter of credit deposited by Borrower with Administrative Agent are sufficient in Administrative Agent's reasonable discretion to cover the cost of the Restoration; and
- (xii) the Property Management Agreement in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall (1) remain in full force and effect during the Restoration and shall not otherwise terminate as a result of the Casualty or Condemnation or the Restoration or (2) if terminated, shall have been replaced with a replacement Property Management Agreement with a qualified Property Manager, prior to the opening or reopening of the Project or any portion thereof for business with the public.

(b) The Net Proceeds shall be held by Administrative Agent in an interest bearing account (with interest to be available to Borrower to the same extent as Net Proceeds are made available pursuant to the terms of this Section 3.2) and, until disbursed in accordance with the provisions of this Section 3.2, shall constitute additional security for the Loans and other obligations under the Loan Documents. The Net Proceeds shall be disbursed by Administrative Agent to, or as directed by, Lead Borrower from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Administrative Agent that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full (less Casualty Retainage), and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other Liens or encumbrances of any nature whatsoever on the Project which have not either been fully bonded to the reasonable satisfaction of Administrative Agent and discharged of record or in the alternative fully insured to the reasonable satisfaction of Administrative Agent by the title company issuing the title insurance policy.

(c) All plans and specifications required in connection with the Restoration, the cost of which is greater than the Threshold Amount, shall be subject to prior review and acceptance (which shall not be unreasonably withheld, conditioned or delayed) in all material respects by Administrative Agent and by an independent consulting engineer selected by Administrative Agent (the "Casualty Consultant"). Administrative Agent shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration the cost of which is greater than the Threshold Amount, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Administrative Agent and the Casualty Consultant. All costs and expenses incurred by Administrative Agent in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(d) In no event shall Administrative Agent be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "Casualty Retainage" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 3.2(2), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration (but shall not be duplicative of such amounts actually held back by Borrower). The Casualty Retainage shall not be released until the Casualty Consultant certifies to Administrative Agent that the Restoration has been completed in accordance with the provisions of this Section 3.2 and that all approvals necessary for the re-occupancy and use of the Project have been obtained from all appropriate Governmental Authorities, and Administrative Agent receives evidence satisfactory to Administrative Agent that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Administrative Agent will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Administrative Agent that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Administrative Agent or by the title company issuing the title insurance policy for the Project, and receives an endorsement to such title insurance policy insuring the continued priority of the Lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Administrative Agent, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(e) Administrative Agent shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Administrative Agent in consultation with the Casualty Consultant, if any, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**"). either in cash or a letter of credit, with Administrative Agent before any further disbursement of the Net Proceeds shall be made. & #160;The Net Proceeds Deficiency deposited with Administrative Agent shall be held by Administrative Agent in the Casualty/Taking Account in accordance with the Cash Management Agreement and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to Section 3.2 hereof shall constitute additional security for the Loans and other obligations under the Loan Documents.

(g) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Administrative Agent after the Casualty Consultant certifies to Administrative Agent that the Restoration has been completed in accordance with the provisions of Section 3.2, hereof and the receipt by Administrative Agent of evidence satisfactory to Administrative Agent that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Administrative Agent to Lead Borrower, provided no Event of Default shall have occurred and shall be continuing.

(3) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Lead Borrower as excess Net Proceeds pursuant to Section 3.2(2)(g), hereof may be retained and applied by Administrative Agent toward the payment of the Loans (without any prepayment premium) whether or not then due and payable in such order, priority and proportions as Administrative Agent in its sole and absolute discretion shall deem proper, or, at the sole and absolute discretion of Administrative Agent, the same may be paid, either in whole or in part, to Lead Borrower for such purposes as Administrative Agent shall approve, in its sole and absolute discretion. If Administrative Agent shall receive and retain Net Proceeds, the Lien of the Mortgage shall be reduced only by the amount thereof received and retained by Administrative Agent and actually applied by Administrative Agent in reduction of the Loans.

Section 3.3 Casualty and Condemnation.

(a) If the Project shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such damage to Administrative Agent and shall promptly commence and diligently prosecute the completion of the Restoration of the Project as nearly as possible to the condition the Project was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Administrative Agent and otherwise in accordance with Section 3.2 hereof. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance (provided that, if Net Proceeds are required to be made available to Borrower for Restoration pursuant to the terms of Section 3.2 hereof, they are made available to Borrower for Restoration). Administrative Agent may, but shall not be obligated to, make proof of loss if not made promptly by Borrower.

(b) Lead Borrower shall promptly give Administrative Agent notice of the actual or threatened commencement of any proceeding for the Condemnation of all or any part of the Project and shall deliver to Administrative Agent copies of any and all papers served in connection with such proceedings. Administrative Agent may participate in any such proceedings, and Borrower shall, from time to time, deliver to Administrative Agent all instruments reasonably requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Administrative Agent, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Loans at the time and in the manner provided for its payment in the Notes and in this Agreement and the Loans shall not be reduced until any Award shall have been actually received and applied by Administrative Agent, after the deduction of expenses of collection, to the reduction or discharge of the Loans. Administrative Agent and the Lenders shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Notes. If the Project or any portion thereof is taken by a condemning authority, Borrower shall, promptly commence and diligently prosecute the Restoration of the Project and otherwise comply with the provisions of Section 3.2 hereof. If the Project is sold, through foreclosure or otherwise, prior to the receipt by Administrative Agent of the Award, Administrative Agent shall have the right, whether or not a deficiency judgment on the Notes shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Loans.

RESERVES; COLLATERAL LETTERS OF CREDIT

Section 4.1 Real Estate Tax and Insurance Reserve Fund.

(1) Deposits. On the Closing Date, Borrower shall deposit with Administrative Agent the amount of \$213,645.46, which amount shall be held by Administrative Agent and disbursed by Administrative Agent in accordance with the terms of Section 4.1(2), (with such disbursements that would have been made by Depository Bank to be made directly by Administrative Agent) until such time as the Cash Management Agreement has been entered into, at which time Administrative Agent shall deposit any remaining amounts held by it and not disbursed pursuant hereto into the Tax and Insurance Reserve Account. On each Payment Date, Borrower shall deposit with Administrative Agent, for deposit in the Tax and Insurance Reserve Account, (i) a monthly amount, as determined by Administrative Agent, which will be sufficient to accumulate with Administrative Agent thirty (30) days prior to each due date therefor sufficient funds to pay all real estate taxes which Administrative Agent estimates will be payable during the next ensuing twelve (12) months, and (ii) a monthly amount, as determined by Administrative Agent, which will be sufficient to accumulate with Administrative Agent thirty (30) days prior to the expiration of the insurance policies sufficient funds to pay all premiums which Administrative Agent estimates will be payable for the renewal of the coverage afforded by the insurance policies during the next ensuing twelve (12) months (said amounts in clauses (i) and (ii) above, together with the amount set forth in the first sentence of this Section 4.1(1), being, collectively, the "Tax and Insurance Reserve Fund"). If at any time Administrative Agent reasonably determines that the Tax and Insurance Reserve Fund is not or will not be sufficient to pay real estate taxes and insurance premiums by the dates set forth in clauses (i) and (ii) above, Administrative Agent shall notify Lead Borrower of such determination and Borrower shall increase its monthly payments to Administrative Agent by the amount that Administrative Agent estimates is sufficient to make up the deficiency thirty (30) days prior to delinquency of the real estate taxes and/or thirty (30) days prior to expiration of the insurance policies, as the case may be. Notwithstanding the foregoing, and provided that no Event of Default has occurred and is continuing, if Borrower has an umbrella insurance policy that: (x) provides acceptable coverage for the Project, (y) is in full force and effect, and (z) is acceptable to Administrative Agent in its sole discretion, then Borrower shall not be required to make the deposits set forth in clause (ii) above with respect to the renewal of insurance policies.

(2) Disbursements. Borrower shall furnish Administrative Agent with (i) bills for the charges for which such deposits are required and (ii) a disbursement request (in a form reasonably satisfactory to Administrative Agent), executed by an authorized officer of Borrower, at least thirty (30) days prior to the date on which the charges first become payable. Provided that no Event of Default exists, Administrative Agent will direct the Depository Bank to apply the Tax and Insurance Reserve Fund to payments of insurance premiums and real estate taxes required to be made by Borrower pursuant to Sections 3.1 and 9.2, respectively, and under the Mortgage but not, in any event, earlier than ten (10) days prior to the due dates thereof. In making any payment relating to the Tax and Insurance Reserve Fund, the Depository Bank may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to real estate taxes) or insurer or agent (with respect to insurance premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof unless said bill, statement or estimate is obviously incorrect. If the amount of the Tax and Insurance Reserve Fund shall exceed the amounts due for real estate taxes and insurance premiums pursuant to Sections 3.1 and 9.2, respectively, Administrative Agent shall, in its sole and absolute discretion, return any excess to Lead Borrower or credit such excess against future payments to be made to the Tax and Insurance Reserve Fund. Provided that on the date that said real estate taxes are due and payable, no Event of Default exists and sufficient funds are on deposit in the Tax and Insurance Reserve Fund to pay real estate taxes, Borrower shall not be liable to pay and shall not be charged with any late charges, interest and/or penalties imposed by or payable to any Governmental Authority as a result of the Depository Bank's failure to pay real estate taxes prior to the date that same become delinquent.

Section 4.2 Tenant Improvement/Leasing Reserve Letter of Credit.

Borrower shall provide to Administrative Agent for the benefit of the Lenders an unconditional, irrevocable standby letter of credit (the "**TI/LC Letter of Credit**") in the amount of \$4,610,000.00 to be used for the payment of future tenant improvements and leasing commissions, which TI/LC Letter of Credit conforms with the requirements of a Collateral Letter of Credit (except that the TI/LC Letter of Credit delivered on the Closing Date only shall not be required to include an "evergreen" automatic renewal provision). The amount of the TI/LC Letter of Credit shall be reduced, upon the written request of Borrower made not more than once per calendar month, in connection with the payment by Borrower of amounts for tenant improvements and leasing commissions for newly executed leases entered into at the Project which have been approved by Administrative Agent or are deemed approved pursuant to Section 6.2 hereof. Reductions to the TI/LC Letter of Credit shall be calculated using a tenant improvement allowance equal to the lesser of actual tenant improvement costs or \$20.00 per net leasable square foot and reductions for leasing commissions shall be calculated using a leasing commissions allowance equal to the lesser of actual leasing commissions or \$26.58 per net leasable square foot. The TI/LC Letter of Credit shall be subject to each of the terms and conditions set forth in Section 4.5 with respect to a Collateral Letter of Credit subject to the following additional terms:

(1) The TI/LC Letter of Credit delivered on the Closing Date shall have an expiry date no earlier than February 1, 2010. At least thirty (30) days prior to the expiration date of such TI/LC Letter of Credit and each renewal and extension thereof Borrower shall deliver to Administrative Agent either (i) a replacement, extension or renewal TI/LC Letter of Credit, in accordance with the terms hereof, or (ii) notice that such replacement, extension or renewal TI/LC Letter of Credit shall not be delivered.

(2) Following a draw by Administrative Agent on the TI/LC Letter of Credit solely because of the failure to furnish Administrative Agent with a replacement or renewal of the TI/LC Letter of Credit, Administrative Agent will deposit such proceeds in the Additional Cash Collateral Account as security for the purposes for which such TI/LC Letter of Credit was delivered. Administrative Agent shall be entitled to draw upon such deposited proceeds to the same extent it would have been entitled to make a draw under the TI/LC Letter of Credit and such deposited proceeds shall be subject to disbursement to Borrower on the same basis as reductions to the TI/LC Letter of Credit are calculated, as described above. Administrative Agent shall direct the Depository Bank to disburse the full remaining amount of such proceeds to Borrower provided (i) Borrower delivers to Administrative Agent a replacement TI/LC Letter of Credit acceptable to Administrative Agent in its sole discretion, (ii) there exists no Event of Default or Potential Default, and (iii) Borrower pays all of Administrative Agent's fees and expenses in connection with such draw and disbursement.

(3) In the event that Borrower fails to deliver to Administrative Agent a replacement, extension or renewal TI/LC Letter of Credit in accordance with the terms hereof, and Administrative Agent does not draw on the TI/LC Letter of Credit prior to its expiry date then Borrower shall furnish such replacement, extension or renewal TI/LC Letter of Credit or Additional Cash Collateral in the required amount of such TI/LC Letter of Credit no later than ten (10) days after the expiry date of such TI/LC Letter of Credit.

Section 4.3 Reserved.

Section 4.4 Reserve Funds and Security Accounts Generally.

(1) Grant of Security Interest. Borrower hereby grants a perfected first priority security interest in favor of Administrative Agent for the ratable benefit of the Lenders in each Reserve Fund and Security Account established by or for it hereunder and all financial assets and other property and sums at any time held, deposited or invested therein, and all security entitlements and investment property relating thereto, together with any interest or other earnings thereon, and all proceeds thereof, whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities (collectively, “Reserve Account Collateral”), together with all rights of a secured party with respect thereto (even if no further documentation is requested by Administrative Agent or the Lenders or executed by Borrower).

(a) Borrower covenants and agrees:

- (A) to do all acts that may be reasonably necessary to maintain, preserve and protect Reserved Account Collateral;
- (B) to pay promptly when due all material taxes, assessments, charges, encumbrances and liens now or hereafter imposed upon or affecting any Reserved Account Collateral;
- (C) to appear in and defend any action or proceeding which may materially and adversely affect Borrower's title to or Administrative Agent's interest in the Reserved Account Collateral;

(D) following the creation of each Reserve Fund and Security Account established by or for Borrower and the initial funding thereof, other than to Administrative Agent pursuant to this Agreement or the Cash Management Agreement, not to transfer, assign, sell, surrender, encumber, mortgage, hypothecate, or otherwise dispose of any of the Reserve Account Collateral or rights or interests therein, and to keep the Reserve Account Collateral free of all levies and security interests or other liens or charges except the security interest in favor of Administrative Agent granted hereunder;

(E) to account fully for and promptly deliver to Administrative Agent, in the form received, all documents, chattel paper, instruments and agreements constituting the Reserve Account Collateral hereunder, endorsed to Administrative Agent or in blank, as requested by Administrative Agent, and accompanied by such powers as appropriate and until so delivered all such documents, instruments, agreements and proceeds shall be held by Borrower in trust for Administrative Agent, separate from all other property of Borrower; and

(F) from time to time upon request by Administrative Agent, to furnish such further assurances of Borrower's title with respect to the Reserve Account Collateral, execute such written agreements, or do such other acts, all as may be reasonably necessary to effectuate the purposes of this agreement or as may be required by law, or in order to perfect or continue the first-priority lien and security interest of Administrative Agent in the Reserve Account Collateral.

(2) **Rights on Event of Default.** Upon the occurrence and during the continuance of an Event of Default, Administrative Agent, at its option, may withdraw the Reserve Funds and the other funds in the Security Accounts and apply such funds to the items for which the Reserve Funds were established or to payment of the Loans in such order, proportion and priority as Administrative Agent may determine in its sole and absolute discretion. Administrative Agent's right to withdraw and apply such funds shall be in addition to all other rights and remedies provided to Administrative Agent on behalf of the Lenders under the Loan Documents.

(3) **Prohibition Against Further Encumbrance.** Borrower shall not, without the prior consent of Administrative Agent, further pledge, assign or grant any security interest in the Reserve Funds or the Security Accounts or permit any Lien to attach thereto, or any levy to be made thereon, or any Uniform Commercial Code financing statements, except those naming Administrative Agent on behalf of the Lenders as the secured party, to be filed with respect thereto.

(4) **Release of Reserve Funds.** Any amount remaining in the Reserve Funds and the Security Accounts after the Loans have been paid in full shall be promptly returned to Borrower.

Section 4.5 Collateral Letters of Credit. With respect to any Collateral Letter of Credit which Borrower may furnish or cause to be furnished to Administrative Agent in accordance with the terms of this Agreement or any of the other Loan Documents:

(1) Administrative Agent will be entitled, among other things, to make one or more draws by presentment thereof to the issuing bank accompanied only by Administrative Agent's clean sight-draft, it being intended that the issuing bank shall have no right to inquire as to Administrative Agent's right to draw upon such Collateral Letter of Credit;

(2) Administrative Agent shall be entitled, among other things, to draw upon each Collateral Letter of Credit, in whole, or in part from time to time, upon the occurrence and during the continuance of any Event of Default or under the other circumstances under which a draw shall be permitted under the Loan Documents or the Collateral Letter of Credit;

(3) Administrative Agent shall have the right to draw upon any Collateral Letter of Credit within thirty (30) days prior to the expiration date of such Collateral Letter of Credit and each renewal and extension thereof unless, at least thirty (30) days prior to such expiration date of such Collateral Letter of Credit and each renewal and extension thereof, Borrower shall have furnished a replacement, extension or renewal Collateral Letter of Credit, acceptable to Administrative Agent, it being the intent hereof that at no time shall the unexpired term of any Collateral Letter of Credit be less than thirty (30) days. If Administrative Agent draws upon a Collateral Letter of Credit pursuant to the terms of this subsection (3), then Administrative Agent shall hold the proceeds thereof in the Additional Cash Collateral Account as additional collateral for the Obligations, to be applied in accordance with subsections (4) and (5) below.

(4) Administrative Agent shall also be entitled to draw upon a Collateral Letter of Credit if Administrative Agent believes that its rights to draw on such Collateral Letter of Credit could be in jeopardy. Without limiting the foregoing, Administrative Agent shall also be entitled to draw on a Collateral Letter of Credit if the credit rating or financial condition of the issuing bank is no longer meets the minimum rating contained in the definition of Collateral Letter of Credit. Following a draw by Administrative Agent on a Collateral Letter of Credit solely because of the deterioration of the creditworthiness of the issuing bank, Administrative Agent will deposit such proceeds in the Additional Cash Collateral Account as security for the purposes for which such Letter of Credit was delivered and Administrative Agent shall be entitled to draw upon such proceeds to the same extent it would have been entitled to make a draw under the applicable Letter of Credit. Administrative Agent shall direct the Depository Bank to disburse such proceeds to Borrower provided (i) Borrower delivers to Administrative Agent a replacement Collateral Letter of Credit within ten (10) days of Administrative Agent's draw, (ii) there exists no Event of Default or Potential Default, and (iii) Borrower pays all of Administrative Agent's fees and expenses in connection with such draw and disbursement.

(5) No draw by Administrative Agent on any Collateral Letter of Credit shall cure or be deemed to cure any Event of Default or limit in any respect any of Administrative Agent's or the Lenders' remedies under the Loan Documents, it being understood that Administrative Agent's and the Lenders' rights and remedies hereunder shall be cumulative and Administrative Agent and the Lenders shall have no obligations to apply the proceeds of any draw to missed installments or other amounts then due and unpaid under the Loans. Proceeds of any draw upon a Collateral Letter of Credit (after reimbursement of any costs and expenses, including attorneys' fees and reimbursements, incurred by Administrative Agent in connection with such draw) may be applied by Administrative Agent to the payment of the Loans in such manner as Administrative Agent may determine. No delay or omission of Administrative Agent or the Lenders in exercising any right to draw on a Collateral Letter of Credit shall impair any such right, or shall be construed as a waiver of, or acquiescence in, any Event of Default.

(6) Administrative Agent shall, upon request, release its rights in any Collateral Letters of Credit and surrender such Collateral Letters of Credit to the issuing bank upon the payment in full of all Loans.

ENVIRONMENTAL MATTERS

Section 5.1 Certain Definitions. As used herein, the following terms have the meanings indicated:

(1) **“Environmental Claim”** means, with respect to any Person, any written request for information by a Governmental Authority, or any written notice, notification, claim, administrative, regulatory or judicial action, suit, judgment, demand or other written communication by any Person or Governmental Authority alleging or asserting liability with respect to Borrower or the Project, whether for damages, contribution, indemnification, cost recovery, compensation, injunctive relief, investigatory, response, remediation, damages to natural resources, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, use or release into the environment of any Hazardous Materials originating at or from, or otherwise affecting, the Project, (ii) any fact, circumstance, condition or occurrence forming the basis of any violation, or alleged violation, of any Environmental Law by Borrower or otherwise affecting the health, safety or environmental condition of the Project or (iii) any alleged injury or threat of injury to the environment by Borrower or otherwise affecting the Project.

(2) **“Environmental Laws”** means any federal, state or local law (whether imposed by statute, or administrative or judicial order, or common law), now or hereafter enacted and applicable to the Project, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, including, such laws governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to, Hazardous Materials.

(3) **“Environmental Liens”** has the meaning assigned to such term in [Section 5.3\(4\)](#).

(4) **“Environmental Loss”** means any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, reasonable attorneys’ fees and expenses, engineers’ fees, environmental consultants’ fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards relating to Hazardous Materials, Environmental Claims, Environmental Liens and violation of Environmental Laws.

(5) **“Hazardous Materials”** means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by-product thereof, (b) asbestos or asbestos-containing materials, (c) polychlorinated biphenyls (pcbs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based paint, (h) Mold, or (i) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any Governmental Authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws.

(6) **"Mold"** means any microbial or fungus contamination or infestation in any Project of a type that could reasonably be anticipated (after due inquiry and investigation) to pose a risk to human health or the environment or could reasonably be anticipated (after due inquiry and investigation) to negatively impact the value of the affected Property in any material respect.

Section 5.2 Representations and Warranties on Environmental Matters. Borrower represents and warrants to Administrative Agent and the Lenders that, to Borrower's knowledge, except as set forth in the Site Assessment, (1) no Hazardous Material is now or was formerly used, stored, generated, manufactured, installed, treated, discharged, disposed of or otherwise present at or about the Project or any property adjacent to the Project (except for cleaning and other products currently used in connection with the routine maintenance or repair of the Project and de minimus quantities used by tenants in the normal course of business in full compliance with Environmental Laws), (2) all permits, licenses, approvals and filings required by Environmental Laws have been obtained, and the use, operation and condition of the Project do not, and did not previously, violate any Environmental Laws, (3) no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought or been threatened, nor have any settlements been reached by or with any parties or any Liens imposed in connection with the Project concerning Hazardous Materials or Environmental Laws and (4) no underground storage tanks exist at the Project.

Section 5.3 Covenants on Environmental Matters.

(1) Borrower shall (a) comply strictly and in all respects with applicable Environmental Laws; (b) notify Administrative Agent immediately upon Borrower's discovery of any spill, discharge, release or presence of any Hazardous Material at, upon, under, within, contiguous to or otherwise affecting the Project; (c) promptly remove such Hazardous Materials and remediate the Project in full compliance with Environmental Laws and as reasonably recommended to preserve the value and/or use of the Project, in accordance with the reasonable recommendations and specifications of an independent environmental consultant approved by Administrative Agent; and (d) promptly forward to Administrative Agent copies of all orders, notices, permits, applications or other communications and reports in connection with any spill, discharge, release or the presence of any Hazardous Material or any other matters relating to the Environmental Laws or any similar laws or regulations, as they may affect the Project or Borrower.

(2) Borrower shall not cause, shall prohibit any other Person within the control of Borrower from causing, and shall use prudent, commercially reasonable efforts to prohibit other Persons (including tenants) from causing (a) any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Materials at, upon, under, within or about the Project or the transportation of any Hazardous Materials to or from the Project (except for cleaning and other products used in connection with the routine maintenance or repair of the Project in full compliance with Environmental Laws), (b) any underground storage tanks to be installed at the Project, or (c) any activity that requires a permit or other authorization under Environmental Laws to be conducted at the Project.

(3) Lead Borrower shall provide to Administrative Agent, at Borrower's expense promptly upon the written request of Administrative Agent from time to time, a Site Assessment or, if required by Administrative Agent, an update to any existing Site Assessment, to assess the presence or absence of any Hazardous Materials and the potential costs in connection with abatement, cleanup or removal of any Hazardous Materials found on, under, at or within the Project. Borrower shall pay the cost of no more than one such Site Assessment or update in any twelve (12)-month period, unless Administrative Agent's request for a Site Assessment is based on information provided under [Section 5.3\(1\)](#), a reasonable suspicion of Hazardous Materials at or near the Project, a breach of representations under [Section 5.2](#), or an Event of Default, in which case any such Site Assessment or update shall be at Borrower's expense.

(4) **Environmental Notices.** Lead Borrower shall promptly provide notice to Administrative Agent of:

- (a) all Environmental Claims asserted or threatened against Borrower or any other party occupying the Project or any portion thereof or against the Project which become known to Borrower;
- (b) the discovery by Borrower of any occurrence or condition on the Project or on any real property adjoining or in the vicinity of the Project which could reasonably be expected to lead to an Environmental Claim against Borrower, Administrative Agent or any of the Lenders;
- (c) the commencement or completion of any environmental remediation at the Project; and
- (d) any Lien or other encumbrance imposed pursuant to any Environmental Law "[Environmental Liens](#)".

In connection therewith, Lead Borrower shall transmit to Administrative Agent copies of any citations, orders, notices or other written communications received from any Person and any notices, reports or other written communications submitted to any Governmental Authority with respect to the matters described above.

Section 5.4 Allocation of Risks and Indemnity. As between Borrower, Administrative Agent and the Lenders, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Material at, upon, within, contiguous to or otherwise affecting the Project, shall lie solely with Borrower. Accordingly, Borrower shall bear all risks and costs associated with any Environmental Loss, damage or liability therefrom, including all costs of removal of Hazardous Materials or other remediation required hereunder or by law. Borrower shall indemnify, defend and hold Administrative Agent and the Lenders harmless from and against all loss, liabilities, damages, claims, costs and expenses (including reasonable costs of defense) arising out of or associated, in any way, with the non-compliance with Environmental Laws, or the existence of Hazardous Materials in, on, or about the Project, or a breach of any representation, warranty or covenant contained in this [Article 5](#), whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent and the Lenders; provided, however, Borrower shall not be liable under such indemnification to the extent such loss, liability, damage, claim, cost or expense results solely from Administrative Agent's or any Lender's gross negligence or willful misconduct. Borrower's obligations under this [Section 5.4](#) shall arise upon the discovery of the presence of any Hazardous Material, whether or not any Governmental Authority has taken or threatened any action in connection with the presence of any Hazardous Material, and whether or not the existence of any such Hazardous Material or potential liability on account thereof is disclosed in the Site Assessment and shall continue notwithstanding the repayment of the Loans or any transfer or sale of any right, title and interest in the Project (by foreclosure, deed in lieu of foreclosure or otherwise).

Section 5.5 No Waiver. Notwithstanding any provision in this Article 5 or elsewhere in the Loan Documents, or any rights or remedies granted by the Loan Documents, Administrative Agent and the Lenders do not waive and expressly reserve all rights and benefits now or hereafter accruing to Administrative Agent and/or any Lenders under the “security interest” or “secured creditor” exception under applicable Environmental Laws, as the same may be amended. No action taken by Administrative Agent and/or any Lender pursuant to the Loan Documents shall be deemed or construed to be a waiver or relinquishment of any such rights or benefits under the “security interest exception.”

ARTICLE 6

LEASING MATTERS

Section 6.1 Representations and Warranties on Leases. Borrower represents and warrants to Administrative Agent and the Lenders with respect to leases of the Project that: (1) to Borrower’s knowledge, the rent roll delivered to Administrative Agent is true and correct, and the leases are valid and in full force and effect; (2) the leases (including amendments) are in writing, and there are no oral agreements with respect thereto; (3) the copies of the leases delivered to Administrative Agent are true and complete; (4) to Borrower’s knowledge, neither the landlord nor any tenant is in default under any of the leases; (5) Borrower has no knowledge of any notice of termination or default with respect to any lease; (6) Borrower has not assigned or pledged any of the leases, the rents or any interests therein except to Administrative Agent (on behalf of the Lenders); (7) no tenant or other party has an option to purchase all or any portion of the Project; (8) no tenant has the right to terminate its lease prior to expiration of the stated term of such lease except in the case of a casualty or condemnation of the Project to the extent permitted pursuant to the terms and conditions of such lease; and (9) no tenant has prepaid more than one month’s rent in advance (except for bona fide security deposits not in excess of an amount equal to two month’s rent). To the extent that any part of the Land is located in the State of New York, reference is hereby made to Section 291-f of the Real Property Law of the State of New York for purposes of obtaining for Administrative Agent and the Lender the benefits of said Section in connection herewith.

Section 6.2 Standard Lease Form; Approval Rights. All leases and other rental arrangements shall in all respects be approved by Administrative Agent and shall be on a standard lease form, to the extent possible, using commercially reasonable efforts, for the Office Component, approved by Administrative Agent with no material modifications (except as approved by Administrative Agent in writing). Such lease form shall provide (a) that the lease is subordinate to the Mortgage, (b) that the tenant shall attorn to Administrative Agent (on behalf of the Lenders) following an Event of Default and (c) that any cancellation, surrender, or amendment of such lease without the prior written consent of Administrative Agent shall be voidable by Administrative Agent. Borrower shall hold, in trust, all tenant security deposits in a segregated account, and, to the extent required by applicable law, shall not commingle any such funds with any other funds of Borrower. Within ten (10) days after Administrative Agent's request, Borrower shall furnish to Administrative Agent a statement of all tenant security deposits, and copies of all leases not previously delivered to Administrative Agent, certified by Borrower as being true and correct. Notwithstanding anything contained in the Loan Documents, Administrative Agent's approval shall not be required for future leases or lease extensions if the following conditions are satisfied: (1) there exists no Potential Default or Event of Default; (2) the lease is on the standard lease form approved by Administrative Agent with no modifications except for commercially reasonable changes agreed to in the ordinary course of Borrower's business, but in any event there shall be no modifications to the subordination, attornment, estoppel and landlord liability clause without the prior written consent of Administrative Agent; (3) the lease does not conflict with any restrictive covenant affecting the Project or any other lease for space in the Project; (4) the lease is not a Major Lease; (5) the lease shall provide for rental rates and landlord concessions comparable to existing local market rates as shall be established pursuant to the Leasing Guidelines; (6) the lease is with a third party not an Affiliate of Borrower, Sponsor or Guarantor; (7) the lease shall not contain any options for renewal or expansion by the tenant at rental rates which are below reasonable comparable market levels at the time the lease is executed; (8) the lease shall be to a tenant which Borrower, in its professional and commercially reasonable judgment, has determined is creditworthy and (9) the lease is for a term of not more than ten (10) years (exclusive of renewal options which, together with the initial lease term shall not exceed fifteen (15) years).

Section 6.3 Covenants. Borrower (1) shall perform the obligations which Borrower is required to perform under the leases, including the performance of any tenant improvement work with respect thereto; (2) shall enforce the obligations to be performed by the tenants; (3) shall promptly furnish to Administrative Agent any notice of default or termination received by Borrower from any tenant, and any notice of default or termination given by Borrower to any tenant; (4) shall not collect any rents for more than thirty (30) days in advance of the time when the same shall become due, except for bona fide security deposits not in excess of an amount equal to two month's rent; (5) shall not enter into any ground lease or master lease of any part of the Project; (6) shall not further assign or encumber any lease; (7) shall not, except with Administrative Agent's prior written consent, cancel or accept surrender or termination of any Major Lease; (8) shall not, except with Administrative Agent's prior written consent, modify or amend any Major Lease (except for minor modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices, not affecting the economic terms of the lease); and (9) shall use its best efforts to lease the Improvements; any action in violation of clauses (5), (6), (7), and (8) of this Section 6.3 shall be void at the election of Administrative Agent.

Section 6.4 Tenant Estoppels. At Administrative Agent's request, Borrower shall, within thirty (30) days, obtain and furnish to Administrative Agent, (1) written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under leases in the Project and confirming the term, rent, and other provisions and matters relating to the leases and (2) written subordination and attornment agreements, in form and substance satisfactory to Administrative Agent, executed by tenants under leases in the Project, whereby, among other things, such tenants subordinate their interest in the Project to the Loan Documents and agree to attorn to Administrative Agent (on behalf of the Lenders) and its successors and assigns upon foreclosure or other transfer of the Project after an Event of Default.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and the Lenders that:

Section 7.1 Organization and Power. Borrower and each Borrower Party is duly organized, validly existing and in good standing under the laws of the state of its formation or existence, and is in compliance with legal requirements applicable to doing business in the State. Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Internal Revenue Code. Lead Borrower's U.S. taxpayer identification number is 20-1577239 and Fordham Office's U.S. taxpayer identification number is 26-1094416.

Section 7.2 Validity of Loan Documents. The execution, delivery and performance by Borrower and each Borrower Party of the Loan Documents: (1) are duly authorized and do not require the consent or approval of any other party or Governmental Authority which has not been obtained; and (2) will not violate any law or result in the imposition of any Lien upon the assets of any such party, except as contemplated by the Loan Documents. The Loan Documents constitute the legal, valid and binding obligations of Borrower and each Borrower Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 7.3 Liabilities; Litigation.

(1) The financial statements delivered by Borrower and each Borrower Party are true and correct with no material change since the date of preparation. Except as disclosed in such financial statements, there are no liabilities (fixed or contingent) affecting the Project, Borrower or any Borrower Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to the knowledge of Borrower, threatened, against the Project, Borrower or any Borrower Party which if adversely determined could have a Material Adverse Effect.

(2) Neither Borrower nor any Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Borrower nor any Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

Section 7.4 Taxes and Assessments. The Project is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Borrower's best knowledge, proposed, special or other assessments for public improvements or otherwise affecting the Project, nor are there any contemplated improvements to the Project that may result in such special or other assessments.

Section 7.5 Other Agreements; Defaults. Neither Borrower nor any Borrower Party is a party to or in violation of any agreement or instrument or subject to any court order, injunction, permit, or restriction which might have a Material Adverse Effect.

Section 7.6 Compliance with Law.

(1) Borrower and each Borrower Party have all requisite licenses, permits, franchises, qualifications, certificates of occupancy or other governmental authorizations to own, lease and operate the Project and carry on its business, and the Project is in compliance with all applicable legal requirements and is free of structural defects, and all building systems contained therein are in good working order, subject to ordinary wear and tear. The Project does not constitute, in whole or in part, a legally non-conforming use under applicable legal requirements;

(2) No condemnation has been commenced or, to Borrower's knowledge, is contemplated with respect to all or any portion of the Project or for the relocation of roadways providing access to the Project; and

(3) The Project has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary or convenient to the full use and enjoyment of the Project are located in the public right-of-way abutting the Project, and all such utilities are connected so as to serve the Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the Project. All roads necessary for the full utilization of the Project for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

Section 7.7 Location of Borrower. Borrower's principal place of business and chief executive offices are located at the address stated in Section 12.1.

Section 7.8 ERISA. Borrower has no employees and has not established any pension plan for employees which would cause Borrower to be subject to the Employee Retirement Income Security Act of 1974, as amended.

Section 7.9 Margin Stock. No part of proceeds of the Loans will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

Section 7.10 Tax Filings. Borrower and each Borrower Party have filed (or have obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and each Borrower Party, respectively.

Section 7.11 Solvency. Giving effect to the Loans, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loans, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loans, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loans will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debts as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

Section 7.12 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower or any Borrower Party in this Agreement or in any of the other Loan Documents or in any certificate, statement or questionnaire delivered by Borrower or any Borrower Party in connection with the Loans contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower or any Borrower Party which has not been disclosed to Administrative Agent which might have a Material Adverse Effect.

Section 7.13 Single Purpose Entity. Borrower is and has at all times since its formation been a Single Purpose Entity.

Section 7.14 Property Management Agreement. The Property Management Agreement is the only management agreement in existence with respect to the operation or management of the Project. The copy of the Property Management Agreement delivered to Administrative Agent is a true and correct copy, and such agreement has not been amended or modified. Neither party to such agreement is in default under such agreement and the Property Manager has no defense, offset right or other right to withhold performance under or terminate such agreement.

Section 7.15 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, operating agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such regulatory authority or other governmental agency or body required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

Section 7.16 Title. Borrower has good, marketable and insurable fee simple title to the Project, free and clear of all Liens whatsoever, except for the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. The Mortgage creates (and upon the recordation thereof and of any related financing statements there will be perfected) (1) a valid Lien on the Project, subject only to Permitted Encumbrances and (2) security interests in and to, and collateral assignments of, all personalty (including the leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. There are no claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents. None of the Permitted Encumbrances, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Mortgage and this Agreement, materially and adversely affect the value of the Project, impair the use or operations of the Project or impair Borrower's ability to pay its obligations in a timely manner.

Section 7.17 Use of Project. The Project is being, and will continue to be, used exclusively for retail, office and other ancillary uses permitted by applicable zoning law, and for no other purpose or purposes.

Section 7.18 Flood Zone. No portion of the Project or the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1994, as amended, or any successor law.

Section 7.19 Insurance. Borrower has obtained and has delivered to Administrative Agent certified copies of all of the insurance policies for the Project reflecting the insurance coverages, amounts and other insurance requirements set forth in this Agreement. No claims have been made under any such policy, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any such policy.

Section 7.20 Certificate of Occupancy; Licenses. All certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits, required for the legal use, occupancy and operation of the Project as an office building (with multi-floor retail uses) (collectively, the "Licenses") have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses in full force and effect. The use being made of the Project is in conformity with any applicable certificate of occupancy issued for the Project.

Section 7.21 Physical Condition. Except as disclosed in the building condition reports certified to Administrative Agent and delivered in connection with the initial advance of the Loans, the Project, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to Borrower's knowledge, there exists no structural or other material defects or damages in the Project, whether latent or otherwise, and Borrower has not received written notice from any insurance company or bonding company of any defects or inadequacies in the Project, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

Section 7.22 Boundaries. All of the Improvements lie wholly within the boundaries and building restriction lines of the Project, and no improvements on adjoining properties encroach upon the Project, and no Improvements encroach upon or violate any easements or other encumbrances upon the Project, so as to materially adversely affect the value or marketability of the Project, except those which are insured against by title insurance.

Section 7.23 Separate Lots. The Project is comprised of one (1) or more parcels which constitutes one (1) or more separate tax lots and does not constitute a portion of any other tax lot not a part of the Project.

Section 7.24 Survey. The survey for the Project delivered to Administrative Agent in connection with this Agreement does not fail to reflect any material matter affecting the Project or the title thereto.

Section 7.25 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable legal requirements currently in effect in connection with the transfer of the Project to Borrower or any transfer of a controlling interest in Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person in connection with the execution, delivery, recording, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid and, the Mortgage is enforceable in accordance with its terms by Administrative Agent or any subsequent holder thereof (on behalf of the Lenders), subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 7.26 Investment Company Act. Borrower is not (1) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (2) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (3) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 7.27 Foreign Assets Control Regulations, Etc.

(1) Neither the execution and delivery of the Notes and the other Loan Documents by Borrower Parties nor the use of the proceeds of the Loans, will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or the Anti-Terrorism Order or any enabling legislation or executive order relating to any of the same. Without limiting the generality of the foregoing, no Borrower Party or any of their respective subsidiaries (a) is or will become a blocked person described in Section 1 of the Anti-Terrorism Order or (b) engages or will engage in any dealings or transactions or be otherwise associated with any such blocked person.

(2) Each partner or member or other direct or indirect principal of Borrower shall be at all times during the term of the Loans an entity or person which (a) is (and whose principals shall be) a reputable entity or person of good character and in good standing as reasonably determined by the Lenders, (b) is creditworthy and not adverse to any of the Lenders in any pending litigation or arbitration in which any Lender is also a party, (c) is not a Prohibited Person, and (d) is in good standing in its state or country of organization.

Section 7.28 Organizational Structure.

(1) Borrower has heretofore delivered to Administrative Agent a true and complete copy of the Organizational Documents of each Borrower Party. The only member of Borrower on the date hereof is Managing Member. The Managing Member is the sole managing member of Borrower. As of the date hereof, there are no outstanding equity rights with respect to Borrower or the Managing Member.

(2) The only members of the Managing Member on the date hereof are Guarantor and P/A Associates LLC. Guarantor is the sole managing member of the Managing Member.

(3) Schedule 7.28 contains a true and accurate chart reflecting the ownership of all of the direct and indirect equity interests in Borrower, including the percentage of ownership interest of the Persons shown thereon.

ARTICLE 8

FINANCIAL REPORTING

Section 8.1 Financial Statements.

(1) **Quarterly Reports.** Within forty-five (45) days after the end of each calendar quarter, Lead Borrower shall furnish to Administrative Agent a detailed operating statement (showing quarterly activity and year-to-date) stating Operating Revenues, Operating Expenses, operating income and Net Cash Flow, and capital expenditures for the calendar quarter just ended and a balance sheet for such quarter for Borrower. Borrower's quarterly statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior calendar quarter, (ii) a calculation reflecting the Debt Service Coverage Ratio as of the last day of such quarter, for such quarter and the last four quarters; (iii) a current rent roll for the Project, and (iv) a certificate executed by the chief financial officer of Borrower or the managing member of Borrower stating that each such quarterly statement presents fairly the financial condition and the results of operations of Borrower and the Project and has been prepared in accordance with general accepted accounting principles.

(2) **Annual Reports.** Within ninety (90) days after the end of each calendar year of Borrower's operation of the Project, Lead Borrower will furnish to Administrative Agent a complete copy of Borrower's annual financial statements prepared in accordance with GAAP and otherwise in form and detail reasonably acceptable to Administrative Agent, for such calendar year which financial statements shall contain a balance sheet, a detailed operating statement stating Operating Revenues, Operating Expenses, operating income and Net Cash Flow for each of Borrower and the Project. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior calendar year, (ii) a certificate executed by the chief financial officer of Borrower or the managing member of Borrower stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Project and has been prepared in accordance with general accepted accounting principles.

(3) **Additional Reports.** Upon request of Administrative Agent, Lead Borrower shall deliver to Administrative Agent as soon as reasonably available, but in no event later than thirty (30) days after such items become available to Borrower in final form a summary report containing each of the following with respect to the Project for the most recently completed calendar year: (A) aggregate sales by tenants under leases or other occupants of the Project, both on an actual (or to the extent such information is not provided by tenants, Property Manager's or Borrower's best estimate) and on a comparable store basis, (B) rent per square foot payable by each tenant, (C) aggregate Occupancy of the Project by anchor space and in-line store space as of December 31 and (D) such other information as Administrative Agent shall reasonably request.

(4) **Certification; Supporting Documentation.** Each such financial statement shall be in scope and detail satisfactory to Administrative Agent and certified by the chief financial representative of Borrower.

Section 8.2 Accounting Principles. All financial statements shall be prepared in accordance with sound accounting principles applicable to commercial real estate, consistently applied from year to year. If the financial statements are prepared on an accrual basis, such statements shall be accompanied by a reconciliation to cash basis accounting principles.

Section 8.3 Other Information. Lead Borrower shall deliver to Administrative Agent such additional information regarding Borrower, its subsidiaries, its business, any Borrower Party, and the Project within thirty (30) days after Administrative Agent's request therefor.

Section 8.4 Annual Budget. At least thirty (30) days prior to the commencement of each fiscal year, Lead Borrower will provide to Administrative Agent Borrower's proposed annual operating and capital improvements budget for such fiscal year for review and approval by Administrative Agent.

Section 8.5 Audits. Administrative Agent shall have the right to choose and appoint a certified public accountant to perform financial audits as it deems necessary, at Borrower's expense, provided, however unless an Event of Default has occurred, Borrower shall not be required to pay for more than one (1) financial audit per calendar year. Borrower shall permit Administrative Agent to examine such records, books and papers of Borrower which reflect upon its financial condition and the income and expense relative to the Project.

ARTICLE 9

COVENANTS

Borrower covenants and agrees with Administrative Agent and the Lenders as follows:

Section 9.1 Due on Sale and Encumbrance; Transfers of Interests. Without the prior written consent of Administrative Agent and the Lenders (to the extent required under Section 12.2),

- (1) Borrower shall not allow any Change of Control to occur, or permit any Transfer to occur (whether of equity interests or through any pledge or encumbrance of equity interests, or of the economic or other benefits therefrom, whether voluntary, involuntary, by operation of law or otherwise) if any such Transfer would result in a Change of Control;
- (2) neither Borrower nor any other Person having an ownership or beneficial interest in Borrower shall (a) allow, directly or indirectly, any Transfer (other than a Permitted Transfer), to occur; (b) further encumber, alienate, grant a Lien or grant any other interest in the Project or any part thereof (including any partnership, membership or other ownership interest in Borrower), whether voluntarily or involuntarily; or (c) enter into any easement or other agreement granting rights in or restricting the use or development of the Project;
- (3) no new general partner, member, or limited partner having the ability to control the affairs of Borrower shall be admitted to or created in Borrower (nor shall any existing general partner or member or controlling limited partner withdraw from Borrower), and no change in Borrower's organizational documents relating to control over Borrower and/or the Project shall be effected.

As used in this Section 9.1, "Transfer" shall include the sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of (a) the Project (including any Unit), (b) any partnership interest in any general partner in Borrower that is a partnership, (c) any membership interest in any member in Borrower that is a limited liability company and (d) any voting stock in any managing member in Borrower that is a corporation; "Transfer" shall not include (i) the leasing of any space within the Project so long as Borrower complies with the provisions of the Loan Documents relating to such leasing activity; or (ii) the transfers of non-managing membership interests in Borrower so long as no Change of Control results therefrom.

Section 9.2 Taxes; Charges. Borrower shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any real estate taxes and assessments, franchise taxes and charges, and other governmental charges that may become a Lien upon the Project or become payable during the term of the Loans (collectively, the "Taxes"), and will promptly furnish Administrative Agent with evidence of such payment; however, Borrower's compliance with Section 4.1 of this Agreement relating to impounds for taxes and assessments shall, with respect to payment of such taxes and assessments, be deemed compliance with this Section 9.2. Borrower shall not suffer or permit the joint assessment of the Project with any other real property constituting a separate tax lot or with any other real or personal property. Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a Lien on the Project; however, Borrower may contest the validity of such claims and demands or taxes so long as (1) Lead Borrower notifies Administrative Agent that Borrower intends to contest such claim or demand, (2) Borrower provides Administrative Agent with an indemnity, bond or other security satisfactory to Administrative Agent (including an endorsement to Administrative Agent's title insurance policy insuring against such claim or demand) assuring the discharge of Borrower's obligations for such claims and demands, including interest and penalties, (3) Borrower is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the tenth (10th) day preceding the earlier to occur of the Maturity Date or the date on which the Project is scheduled to be sold, forfeited, terminated, cancelled or lost for non payment, (4) such proceedings shall not subject Borrower, the Administrative Agent or any Lender to criminal or civil liability (other than civil liability as to which adequate security has been provided pursuant to clause (2) above), and (5) Borrower shall promptly upon final determination thereof pay the amount of such items, together with all costs, interests and penalties.

Section 9.3 Control; Management. Borrower shall not terminate, replace or appoint any manager or terminate or amend the Property Management Agreement for the Project without Administrative Agent's prior written approval. Any change in ownership or control of the Property Manager shall be cause for Administrative Agent to re-approve such Property Manager and Property Management Agreement. If at any time Administrative Agent consents to the appointment of a new manager, such new manager and Borrower shall, as a condition of Administrative Agent's consent, execute a Property Manager's Consent and Subordination of Property Management Agreement in the form then used by Administrative Agent. Each manager shall hold and maintain all necessary licenses, certifications and permits required by law. Borrower shall fully perform all of its covenants, agreements and obligations under the Property Management Agreement.

Section 9.4 Operation; Maintenance; Inspection. Borrower shall observe and comply with all legal requirements applicable to the ownership, use and operation of the Project. Borrower shall maintain the Project in good condition and promptly repair any damage or casualty. Borrower shall permit Administrative Agent and the Lenders and their agents, representatives and employees, upon reasonable prior notice to Borrower, to inspect the Project and conduct such environmental and engineering studies as Administrative Agent may require, provided such inspections and studies do not materially interfere with the use and operation of the Project.

Section 9.5 Taxes on Security. Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Notes or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Administrative Agent or any Lender. If there shall be enacted any law (1) deducting the Loans from the value of the Project for the purpose of taxation, (2) affecting any Lien on the Project, or (3) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Administrative Agent, on demand, all taxes, costs and charges for which Administrative Agent or any Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loans usurious, then instead of collecting such payment, Administrative Agent may (and on the request of the Majority Lenders shall) declare all amounts owing under the Loan Documents to be immediately due and payable.

Section 9.6 Legal Existence; Name, Etc.

(1) Borrower and each managing member in Borrower shall preserve and keep in full force and effect its existence as a Single Purpose Entity, entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of the Project. Neither Borrower nor any managing member of Borrower shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets, or acquire all or substantially all of the assets of the business of any Person, or permit any subsidiary or Affiliate of Borrower to do so. Borrower and each managing member in Borrower shall conduct business only in its own name and shall not change its name, identity, or organizational structure, or the location of its chief executive office or principal place of business unless Borrower (a) shall have obtained the prior written consent of Administrative Agent to such change, and (b) shall have taken all actions necessary or requested by Administrative Agent to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents.

(2) Borrower shall at all times cause there to be at least one (1) duly appointed member of the board of managers or other governing board or body of the managing member of the Managing Member, who is an Independent Manager. Borrower shall not take any action or permit any action to be taken which, under the terms of this Agreement, or the limited partnership agreement or limited liability company operating agreement of Borrower, the Managing Member, or the managing member of the Managing Member, requires the consent of such Independent Manager(s), unless such Independent Manager(s) shall have consented in writing to such action.

(3) Neither Borrower nor Borrower's Managing Member shall cause or permit any modification to be made in its organizational documents that would be inconsistent with the provisions of Section 7.28 or this Section 9.6, that would interfere with its ability to comply with its status as a Single Purpose Entity, as applicable, or that otherwise in any other respect would violate this Agreement or could reasonably be expected to have a Material Adverse Effect.

Section 9.7 Affiliate Transactions. Without the prior written consent of Administrative Agent, Borrower shall not engage in any transaction affecting the Project with an Affiliate of Borrower.

Section 9.8 Limitation on Other Debt. Borrower and Managing Member shall not, without the prior written consent of Administrative Agent and the Majority Lenders, incur any Debt other than, in the case of the Borrower, the Loans and trade and operational debt described in subsection (p) of the definition of Single Purpose Entity.

Section 9.9 Further Assurances. Borrower shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, and (2) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Administrative Agent may reasonably request to further evidence and more fully describe the collateral for the Loans, to correct any omissions in the Loan Documents, to perfect, protect or preserve any Liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith.

Section 9.10 Loan Certificates. Borrower or Administrative Agent, within ten (10) days after request from the other party, shall furnish to the requesting party a written statement, duly acknowledged, setting forth the amount due on the Loans, the terms of payment of the Loans, the date to which interest has been paid, whether any offsets or defenses exist against the Loans and, if any are alleged to exist, the nature thereof in detail, and such other matters as the requesting party reasonably may request.

Section 9.11 Notice of Certain Events. Lead Borrower shall promptly notify Administrative Agent of (1) any Potential Default or Event of Default, together with a detailed statement of the steps being taken to cure such Potential Default or Event of Default; (2) any notice of default received by Borrower or any Borrower Party under other obligations relating to the Project or otherwise material to Borrower's business; and (3) any threatened or pending legal, judicial or regulatory proceedings, including any dispute between Borrower and any Governmental Authority, affecting Borrower or the Project.

Section 9.12 Indemnification. Borrower shall indemnify, defend and hold Administrative Agent and each Lender harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including the reasonable fees and actual expenses of their counsel, which may be imposed upon, asserted against or incurred by any of them relating to or arising out of (1) the Project or (2) any of the Loan Documents or the transactions contemplated thereby, including, without limitation, (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about any of the Project or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways, (b) any inspection, review or testing of or with respect to the Project, (c) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Administrative Agent or any Lender is designated a party thereto, commenced or threatened at any time (including after the repayment of the Loans) in any way related to the execution, delivery or performance of any Loan Document or to the Project, (d) any proceeding instituted by any Person claiming a Lien, and (e) any brokerage commissions or finder's fees claimed by any broker or other party claiming to have dealt with the Borrower in connection with the Loans, the Project, or any of the transactions contemplated in the Loan Documents, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent or any Lender, except to the extent any of the foregoing is caused by Administrative Agent's or any Lender's gross negligence or willful misconduct, in which case the party to whom the gross negligence or willful misconduct is attributable (but not any other party) shall not be entitled to the indemnification provided for hereunder to the extent of such gross negligence or willful misconduct, to the extent determined by a court of competent jurisdiction.

Section 9.13 Payment for Labor and Materials. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Project and never permit to exist beyond the due date thereof in respect of the Project or any part thereof any Lien, even though inferior to the Liens of the Loan Documents, and in any event never permit to be created or exist in respect of the Project or any part thereof any other or additional Lien other than the Liens or security of the Loan Documents, except for the Permitted Encumbrances; however, Borrower may contest the validity of such Liens so long as (1) Lead Borrower notifies Administrative Agent that Borrower intends to contest such Liens, (2) Borrower provides Administrative Agent with an indemnity, bond or other security satisfactory to Administrative Agent (including an endorsement to Administrative Agent's title insurance policy insuring against such Liens) assuring the discharge of Borrower's obligations for such Liens, including interest and penalties, (3) Borrower is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the tenth (10th) day preceding the earlier to occur of the Maturity Date or the date on which the Project is scheduled to be sold, forfeited, terminated, cancelled or lost for non payment, (4) such proceedings shall not subject Borrower, the Administrative Agent or any Lender to criminal or civil liability (other than civil liability as to which adequate security has been provided pursuant to clause (2) above), and (5) Borrower shall promptly upon final determination thereof pay the amount of such items, together with all costs, interests and penalties.

Section 9.14 Alterations. Borrower shall obtain Administrative Agent's prior written consent, which consent shall not be unreasonably withheld or delayed, to any alterations to any improvements that may have a Material Adverse Effect on Borrower's financial condition, the use, operation or value of the Project or the actual Net Operating Income with respect to the Project, other than (a) tenant improvement work performed pursuant to the terms of any lease executed on or before the date hereof, (b) tenant improvement work performed pursuant to the terms and provisions of a lease and not adversely affecting any structural component of any improvements, any utility or HVAC system contained in any improvements or the exterior of any building constituting a part of any improvements at the Project, or (c) alterations performed in connection with the restoration of the Project after the occurrence of a casualty in accordance with the terms and provisions of this Agreement.

Section 9.15 Hedge Agreements.

(1) At Borrower's option, the Borrower may enter into one or more Hedge Agreements. Each Hedge Agreement shall, at Borrower's option, be based on an Interest Period (each, an "**Interest Rate Hedge Period**") of one (1) month. The economic and other benefits of the Hedge Agreements and all of the other rights thereunder shall be collaterally assigned to Administrative Agent as additional security for the Loans, pursuant to a Hedge Agreement Pledge. All Hedge Agreement Pledges shall be accompanied by (i) Uniform Commercial Code financing statements, in duplicate, with respect to such pledges and (ii) the consent and agreement of the counter party thereunder that it will pay all amounts due thereunder to an account designated by Administrative Agent and will continue to perform its obligations under such Hedge Agreement for the benefit of Administrative Agent and the Lenders after enforcement of and/or realization on such Hedge Agreement Pledge and an acknowledgement that Administrative Agent shall not be deemed to have assumed any of the obligations or duties of Borrower under any such Hedge Agreement.

(2) All of Borrower's obligations under any Hedge Agreement provided by a Eurohypo Counterparty shall be secured by the lien of the Mortgage on a pari passu basis with the Loans and other sums evidenced or secured by the Loan Documents.

(3) Any Hedge Agreement entered into with one or more banks or insurance companies (each a "**Third-Party Counterparty**") other than a Eurohypo Counterparty (a "**Third-Party Hedge Agreement**") shall not be secured by the Mortgage or a Lien on any portion of the collateral under the Security Documents or on or in any direct or indirect interest in Borrower.

(4) Borrower shall cause all payments payable by a Third-Party Counterparty under the Hedge Agreement to be deposited into an account designated by Administrative Agent. On the due date for interest on the Loans each month, the amounts so deposited in such account shall be debited, and applied to pay the accrued but unpaid interest on the Loans due on such date, before applying any portion of the Loan proceeds which is allocated to the Interest Reserve for such purpose, and before applying any Operating Revenues for such purpose.

(5) Any payment due from the counterparty under any Hedge Agreement upon a termination thereof, shall be delivered to Administrative Agent and applied by Administrative Agent to any amounts due under the Loan Documents.

(6) In connection with a Third-Party Hedge Agreement, Lead Borrower shall obtain and deliver to Administrative Agent an opinion from counsel (which counsel may be in-house counsel for the Third-Party Counterparty) for the Third-Party Counterparty (in form reasonably satisfactory to Administrative Agent and upon which Administrative Agent, the Lenders and their respective successors and assigns may rely) which shall provide, in relevant part, that:

(a) the Third-Party Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Third-Party Hedge Agreement;

(b) the execution and delivery of the Third-Party Hedge Agreement by the Third-Party Counterparty, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property;

(c) all consents, authorizations and approvals required for the execution and delivery by the Third-Party Counterparty of the Third-Party Hedge Agreement, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any Governmental Authority or regulatory body is required for such execution, delivery or performance; and

(d) the Third-Party Hedge Agreement, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by the Third-Party Counterparty and constitutes the legal, valid and binding obligation of the Third-Party Counterparty, enforceable against the Third-Party Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

Section 9.16 Certain Financial Covenants.

(1) Debt Service Coverage Ratio.

(a) Commencing on December 31, 2009 Borrower shall not permit (a) the Debt Service Coverage Ratio for any calendar quarter to be less than (i) with respect to the period from the Closing Date through and including the first anniversary of the Closing Date, 1.35:1.00; and (ii) from the first day after the first anniversary of the Closing Date through and including the original Maturity Date, 1.25:1.00; or (b) in the event that Borrower exercises the option to extend the term of the Loan pursuant to Section 2.5 hereof, the Pro Forma Debt Service Coverage Ratio for any calendar quarter during the Extension Period to be less than 1.45:1.00.

(b) Upon the occurrence of a Low DSCR Trigger Event, Borrower shall, on or before the date which is five (5) Business Days after the date of any such determination (but in any event within fifty (50) days after the end of the applicable calendar quarter) either (a) make a payment in reduction of the outstanding principal amount in an amount determined by Administrative Agent (together with all applicable breakage costs or other charges, if any, provided for herein) such that after giving effect to such payment, the Debt Service Coverage Ratio would not have triggered a Low DSCR Trigger Event for the applicable calendar quarter had such prepayment been made as of the first day of such calendar quarter; or (b) make a deposit of cash with Administrative Agent, and/or deliver a Collateral Letter of Credit to Administrative Agent as additional collateral for the Notes and Borrower's other obligations under the Loan Documents, in each case, in an amount determined by Administrative Agent such that if the amount so deposited were used to make a principal prepayment, the Debt Service Coverage Ratio would not have triggered a Low DSCR Trigger Event for the applicable calendar quarter had such prepayment been made as of the first day of such calendar quarter. Any cash shall be deposited by Administrative Agent in the Low DSCR Account and be subject to the terms of the Cash Management Agreement, including the security interest granted by Borrower therein pursuant to the Cash Management Agreement. If the Low DSCR Release Event shall occur within six (6) months of the Low DSCR Trigger Event, provided that there is no then existing Potential Default or Event of Default, any funds held in the Low DSCR Account pursuant to this subsection (b), and any undrawn Collateral Letters of Credit delivered pursuant to this subsection (b) shall be released to Lead Borrower. In the event that the Low DSCR Release Event does not occur within six (6) months of the Low DSCR Trigger Event, then Administrative Agent shall have the right to apply any funds held in the Low DSCR Account pursuant to this subsection (b) and to draw on any Collateral Letters of Credit delivered pursuant to this subsection (b) and apply such amounts in reduction of the outstanding principal balance of the Loan.

Section 9.17 Handicapped Access.

(1) Borrower (a) agrees that it shall use commercially reasonable efforts to ensure that the Project shall at all times comply with the applicable requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, "**Access Laws**") and (b) has no actual knowledge as to the Project's non-compliance with any Access Laws where the failure to so comply could have a Material Adverse Effect on the Project or on Borrower's ability to repay the Loans in accordance with the terms hereof.

(2) Notwithstanding any provisions set forth herein or in any other document regarding Administrative Agent's approval of alterations of the Project, Borrower shall not alter the Project in any manner which would materially increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Administrative Agent. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Administrative Agent may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person reasonably acceptable to Administrative Agent.

(3) Lead Borrower agrees to give prompt notice to Administrative Agent of the receipt by Borrower of any written complaints related to violation of any Access Laws with respect to the Project and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

Section 9.18 Zoning. Borrower shall not, without Administrative Agent's prior consent, such consent not to be unreasonably withheld, seek, make, suffer, consent to or acquiesce in any change or variance in any zoning or land use laws or other conditions of use of the Project or any portion thereof. Borrower shall not use or permit the use of any portion of the Project in any manner that could result in such use becoming a non-conforming use under any zoning or land use law or any other applicable law or modify any agreements relating to zoning or land use matters or with the joinder or merger of lots for zoning, land use or other purposes, without the prior written consent of Administrative Agent. Without limiting the foregoing, in no event shall Borrower take any action that would reduce or impair either (a) the number of parking spaces at the Improvements or (b) access to the Project from adjacent public roads. Further, without Administrative Agent's prior written consent, such consent not to be unreasonably withheld, Borrower shall not file or subject any part of the Project to any additional declaration of condominium or co-operative or convert any part of the Project to an additional condominium, co-operative or other direct or indirect form of multiple ownership and governance.

Section 9.19 ERISA. Borrower shall not take any action, or omit to take any action, which would (a) cause Borrower's assets to constitute "plan assets" for purposes of ERISA or the Internal Revenue Code or (b) cause the Loan Transactions to be a nonexempt prohibited transaction (as such term is defined in Section 4975 of the Internal Revenue Code or Section 406 of ERISA) that could subject Administrative Agent and/or the Lenders, on account of any Loan or execution of the Loan Documents hereunder, to any tax or penalty on prohibited transactions imposed under Section 4975 of the Internal Revenue Code or Section 502(i) of ERISA.

Section 9.20 Books and Records. Borrower will, and will cause each of the other Borrower Parties to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Borrower will, and will cause each of the other Borrower Parties to, permit any representatives designated by Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

Section 9.21 Foreign Assets Control Regulations. Neither Borrower nor any Borrower Party shall use the proceeds of the Loan in any manner that will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or the Anti-Terrorism Order or any enabling legislation or executive order relating to any of the same. Without limiting the foregoing, neither Borrower nor any Borrower Party will permit itself nor any of its Subsidiaries to (a) become a blocked person described in Section 1 of the Anti-Terrorism Order or (b) knowingly engage in any dealings or transactions or be otherwise associated with any person who is known by such Borrower Party or who (after such inquiry as may be required by applicable law) should be known by such Borrower Party to be a blocked person.

Section 9.22 Appraisals. Administrative Agent may, at its option, commission one or more new and/or updated Appraisals from time to time after the closing date; provided, however, that Borrower shall only be required to reimburse Administrative Agent for such new and updated Appraisal (A) not more than annually unless (1) an Event of Default exists or (2) there is, in Administrative Agent's reasonable judgment, a material adverse change in the Project or the market conditions related to the Project, (B) in connection with Section 2.5 and (C) at any time such appraisal is required by applicable law or regulatory requirements.

Section 9.23 Covenants Regarding the Condominium Declaration.

Borrower covenants and agrees that:

(1) Borrower shall pay when due and before any fine, penalty, interest or cost may be added thereto for the late payment or non-payment thereof, all Unit Annual Assessments imposed on Borrower's Project Interest and all other charges mentioned in and payable by Borrower under the Condominium Declaration (including, without limitation, all insurance and taxes applicable to Borrower's Project Interest), and shall comply with all of its other obligations under the Condominium Declaration, and shall do all things necessary to preserve and to keep unimpaired Borrower's rights, powers and privileges (whether as the owner of the Units, as the Declarant, as the holder of any special class of voting rights, or otherwise) thereunder. If Borrower shall fail to do so, the Lenders shall, if required by Administrative Agent, pay such Unit Annual Assessments or other charges. Lead Borrower shall deliver to Administrative Agent, upon request, copies of receipts or other proof satisfactory to Administrative Agent evidencing the timely payment of such Unit Annual Assessments and other charges.

(2) Borrower shall comply with the covenants, agreements and provisions of the Condominium Documents, and Lead Borrower shall promptly notify Administrative Agent of (a) any failure by Borrower to comply with the Condominium Declaration and (b) the receipt by Borrower of any notice asserting or claiming a default by Borrower under the Condominium Declaration, and shall promptly cause a copy of such notice to be delivered to Administrative Agent.

(3) Borrower shall not vote in favor of or otherwise approve any amendment of the Condominium Declaration without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld.

(4) Borrower shall not waive any material right of the Borrower (whether as the owner of the Units, as the Declarant, as the holder of any special class of voting rights, or otherwise) under the Condominium Declaration without the prior written consent of Administrative Agent which shall not be unreasonably withheld.

(5) The Lien of the Mortgage shall encumber all of Borrower's Project Interest, including all of Borrower's rights to vote on or approve any matter with respect to Borrower's Project Interest. Without the prior written consent of Administrative Agent, Borrower shall not exercise such voting or approval rights with respect to any of the following:

- (a) any partition of all or a part of the Project subject to the Condominium Declaration;
- (b) the nature and amount of any insurance covering all or a part of the Project and the disposition of any proceeds thereof;
- (c) the manner in which any condemnation or threat of condemnation of all or a part of the Project shall be defended or settled and the disposition of any award or settlement in connection therewith;

(d) the construction of any additions or improvements to, or any repair, rebuilding or restoration of all or a portion of any Improvements to, the Project (to the extent that the same would require the approval of Administrative Agent under this Agreement);

(e) the distribution of any insurance or condemnation proceeds (other than in compliance with this Agreement); and

(f) any other material action or decision provided for in the Condominium Declaration.

(6) If required by the Administrative Agent, Lead Borrower will take all action to obtain as promptly as possible, and forthwith upon receipt furnish to the Administrative Agent, a true and correct copy of: (a) any statement showing the allocation of expenses and other assessments against the Units and (b) any statements issued to Borrower calling for payment of expenses.

(7) Lead Borrower shall be, and remain through the repayment of the Loans in full, the Declarant under the Condominium Declaration.

(8) Borrower shall cause the condominium association created by the Condominium Documents to, at all times, have furnished to Administrative Agent at no cost or expense to Administrative Agent, insurance policies for the insurance required hereunder and under the Condominium Documents, with extended coverage naming Administrative Agent, said condominium association, and Borrower (as owner of the Units), as their respective interests may appear, as the insureds, covering all of the Improvements; said insurance shall at all times be an amount equal to 100% of the insurable value of the Improvements and shall otherwise comply with the applicable conditions contained in the Mortgage and elsewhere in this Agreement.

(9) Borrower shall at all times comply with the following covenants:

(a) Borrower shall satisfy all of the requirements of the Condominium Act and of any other applicable law necessary to maintain a valid condominium regime inclusive of all of the Units; and obtain any required approval of the Condominium Documents from the Attorney General of the State of New York. Any Condominium Documents and any modifications or amendments thereto shall be reasonably approved by Administrative Agent prior to the recording, filing or effectiveness thereof, provided that in the case of any such amendment which shall increase the number of condominium units, in the event that a casualty or condemnation has occurred and the provisions of ARTICLE 3 prevent restoration in connection with such casualty or condemnation, then prior to the recording, filing or effectiveness, as applicable, of such amendment, Lead Borrower, at Administrative Agent's option, shall be prohibited from recording, filing or otherwise causing the amendment to become effective and Administrative Agent, at the Majority Lenders' election, shall be permitted to vote, on Lead Borrower's behalf in accordance with the Voting Proxy delivered to Administrative Agent, or require Lead Borrower to vote, to terminate and dissolve the Condominium. In connection with such amendment, Lead Borrower shall provide updates of the documents and opinion provided herein in the event that the Condominium Declaration has been modified or amended or any of the officers, managers or directors have changed as a result of such amendment;

(b) Borrower shall duly perform or cause to be duly performed, in all material respects, all obligations of the developers or sponsors under the Condominium Documents, and do or cause to be done all things necessary to operate and maintain the Project and the Condominium as a retail condominium project, that are required to be done by the developers or sponsors and comply with all Applicable Laws applicable to the Condominium, and furnish such evidence of compliance therewith as Administrative Agent may reasonably request;

(c) Subject to Administrative Agent's approval in its reasonable discretion, Borrower shall not cancel, terminate or revoke, or modify, or in any way alter or permit the alteration of, any of the material provisions of the Condominium Documents or grant any consents or waivers thereunder, and not to exercise any right it may have under the Condominium Documents to cancel, terminate or revoke the same. Any request for approval by Administrative Agent pursuant to this paragraph shall be made to, and approved by, Administrative Agent prior to, if necessary, submitting such request to the Attorney General of the State of New York

(10) Borrower acknowledges and agrees that nothing set forth in this Section or in any of the other provisions of the Loan Documents shall impose upon Administrative Agent or any Lender any obligation or responsibility to Borrower under the Condominium Declaration.

Section 9.24 Industrial and Commercial Incentive Program.

(1) On or before the Closing Date, Borrower shall have delivered to Administrative Agent the preliminary application submitted to the New York City Department of Finance ("Department of Finance") evidencing the Project's eligibility for the partial tax exemption in accordance with paragraph 24 of Schedule 4-Part A.

(2) On or before the Closing Date, pursuant to Title 11, Chapter 2, Part 4 of the Administrative Code of the City of New York City and the regulations promulgated thereunder, as amended from time to time ("Code"), Borrower shall have made a thorough and complete final application to the Department of Finance for a certificate of eligibility for a partial exemption of real property taxes for the Improvements for a twenty-five (25) year period ("ICIP Tax Exemption") subsequent to commencing construction on the Project. Borrower shall provide a copy of the said application to Administrative Agent evidencing that same was received by the Department of Finance on or before the Closing Date.

(3) Pursuant to the Code, Borrower shall have submitted a thorough and complete final construction report within sixty (60) days of completing construction on the Project to the Department of Finance for a certificate of eligibility for the ICIP Tax Exemption. Borrower shall have provided a copy of the certificate of eligibility, or if unavailable, a letter from the Department of Finance evidencing same, to Administrative Agent promptly upon Borrower's receipt thereof and in any event no later than sixty (60) days after the submission of such application, or such later date to the extent that the Borrower's failure to receive such certificate is due to Unavoidable Delay.

(4) Borrower shall do or shall have done all things necessary and required by statute, rule and regulation to maintain the availability of the ICIP Tax Exemption, including, but not limited to the following: (i) having notified the ICIP unit of the Department of Finance ("ICIP Unit") and the New York City Department of Small Business Services/Division of Labor Services ("Division of Labor Services") in writing fifteen (15) business days prior to commencing construction on the Project; (ii) submitting construction employment reports for the Project to the Division of Labor Services; and, if requested by the Department of Finance, filing a certificate of continuing use with the ICIP Unit annually in each year of benefit period.

(5) Notwithstanding anything to the contrary in this Agreement, Borrower's failure to obtain a certificate of eligibility for a ICIP Tax Exemption pursuant to clauses (2) and (3) above shall not constitute a default provided that (a) Borrower has otherwise complied with the provisions of this [Section 9.24](#), (b) is diligently proceeding to obtain such certificate and (iii) the only cause for Borrower's inability to obtain the applicable certificate is the Department of Finance's bureaucratic delay in issuing the applicable certificate and not for reasons related to Borrower's actions or eligibility.

ARTICLE 10

EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default under the Loans:

Section 10.1 Payments. Borrower's failure to (i) pay any regularly scheduled installment of principal, interest, the Administrative Fee or other amount due under the Loan Documents or (ii) make a deposit of cash, and/or deliver a Collateral Letter of Credit required under the Loan Documents, within five (5) days of (and including) the date when due, or Borrower's failure to pay the Loans at the Maturity Date, whether by acceleration or otherwise.

Section 10.2 Insurance. Borrower's failure to maintain insurance as required under [Section 3.1](#) of this Agreement.

Section 10.3 Single Purpose Entity. If Borrower or any Borrower Party materially breaches its covenant under [Section 9.6](#) with respect to its status as a Single Purpose Entity.

Section 10.4 Taxes. If any of the Taxes are not paid when the same are due and payable and such failure continues for ten (10) Business Days after Borrower has actual knowledge of such failure.

Section 10.5 Sale, Encumbrance, Etc. The sale, transfer, conveyance, pledge, mortgage or assignment of any part or all of the Project, or any interest therein, or of any interest in Borrower, in violation of [Section 9.1](#) of this Agreement.

Section 10.6 Representations and Warranties. Any representation or warranty made in any Loan Document proves to be untrue in any material respect when made or deemed made.

Section 10.7 Other Encumbrances. Any material default under any document or instrument, other than the Loan Documents, evidencing or creating a Lien on the Project or any part thereof that is not cured within any applicable notice or cure period.

Section 10.8 Various Covenants. Borrower defaults under any of its obligations under [Section 4.2\(3\)](#) (pertaining to the TI/LC Letter of Credit), [Section 6.2](#) (pertaining to lease approvals) and [Sections 9.3](#) (management of the Project), [9.7](#) (transactions with Affiliates), [9.8](#) (limitations on debt), [9.15](#) (hedge arrangements), [9.18](#) (zoning and use changes) or [9.19](#) (ERISA), of this Agreement.

Section 10.9 Reserved.

Section 10.10 Financial Covenants. Borrower defaults under any of its obligations under Section 9.16 of this Agreement.

Section 10.11 Involuntary Bankruptcy or Other Proceeding. Commencement of an involuntary case or other proceeding against Borrower, any Borrower Party or any other Person having an ownership or security interest in the Project (each, a "Bankruptcy Party") which seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of sixty (60) days; or an order for relief against a Bankruptcy Party shall be entered in any such case under the Federal Bankruptcy Code.

Section 10.12 Voluntary Petitions, Etc. Commencement by a Bankruptcy Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Bankruptcy Party 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 the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability, to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.

Section 10.13 Indebtedness. Any of the Borrower Parties, or any combination thereof, shall default in the payment when due of any principal of or interest on any of its other Indebtedness aggregating \$1,000,000.00 or more and such default shall not be cured within any applicable notice or cure period provided with respect to such Indebtedness; or any event specified in any note, agreement, indenture or other document evidencing or relating to any such Indebtedness shall occur if the effect of such event is to cause, or (with the giving of any notice or the lapse of time or both) to permit the holder or holders of such Indebtedness to cause, such Indebtedness to become due, or to be prepaid in full (whether by redemption, purchase, offer to purchase or otherwise); prior to its stated maturity.

Section 10.14 Dissolution. Any of the Borrower Parties shall be terminated, dissolved or liquidated (as a matter of law or otherwise) or proceedings shall be commenced by any Person (including any Borrower Party) seeking the termination, dissolution or liquidation of any Borrower Party, which, in the case of actions by Persons other than a Borrower Party or any of their Affiliates, shall continue unstayed and in effect for a period of sixty (60) or more days.

Section 10.15 Judgments. One or more (i) judgments for the payment of money (exclusive of judgment amounts fully covered by insurance where the insurer has admitted liability in respect of such judgment) aggregating with respect to any Borrower Party (other than Guarantor) in excess of \$1,000,000.00 shall be rendered against such party or parties or (ii) non-monetary judgments, orders or decrees shall be entered against any of the Borrower Parties which have or would reasonably be expected to have a Material Adverse Effect, and, in either case, the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of such Borrower Party to enforce any such judgment.

Section 10.16 Security. The Liens created by the Security Documents shall at any time not constitute a valid and perfected first priority Lien (subject to the Permitted Encumbrances) on the collateral intended to be covered thereby in favor of Administrative Agent, free and clear of all other Liens (other than the Permitted Encumbrances), or, except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by any Borrower Party or any of their Affiliates, provided that, as long as the security provided by the Security Documents shall not be impaired, with respect to a Lien (other than a Permitted Encumbrance) on the collateral, Borrower shall have ten (10) days for monetary Liens and thirty (30) days for all non-monetary Liens within which to provide Administrative Agent with evidence that such Lien has been bonded or otherwise removed of record.

Section 10.17 Guarantor Documents. Guarantor shall (i) default under any Guarantor Document beyond any applicable notice and grace period; or (ii) revoke or attempt to revoke, contest or commence any action against its obligations under any Guarantor Document.

Section 10.18 Security Accounts. Borrower uses, or permits the use of, funds from any reserves or from any Security Accounts for any purpose other than the purpose for which such funds were disbursed from such reserves or the Security Accounts and such default is not cured within ten (10) days of Borrower's knowledge of such default.

Section 10.19 Reserved.

Section 10.20 Covenants. Borrower's failure to perform or observe any of the agreements and covenants contained in this Agreement or in any of the other Loan Documents and not specified above, and, if such failure is susceptible to being cured, the continuance of such failure for thirty (30) days after notice by Administrative Agent to Lead Borrower; provided, however, subject to any shorter period for curing any failure by Borrower as specified in any of the other Loan Documents, Borrower shall have an additional ninety (90) days to cure such failure if (1) such failure does not involve the failure to make payments on a monetary obligation; (2) such failure cannot reasonably be cured within thirty (30) days; (3) Borrower is diligently undertaking to cure such default, and (4) Borrower has provided Administrative Agent with security reasonably satisfactory to Administrative Agent against any reasonably anticipated interruption of payment or impairment of collateral as a result of such continuing failure.

Section 10.21 Co-Borrower Documents. Either Borrower shall (i) default under any Co-Borrower Document beyond any applicable notice and grace period; or (ii) revoke or attempt to revoke, contest or commence any action against its obligations under any Co-Borrower Document.

Notwithstanding anything set forth in this Article 10, no cure periods will be afforded for any willful breach hereunder or under any of the Loan Documents.

ARTICLE 11

REMEDIES

Section 11.1 Remedies - Insolvency Events. Upon the occurrence of any Event of Default described in Section 10.8 or 10.9, and all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrower; provided, however, if the Bankruptcy Party under Section 10.8 or 10.9 is other than Borrower, then all amounts due under the Loan Documents shall become immediately due and payable at Administrative Agent's election.

Section 11.2 Remedies - Other Events. Except as set forth in Section 11.1 above, while any Event of Default exists, Administrative Agent may (1) by written notice to Lead Borrower, declare the entire amount of the Loans to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrower, (2) terminate the obligation, if any, of the Lenders to advance amounts hereunder, and (3) exercise all rights and remedies therefor under the Loan Documents and at law or in equity.

Section 11.3 Administrative Agent's Right to Perform the Obligations. If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Administrative Agent or any Lender may have because of such Event of Default, Administrative Agent may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter upon the Project for such purpose and to take all such action thereon and with respect to the Project as it may deem necessary or appropriate. If Administrative Agent shall elect to pay any sum due with reference to the Project, Administrative Agent may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Administrative Agent shall not be bound to inquire into the validity of any apparent or threatened adverse title, Lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Additionally, if any Hazardous Materials affect or threaten to affect the Project, Administrative Agent may (but shall not be obligated to) give such notices and take such actions as it deems necessary or advisable in order to abate the discharge of any Hazardous Materials or remove the Hazardous Materials. Borrower shall indemnify, defend and hold Administrative Agent and the Lenders harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees and disbursements, incurred or accruing by reason of any acts performed by Administrative Agent or any Lender pursuant to the provisions of this Section 11.3, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent and any Lender, except as a result of Administrative Agent's or any Lender's gross negligence or willful misconduct. All sums paid by Administrative Agent pursuant to this Section 11.3, and all other sums expended by Administrative Agent or any Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loans, shall be secured by the Loan Documents and shall be paid by Borrower to Administrative Agent upon demand.

ARTICLE 12

MISCELLANEOUS

Section 12.1 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and either shall be (a) mailed by certified mail, postage prepaid, return receipt requested, (b) sent by overnight air courier service, (c) personally delivered to a representative of the receiving party, or (d) sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12.1) to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof. Any communication so addressed and mailed shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first Business Day after deposit with an overnight air courier service, or (3) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by Administrative Agent, a Lender, Lead Borrower or Borrower, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified above, and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 2.1. Any party may designate a change of address by written notice to each other party by giving at least ten (10) days' prior written notice of such change of address.

Section 12.2 Amendments, Waivers, Etc.

(1) Subject to any consents required pursuant to this Section 12.2 and any other provisions of this Agreement and any other Loan Document which expressly require the consent, approval or authorization of the Majority Lenders, this Agreement and any other Loan Document may be modified or supplemented only by an instrument in writing signed by Borrower and Administrative Agent; provided that, Administrative Agent may (without any Lender's consent) give or withhold its agreement to any amendments of the Loan Documents or any waivers or consents in respect thereof or exercise or refrain from exercising any other rights or remedies which Administrative Agent may have under the Loan Documents or otherwise provided that such actions do not, in Administrative Agent's judgment reasonably exercised, materially adversely affect the value of any collateral, taken as a whole, or represent a departure from Administrative Agent's standard of care described in Section 14.5, except that Administrative Agent will not, without the consent of such Lender, agree to any amendment, waiver or consent for which a Lender's consent is required pursuant to Section 14.9.

(2) Notwithstanding anything to contrary contained in this Agreement, any modification or supplement of [Article 14](#), or of any of the rights or duties of Administrative Agent hereunder, shall require the consent of Administrative Agent.

Section 12.3 Limitation on Interest. It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrower, Administrative Agent and the Lenders with respect to the Loans are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Administrative Agent or any Lender or charged by any Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loans would be usurious under applicable law (including the laws of the State and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (1) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Notes by the holders thereof (or, if the Notes have been paid in full, refunded to Borrower); and (2) if maturity is accelerated by reason of an election by Administrative Agent in accordance with the terms hereof, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be cancelled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Notes (or, if the Notes have been paid in full, refunded to Borrower). The terms and provisions of this [Section 12.3](#) shall control and supersede every other provision of the Loan Documents. The Loan Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State, except that if at any time the laws of the United States of America permit the Lenders to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which the Lenders may contract for, take, reserve, charge or receive under the Loan Documents.

Section 12.4 Invalid Provisions. If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 12.5 Reimbursement of Expenses. Borrower shall pay or reimburse Administrative Agent and/or the Lenders within ten (10) Business Days of demand by the applicable party for: (1) all expenses incurred by Administrative Agent in connection with the Loans, including reasonable fees and expenses of Administrative Agent's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the negotiation, recording or filing of Loan Documents, (2) all expenses of Administrative Agent in connection with the administration of the Loans, including audit costs, inspection fees, reasonable attorneys' fees and disbursement, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto, (3) all of Administrative Agent's reasonable costs and expenses (including reasonable fees and disbursements of Administrative Agent's external counsel) incurred in connection with the syndication of the Loans to the Lenders, and (4) Administrative Agent and the Lenders for all amounts expended, advanced or incurred by Administrative Agent and the Lenders to collect the Notes, or to enforce the rights of Administrative Agent and the Lenders under this Agreement or any other Loan Document, or to defend or assert the rights and claims of Administrative Agent and the Lenders under the Loan Documents or with respect to the Project (by litigation or other proceedings), which amounts will include all court costs, reasonable attorneys' fees and expenses, fees and expenses of financial advisors, fees of auditors and accountants, and investigation expenses as may be incurred by Administrative Agent and the Lenders in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to Administrative Agent and the Lenders, all of which shall constitute part of the Loans and shall be secured by the Loan Documents.

Section 12.6 Approvals; Third Parties; Conditions. All approval rights retained or exercised by Administrative Agent and the Lenders with respect to leases, contracts, plans, studies and other matters are solely to facilitate the Lenders' credit underwriting, and shall not be deemed or construed as a determination that the Lenders have passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person. This Agreement is for the sole and exclusive use of Administrative Agent, the Lenders, the Lead Borrower and Borrower and may not be enforced, nor relied upon, by any Person other than Administrative Agent, the Lenders, the Lead Borrower and Borrower. All conditions of the obligations of Administrative Agent and the Lenders hereunder, including any obligation to make advances, are imposed solely and exclusively for the benefit of Administrative Agent and the Lenders, their successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that the Lenders will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Administrative Agent and the Lenders at any time in their sole discretion.

Section 12.7 Lenders and Administrative Agent Not in Control; No Partnership. None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Administrative Agent or any Lender the right or power to exercise control over the affairs or management of Borrower, the powers of Administrative Agent and the Lenders being limited to the rights to exercise the remedies referred to in the Loan Documents. The relationship between Borrower and the Lenders is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders, Lead Borrower and Borrower or to create an equity in the Project in Administrative Agent or any Lender. Administrative Agent and the Lenders neither undertake nor assume any responsibility or duty to Borrower or to any other person with respect to the Project or the Loans, except as expressly provided in the Loan Documents; and notwithstanding any other provision of the Loan Documents: (1) neither Administrative Agent nor any Lender is, nor shall be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Borrower or any Borrower Party or any of their respective stockholders, members, or partners and neither Administrative Agent nor any Lender intends to ever assume such status; (2) no Lender or Administrative Agent shall in any event be liable for any Debts, expenses or losses incurred or sustained by Borrower or any Borrower Party; and (3) no Lender or Administrative Agent shall be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or any Borrower Party or any of their respective stockholders, members, or partners. Administrative Agent, the Lenders and Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders and Borrower, or to create an equity in the Project in Administrative Agent or any Lender, or any sharing of liabilities, losses, costs or expenses.

Section 12.8 Time of the Essence. Time is of the essence with respect to this Agreement.

Section 12.9 Successors and Assigns. Subject to the provisions of Section 12.24, this Agreement shall be binding upon and inure to the benefit of Administrative Agent, the Lenders and Borrower and the respective successors and permitted assigns.

Section 12.10 Renewal, Extension or Rearrangement. All provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loans. For portfolio management purposes, the Lenders may elect to divide the Loans into two or more separate loans evidenced by separate promissory notes so long as the payment and other obligations of Borrower are not effectively increased or otherwise modified. ; Borrower agrees to cooperate with Administrative Agent and the Lenders and to execute such documents as Administrative Agent reasonably may request to effect such division of the Loans.

Section 12.11 Waivers. No course of dealing on the part of Administrative Agent or any Lender, their officers, employees, consultants or agents, nor any failure or delay by Administrative Agent or any Lender with respect to exercising any right, power or privilege of Administrative Agent or any Lender under any of the Loan Documents, shall operate as a waiver thereof.

Section 12.12 Cumulative Rights. Rights and remedies of Administrative Agent and the Lenders under the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

Section 12.13 Singular and Plural. Words used in this Agreement and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 12.14 Phrases. When used in this Agreement and the other Loan Documents, the phrase “including” shall mean “including, but not limited to,” the phrases “satisfactory to any Lender” or “satisfactory to Administrative Agent” shall mean in form and substance satisfactory to such Lender or Administrative Agent, as the case may be, in all respects, the phrases “with Lender’s consent”, “with Lender’s approval”, “with Administrative Agent’s consent” or “with Administrative Agent’s approval” shall mean such consent or approval at Lender’s or Administrative Agent’s, as the case may be, discretion, and the phrases “acceptable to Lender” or “acceptable to Administrative Agent” shall mean acceptable to Lender or Administrative Agent, as the case may be, at such party’s sole discretion.”

Section 12.15 Exhibits and Schedules. The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 12.16 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Agreement and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 12.17 Promotional Material. Borrower authorizes Administrative Agent and each of the Lenders to issue press releases, advertisements and other promotional materials in connection with Administrative Agent’s or such Lender’s own promotional and marketing activities, and describing the Loans in general terms or in detail and Administrative Agent’s or such Lender’s participation in the Loans. All references to Administrative Agent or any Lender contained in any press release, advertisement or promotional material issued by Borrower shall be approved in writing by Administrative Agent and such Lender in advance of issuance.

Section 12.18 Survival. All of the representations, warranties, covenants, and indemnities of Borrower hereunder (including environmental matters under [Article 5](#), the obligations under [Sections 2.9\(1\)](#), [2.9\(5\)](#) and [2.9\(6\)](#)), and under the indemnification provisions of the other Loan Documents shall survive (a) the repayment in full of the Loans and the release of the Liens evidencing or securing the Loans, (b) the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Project to any party, whether or not an Affiliate of Borrower and (c) in the case of any Lender that may assign any interest in its Commitment or Loans hereunder in accordance with the terms of this Agreement, the making of such assignment, notwithstanding that such assigning Lender may cease to be a “Lender” hereunder.

Section 12.19 WAIVER OF JURY TRIAL. BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOANS OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND EACH LENDER TO ENTER THIS AGREEMENT.

Section 12.20 Remedies of Borrower. It is expressly understood and agreed that, notwithstanding any applicable law or any provision of this Agreement or the other Loan Documents to the contrary, the liability of Administrative Agent and each Lender (including their respective successors and assigns) and any recourse of Borrower against Administrative Agent and each Lender shall be limited solely and exclusively to their respective interests in the Loans and/or Commitments or the Project. Without limiting the foregoing, in the event that a claim or adjudication is made that Administrative Agent, any of the Lenders, or their agents, acted unreasonably or unreasonably delayed acting in any case where by applicable law or under this Agreement or the other Loan Documents, Administrative Agent, any Lender or any such agent, as the case may be, has an obligation to act reasonably or promptly, or otherwise violated this Agreement or the Loan Documents, Borrower agrees that none of Administrative Agent, the Lenders or their agents shall be liable for any incidental, indirect, special, punitive, consequential or speculative damages or losses resulting from such failure to act reasonably or promptly in accordance with this Agreement or the other Loan Documents.

Section 12.21 Governing Law.

(1) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY ADMINISTRATIVE AGENT AND LENDERS AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTES DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTES, AND THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(2) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ADMINISTRATIVE AGENT, ANY LENDER OR BORROWER ARISING OUT OF OR RELATING TO THE LOAN DOCUMENTS MAY AT ADMINISTRATIVE AGENT'S OPTION (WHICH DECISION SHALL BE MADE BY THE MAJORITY LENDERS) BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT NATIONAL REGISTERED AGENTS, INC., 875 AVENUE OF THE AMERICAS, SUITE 501, NEW YORK, NY 10001 AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (A) SHALL GIVE PROMPT NOTICE TO ADMINISTRATIVE AGENT OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 12.22 Entire Agreement. This Agreement and the other Loan Documents embody the entire agreement and understanding between Administrative Agent, the Lenders and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents 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. If any conflict or inconsistency exists between this Agreement and any of the other Loan Documents, the terms of this Agreement shall control.

Section 12.23 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 12.24 Assignments and Participations.

(1) **Assignments by Borrower.** Borrower may not assign any of its rights or obligations hereunder or under the Notes without the prior consent of all of the Lenders and Administrative Agent.

(2) **Assignments by the Lenders.** Each Lender may assign any of its Loans, its Note and its Commitment (but only with the consent of Administrative Agent); provided that:

(a) no such consent by Administrative Agent shall be required in the case of any assignment by any Lender to another Lender or an Affiliate of such Lender or such other Lender (provided that in the case of an assignment to an Affiliate of the assigning Lender, the assigning Lender will not be released from its obligations under the Loan Documents and Administrative Agent may continue to deal only with such assigning Lender);

(b) except to the extent Administrative Agent shall otherwise consent, any such partial assignment (other than to another Lender or an Affiliate of a Lender) shall be in an amount at least equal to \$10,000,000;

(c) each such assignment (including an assignment to another Lender or an Affiliate of a Lender) by a Lender of its Loans or Commitment shall be made in such manner so that the same portion of its Loans and Commitment is assigned to the respective assignee;

(d) subject to the applicable Lender's compliance with the provisions of clauses (b) and (c) above, Administrative Agent's consent to an assignment shall not be unreasonably withheld, delayed or conditioned if (i) such assignment is made to an Eligible Assignee, and (ii) the provisions of clause (e) have been satisfied; and

(e) upon execution and delivery by the assignee (even if already a Lender) to Borrower and Administrative Agent of an Assignment and Acceptance pursuant to which such assignee agrees to become a "Lender" hereunder (if not already a Lender) having the Commitment and Loans specified in such instrument, and upon consent thereto by Administrative Agent to the extent required above, the assignee shall have, to the extent of such assignment (unless otherwise consented to by Administrative Agent), the obligations, rights and benefits of a Lender hereunder holding the Commitment and Loans (or portions thereof) assigned to it (in addition to the Commitment and Loans, if any, theretofore held by such assignee) and the assigning Lender shall, to the extent of such assignment, be released from the Commitment (or portion thereof) so assigned. Upon each such assignment the assigning Lender shall pay Administrative Agent a processing and recording fee of \$3,500 (unless the assignee is an Affiliate of the Assigning Lender) and the reasonable fees and disbursements of Administrative Agent's counsel incurred in connection therewith.

(3) **Participations.**

(a) A Lender may sell or agree to sell to one or more other Persons (each a "**Participant**") a participation in all or any part of any Loans held by it, or in its Commitment, provided (A) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) 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 the other Loan Documents. In no event shall a Lender that sells a participation agree with the Participant to take or refrain from taking any action hereunder or under any other Loan Document except that such Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal or interest on the related Loan or Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, (iv) reduce the rate at which interest is payable thereon, or any fee hereunder payable to the Participant, to a level below the rate at which the Participant is entitled to receive such interest or fee or (v) consent to any modification, supplement or waiver hereof or of any of the other Loan Documents to the extent that the same, under Section 12.2, requires the consent of each Lender. Subject to subsection (3)(b) of this Section 12.24, Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.9(1), 2.9(5), and 2.9(6) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (2) of this Section 12.24. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.24 as though it were a Lender; provided that such Participant agrees to be subject to Section 12.24 as though it were a Lender.

(b) A Participant shall not be entitled to receive any greater payment under Section 2.9(1) or 2.9(6) than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent. A Participant that is a non-U.S. Person that would become a Lender shall not be entitled to the benefits of Section 2.9(6) unless Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 2.9(6) as though it were a Lender.

(4) **Certain Pledges.** In addition to the assignments and participations permitted under the foregoing provisions of this Section 12.24 (but without being subject thereto), any Lender may (without notice to Borrower, Administrative Agent or any other Lender and without payment of any fee) assign and pledge all or any portion of its Loans and its Note to any Federal Reserve Bank as collateral security pursuant to Regulation A and any operating circular issued by such Federal Reserve Bank, and such Loans and Note shall be fully transferable as provided therein. No such assignment shall release the assigning Lender from its obligations hereunder.

(5) **Provision of Information to Assignees and Participants.** A Lender may furnish any information concerning Borrower, any Borrower Party or any of their respective Affiliates or the Project in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants); provided that such assignee and participant agree to be bound by the terms of Section 12.29.

(6) **No Assignments to Borrower or Affiliates.** Anything in this Section 12.24 to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan held by it hereunder to Borrower or any of its Affiliates without the prior consent of each Lender.

Section 12.25 Brokers. Borrower hereby represents to Administrative Agent and each Lender that Borrower has not dealt with any broker, underwriters, placement agent, or finder in connection with the transactions contemplated by this Agreement and the other Loan Documents. Borrower hereby agrees to indemnify and hold Administrative Agent and each Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower in connection with the transactions contemplated herein.

Section 12.26 Right of Set-off.

(1) Upon the occurrence and during the continuance of any Event of Default, each of the Lenders is, subject (as between the Lenders) to the provisions of subsection (3) of this Section 12.26, hereby authorized at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower) and 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) at any time held, and other indebtedness at any time owing, by such Lender in any of its offices, in Dollars or in any other currency, to or for the credit or the account of Borrower against any and all of the respective obligations of Borrower now or hereafter existing under the Loan Documents, irrespective of whether or not such Lender or any other Lender shall have made any demand hereunder and although such obligations may be contingent or unmatured and such deposits or indebtedness may be unmatured. Each Lender hereby acknowledges that the exercise by any Lender of offset, set-off, banker's lien, or similar rights against any deposit or other indebtedness of Borrower whether or not located in New York or any other state with certain laws restricting lenders from pursuing multiple collection methods, could result under such laws in significant impairment of the ability of all the Lenders to recover any further amounts in respect of the Loan. **Therefore, each Lender agrees that no Lender shall exercise any such right of set-off, banker's lien, or otherwise, against any assets of Borrower (including all general or special, time or demand, provisional or other deposits and other indebtedness owing by such Lender to or for the credit or the account of Borrower) without the prior written consent of Administrative Agent.**

(2) Each Lender shall promptly notify Lead Borrower and Administrative Agent after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lenders under this Section 12.26 are in addition to other rights and remedies (including other rights of set-off) which the Lenders may have.

(3) Each Lender agrees that it shall turn over to Administrative Agent any payment (whether voluntary or involuntary, through the exercise of any right of setoff or otherwise) on account of the Loans held by it in excess of its ratable portion (in accordance with this Agreement and any separate agreement among Administrative Agent and the Lenders) of payments on account of the Loans obtained by all the Lenders.

Section 12.27 Limitation on Liability of Administrative Agent's and the Lenders' Officers, Employees, etc. Any obligation or liability whatsoever of Administrative Agent or any Lender which may arise at any time under this Agreement or any other Loan Document shall be satisfied, if at all, out of Administrative Agent's or such Lender's respective assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Administrative Agent's or any Lender's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 12.28 Cooperation with Syndication. Borrower acknowledges that Arranger intends to syndicate a portion of the Commitments to one or more Lenders (the "Syndication") and in connection therewith, Borrower will take all actions as Arranger may reasonably request to assist Arranger in its Syndication effort. Without limiting the generality of the foregoing, Borrower shall, at the request of Arranger (i) facilitate the review of the Loan and the Project by any prospective Lender; (ii) assist Arranger and otherwise cooperate with Arranger in the preparation of information offering materials (which assistance may include reviewing and commenting on drafts of such information materials and drafting portions thereof); (iii) deliver updated information on Borrower and the Project; (iv) make representatives of Borrower available to meet with prospective Lenders at tours of the Project and bank meetings; (v) facilitate direct contact between the senior management and advisors of Borrower and any prospective Lender; and (vi) provide Arranger with all information reasonably deemed necessary by it to complete the Syndication successfully. Borrower agrees to take such further action, in connection with documents and amendments to the Loan Documents, as may reasonably be required to effect such Syndication; provided, however, that notwithstanding any other provision of this Section 12.28 or Section 12.29 to the contrary, Borrower shall not be required to enter into any such documents and amendments which would alter any of the material economic terms of the Loan Documents or which would create new or greater obligations or liabilities on Borrower Parties under the Loan Documents.

Section 12.29 Severance of Loan. Loan Components. The Administrative Agent shall have the right, at any time, with respect to all or any portion of the Loan, to (a) cause the Notes, the Mortgage and the other Security Documents to be severed and/or split into two or more separate notes, mortgages and other security agreements, so as to evidence and secure one or more senior and subordinate mortgage loans, (b) create one or more senior and subordinate notes (i.e., an A/B or A/B/C structure) secured by the Mortgage and the other Security Documents, (c) create multiple components of the Notes (and allocate or re-allocate the outstanding principal amount of the Loan among such components) or (d) otherwise sever the Loan into two or more loans secured by the Mortgage and the other Security Documents (each of clauses (a) through (d), a "Bifurcation"); in each such case, in whatever proportions and priorities as Administrative Agent may so direct in its discretion to Administrative Agent; provided, however, that in each such instance (i) the outstanding principal amount of all the Notes evidencing the Loan (or components of such Notes) immediately following such Bifurcation shall be equal to the outstanding principal amount of the Loan immediately prior to such Bifurcation, and (ii) the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the new notes immediately after such Bifurcation and at all times prior to the occurrence of any Event of Default shall not exceed the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the initial Notes delivered hereunder (as such interest rates are subject to being adjusted from time to time in accordance herewith, including as a result of the accrual of interest at the Default Rate). If requested by Administrative Agent in writing, Borrower shall execute within ten (10) days after such request, a severance agreement, amendments to or amendments and restatements of any one or more Loan Documents, and such documentation as Administrative Agent may reasonably request to evidence and/or effectuate any such Bifurcation, all in form and substance reasonably satisfactory to Administrative Agent.

Section 12.30 Confidentiality. Each of Administrative Agent and the Lenders and Borrower Parties and Sponsor agrees to maintain the confidentiality of the Confidential Information, except that Confidential Information may be disclosed (a) to it 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 shall be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority, (c) to the extent required by Applicable Law 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 under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) to any assignee or pledgee of or Participant in, or any prospective assignee or pledgee of or Participant in, any of its rights or obligations under this Agreement or any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations, (g) with the consent of Borrower or Administrative Agent, as applicable, or (h) to the extent such Confidential Information (i) becomes publicly available other than as a result of a breach of this Section 12.29 or of arrangements entered into pursuant hereto or (ii) becomes available to such party from a source other than Borrower or its Affiliates or the Administrative Agent or the Lender or their Affiliates, as applicable; provided, however, the obligation to maintain the confidentiality of the Confidential Information provided hereunder shall expire twelve (12) months after the date upon which the Loans hereunder are indefeasibly paid in full. Administrative Agent and each Lender, to the extent required to maintain the confidentiality of Information as provided in this Section 12.29, 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 Confidential Information as a commercial banker exercising reasonable and customary business practices would accord to its own confidential information. Notwithstanding anything herein to the contrary, the information subject to this Section 12.29 shall not include, and Administrative Agent and each Lender may disclose without limitation of any kind, any information with respect to the "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to Administrative Agent or such Lender relating to such tax treatment and tax structure. For purposes of this Section 12.29, the information that shall be treated as Confidential Information shall mean, in the case of Administrative Agent and the Lenders, written non-public information concerning the Project and, in the case of Borrower, information concerning the terms and conditions set forth in the Loan Documents.

Section 12.31 Designation of Lead Borrower as Agent for Borrower.

(1) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's agent to obtain loans and advances under the Loan. As the disclosed principal for its agent, each Borrower shall be obligated to the Agent and the Lenders on account of loans and advances so made under the Loan as if made directly by the Lenders to that Borrower, notwithstanding the manner by which such loans and advances are recorded on the books and records of the Lead Borrower and/or of any Borrower (including, without limitation, on account of any such treatment of said loan or advance as an equity investment in a Borrower by Lead Borrower). Lead Borrower shall ensure that each Borrower receives from the Loan proceeds an amount or benefit that is a reasonably equivalent value for the grants of security made by each Borrower to Administrative Agent.

(2) Each Borrower recognizes that credit available to it under the Loan is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower, jointly and severally, hereby assumes and agrees fully, faithfully, and punctually to discharge all obligations of all of the Borrowers under the Loan Documents.

(3) The proceeds of the Loan shall be deposited into an account in the name of the Lead Borrower or as otherwise indicated by the Lead Borrower. Neither the Agent nor any Lender shall have any obligation to see to the application of such proceeds.

(4) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's attorney-in-fact to act in the Borrower's name and stead and to do and perform all matters, to grant to the Agent for the benefit of the Lenders a security interest in the Collateral, transact all business, and make, execute and acknowledge all Loan Documents and other instruments relating to this Agreement including but not limited to, this Agreement, the Note, and the Security Documents. The Borrowers hereby acknowledge and agree that the power of attorney created hereby is coupled with an interest.

RECOURSE LIABILITY

Section 13.1 Recourse Liability. No past, present or future member, or any past, present or future shareholder, partner, member, officer, employee, servant, executive, director, agent, authorized representative or Affiliate of Borrower or any member of Borrower, (each such Person, an "**Exculpated Party**") shall be personally liable for payments due hereunder or under any other Loan Document or for the performance of any obligation, or breach of any representation or warranty made by Borrower hereunder or thereunder. The sole recourse of the Lenders and Administrative Agent for satisfaction of the obligations of Borrower hereunder and under any other Loan Document shall be against Borrower and its assets and not against any assets or property of any such Exculpated Party other than the direct or indirect ownership interest of such Exculpated Party in Borrower. In the event that a Potential Default or Event of Default occurs in connection with such obligations, no action shall be brought against any such Exculpated Party by virtue of its direct or indirect ownership interest in Borrower. In the event of foreclosure or other sale or disposition of the Project, no judgment for any deficiency upon the obligations hereunder or under any other Loan Document shall be obtainable by the Lenders or Administrative Agent against any such Exculpated Party. Notwithstanding the foregoing, nothing in this **Section 13.1** shall affect or diminish the obligations of Borrower or Guarantor under or in respect of each Loan Document to which it is a party, including Guarantor Documents (including the right to name any Guarantor in any foreclosure action in connection with its obligations under the Guarantor Documents) and the Co-Borrower Documents. Notwithstanding the foregoing provisions of this **Section 13.1**, each Exculpated Party shall be personally (and on a full recourse basis) liable for and shall indemnify and defend Administrative Agent and the Lenders from and against, and shall hold Administrative Agent and the Lenders harmless of, from and against any deficiency, liability, loss, damage, costs, and expenses (including legal fees and disbursements) suffered by Administrative Agent and/or the Lenders and caused by, or arising out of or as a result of any of the following: (i) such Person's commission of a criminal act, (ii) such Person's failure to comply with the provisions of the Loan Documents prohibiting a transfer or Change of Control; (iii) such Person's misappropriation of any cash flow or other revenue derived from or in respect of the Project, including security deposits, insurance proceeds, condemnation awards, or any rental, sales or other income derived directly or indirectly from the Project, or the misapplication of any of the foregoing sums, in either event, in contravention of any provision of this Agreement or the other Loan Documents; (iv) such Person's fraud or misrepresentation or inaccurate certification made at any time in connection with the Loan Documents or the Loans; (v) such Person's intentional interference with Administrative Agent's (or the Lenders') exercise of its rights under any of the Loan Documents; (vi) such Person's intentional destruction or removal of fixtures or personal property securing the Loans unless replaced by items of equal value and utility; (vii) such Person's misapplication or misappropriation of funds disbursed from the Security Accounts or the Controlled Accounts; (viii) such Person's commissions of intentional waste to or of the Project or any portion thereof or failure to maintain the Project in the manner required by the Loan Documents; (ix) failure to maintain the insurance coverage required by the Loan Documents; (x) failure to pay taxes, assessments and any other charges, including, without limitation, charges for labor or materials, which could result in prior liens against any portion of the Project; (xi) willful misconduct; (xii) Borrower files a voluntary petition under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xiii) such Person files or joins in the filing of, or solicits or acts in concert with, or colludes or conspires with petitioning creditors with respect to, an involuntary petition against Borrower under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xiv) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xv) such Person consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Project; (xvi) Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; or (xvii) Borrower violates any of provisions set forth in the definition of Single Purpose Entity and such violation results in a substantive consolidation of the Borrower or its assets in the bankruptcy of an Affiliate.

Section 13.2 No Waiver of Certain Rights. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, (A) neither of Administrative Agent nor the Lenders shall be deemed to have waived any right which Administrative Agent or any Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Federal Bankruptcy Code, as such sections may be amended, to file a claim for the full amount due to Administrative Agent or such Lender under the Loan Documents or to require that all collateral shall continue to secure the amounts due under the Loan Documents and (B) Administrative Agent may pursue any power of sale, bring any foreclosure action, any action for specific performance, or any other appropriate action or proceedings against Borrower or any other Person for the purpose of enabling the Administrative Agent and the Lenders to realize upon the collateral for the Loans (including, without limitation, any Net Operating Income to the extent provided for in the Loan Documents) or to obtain the appointment of a receiver.

ARTICLE 14

ADMINISTRATIVE AGENT

Section 14.1 Appointment, Powers and Immunities. Each Lender hereby appoints and authorizes Administrative Agent to act as its agent hereunder and under the other Loan Documents with such powers as are specifically delegated to Administrative Agent by the terms of this Agreement and of the other Loan Documents, together with such other powers as are reasonably incidental thereto. Administrative Agent (which term as used in this sentence and in Section 14.5 and the first sentence of Section 14.6 shall include reference to its Affiliates and its own and its Affiliates' officers, directors, employees and agents):

(a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents, and shall not by reason of this Agreement or any other Loan Document be a 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 nor shall any Lender have any fiduciary duty to Borrower or any other Lender;

(b) shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in this Agreement or in any other Loan Document, or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or any other Loan Document (except of representations, warranties and certifications expressly made by Administrative Agent to a Lender in writing as set forth in any Assignment and Acceptance executed by Administrative Agent in favor of a Lender), or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, any Note or any other Loan Document or any other document referred to or provided for herein or therein or for any failure by Borrower or any other Person to perform any of its obligations hereunder or thereunder; and

(c) shall not be responsible for any action taken or omitted to be taken by it hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except to the extent any such action taken or omitted violates Administrative Agent's standard of care set forth in the first sentence of Section 14.5.

(d) shall not, except to the extent expressly instructed by the Majority Lenders with respect to collateral security under the Security Documents, be required to initiate or conduct any litigation or collection proceedings hereunder or under any other Loan Document; and

(e) shall not be required to take any action which is contrary to this Agreement or any other Loan Document or Applicable law.

The relationship between Administrative Agent and each Lender is a contractual relationship only, and nothing herein shall be deemed to impose on Administrative Agent any obligations other than those for which express provision is made herein or in the other Loan Documents. Administrative Agent may employ agents and attorneys-in-fact, and may delegate all or any part of its obligations hereunder, to third parties and shall not be responsible for the negligence or misconduct of any such agents, attorneys-in-fact or third parties selected by it in good faith. Administrative Agent may deem and treat the payee of a Note as the holder thereof for all purposes hereof unless and until a notice of the assignment or transfer thereof shall have been filed with Administrative Agent, any such assignment or transfer to be subject to the provisions of Section 12.24. Except to the extent expressly provided in Sections 14.8, the provisions of this Article 14 are solely for the benefit of Administrative Agent and the Lenders, and Borrower shall not have any rights as a third-party beneficiary of any of the provisions hereof and the Lenders may Modify or waive such provisions of this Article 14 in their sole and absolute discretion..

Section 14.2 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including, without limitation, any thereof by telephone, telecopy, telegram or cable) reasonably 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. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Majority Lenders, and such instructions of the Majority Lenders and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

Section 14.3 Defaults.

(1) Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Potential Default or Event of Default, other than a payment Event of Default arising out of Section 10.1, unless Administrative Agent has received notice from a Lender, Lead Borrower or Borrower specifying such Potential Default or Event of Default and stating that such notice is a "Notice of Default". In the event that Administrative Agent receives such a notice of the occurrence of a Potential Default or Event of Default, Administrative Agent shall give prompt notice thereof to the Lenders. Within ten (10) days of delivery of such notice of Potential Default or Event of Default from Administrative Agent to the Lenders (or such shorter period of time as Administrative Agent determines is necessary), Administrative Agent and the Lenders shall consult with each other to determine a proposed course of action. Administrative Agent shall (subject to Section 14.7) take such action with respect to such Potential Default or Event of Default as shall be directed by the Majority Lenders, provided that, (A) unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, including decisions (1) to make protective advances that Administrative Agent determines are necessary to protect or maintain the Project and (2) to foreclose on any of the Project or exercise any other remedy, with respect to such Potential Default or Event of Default as it shall deem advisable in the interest of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of all of the Lenders and (B) no actions approved by the Majority Lenders shall violate the Loan Documents or applicable law; provided further that if no consensus is reached by Majority lenders within one hundred twenty (120) days, Administrative Agent shall commence a foreclosure action with respect to the Project. Each of the Lenders acknowledges and agrees that no individual Lender may separately enforce or exercise any of the provisions of any of the Loan Documents (including the Notes) other than through Administrative Agent. Administrative Agent shall advise the Lenders of all material actions which Administrative Agent takes in accordance with the provisions of this Section 14.3(1) and shall continue to consult with the Lenders with respect to all of such actions. Notwithstanding the foregoing, if the Majority Lenders shall at any time direct that a different or additional remedial action be taken from that already undertaken by Administrative Agent, including the commencement of foreclosure proceedings, such different or additional remedial action shall be taken in lieu of or in addition to, the prosecution of such action taken by Administrative Agent; provided that all actions already taken by Administrative Agent pursuant to this Section 14.3(1) shall be valid and binding on each Lender. All money (other than money subject to the provisions of Section 14.7) received from any enforcement actions, including the proceeds of a foreclosure sale of the Project, shall be applied, first, to the payment or reimbursement of Administrative Agent for expenses incurred in accordance with the provisions of Sections 14.3(2), (3) and (4) and 14.5 and to the payment of the Administrative Fee to the extent not paid by Borrower pursuant to Section 14.11, second, to the payment or reimbursement of the Lenders for expenses incurred in accordance with the provisions of Sections 14.3(2), (3) and (4) and 14.5; third, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 14.3(2); and fourth, to the Lenders in accordance with their respective Proportionate Shares (and, if applicable, to Eurohypo Counterparty under any Hedge Agreement for its Additional Interest in accordance with Section 9.15), unless an Unpaid Amount is owed pursuant to Section 14.12, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defaulting Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender.

(2) All losses with respect to interest (including interest at the Default Rate) and other sums payable pursuant to the Notes or incurred in connection with the Loans shall be borne by the Lenders in accordance with their respective proportionate shares of the Loans. All losses incurred in connection with the Loans, the enforcement thereof or the realization of the security therefor, shall be borne by the Lenders in accordance with their respective proportionate shares of the Loan, and the Lenders shall promptly, upon request, remit to Administrative Agent their respective proportionate shares of (i) any actual out of pocket expenses incurred by Administrative Agent in connection with any Default to the extent any expenses have not been paid by Borrower, (ii) any advances made to pay taxes or insurance or otherwise to preserve the Lien of the Security Documents or to preserve and protect the Project, whether or not the amount necessary to be advanced for such purposes exceeds the amount of the Mortgage, and (iii) any other actual out of pocket expenses incurred in connection with the enforcement of the Mortgage or other Loan Documents. To the extent any such advances are recovered in connection with the enforcement of the Mortgage or the other Loan Documents, each Lender shall be paid its proportionate share of such recovery after deduction of the expenses of Administrative Agent and the Lenders.

(3) If, at the direction of the Majority Lenders or otherwise as provided in Section 14.3(1), any action(s) is brought to collect on the Notes or enforce the Security Documents or any other Loan Document, such action shall (to the extent permitted under applicable law and the decisions of the court in which such action is brought) be an action brought by Administrative Agent and the Lenders, collectively, to collect on all or a portion of the Notes or enforce the Security Documents or any other Loan Document and counsel selected by Administrative Agent shall prosecute any such action on behalf of Administrative Agent and the Lenders, and Administrative Agent and the Lenders shall consult and cooperate with each other in the prosecution thereof. All decisions concerning the appointment of a receiver while such action is pending, the conduct of such receivership, the conduct of such action, the collection of any judgment entered in such action and the settlement of such action shall be made by Administrative Agent. The costs and expenses of any such action shall be borne by the Lenders in accordance with each of their respective proportionate shares.

(4) If, at the direction of the Majority Lenders or otherwise as provided in Section 14.3(1), any action(s) is brought to foreclose the Mortgage, such action shall (to the extent permitted under applicable law and the decisions of the court in which such action is brought) be an action brought by Administrative Agent and the Lenders, collectively, to foreclose all or a portion of the Mortgage and collect on the Notes. Counsel selected by Administrative Agent shall prosecute any such foreclosure on behalf of Administrative Agent and the Lenders and Administrative Agent and the Lenders shall consult and cooperate with each other in the prosecution thereof. All decisions concerning the appointment of a receiver, the conduct of such foreclosure, the acceptance of a deed in lieu of foreclosure, the bid on behalf of Administrative Agent and the Lenders at the foreclosure sale of the Project, the manner of taking and holding title to the Project (other than as set forth in subsection (6) below), and the commencement and conduct of any deficiency judgment proceeding shall be made by Administrative Agent. All decisions concerning the sale of the Project after foreclosure shall be made by the Majority Lenders, provided, however, the Lenders agree that if Administrative Agent receives a bona fide "all cash" (as determined by Administrative Agent in its reasonable discretion) offer for the purchase of the entire Project which has been approved in writing by Administrative Agent and (i) such offer (A) equals or exceeds ninety percent (90%) of the most recent appraised value of the Project as established by an Appraisal that has been completed within six (6) months of such offer and (B) is equal to or greater than ninety percent (90%) of the outstanding principal balance of the Loan, and (ii) the consent of the Majority Lenders is not achieved within ninety (90) days from the date that Administrative Agent received such offer, then, notwithstanding anything to the contrary contained in this subsection (4), Administrative Agent is irrevocably authorized to accept such offer on behalf of all Lenders. The costs and expenses of foreclosure will be borne by the Lenders in accordance with their respective proportionate shares.

(5) If title is acquired to the Project after a foreclosure sale or by a deed in lieu of foreclosure, title shall be held by Administrative Agent in its own name in trust for the Lenders or, at Administrative Agent's election, in the name of a wholly owned subsidiary of Administrative Agent on behalf of the Lenders, or a subsidiary wholly owned by the Lenders and managed by the Administrative Agent.

(6) If Administrative Agent (or its subsidiary) acquires title to the Project or is entitled to possession of the Project during or after the foreclosure, all material decisions with respect to the possession, ownership, development, construction, control, operation, leasing, and management of the Project shall be made by Administrative Agent. All income or other money received after so acquiring title to or taking possession of the Project with respect to the Project, including income from the operation and management of the Project and the proceeds of a sale of the Project, shall be applied (subject to the terms of any separate agreement among Administrative Agent and the Lenders), first, to the payment or reimbursement of Administrative Agent and the expenses incurred in accordance with the provisions of this Article 14 and to the payment of the Administrative Fee to the extent not paid by Borrower pursuant to Section 14.11, second, to the payment of operating expenses, taxes and insurance with respect to the Project; third, to the establishment of reasonable reserves for the operation of the Project; fourth, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 14.3(2); fifth to fund any capital improvement, leasing and other reserves; and sixth, to the Lenders in accordance with their respective Proportionate Shares (and, if applicable, to Eurohypo Counterparty under any Hedge Agreement for its Additional Interest in accordance with Section 9.15), unless an Unpaid Amount is owed pursuant to Section 14.12, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defauling Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender.

Section 14.4 Rights as a Lender. With respect to its Commitment and the Loans made by it Eurohypo (and any successor acting 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 term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Administrative Agent in its individual capacity. Eurohypo (and any successor acting as Administrative Agent) and its Affiliates may (without having to account therefor to any Lender) lend money to, make investments in and generally engage in any kind of lending, trust or other business with Borrower (and any of its Affiliates)(to the extent otherwise permitted by the terms of this Agreement) as if it were not acting as Administrative Agent, and Eurohypo and its Affiliates may accept fees and other consideration from Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

Section 14.5 Standard of Care; Indemnification. In performing its duties under the Loan Documents, Administrative Agent will exercise the same degree of care as it normally exercises in connection with real estate loans that it syndicates and administers and holds for its own account, but Administrative Agent shall have no further responsibility to any Lender except as expressly provided herein and except for its own gross negligence or willful misconduct which resulted in actual loss to such Lender, and, except to such extent, Administrative Agent shall have no responsibility to any Lender for the failure by Administrative Agent to comply with any of Administrative Agent's obligations to Borrower under the Loan Documents or otherwise. Subject to the terms of any separate agreement among Administrative Agent and the Lenders, the Lenders agree to indemnify Administrative Agent (to the extent not reimbursed under Section 12.5, but without limiting the obligations of Borrower under Section 12.5) ratably in accordance with the aggregate principal amount of the Loans held by the Lenders (or, if no Loans are at the time outstanding, ratably in accordance with their respective Commitments), for any and all liabilities, obligations, losses (other than losses due to Borrower's failure to pay any interest, principal and fees payable by Borrower under the Loan Documents), damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Administrative Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Loan Document or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses that Borrower is obligated to pay under Section 12.5, but excluding, unless an Event of Default has occurred and is continuing, normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents, provided that no Lender shall be liable for any of the foregoing to the extent they arise from Administrative Agent's breach of its standard of care set forth in the first sentence of this Section.

Section 14.6 Non-Reliance on Administrative Agent and Other Lenders. Each Lender agrees 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 credit analysis of Borrower and its Affiliates and 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 under any other Loan Document. Subject to the provisions of the first sentence of Section 14.5, Administrative Agent shall not be required to keep itself informed as to the performance or observance by Borrower of this Agreement or any of the other Loan Documents or any other document referred to or provided for herein or therein or to inspect the Project or the books of Borrower or any of its Affiliates. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by Administrative Agent hereunder or as otherwise agreed by Administrative Agent and the Lenders, 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 any of its Affiliates that may come into the possession of Administrative Agent or any of its Affiliates.

Section 14.7 Failure to Act. Except for action expressly required of Administrative Agent hereunder, and under the other Loan Documents, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 14.5 against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

Section 14.8 Successor Administrative Agent. Administrative Agent may resign at any time by giving notice thereof to the Lenders and Lead Borrower. The Majority Lenders (including all Lenders exclusive of Administrative Agent, for the purposed of determining the Majority Lenders), on the basis of gross negligence or willful misconduct (as to which a final determination is made in a judicial proceeding in which Administrative Agent has had an opportunity to be heard, which determination includes a specific finding that Administrative Agent had acted in a grossly negligent manner or had engaged in willful misconduct), may remove Administrative Agent at any time by giving thirty (30) days' prior written notice to Administrative Agent, Borrower and the other Lenders. Upon any such resignation or removal, the Majority Lenders shall have the right to appoint a successor Administrative Agent that shall be a Person that meets the qualifications of an Eligible Assignee. If no successor Administrative Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation or the Majority Lenders' giving notice of removal, as the case may be, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, that shall be an institutional lender that meets the requirements of the immediately preceding sentence. 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 (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and prospective obligations hereunder (if not already discharged therefrom as provided above in this Section 14.8). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provision of this Article 14 and Section 12.5 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 14.9 Consents under Loan Documents. Administrative Agent may (without any Lender's consent) give or withhold its agreement to any amendments of the Loan Documents or any waivers or consents in respect thereof or exercise or refrain from exercising any other rights or remedies which Administrative Agent may have under the Loan Documents or otherwise provided that such actions do not, in Administrative Agent's reasonable judgment, materially adversely affect the value of any collateral, taken as a whole, or represent a departure from Administrative Agent's standard of care described in Section 14.5, except that, except as otherwise provided in any separate agreement entered into among Administrative Agent and the Lenders, Administrative Agent shall not agree to the following (provided that no Lender's consent shall be required for any of the following which are otherwise required or contemplated under the Loan Documents):

- (a) increase the Commitment of any Lender without the consent of such Lender;
- (b) reduce the principal amount of the Loans or reduce the interest rate thereon without the consent of each Lender affected thereby;

- (c) increase the interest rate on the Loans (exclusive of imposing the Default Rate) without the consent of all Lenders;
- (d) extend any stated payment date for principal of or interest on the Loans payable to any Lender without the consent of each Lender affected thereby;
- (e) release Borrower, any Guarantor or any other party from liability under the Loan Documents (except for any assigning Lender pursuant to [Section 12.24](#) and any resigning Administrative Agent pursuant to [Section 14.8](#) without the consent of each Lender (except that no such consent shall be required, and Administrative Agent is hereby authorized, to release Borrower and Guarantor upon payment of the Obligations in full in accordance with the terms of the Loan Documents);
- (f) release or subordinate in whole or in part any material portion of the collateral given as security for the Loans without the consent of each Lender (except that no such consent shall be required, and Administrative Agent is hereby authorized, to release any Lien covering the collateral under the Security Documents upon payment of the Obligations in full in accordance with the terms of the Loan Documents);
- (g) modify any of the provisions of [Section 12.2](#) or this [Section 14.9](#) or the definition of "Majority Lenders" or any other provision in the Loan Documents specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder without the consent of each Lender;
- (h) modify the terms of, or definition of, any Event of Default without the consent of each Lender;
- (i) consent to (i) the sale, transfer or encumbrance of any portion of the Project (or any interest therein) or any direct or indirect ownership interest therein and (ii) the incurrence by Borrower of any additional indebtedness secured by the Project, in each case to the extent such consent is required under the Loan Documents (and subject to any standard of reasonability set forth therein) without the consent of each Lender;
- (j) A modification or waiver of conditions to extension of the Maturity Date without the consent of each Lender;
- (k) A modification or waiver of any financial covenants of Borrower in the Loan Documents without the consent of the Majority Lenders;
- (l) A material modification of the terms of any cash management arrangement or lockbox without the consent of the Majority Lenders; or
- (m) a waiver of any Event of Default without consent of the Majority Lenders.

Notwithstanding anything to the contrary contained in this Agreement, (a) any modification or supplement of [ARTICLE 14](#), or of any of the rights or duties of Administrative Agent hereunder, shall require the consent of Administrative Agent and (b) Administrative Agent is hereby authorized to enter into modifications or amendments to the Loan Documents which are ministerial in nature, including the preparation and execution of Uniform Commercial Code forms, Assignments and Assumptions and subordination and non-disturbance agreements with tenants at the Project. If Administrative Agent solicits any consents or approvals from the Lenders under any of the Loan Documents, each Lender shall within ten (10) Business Days of receiving such request, give Administrative Agent written notice of its consent or approval or denial thereof; provided that, if Administrative Agent's request states that failure to respond within ten (10) Business Days shall be deemed consent and any Lender does not respond within such ten (10) Business Days, such Lender shall be deemed to have authorized Administrative Agent to vote such Lender's interest with respect to the matter which was the subject of Administrative Agent's solicitation as Administrative Agent elects. Any such solicitation by Administrative Agent for a consent or approval shall be in writing and shall include a description of the matter or thing as to which such consent or approval is requested and shall include Administrative Agent's recommended course of action or determination in respect thereof.

Section 14.10 Authorization. Administrative Agent is hereby authorized by the Lenders to execute, deliver and perform in accordance with the terms of each of the Loan Documents to which Administrative Agent is or is intended to be a party and each Lender agrees to be bound by all of the agreements of Administrative Agent contained in such Loan Documents. Borrower shall be entitled to rely on all written agreements, approvals and consents received from Administrative Agent as being that also of the Lenders, without obtaining separate acknowledgment or proof of authorization of same.

Section 14.11 Administrative Fee. So long as the Commitments are in effect and until payment in full of all obligations under this Agreement, the Notes and the other Loan Documents, Borrower shall pay to Administrative Agent, for its sole account, the Administrative Fee. The Administrative Fee shall be payable annually in advance commencing on the Closing Date pursuant to the Fee Letter.

Section 14.12 Defaulting Lenders.

(1) If any Lender (a "Defaulting Lender") shall for any reason fail to (i) make any respective Loan required pursuant to the terms of this Agreement or (ii) pay its proportionate share of an advance or disbursement to protect the Project or the Lien of the Security Documents in accordance with this Agreement, any of the other Lenders may, but shall not be obligated to, make all or a portion of the Defaulting Lender's Loan or proportionate share of such advance, provided that such Lender gives the Defaulting Lender and Administrative Agent prior notice of its intention to do so. The right to make such advances in respect of the Defaulting Lender shall be exercisable first by the Lender holding the greatest proportionate share and thereafter to each of the Lenders in descending order of their respective proportionate shares of the Loans or in such other manner as the Majority Lenders (excluding the Defaulting Lender) may agree on. Any Lender making all or any portion of the Defaulting Lender's proportionate share of the applicable Loan or advance in accordance with the foregoing terms and conditions shall be referred to as a "Special Advance Lender".

(2) In any case where a Lender becomes a Special Advance Lender (i) the Special Advance Lender shall be deemed to have purchased, and the Defaulting Lender shall be deemed to have sold, a senior participation in the Defaulting Lender's respective Loan to the extent of the amount so advanced or disbursed (the "Advanced Amount") bearing interest at the Loan rates provided herein (including interest at the Default Rate, if applicable) and (ii) the Defaulting Lender shall have no voting rights under this Agreement or any other Loan Documents so long as it is a Defaulting Lender. It is expressly understood and agreed that each of the respective obligations under this Agreement and the other Loan Documents, including advancing Loans, losses incurred in connection with the Loan, costs and expenses of enforcement, advancing to preserve the Lien of the Mortgage or to preserve and protect the Project, shall be without regard to any adjustment in the proportionate shares occasioned by the acts of a Defaulting Lender. The Special Advance Lender shall be entitled to an amount (the "Unpaid Amount") equal to the applicable Advanced Amount, plus any unpaid interest due and owing with respect thereto, less any repayments thereof made by the Defaulting Lender immediately upon demand. The Defaulting Lender shall have the right to repurchase the senior participation in its Loan from the Special Advance Lender at any time by the payment of the Unpaid Amount.

(3) A Special Advance Lender shall (i) give notice to the Defaulting Lender, Administrative Agent and each of the other Lenders (provided that failure to deliver said notice to any party other than the Defaulting Lender shall not constitute a default under this Agreement) of the Advance Amount and the percentage of the Special Advance Lender's senior participation in the Defaulting Lender's Loan and (ii) in the event of the repayment of any of the Unpaid Amount by the Defaulting Lender, give notice to the Defaulting Lender and Administrative Agent of the fact that the Unpaid Amount has been repaid (in whole or in part), the amount of such repayment and, if applicable, the revised percentage of the Special Advance Lender's senior participation. Provided that Administrative Agent has received notice of such participation, Administrative Agent shall have the same obligations to distribute interest, principal and other sums received by Administrative Agent with respect to a Special Advance Lender's senior participation as Administrative Agent has with respect to the distribution of interest, principal and other sums under this Agreement; and at the time of making any distributions to the Lenders, shall make payments to the Special Advance Lender with respect to a Special Advance Lender's senior participation in the Defaulting Lender's Loan out of the Defaulting Lender's share of any such distributions before paying any amounts to the Defaulting Lender.

(4) A Defaulting Lender shall immediately pay to a Special Advance Lender all sums of any kind paid to or received by the Defaulting Lender from Borrower, whether pursuant to the terms of this Agreement or the other Loan Documents or in connection with the realization of the security therefor until the Unpaid Amount is fully repaid. Notwithstanding the fact that the Defaulting Lender may temporarily hold such sums, the Defaulting Lender shall be deemed to hold same as a trustee for the benefit of the Special Advance Lender, it being the express intention of the Lenders that the Special Advance Lender shall have an ownership interest in such sums to the extent of the Unpaid Amount.

(5) Each Defaulting Lender shall indemnify, defend and hold Administrative Agent and each of the other Lenders harmless from and against any and all losses, damages, liabilities or expenses (including reasonable attorneys' fees and expenses and interest at the Default Rate) which they may sustain or incur by reason of the Defaulting Lender's failure or refusal to abide by its obligations under this Agreement or the other Loan Documents, except to the extent a Defaulting Lender became a Defaulting Lender due to the gross negligence or willful misconduct of Administrative Agent and/or any Lender. Administrative Agent shall, after payment of any amounts due to any Special Advance Lender pursuant to the terms of subsection (3) above, set-off against any payments due to such Defaulting Lender for the claims of Administrative Agent and the other Lenders pursuant to this indemnity.

(6) In the event any Lender becomes a Defaulting Lender and none of the other Lenders elects to be a Special Advance Lender pursuant to subsection (1) above, Borrower shall have the right, at any time prior to the Completion Date, provided that no Potential Default or Event of Default exists, to cause another financial institution, reasonably acceptable to (x) the Majority Lenders if such institution is not an Eligible Assignee or (y) Administrative Agent if such institution is an Eligible Assignee, to assume Defaulting Lender's obligations with respect to the Advance Amount on the then-existing terms and conditions of the Loan Documents (such replacement institution, a "**Replacement Lender**"). Such assumption shall be pursuant to a written instrument reasonably satisfactory to administrative Agent. Upon such assumption, the Replacement Lender shall become a "Lender" for all purposes hereunder, with a Commitment in an amount equal to the Advance Amount, and the Defaulting Lender's Commitment shall automatically be reduced by the Advance Amount. In connection with the foregoing, Borrower shall execute and deliver to the Replacement Lender and the Defaulting Lender substitute notes substantially in the form of **Exhibit C** and stating: "This Note is a substitute note as contemplated by **Section 14.12** of the Agreement; it replaces and is in lieu of that certain note made by Maker dated [date of Note] to the order of [Defaulting Lender] in the principal sum of [Defaulting Lender's original Commitment]." Such substitute notes shall be in amounts equal to, in the case of the Replacement Lender's note, the Advance Amount and, in the case of the Defaulting Lender's note, its Commitment as reduced aforesaid. Such substitute notes shall constitute "Notes" and the obligations evidenced by such substitute notes shall be secured by the Mortgage. In connection with Borrower's execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent evidence, satisfactory to Administrative Agent, of all requisite partnership/limited liability company/corporate action to authorize Borrower's execution and delivery of the substitute notes and any related documents. Upon delivery of the foregoing substitute notes, each Defaulting Lender shall return to Borrower its note which was replaced, provided that the delivery of a substitute note to the Defaulting Lender pursuant to this **Section 14.12** shall operate to void and replace the note previously held by the Defaulting Lender regardless of whether Defaulting Lender returns the same as required hereby. 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 substitution of Lenders in accordance with the foregoing provisions of this Section. Lenders shall reasonably cooperate with Borrower's attempts to obtain a Replacement Lender, but they shall not be obligated to modify the Loan Documents in connection therewith, other than modifications pursuant to the immediately preceding sentence.

Section 14.13 Liability of Administrative Agent. Administrative Agent shall not have any liabilities or responsibilities to Borrower on account of the failure of any Lender (other than Administrative Agent in its capacity as a 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 Loan Document.

Section 14.14 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 Lead Borrower and the Lenders thereof.

Section 14.15 Information for Lenders. Administrative Agent shall promptly provide each Lender with copies of all financial statements delivered by Borrower or Guarantor to Administrative Agent pursuant to the Loan Documents. Administrative Agent shall promptly deliver to each Lender all material information regarding the Property, Borrower and any other holder of any of the ownership interests of Borrower furnished to or obtained by Administrative Agent with respect to the Loan. Administrative Agent shall promptly provide each Lender with copies of all requests and notices received from Borrower by Administrative Agent and all appraisals ordered by Administrative Agent on behalf of the Lenders.

Section 14.16 Pfandbriefe. Notwithstanding anything to the contrary in this Agreement, each Lender shall be permitted to assign or otherwise transfer its interest in the Loan and the Loan Documents to a trustee, administrator or receiver (or their respective nominees, collateral agents or security trustees) of a pool securing covered mortgage bonds (Pfandbriefe) issued by a German Pfandbriefebank under German Pfandbriefe legislation in connection with a Pfandbriefe Offering.

Section 14.17 Restrictions on Transfers by Borrower. Notwithstanding any provision of this Agreement that may permit Transfers of any nature without consent of Administrative Agent and the Lenders, any Transfer of a direct or indirect ownership interest in Borrower, Borrower's direct or indirect members, Borrower's manager or any Guarantor shall be subject to the requirement that, after giving effect to such Transfer, such person and each Lender shall be in compliance with all Transfer Restriction Regulations. A "Transfer Restriction Regulation" shall mean any law or regulation of any Governmental Authority, including the USA Patriot Act and regulations issued pursuant thereto and "know your customer" laws, rules, regulations and orders, or any interpretation, directive or request under any such law or regulation by any court or Governmental Authority or monetary authority charged with the interpretation or administration thereof, or any internal Lender policy resulting therefrom, or any internal Lender policy limiting the amount of loans which may be extended to any one customer of the Lender. If any Lender determines that a proposed transfer that does not require the Lender's consent under this Agreement would cause the Lender to be in violation of a Transfer Restriction Regulation (any such Lender being herein called a "Restricted Lender"), such Lender shall notify Borrower. Borrower may not cause or permit the Transfer unless Borrower shall first either (i) prepay such Restricted Lender's outstanding Loans or (ii) arrange for the transfer by such Restricted Lender of all of its right, title and interest under this Agreement and such Restricted Lender's Note to an Eligible Assignee selected by Borrower that is reasonably satisfactory to Agent, such Eligible Assignee assumes all of the obligations of such Restricted Lender hereunder, and purchases all of such Restricted Lender's interests hereunder for consideration equal to the aggregate outstanding principal amount of such Restricted Lender's Loans, together with interest thereon to the date of such purchase (to the extent not paid by Borrower) and all other amounts accrued and payable hereunder to such Restricted Lender as of the date of such transfer

[Signature Pages Follow]

EXECUTED as of the date first written above.

LENDER:

EUROHYPO AG, NEW YORK BRANCH

By: /s/ Mark A. Fisher
Name: Mark A. Fisher
Title: Executive Director

By: /s/ John Hayes
Name: John Hayes
Title: Vice President

Address for Notices to Eurohypo AG, New York Branch:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Legal Director
Telecopier No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Head of Portfolio Operations
Telecopier No.: 866 267 7680

– and –

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

LENDER:

DEUTSCHE GENOSSENSCHAFTS -
HYPOTHEKENBANK AG

By: /s/ Gielens
Name: Gielens
Title: Authorized signature

By: /s/Köhn
Name: Köhn
Title: Authorized signature

Applicable Lending Office

Address for Notices:
Deutsche Genossenschafts-Hypothekenbank AG
Rosenstraße 2
20095 Hamburg
Germany
Attention: Polina Melnikova
Telecopier: +49 (0) 40 33 34 2916

With copies to:

Deutsche Genossenschafts-Hypothekenbank AG
Rosenstraße 2
20095 Hamburg
Germany
Attention: Johanna Jürgens
Telecopier: +49 (0) 40 33 34 2916

Trimont
Monarch Tower
3424 Peachtree Road, N.E., Suite 2200
Atlanta, GA 30326
Attention: Trica Burell
Telecopier: (404) 581-7841

Trimont
Monarch Tower
3424 Peachtree Road, N.E., Suite 2200
Atlanta, GA 30326
Attention: Laura Holton
Telecopier: (404) 582-8901

DGHYP
609 Fifth Ave., 6th Floor
New York, New York 10017-1021
Attention: Jean Barden
Telecopier: (212) 796-4313

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

LENDER:

AMALGAMATED BANK

By: /s/ Cynthia Lash
Name: Cynthia Lash
Title: Senior Vice President

By: /s/ _____
Name:
Title:

Applicable Lending Office

Address for Notices:
275 Seventh Avenue
New York, New York 10001
Attention: Cynthia Lash
Telephone No.: (212) 895-4415
Telecopier No.: (212) 895-4728

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

LENDER:

TD BANK, as successor-in-interest to
Commerce Bank, N.A.

By: /s/ Matthew Schatz
Name: Matthew Schatz
Title: Vice President

Applicable Lending Office

Address for Notices:
317 Madison Avenue
New York, New York 10017
Attention: Matthew Schatz
Telephone No.: (212) 651-2717
Telecopier No.: (212) 299-5757

With copies to:

1701 Route 70 East
Cherry Hill, New Jersey 08034

- and -

Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
Attention: Arnold L. Bartfield, Esq.
Telephone No.: (212) 278-1511
Telecopier No.: (212) 278-1733

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

BORROWER:

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President-General Counsel

Address for Notices:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, NY 10605
Attention: Robert Masters
Telecopier No.: 914-428-3646

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

BORROWER:

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters

Name: Robert Masters

Title: Senior Vice President-General Counsel

Address for Notices:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, NY 10605
Attention: Robert Masters
Telecopier No.: 914-428-3646

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

ADMINISTRATIVE AGENT:

EUROHYPO AG, NEW YORK BRANCH, AS
Administrative Agent

By: /s/ Mark A. Fisher
Name: Mark A. Fisher
Title: Executive Director

By: /s/ John Hayes
Name: John Hayes
Title: Director

Address for Notices to Eurohypo AG,
New York Branch:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Legal Director
Telecopier No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas
New York, New York 10036
Attention: Head of Portfolio Operations
Telecopier No.: 866 267 7680

– and –

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

LEGAL DESCRIPTION OF PROJECT

The condominium units (the "Units" - each a "Unit") in the building known as The 400 E. Fordham Road Condominium and by the street number 2502 Webster Avenue, 2504 Webster Avenue and 400 East Fordham Road and 250 Webster Avenue, Bronx, New York (the "Building"), designated and described as the Retail Unit and the Office/Community Unit in that certain declaration made pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan for condominium ownership of the Building and the land (the "Land") on which the Building is situated (which Land is more particularly described below), dated October 23, 2008, and recorded in the Office of the New York City Register, Bronx County, on December 18, 2008, under CRFN 2008000481411, as amended (the "Declaration"). The Units are also designated as the Tax Lots 1001 (as to the Retail Unit) and 1002 (as to the Office/Community Unit) in Block 3033 on the Tax Map of the City of New York of the County of the Bronx on the Tax Map and on the Floor Plans of the Building, and filed with Real Property Assessment Department on December 15, 2008 as Condominium Plan No. 116 and also filed in the Office of the New York City Register, Bronx County, as Condominium Map No. under CRFN 2008000481412;

TOGETHER WITH an undivided 70.0% interest (as to the Retail Unit) and an undivided 30.0% interest (as to the Office/Community Unit) in the Common Elements (as such term is defined in the Declaration).

The Land upon which the Building containing the Units is located is described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Bronx, City, County and State of New York, bounded and described as follows:

BEGINNING at a point formed by the intersection of the easterly side of Webster Avenue (100 feet wide) with the southerly side of East Fordham Road (a.k.a. Pelham Avenue, variable width) and from said point of beginning running thence; the following three (3) courses along said southerly side of East Fordham Road;

1. South 84 degrees 34 minutes 46 seconds East, a distance of 43.27 feet to a point, thence;
2. South 54 degrees 01 minutes 22 seconds East, a distance of 29.77 feet to a point, thence;
3. South 40 degrees 09 minutes 32 seconds East, a distance of 85.32 feet to a point on the westerly side of Park Avenue (variable width). Thence;
4. Along said westerly side of Park Avenue, South 00 degrees 10 minutes 48 seconds East, a distance of 201.71 feet to a point, thence;
5. Along the common dividing line between lot 12, lot 8 and lot 4 (lands now or formerly of Automotive Realty Corporation), block 3033, North 85 degrees 39 minutes 56 seconds West, a distance of 164.24 feet to a point on the aforementioned easterly side of Webster Avenue; thence
6. Along said easterly side of Webster Avenue, North 08 degrees 26 minutes 11 seconds East, a distance of 279.09 feet to the point or place of BEGINNING.

Ex. A

EXHIBIT B
INTENTIONALLY OMITTED

Ex. B

[Form of Note]
PROMISSORY NOTE

\$ _____

_____, 200_ [_____] [_____]

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC (individually and collectively, jointly and severally, the "**Borrower**"), hereby promises to pay to _____ (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of EUROHYPO AG, NEW YORK BRANCH, at 1114 Avenue of the Americas, 2nd Floor, New York, New York 10036, the principal sum of _____ Dollars (\$ _____) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

With respect to the definition of "Borrower", except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Note is one of the Notes referred to in the Loan Agreement dated as of _____, 200_ (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") among Borrower, the lenders party thereto (including the Lender) and Eurohypo AG New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

Ex. C

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as permitted by Sections 12.9 and 12.24 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

As long as a Hedge Agreement with the Eurohypo Counterparty is in effect, the interest payable under this Note shall be increased or decreased from time to time in accordance with such Hedge Agreement. Therefore, this Note also evidences such amounts as may become due and payable by Borrower under the Hedge Agreement with the Eurohypo Counterparty, including, without limitation, any amount payable upon or in connection with termination of such Hedge Agreement, all of which sums shall be deemed to constitute "Additional Interest" evidenced hereby and payable pursuant to this Note and in accordance with the terms and provisions of the Hedge Agreement with a Eurohypo Counterparty.

[Remainder of Page Intentionally Left Blank]

Ex. C

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first above written.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware
limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a
Delaware limited liability company, its managing
member

By: Acadia Realty Acquisition II, LLC, a
Delaware limited liability company, its
managing member

By: Acadia Realty Limited Partnership, a
Delaware limited partnership, its sole
member

By: Acadia Realty Trust, a Maryland
real estate investment trust, its
general partner

By: _____
Name: Robert Masters
Title: Senior Vice President-General Counsel

Ex. C

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: _____
Name: Robert Masters
Title: Senior Vice President-General Counsel

Ex. C

SCHEDULE OF LOANS

This Note evidences Loans made, Continued or Converted under the within-described Agreement to Borrower, on the dates, in the principal amounts, of the Types, bearing interest at the rates and having Interest Periods (if applicable) of the durations set forth below, subject to the payments, Continuations, Conversions and prepayments of principal set forth below:

Date Made, Continued or Converted	Principal Amount of Loan	Type of Loan	Interest Rate	Duration of Interest Period	Amount Paid, Prepaid, Continued or Converted	Unpaid Principal Amount	Notation Made by
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Ex. C

[Form of Assignment and Acceptance]
ASSIGNMENT AND ACCEPTANCE

Reference is made to (a) the Loan Agreement dated as of _____, 200_ (as amended and in effect on the date hereof, the "**Agreement**"), among ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC (individually and collectively, jointly and severally, the "**Borrower**"), the Lenders named therein and [_____] , as Administrative Agent for the Lenders among Administrative Agent and each Lender. Terms defined in the Agreement are used herein with the same meanings.

The Assignor named below hereby sells and assigns, without recourse, to the Assignee named below, and the Assignee hereby purchases and assumes, without recourse, from the Assignor, effective as of the Assignment Date set forth below, the interests set forth below (the "**Assigned Interest**") in the Assignor's rights and obligations under the Agreement, including, without limitation, the interests set forth below in the Commitment of the Assignor on the Assignment Date and Loans owing to the Assignor which are outstanding on the Assignment Date, together with (a) interest on the assigned Loans from and after the Assignment Date and (b) the amount, if any, set forth below of the fees accrued to the Assignment Date for account of the Assignor. The Assignee hereby acknowledges receipt of a copy of the Agreement. From and after the Assignment Date (i) the Assignee shall be a party to and be bound by the provisions of the Agreement and, to the extent of the interests assigned by this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and (ii) the Assignor shall, to the extent of the interests assigned by this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Agreement.

This Assignment and Acceptance is being delivered to Administrative Agent together with, if the Assignee is not already a Lender under the Agreement, an administrative questionnaire in the form supplied by Administrative Agent, duly completed by the Assignee. The [Assignee/Assignor] shall pay the fee payable to Administrative Agent pursuant to Section 12.24(2)(e) of the Agreement.

This Assignment and Acceptance shall be governed by and construed in accordance with the laws of the State of _____.

The Assignor represents and warrants to the Assignee that the Assignor is the legal and beneficial owner of the Assigned Interest and has not created any adverse interest therein. The Assignor and the Assignee represent and warrant to each other that they are, respectively, authorized to execute and deliver this Assignment and Acceptance.

Date of Assignment:

Legal Name of Assignor:

Legal Name of Assignee:

Assignee's Address for Notices:

Effective Date of Assignment

("Assignment Date")¹:

	Principal Amount Assigned	Percentage Assigned of Facility/Commitment (set forth, to at least 4 decimals, as a percentage of the Facility and the aggregate Commitments of all Lenders thereunder
Current Outstanding Loans Assigned:	\$	%] ²
Future Funding Commitment: \$		%
[Fees Assigned (if any):]		

The terms set forth above and below are hereby agreed to:

[NAME OF ASSIGNOR] , as Assignor

By: _____

Name:

Title:

[NAME OF ASSIGNEE] , as Assignee

By: _____

Name:

Title:

¹ Must be at least five Business Days after execution hereof by all required parties.

² Delete if no future advances are involved.

The undersigned hereby consent to the within assignment:³

[_____],
as Administrative Agent

By: _____
Name:
Title:

_____ ³ Consent to be included to the extent required by Section 11.24(2) of the Agreement.

FORM OF HEDGE AGREEMENT PLEDGE

(See attached)

Ex. E-1

FORM OF NOTICE OF CONVERSION/CONTINUATION

_____, 200_

Eurohypo AG, New York Branch, as Administrative Agent
1114 Avenue of the Americas
New York, New York 10036
Attn: _____

Re: Loan Agreement dated as of _____, 200_ (as the same may be amended, modified or supplemented from time to time, the "**Agreement**") by and among [BORROWER] (the "**Borrower**"), the lenders from time to time party to the Agreement (the "**Lenders**"), and EUROHYPO AG, NEW YORK BRANCH, as Administrative Agent on behalf of the Lenders (the "**Administrative Agent**")
Ladies and Gentlemen:

Reference is made to the Agreement. Capitalized terms used in this Notice of Conversion/Continuation without definition have the meanings specified in the Agreement.

Pursuant to Section 2.8(5) of the Agreement, Borrower hereby elects to convert or continue the loans described in attached Schedule 1 (the "**Loans**"). In connection therewith, Borrower and the undersigned authorized officer of Borrower hereby certify that:

(1) Representations and Warranties. All representations and warranties of Borrower contained in the Loan Documents, including those contained in ARTICLE 7 of the Agreement, are true and correct as of the date hereof and shall be true and correct on the date of the continuation/conversion of the Loans, both before and after giving effect to such continuation/conversion; and

(2) No Event of Default. No Event of Default exists as of the date hereof or will result from the continuation/conversion of the Loans.

[BORROWER],
a _____

By: _____
Name:
Title:



LOAN TO BE CONVERTED OR CONTINUED

A. All conversions and continuations must be of a Loan, or portion thereof, in a principal amount in excess of \$1,000,000.

B. Conversions/continuations to a LIBOR-based Loan under paragraphs (2) and (3) below are not permitted if, after giving effect to thereto, (a) there would be more than one (1) LIBOR-based Loans in effect, or (b) the aggregate outstanding principal amount of all LIBOR-based Loans would be reduced to be less than \$1,000,000.

(1) Conversion of a LIBOR-based Loan into a Base Rate Loan.

The following LIBOR-based Loan to a Base Rate Loan:

Amount: \$

Requested Conversion Date:
(must be a Business Day at least three (3)

Business Days after date of notice)

Last day of current Interest Period:

(2) Conversion of a Base Rate Loan into a LIBOR-based Loan.

The following Base Rate Loan to a LIBOR-based Loan:

Amount: \$

Requested Conversion Date:
(must be a Business Day at least three (3)

Business Days after date of notice)

(3) Continuation of a LIBOR-based Loan into a Subsequent Interest Period.

The following LIBOR-based Loan into a subsequent Interest Period:

Amount: \$

Last day of current Interest Period:
(must be a Business Day at least three (3)

Business Days after date of notice)

COMMITMENTS

LENDER	COMMITMENT
1. Eurohypo AG New York Branch	\$34,099,000.00
2. Deutsche Genossenschafts-Hypothekenbank AG	\$20,313,200.00
3. Amalgamated Bank	\$18,051,400.00
4. TD Bank, N.A.	<u>\$13,536,400.00</u>
Total Commitment:	\$86,000,000.00

LEASING GUIDELINES

(See attached)

PROPORTIONATE SHARES

Lender	Percentage
Eurohypo AG, New York Branch	39.65%
Deutsche Genossenschafts-Hypothekenbank AG	23.62%
Amalgamated Bank	20.99%
TD Bank, N.A.	15.74%
Total	100%

PRECONDITIONS TO EFFECTIVENESS OF AGREEMENT

PART A. CONDITIONS TO EFFECTIVENESS OF AGREEMENT.

The preconditions to effectiveness of Agreement shall be Administrative Agent's and each Lender's receipt, review, approval and/or confirmation of the following, at Borrower's cost and expense, each in form and content satisfactory to Administrative Agent and each Lender in their sole and absolute discretion:

1. The Loan Documents, executed by Borrower and, as applicable, each Borrower Party.
2. Payment to Administrative Agent (on behalf of the Lenders) of the commitment fee as set forth in the Fee Letter.
3. An ALTA (or equivalent) mortgagee policy of title insurance in the maximum amount of the Loans, with reinsurance and endorsements as Administrative Agent may require, containing no exceptions to title (printed or otherwise) which are unacceptable to Administrative Agent, and insuring that the Mortgage is a first-priority Lien on the Project and related collateral. Without limitation, such policy shall (a) be on the 2006 ALTA (revised 6-17-06) form or, if not available, ALTA 1992 form (deleting arbitration and creditors' rights, if permissible) or, if not available, the form commonly used in the state where the property is located, insuring Administrative Agent (on behalf of the Lenders) or any and its successors and assigns; and (b) include the following endorsements and/or affirmative coverages to the extent available or applicable: (1) Comprehensive endorsement, (2) Survey, (3) Zoning (with additional coverage for number and type of parking spaces), (4) Usury, (5) Doing Business, (6) Access, (7) Separate Tax Lot, (8) Environmental Protection Lien, (9) Subdivision, (10) Contiguity, (11) Tax Deed, and (12) Mortgage Recording Tax, and such endorsements and/or affirmative coverages as Administrative Agent may require in its sole and absolute discretion.
4. All documents evidencing the formation, organization, valid existence, good standing, and due authorization of and for Borrower and each Borrower Party for the execution, delivery, and performance of the Loan Documents by Borrower and each Borrower Party, including an organizational chart for Borrower and Borrower Parties.
5. Legal opinions issued by counsel for Borrower and each Borrower Party, opining as to the due organization, valid existence and good standing of Borrower and each Borrower Party, and the due authorization, execution, delivery, enforceability and validity of the Loan Documents with respect to, Borrower and each Borrower Party; that the Loans, as reflected in the Loan Documents, are not usurious; to the extent that Administrative Agent is not otherwise satisfied, that the Project and its use is in full compliance with all legal requirements; and as to such other matters as Administrative Agent and Administrative Agent's counsel reasonably may specify.

6. Current Uniform Commercial Code searches, and litigation, bankruptcy, judgment and federal tax lien reports as requested by Administrative Agent, with respect to Borrower, Borrower's members, and Guarantor.
7. Evidence of insurance as required by this Agreement, and conforming in all respects to the requirements of Administrative Agent.
8. A current "as-built" survey of the Project, dated to the reasonable satisfaction of the Administrative Agent, certified to Administrative Agent (on behalf of the Lenders) and the issuer of the title insurance, prepared by a licensed surveyor acceptable to Administrative Agent and the issuer of the title insurance, and conforming to Administrative Agent's current standard survey requirements, which may include certification to additional participants, co-lenders and/or investors. Without limitation, the minimum requirements for the survey shall be as set forth in the 2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, "Urban Survey" classification, with the following additional items from Table A, "Optional Survey Responsibilities and Specifications": "2" (vicinity map showing nearby highway or major intersection), "3" (flood zone designation), "4" (land area), "6" (setbacks, height and bulk restrictions), "8" (other visible improvements), "9" (parking areas), "10" (access to public way, driveway and curb cuts), "11(a)" (utilities).
9. A current engineering report or architect's certificate with respect to the Project, covering, among other matters, inspection of heating and cooling systems, roof and structural details, showing no failure of compliance with building plans and specifications, applicable legal requirements (including requirements of the Americans with Disabilities Act) and fire, safety and health standards and reviewing and approving, among other matters, soil tests, plans and specifications (including heating, ventilation and cooling systems, roof and structural details, mechanical and electrical systems), and compliance with local, state or federal laws, regulations, codes, etc., and containing a declaration satisfactory to Administrative Agent that there will be no asbestos in the Project. The engineer/architect preparing such report or certificate must be satisfied that the Project is in compliance with fire, safety and health standards which such engineer/architect deems reasonable, in addition to standards imposed by law, regulation or codes. As requested by Administrative Agent, such report shall also include an assessment of the Project's tolerance for earthquake and seismic activity.
10. A current Site Assessment.
11. All appraisals, environmental reports, building condition reports and Site Assessments delivered to Administrative Agent prior to the execution of this Agreement shall be certified to Administrative Agent (on behalf of the Lenders and their successors and assigns) without modification or change thereto in the form reasonably requested by Administrative Agent which may include certification to additional participants, co-lenders and/or investors.
12. A current rent roll of the Project, certified by Borrower or the current owner of the Project. Such rent roll shall include the following information: (a) tenant names; (b) unit/suite numbers; (c) area of each demised Project and total area of the Project (stated in net rentable square feet); (d) rental rate (including escalations) (stated in gross amount and in amount per net rentable square foot per year); (e) lease term (commencement, expiration and renewal options); and (f) expense pass-throughs. In addition, Borrower shall provide Administrative Agent with a copy of the standard lease form to be used by Borrower in leasing space in the Project, and, at Administrative Agent's request, true and correct copies of all leases of the Project.

13. A copy of the Property Management Agreement for the Project, certified by Borrower as being true, correct and complete.
14. Borrower's deposit into the applicable Reserve Account of the amount required by Administrative Agent to impound for taxes and assessments under Article 4 and to fund any other required escrows or reserves.
15. Evidence that (a) the Project and the operation thereof comply with all legal requirements, including that all requisite certificates of occupancy, building permits, and other licenses, certificates, approvals or consents required by any Governmental Authority have been issued without variance or condition, (b) following any casualty, the improvements which form a part of the Project may be reconstructed and the current use thereof restored, and (c) that there is no litigation, action, citation, injunctive proceedings, or like matter pending or threatened with respect to the validity of such matters. At Administrative Agent's request, Borrower shall furnish Administrative Agent with a zoning endorsement to Administrative Agent's title insurance policy, zoning letters from applicable municipal agencies, and utility letters from applicable service providers.
16. No change shall have occurred in the financial condition of Borrower or any Borrower Party or in the Net Operating Income of the Project, or in the financial condition of any major or anchor tenant, which would have, in Administrative Agent's or any Lender's judgment, a Material Adverse Effect on the Project or on Borrower's or any Borrower Party's ability to repay the Loans or otherwise perform its obligations under the Loan Documents. Further, there shall not exist any material default by Borrower or any principal in Borrower (or any entity owned or controlled by any of them) under any loan, financing or similar arrangement with any lender.
17. No condemnation or adverse zoning or usage change proceeding shall have occurred or shall have been threatened against the Project; the Project shall not have suffered any significant damage by fire or other casualty which has not been repaired; no structural change to the Project shall have occurred or to any of the Improvements thereon; no law, regulation, ordinance, moratorium, injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any third party or Governmental Authority, which would have, in Administrative Agent's or any Lender's judgment, a Material Adverse Effect on Borrower, any Borrower Party or the Project.
18. All fees and commissions payable to real estate brokers, mortgage brokers, or any other brokers or agents in connection with the Loans or the acquisition of the Project have been paid, such evidence to be accompanied by any waivers or indemnifications deemed necessary by Administrative Agent.
19. Intentionally Omitted.

20. Payment of Administrative Agent's costs and expenses in underwriting, documenting, and closing the transaction, including fees and expenses of Administrative Agent's inspecting engineers, consultants, and outside counsel.
21. The Collateral Letter of Credit, if any, and the TI/LC Letter of Credit required under Article 4.
22. Estoppel certificates and subordination, non-disturbance and attornment agreements from tenants, as requested by Administrative Agent.
23. Service contracts, warranties, licenses and permits, applicable to the operation or use of the Project.
24. An Appraisal of the Project, which, among other things, verifies that the value of the Project is not less than \$123,900,000.00.
25. Prepayment of the Loans under the Original Loan Agreement such that the outstanding principal balance of the Loan as of of the Closing Date will be \$86,000,000.00.
26. Such other documents or items as Administrative Agent or its counsel reasonably may require.
27. The representations and warranties contained in this Loan Agreement and in all other Loan Documents are true and correct.
28. The title policy, survey, insurance policies, appraisal, environmental report, engineering report and other third party reports shall run in favor of Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon.
29. No Potential Default or Event of Default shall have occurred or exist.

WIRE INSTRUCTIONS

Commerzbank AG, New York

Fed ABA No.: 026-008-044

For Account of: Eurohypo AG, New York

A/C No.: 150-9409269-00USD

Ref: 400 E. Fordham Road

Schedule 2.4(1) - 1

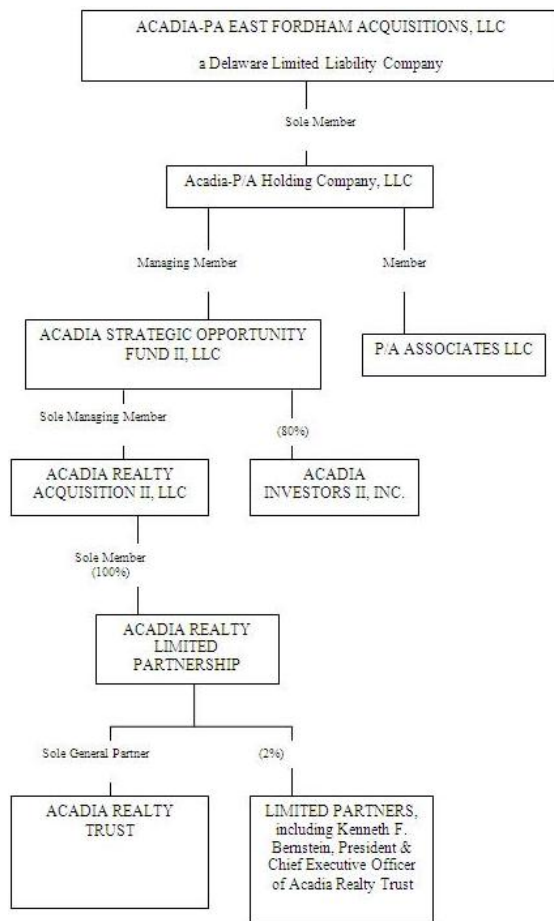
AMORTIZATION SCHEDULE

Schedule 2.4(2) - 1

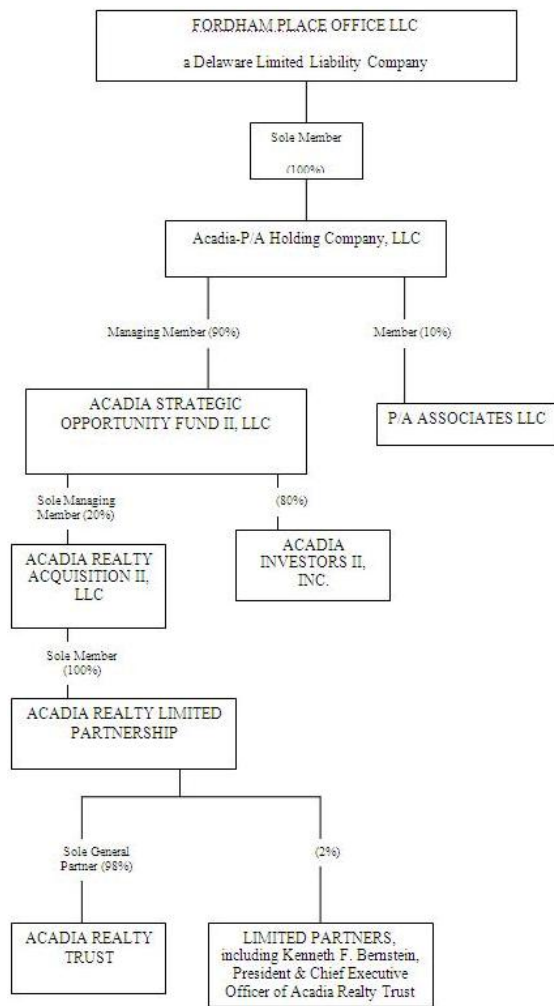
ORGANIZATIONAL CHART

(See Attached)

Schedule 7.28 - 1



Schedule 7.28 - 2



SECTION: 11
BLOCK: 3033
LOTS: 9 and 12 now known as Lots 1001 and 1002
COUNTY: Bronx
ADDRESS: 2502 Webster Avenue, 2504 Webster Avenue, and 400-414 East Fordham Road, a/k/a 4747-4763 Park Avenue, a/k/a 2506-2526 Webster Avenue, Bronx, New York

As of November 4, 2009

MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT

between

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent for "Lenders" (as hereinafter defined)
(together with its successors in such capacity, "Mortgagee")

and

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
and
FORDHAM PLACE OFFICE LLC
a Delaware limited liability company

(jointly and severally, individually and collectively, the "Mortgagor")

This instrument prepared by,
and after recording please return to:

Riemer & Braunstein LLP
7 Times Square, Suite 2506
New York, New York 10036
Attention: Steven J. Weinstein, Esq.

MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT

MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT (this "Agreement") made as of the 4th day of November, 2009 between EUROHYPO AG, NEW YORK BRANCH, as administrative agent ("Administrative Agent") for "Lenders" (as hereinafter defined) (together with its successors in such capacity, "Mortgagee"), having an office at 1114 Avenue of the Americas, New York, New York 10036 and ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, and FORDHAM PLACE OFFICE LLC, each a Delaware limited liability company (jointly and severally, individually and collectively, "Mortgagor"), each having an address for notice at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, NY 10605.

W I T N E S S E T H :

WHEREAS, Mortgagor is a party to that certain Consolidated, Amended and Restated Term Loan Agreement dated the date hereof with Administrative Agent, Lenders (as hereinafter defined) and Mortgagor (as the same may hereafter be amended, modified or supplemented from time to time, the "Loan Agreement") which consolidates, modifies and amends existing loans to Mortgagor from Eurohypo AG, New York Branch and other lenders party thereto and such other lending institutions who became "Lenders" pursuant to the Loan Agreement (each individually, a "Lender" and collectively, "Lenders");

WHEREAS, Mortgagee is the lawful owner and holder of the mortgages (collectively, the "Mortgages") more particularly described in EXHIBIT A attached hereto and made a part hereof, and the Lenders are holders of the notes (collectively, the "Existing Notes") and other obligations secured thereby;

WHEREAS, the maximum principal amount which is or under any contingency may be secured by the Mortgages is \$86,000,000.00 (the "Consolidated 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 Mortgages are presently valid liens on all of the real property described in SCHEDULE A attached hereto and made a part hereof (the "Premises");

WHEREAS, Mortgagor is the lawful owner of the Premises; and

WHEREAS, Mortgagee has agreed to consolidate the Mortgages to form a single first lien on the entire Premises and to modify the terms of the Mortgages 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 agrees to be bound by all of the terms of, the Mortgages, as herein modified and consolidated. The liens of the Mortgages are hereby consolidated and coordinated to constitute a single mortgage which encumbers all of the "Mortgaged Property" (as such term is defined in the Mortgages, 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 Consolidated Indebtedness, together with interest accrued and to accrue thereon and all other sums secured thereby.

2. Mortgagor hereby agrees to pay the Consolidated Indebtedness and interest thereon at the rate(s) of interest and on the terms provided for the payment of principal and interest in the replacement notes (said replacement notes, as the same may be amended, modified, extended, severed, assigned, renewed, replaced or restated, and including any substitute or replacement notes executed pursuant to the Loan Agreement, hereinafter the "Notes") delivered pursuant to and in accordance with that certain Note Consolidation, Severance and Modification Agreement (the "Note Agreement"), dated the date hereof, between each of the Lenders and Mortgagor.

3. The Mortgages are hereby amended and restated in their entirety by EXHIBIT B attached hereto and made a part hereof, 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 Existing Notes, as consolidated and modified by the Note Agreements (and evidenced by the Notes), and secured by the Mortgages, 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 Mortgages, as modified hereby, or under the Existing Notes, as modified by the Note Agreements (and now evidenced by the Notes), including its obligation for the payment of the Consolidated 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.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters _____

Name: Robert Masters

Title: Senior Vice President-General Counsel

[Signature Page to Mortgage Consolidation and Modification Agreement]

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters _____

Name: Robert Masters

Title: Senior Vice President-General Counsel

[Signature Page to Mortgage Consolidation and Modification Agreement]

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: /s/ Mark A. Fisher
Name: Mark A. Fisher
Title: Executive Director

By: /s/ John C. Hayes
Name: John C. Hayes
Title: Director

[Signature Page to Mortgage Consolidation and Modification Agreement]

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the 16th day of October in the year 2009, 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his 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

My Commission Expires:

Debra Leibler-Jones
Notary Public, State of New York
Dutchess County CLK #01JO6005994
Commission Expires 4/20/10

4/20/2010

[Acknowledgement to Mortgage Consolidation and Modification Agreement]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 16 day of October in the year 2009, before me, the undersigned, a notary public in and for said state, personally appeared Mark A. Fisher, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Patricia A. Ferro
Notary Public

My Commission Expires:

July 2, 2011

Patricia A. Ferro
Notary Public, State of New York
No. 01FE6170163
Qualified in Kings County
My Commission Expires July 2, 2011

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 16 day of October in the year 2009, before me, the undersigned, a notary public in and for said state, personally appeared John C. Hayes, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Patricia A. Ferro
Notary Public

My Commission Expires:

July 2, 2011

Patricia A. Ferro
Notary Public, State of New York
No. 01FE6170163
Qualified in Kings County
My Commission Expires July 2, 2011

[Acknowledgement to Mortgage Consolidation and Modification Agreement]

SCHEDULE A

Property Description

The condominium units (the "Units" - each a "Unit") in the building known as The 400 E. Fordham Road Condominium and by the street number 2502 Webster Avenue, 2504 Webster Avenue and 400 East Fordham Road and 250 Webster Avenue, Bronx, New York (the "Building"), designated and described as the Retail Unit and the Office/Community Unit in that certain declaration made pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan for condominium ownership of the Building and the land (the "Land") on which the Building is situated (which Land is more particularly described below), dated October 23, 2008, and recorded in the Office of the New York City Register, Bronx County, on December 18, 2008, under CRFN 2008000481411, as amended (the "Declaration"). The Units are also designated as the Tax Lots 1001 (as to the Retail Unit) and 1002 (as to the Office/Community Unit) in Block 3033 on the Tax Map of the City of New York of the County of the Bronx on the Tax Map and on the Floor Plans of the Building, and filed with Real Property Assessment Department on December 15, 2008 as Condominium Plan No. 116 and also filed in the Office of the New York City Register, Bronx County, as Condominium Map No. under CRFN 2008000481412;

TOGETHER WITH an undivided 70.0% interest (as to the Retail Unit) and an undivided 30.0% interest (as to the Office/Community Unit) in the Common Elements (as such term is defined in the Declaration).

The Land upon which the Building containing the Units is located is described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Bronx, City, County and State of New York, bounded and described as follows:

BEGINNING at a point formed by the intersection of the easterly side of Webster Avenue (100 feet wide) with the southerly side of East Fordham Road (a.k.a. Pelham Avenue, variable width) and from said point of beginning running thence; the following three (3) courses along said southerly side of East Fordham Road;

1. South 84 degrees 34 minutes 46 seconds East, a distance of 43.27 feet to a point, thence;
2. South 54 degrees 01 minutes 22 seconds East, a distance of 29.77 feet to a point, thence;
3. South 40 degrees 09 minutes 32 seconds East, a distance of 85.32 feet to a point on the westerly side of Park Avenue (variable width). Thence;
4. Along said westerly side of Park Avenue, South 00 degrees 10 minutes 48 seconds East, a distance of 201.71 feet to a point, thence;

5. Along the common dividing line between lot 12, lot 8 and lot 4 (lands now or formerly of Automotive Realty Corporation), block 3033, North 85 degrees 39 minutes 56 seconds West, a distance of 164.24 feet to a point on the aforementioned easterly side of Webster Avenue; thence
6. Along said easterly side of Webster Avenue, North 08 degrees 26 minutes 11 seconds East, a distance of 279.09 feet to the point or place of BEGINNING.

Schedule A

EXHIBIT A

Prior Mortgage(s)

ACQUISITION LOAN MORTGAGES

A. Mortgage in the original principal amount of \$550,000 made by Alfred M. Rogers and Florence Hills Rogers, his wife, and Howard J. Rogers and Elizabeth J. Rogers, his wife, to Dollar Savings Bank of the City of New York dated 2/2/25 and recorded 2/2/25 in Liber 876 page 139.

Mortgage Tax Paid: \$

1. Said mortgage A was extended by Extension Agreement dated 6/14/30 and recorded 6/26/30 in Liber 1513 page 64.
2. A \$100,000 subordinate interest in said mortgage A was assigned by Dollar Savings Bank of the City of New York to Lillian Markowitz and Maybelle Mintz by Assignment of Mortgage dated 2/28/50 and recorded 3/10/50 in Liber 2590 page 367.
3. Maybelle Mintz thence assigned her interest in the \$100,000 subordinate interest in said mortgage A to Lillian Markowitz by Assignment of Mortgage dated 10/16/50 and recorded 8/6/52 in Liber 2802 page 174.
4. Lillian Markowitz thence assigned her interest in the \$100,000 subordinate interest in said mortgage A to The Emigrant Industrial Savings Bank by Assignment of Mortgage dated 7/22/52 and recorded 8/6/52 in Liber 2802 page 189.
5. Priority interest in said mortgage A was assigned by Dollar Savings Bank of the City of New York to The Emigrant Industrial Savings Bank by Assignment of Mortgage dated 7/17/52 and recorded 8/6/52 in Liber 2802 page 170.

B. Mortgage in the original principal amount of \$294,793.25 made by Bruce Realty Company of New York, Inc. to The Emigrant Savings Bank dated 7/22/52 and recorded 8/6/52 in Liber 2802 page 153.

Mortgage Tax Paid: \$

1. Said mortgages A and B were consolidated to form a single lien of \$600,000 by Consolidation, Spreader, Extension and Modification Agreement made by and between The Emigrant Industrial Savings Bank and Bruce Realty Company of New York, Inc. dated 7/22/52 and recorded 8/6/52 in Liber 2802 page 161.
2. Said mortgages A and B, as consolidated, were assigned by The Emigrant Savings Bank to The Seamen's Bank for Savings in the City of New York by Assignment of Mortgage dated 2/18/64 and recorded 2/21/64 in Liber 3860 mp 3.

Exhibit A

C. Mortgage in the original principal amount of \$769,437.11 made by Bruce Realty Company of New York, Inc. to The Seamen's Bank for Savings in the City of New York dated 2/20/64 and recorded 2/21/64 in Liber 3868 page 36.

Mortgage Tax Paid: \$

1. Said mortgages A, B and C were consolidated to form a single lien of \$1,200,000 by Consolidation and Extension Agreement made by and between Bruce Realty Company of New York, Inc. and The Seamen's Bank for Savings in the City of New York dated 2/20/64 and recorded 2/27/64 in Liber 3869 page 192.
2. Said mortgages A, B and C, as consolidated, were modified by Extension Agreement made by and between Bruce Realty Company of New York, Inc. and The Seamen's Bank for Savings dated as of 6/10/78 and recorded 8/3/78 in Reel 367 page 1877.
3. Said mortgages A, B and C, as consolidated, were assigned by The Seamen's Bank for Savings (f/k/a The Seamen's Bank for Savings in the City of New York) to Chemical Bank by Assignment of Mortgage dated 8/18/83 and recorded 8/30/83 in Reel 515 page 965.
4. Said mortgages A, B and C, as consolidated, were modified by Extension Agreement made by and between 400 East Fordham Associates and Chemical Bank dated 8/22/83 and recorded 8/30/83 in Reel 515 page 919.
5. Said mortgages A, B and C, as consolidated, were further assigned by Chemical Bank to Crossland Savings, FSB by Assignment of Mortgage dated 3/17/86 and recorded 3/26/86 in Reel 639 Page 1930.

D. Mortgage in the original principal amount of \$498,000 made by 400 East Fordham Associates to Bruce Realty Company of New York, Inc. dated 6/15/82 and recorded 6/28/82 in Reel 476 page 897.

Mortgage Tax Paid: \$ 7,470.00

1. Said mortgage D was assigned by Bruce Realty Company Liquidating Trust (successor in interest to Bruce Realty Company of New York, Inc.) to New Enterprises, Inc. by Assignment of Mortgage dated 11/21/84 and recorded 12/6/84 in Reel 570 Page 875.
2. Said mortgage D was further assigned by New Enterprises, Inc. to Chemical Bank by Assignment of Mortgage dated 11/29/84 and recorded 12/6/84 in Reel 570 Page 872.

Exhibit A

3. Said mortgage D was further assigned by Chemical Bank to New Enterprises, Inc. by Assignment of Mortgage dated 3/17/86 and recorded 3/26/86 in Reel 639 Page 1928.

4. Said mortgage D was further assigned by New Enterprises, Inc. to Crossland Savings, FSB by Assignment of Mortgage dated 3/17/86 and recorded 3/26/86 in Reel 639 Page 1939.

E. Mortgage in the original principal amount of \$2,305,982.59 made by 400 East Fordham Associates to Crossland Savings, FSB dated 3/17/86 and recorded 3/26/86 in Reel 639 Page 1920.

Mortgage Tax Paid: \$ 51,885

1. Said mortgages A, B, C, D and E were consolidated to form a single lien of \$3,200,000 by Consolidation and Extension Agreement made by and between 400 East Fordham Associates and Crossland Savings, FSB dated 3/17/86 and recorded 3/26/86 in Reel 639 Page 1941.

2. Said mortgages A, B, C, D and E, as consolidated, were assigned by Crossland Savings, FSB to Crossland Commercial Funding Corp. I by Assignment of Mortgage dated as of 6/22/89 and recorded 6/30/89 in Reel 928 Page 90.

3. Said mortgages A, B, C, D and E, as consolidated, were further assigned by Crossland Commercial Funding Corp. I to Wilmington Trust Company, as Trustee, by Collateral Assignment of Mortgage dated as of 6/22/89 and recorded 6/30/89 in Reel 928 Page 85.

4. Said mortgages A, B, C, D and E, as consolidated, were further assigned by Wilmington Trust Company, as Trustee, to Crossland Commercial Funding Corp. I by Assignment of Mortgage dated 6/15/93 and recorded 7/2/93 in Reel 1174 Page 1111.

5. Said mortgages A, B, C, D and E, as consolidated, were further assigned by Crossland Commercial Funding Corp. I to Crossland Federal Savings Bank by Assignment of Mortgage dated 12/13/93 and recorded 12/20/93 in Reel 1205 Page 1723.

6. Said mortgages A, B, C, D and E, as consolidated, were further assigned by Crossland Federal Savings Bank to Bear, Stearns Funding, Inc. by Assignment of Mortgage Without Covenant dated 12/12/95 and recorded 1/22/96 in Reel 1365 page 349.

F. Mortgage in the original principal amount of \$1,095,319.74 made by 400 East Fordham Associates to Bear, Stearns Funding, Inc. dated 12/13/95 and recorded 1/22/96 in Reel 1365 page 227.

Exhibit A

Mortgage Tax Paid: \$

1. Said mortgages A, B, C, D, E and F were consolidated to form a single lien of \$4,000,000 by Consolidation, Modification, Spreader and Extension Agreement made by and between 400 East Fordham Associates and Bear, Stearns Funding, Inc. dated as of 12/13/95 and recorded 1/22/96 in Reel 1365 page 235.
 2. Said mortgages A, B, C, D, E and F, as consolidated, were assigned by Bear, Stearns Funding, Inc. to LaSalle National Bank, as trustee for the registered holders of Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates Series, 1996-1 by Assignment of Mortgage dated 7/19/96 and recorded 11/22/04 as CRFN 2004000722254.
 3. Said mortgages A, B, C, D, E and F, as consolidated, were assigned by LaSalle National Bank, as trustee for the registered holders of Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates Series, 1996-1 to Acadia Realty Limited Partnership by Assignment of Mortgage dated 9/8/04 and recorded 11/22/04 as CRFN 2004000722256.
 4. Said mortgages A, B, C, D, E and F, as consolidated, were assigned by Acadia Realty Limited Partnership to Bank of China, New York Branch by Assignment of Mortgage dated 10/26/04 and recorded 2/18/05 as CRFN 2005000103995.
- G. Mortgage in the original principal amount of \$14,597,734.90 made by Acadia-PA East Fordham Acquisitions, LLC (f/k/a Acadia-P/A East Fordham Acquisitions, LLC) to Bank of China, New York Branch dated 10/26/04 and recorded 2/18/05 as CRFN 2005000103996.

Mortgage Tax Paid: \$ 401,426.76

1. Said mortgages A, B, C, D, E, F and G were consolidated to form a single lien of \$18,000,000 by a Consolidated and Restated Mortgage, Assignment of Leases and Rents and Security Agreement made between Acadia-PA East Fordham Acquisitions, LLC (f/k/a Acadia-P/A East Fordham Acquisitions, LLC) and Bank of China, New York Branch, dated 10/26/04 and recorded 2/18/05 as CRFN 2005000103997.
2. Said mortgages A, B, C, D, E, F and G, as consolidated, were assigned by Bank of China, New York Branch to Bank of America, N.A. by Assignment of Mortgage dated 11/01/06 and recorded 11/22/06 as CRFN 2006000650021.
3. Said mortgages A, B, C, D, E, F and G, as consolidated, were modified and assumed by Mortgage Assumption, Modification and Spreader Agreement made between Bank of America, N.A. and Acadia-PA East Fordham Acquisitions, LLC dated as of 11/1/06 and recorded 11/22/06 as CRFN 2006000650022.

Exhibit A

4. Said Mortgages A, B, C, D, E, F and G, as consolidated, were assigned by Bank of America, N.A. to Eurohypo AG, New York Branch, as Administrative Agent pursuant to the Assignment of Mortgage by Bank of America, N.A. to Eurohypo AG, New York Branch, as Administrative Agent, dated 10/5/07 and recorded 11/2/07 as CRFN 2007000554121 and as modified by the Mortgage Assumption, Modification and Spreader Agreement in the amount of \$18,000,000 made between Acadia-PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch, as Administrative Agent, dated as of 10/5/07 and recorded 11/2/07 as CRFN 2007000554123. Said Mortgage Assumption, Modification and Spreader Agreement was amended by that certain First Amendment to Mortgage Assumption, Modification and Spreader Agreement made by and among Acadia-PA East Fordham Acquisitions, LLC and Fordham Place Office LLC to Eurohypo AG, New York Branch, as Administrative Agent, dated 12/30/08 and recorded 1/15/09 as CRFN 2009000014261.

BUILDING LOAN MORTGAGE

H. Building Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing in the original principal amount of \$75,339,243.00 made by Acadia-PA East Fordham Acquisitions, LLC to Eurohypo AG, New York Branch, as Administrative Agent, dated 10/5/07 and recorded 11/2/07 as CRFN 2007000554119.

Mortgage Tax Paid: \$2,109,497.60

1. Said mortgage H was amended by that certain First Amendment to Building Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by and among Acadia-PA East Fordham Acquisitions, LLC and Fordham Place Office LLC to Eurohypo AG, New York Branch, as Administrative Agent, dated 12/30/08 and recorded 1/15/09 as CRFN 2009000014259.

PROJECT LOAN MORTGAGES

I. Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing in the original principal amount of \$1,930,757.00 made by Acadia-PA East Fordham Acquisitions, LLC to Eurohypo AG, New York Branch, as Administrative Agent, dated 10/5/07 and recorded 11/2/07 as CRFN 2007000554120.

Mortgage Tax Paid: \$54,062.40

1. Said mortgage I was amended by that certain First Amendment to Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by and among Acadia-PA East Fordham Acquisitions, LLC and Fordham Place Office LLC to Eurohypo AG, New York Branch, as Administrative Agent, dated 12/30/08 and recorded 1/15/09 as CRFN 2009000014260.

Exhibit A

On which said Mortgages A, B, C, D, E, F, G, H and I remains the unpaid principal sum of \$86,000,000.00, which said Mortgages A, B, C, D, E, F, G, H and I are consolidated into one joint lien and first mortgage.

Exhibit A

EXHIBIT B

Form of Mortgage

See Attached

(ii)

EXHIBIT B
MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

made by

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,

a Delaware limited liability company

and

FORDHAM PLACE OFFICE, LLC

a Delaware limited liability company,

(jointly and severally, individually and collectively, the "Mortgagor")

in favor of

EUROHYPO AG, NEW YORK BRANCH, AS ADMINISTRATIVE AGENT

(together with its successors in such capacity, "Mortgagee")

Dated: As of November 4, 2009

Section: 11
Block: 3033
Lots: 9 and 12 now known as Lots 1001 and 1002

2502 Webster Avenue, 2504 Webster Avenue, and 400-414 East Fordham Road, a/k/a 4747-4763 Park Avenue, a/k/a 2506-2526 Webster Avenue, Bronx, New York
City of New York, Bronx County, State of New York

Mortgage Amount: \$86,000,000.00

RECORD AND RETURN TO:
RIEMER & BRAUNSTEIN LLP
7 Times Square, Suite 2506
New York, New York 10036
ATTENTION: Steven J. Weinstein, Esq.

THIS MORTGAGE DOES NOT COVER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX RESIDENTIAL DWELLING UNITS, EACH DWELLING UNIT HAVING ITS OWN SEPARATE COOKING FACILITIES.

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MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the ___ day of November, 2009 by **ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC** ("Acquisitions") and **FORDHAM PLACE OFFICE LLC** ("Office"; together with Acquisitions, individually and collectively, jointly and severally, "Mortgagor"), each a limited liability company duly organized and validly existing under the laws of the State of Delaware and having an office at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, NY 10605, in favor of EUROHYPO AG, NEW YORK BRANCH, having an office at 1114 Avenue of the Americas, New York, New York 10036, as Administrative Agent for the lenders referred to below (in such capacity, together with its successors in such capacity, "Mortgagee").

WITNESSETH:

WHEREAS, Acquisitions and the Office are the fee owners of that certain tract of land located in the County of Bronx, State of New York and being more fully described in Exhibit A attached hereto (the "Land"); and WHEREAS, Mortgagor, certain lenders (collectively, the "Lenders") and Mortgagee are parties to a Loan Agreement dated as of the date hereof (said Loan Agreement, as modified and supplemented and in effect from time to time, being herein called the "Loan Agreement"; and except as otherwise herein expressly provided, all terms defined in the Loan Agreement are being used herein as defined therein), which Loan Agreement provides, among other things, for Loans to be made by the Lenders to Mortgagor in an aggregate principal amount not exceeding \$86,000,000.00 to be evidenced by, and repayable with interest thereon in accordance with, various Notes to be executed and delivered to the respective order of the Lenders (collectively, as such notes may be consolidated, severed, modified, amended, restated or extended, the "Notes"); and

WHEREAS, pursuant to that certain Declaration of Condominium for The 400 E. Fordham Road Condominium (hereinafter, the "Declaration") dated as of October 23, 2008 and recorded on December 18, 2008 in the New York County Office of the New York City Register as CRFN 2008000481411, together with all amendments thereto, if any, Acquisitions has established a condominium consisting of two (2) separate and distinct units, more specifically identified in the Declaration as the "Retail Unit" and the "Office/Community Unit"; and

WHEREAS, Acquisitions has transferred the Office/Community Unit to Fordham Office; and

WHEREAS, it is a condition to the obligation of the Lenders to extend credit to Mortgagor pursuant to the Loan Agreement that Mortgagor execute and deliver this Mortgage as the Mortgage under the Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the operative provisions of this Mortgage by this reference, and for other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged,

To secure the payment of an indebtedness in the principal sum of EIGHTY-SIX MILLION DOLLARS (\$86,000,000.00), lawful money of the United States of America to be paid with interest (including, without limitation, any Additional Interest under any Hedge Agreement to the extent provided in the Loan Agreement) according to the Notes, and the payment and performance of all other Obligations (defined below) of Mortgagor hereunder, Mortgagor has mortgaged, given, granted, bargained, sold, alienated, conveyed, confirmed, pledged, assigned and hypothecated and by these presents do mortgage, give, grant, bargain, sell, alienate, convey, confirm, pledge, assign and hypothecate unto Mortgagee all right, title, interest and estate of Mortgagor, now owned, or hereafter acquired, in and to the following property, rights and interests (such property, rights and interests being collectively referred to herein as the "Mortgaged Property"), subject only to the Permitted Encumbrances (as defined below):

(i) the Land;

(ii) any and all buildings, constructions and improvements now or hereafter erected or located in or on the Land or any portion thereof, including all Equipment (defined below) and other articles now or hereafter attached or affixed thereto or located thereon and owned or ground leased by Mortgagor, together with all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof (collectively, the "Improvements"), all of which shall be deemed and construed to be part of the realty;

(iii) all of the estate, rights, title, interest, claims or demands of any nature whatsoever of Mortgagor, whether in law or in equity, in possession or expectancy, in and to the Mortgaged Property or any part thereof;

(iv) all easements, streets, rights-of-way, strips and gores of land, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property (including any and all development rights, air rights, signage rights, rights under trackage agreements, mineral, mining, oil and gas rights and rights to produce or share in the production of anything related thereto and similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Project or now or hereafter transfer red to the Project) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Project to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy property, possessions, claims and demands whatsoever, both at law and in equity, of Mortgagor of, in and to the Project, and every part and parcel thereof, with the appurtenances thereto (collectively, the "Appurtenances"; the Land, the Improvements and the Appurtenances being referred to herein, collectively, as the "Premises");

(v) all machinery, apparatus, equipment, fittings, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned or leased by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property, or appurtenant thereto, or useable in connection with the present or future operation and occupancy of the Mortgaged Property 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 Mortgaged Property, including all such items that do not constitute personal property under the laws of the State of New York (herein collectively referred to as the "Equipment"), and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any security agreements (as defined in the Uniform Commercial Code of the State of New York (the "Uniform Commercial Code")), superior or inferior or pari passu in lien to the lien of this Mortgage;

(vi) all awards or payments, including interest thereon, and the right to receive the same, which may heretofore or hereafter be made with respect to the whole or part of the Mortgaged Property, whether from the exercise of the right of eminent domain (including any proceeding or transfer in lieu of or in anticipation of the exercise of such right), or for any other injury to or decrease in the value of the Mortgaged Property, including any award resulting from a change of any streets (whether as to grade, access or otherwise) and any award for severance damages;

(vii) all tax refunds, including interest thereon, and tax abatements, and the right to receive the same, which may be payable or available with respect to the Mortgaged Property;

(viii) all leasehold estates, leases, ground leases, subleases, licenses, concessionaire agreements, bailments or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property or any portion thereof now or hereafter existing or entered into (including any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Mortgaged Property (a "Tenant") and all extensions, amendments and modifications thereto heretofore or hereafter entered into (collectively, the "Leases"), and all right, title and interest of Mortgagor thereunder, including all guaranties thereof;

(ix) all rents, issues, profits, royalties, use and occupancy charges (including all oil and gas or other mineral royalties and bonuses), income and other benefits now or hereafter derived from any portion of the Mortgaged Property or the use or occupancy thereof (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any Tenant of any portion of the Mortgaged Property and all claims as a creditor in connection with any of the foregoing) and all cash or security deposits, advance rentals, and all deposits or payments of a similar nature relating thereto (collectively, the "Rents");

(x) all proceeds of and any unearned premiums on any insurance policies that may now or hereafter cover the Mortgaged Property, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Mortgaged Property;

(xi) all right, title and interest of Mortgagor in, to and under all plans, specifications, maps, surveys, studies, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, development, construction upon, occupancy, leasing, sale or operation of the Mortgaged Property;

(xii) all the fixtures and, to the extent the same constitutes an interest in real property, all of the property described in Exhibit B attached hereto, now owned or hereafter acquired by Mortgagor, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof (collectively, the "Fixtures"); and, if the lien and security interest of this Mortgage is subject to any security interest in such property, all right, title and interest of Mortgagor now owned or hereafter arising in and to any and all such property is hereby assigned to Mortgagee, together with the benefits of all deposits and payments now or hereafter made thereon by or on behalf of Mortgagor;

(xiii) all right, title and interest now owned or hereafter acquired by Mortgagor in and to all options to purchase or ground lease the Mortgaged Property or any portion thereof or interest therein, and in and to any greater estate in the Premises or any other Mortgaged Property;

(xiv) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property, and to commence any action or proceeding to protect the interest of Mortgagee and the Lenders in the Mortgaged Property;

(xv) all proceeds, products, substitutions, and accessions of the foregoing of every type; and

(xvi) all right, title and interest of Mortgagor in, to and under (including the benefits thereunder) the Declaration (as defined above).

As used herein, "Permitted Encumbrances" means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage, together with the liens and security interests in favor of Mortgagee created by the Loan Documents.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever;

PROVIDED ALWAYS, that if the principal of and interest (including, without limitation, any Additional Interest) on the Notes and all of the other Obligations shall be paid in full according to the terms of the Notes, the Loan Agreement, any Hedge Agreement (but only if entered into with a Eurohypo Counterparty thereof pursuant to the terms of the Loan Agreement) and the other Loan Documents and Mortgagor shall abide by and comply with each and every covenant contained herein or therein, then this Mortgage and the estate hereby granted shall cease, terminate and become void.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES WITH MORTGAGEE AND THE LENDERS AS FOLLOWS:

OBLIGATIONS

(b) Obligations.

This Mortgage is executed, acknowledged and delivered by Mortgagor to secure and enforce the following obligations (collectively, the "Obligations"), subject to the limitations set forth in Section 1.02 hereof:

(i) Payment of the entire unpaid principal amount of the Notes, together with all interest (including, without limitation, any Additional Interest) accrued and unpaid thereon, any fees due under the Fee Letter and all other amounts that may or shall become due and owing under this Mortgage, the Notes, the Loan Agreement, the Hedge Agreement (but only if entered into with a Eurohypo Counterparty thereof pursuant to the terms of the Loan Agreement) and the other Loan Documents, including all sums advanced pursuant to the terms of this Mortgage to protect and preserve the Mortgaged Property and the lien and security interest hereby created therein at the time and in the manner provided therein for such payment;

(ii) Full and prompt performance of every obligation, covenant and agreement of Mortgagor arising under or in connection with this Mortgage, the Notes, the Loan Agreement and all other Loan Documents at the time and in the manner provided therein for such performance;

(iii) Payment of all other indebtedness and liabilities and performance of all other obligations of Mortgagor to Mortgagee and the Lenders arising pursuant to or in connection with this Mortgage or any other Loan Document (including, without limitation, as Additional Interest, any Hedge Agreement, but only if entered into with a Eurohypo Counterparty thereof pursuant to the terms of the Loan Agreement); and

(iv) All renewals, extensions, amendments, modifications, consolidations and changes of, or substitutions or replacements for, all or any part of the items described under clauses (a) through (c) above.

(c) Maximum Secured Indebtedness.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE MAXIMUM AMOUNT OF PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE AT THE TIME OF EXECUTION OR WHICH UNDER ANY CONTINGENCY MAY HEREAFTER BECOME SECURED BY THIS MORTGAGE AT ANY TIME IS EIGHTY-SIX MILLION DOLLARS (\$86,000,000.00); TOGETHER WITH (A) INTEREST (INCLUDING, WITHOUT LIMITATION, ANY ADDITIONAL INTEREST) ON THE AFORESAID PRINCIPAL INDEBTEDNESS AT THE RATES SET FORTH IN THE NOTES AND (B) AMOUNTS EXPENDED BY MORTGAGEE AFTER DEFAULT OF SUMS ADVANCED OR PAID FOR HEREUNDER TO MAINTAIN THE LIEN OF THIS MORTGAGE OR TO PROTECT THE PREMISES SECURED BY THIS MORTGAGE, INCLUDING, WITHOUT LIMITATION, AMOUNTS IN RESPECT OF INSURANCE PREMIUMS, IMPOSITIONS (OR PAYMENTS IN LIEU OF IMPOSITIONS), LITIGATION EXPENSES TO PROSECUTE OR DEFEND THE RIGHTS, REMEDIES AND LIEN OF THIS MORTGAGE OR TITLE TO THE PREMISES SECURED HEREBY, AND ANY COSTS, CHARGES OR AMOUNTS TO WHICH MORTGAGEE OR THE LENDERS BECOME SUBROGATED UPON PAYMENT, WHETHER UNDER RECOGNIZED PRINCIPLES OF LAW OR EQUITY OR UNDER EXPRESS STATUTORY AUTHORITY.

10.

PARTICULAR COVENANTS AND AGREEMENTS OF MORTGAGOR

(a) Payment of Secured Obligations.

Mortgagor shall pay and perform the Obligations in full in accordance with the terms of the Notes, the Loan Agreement and the other Loan Documents.

(b) Title, etc.

(i) Mortgagor represents and warrants that (i) Mortgagor is lawfully seized and possessed of good, marketable and insurable fee simple title to the Premises and good sufficient and legal title to all other portions of the Mortgaged Property, in each case subject to no Liens other than Permitted Encumbrances and (iii) it has the full power and lawful authority to grant, bargain, sell, release, convey, warrant, assign, transfer, mortgage, pledge, set over and confirm unto Mortgagee the Mortgaged Property as hereinabove provided.

(ii) Mortgagor shall, at Mortgagor's sole cost and expense, preserve Mortgagor's title to the Mortgaged Property and the validity, enforceability and first priority of the lien of this Mortgage (subject to the Permitted Encumbrances) and shall forever warrant and defend the same to Mortgagee against the claims of each and every Person claiming or threatening to claim the same or any part thereof.

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(iii) If the lien or security interest created by this Mortgage, or the validity, enforceability or priority thereof or of this Mortgage, or if title or any of the rights of Mortgagor or Mortgagee in or to the Mortgaged Property, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Mortgagor, Mortgagee or any Lender with respect thereto, Mortgagor will promptly notify Mortgagee thereof and will diligently take such action as may be required to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of litigation and (subject to Mortgagee's approval, not to be unreasonably withheld or delayed) the release or discharge of any and all adverse claims. Mortgagee shall have the right to appear in and defend any such actions or proceedings (whether or not originally named as a party to such actions or proceedings) and is hereby authorized and empowered (but shall not be obligated) to take such additional steps as it may deem necessary or proper, in the name and on behalf of Mortgagor, for the defense of any such action or proceeding or the protection of the lien, security interest, validity, enforceability or priority of this Mortgage or of such title or rights, including the employment of counsel, the institution, prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, the purchase of any tax title and the removal of such prior liens and security interests.

(c) Further Assurances; Filing; Re-Filing; etc.

(i) Mortgagor shall execute, acknowledge and deliver, from time to time, such further instruments as may be necessary, or that Mortgagee may reasonably require to accomplish the purposes of this Mortgage.

(ii) Mortgagor, immediately upon the execution and delivery of this Mortgage, and thereafter from time to time, shall cause this Mortgage, any security agreement or mortgage supplemental hereto and each instrument of further assurance to be executed, acknowledged, filed, registered or recorded and refiled, re-registered or re-recorded in such manner and in such places as may be required by Mortgagee or by any present or future law in order to publish notice of and perfect the lien and estate of this Mortgage upon, and security interest in, the Mortgaged Property.

(iii) Mortgagor shall pay all filing, registration and recording fees, all refiling, re-registration and re-recording fees, and all expenses incident to the execution, filing, recording and acknowledgment of this Mortgage, any security agreement or mortgage supplemental hereto and any instrument of further assurance, and all Federal, state, county and municipal stamp taxes, mortgage taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing and recording of the Notes, this Mortgage, the Loan Agreement or any of the other Loan Documents, any security agreement or mortgage supplemental hereto or any instruments of further assurance.

(d) Liens; Transfers.

Mortgagor shall not create or suffer to be created any Lien upon the Mortgaged Property prior to, on a parity with, or subordinate to the lien of this Mortgage or permit any transfers in violation of Section 9.1 of the Loan Agreement, other than Permitted Encumbrances.

(e) Insurance.

Mortgagor shall cause the Mortgaged Property to be insured in the manner and to the extent required by Section 3.1 of the Loan Agreement.

(f) Impositions.

Mortgagor shall pay or cause to be paid, before any fine, penalty, interest or cost attaches thereto, all Impositions (as defined below) in accordance with Section 9.2 of the Loan Agreement, including, without limitation, all taxes, assessments, water and sewer rates, utility charges and all other governmental or nongovernmental charges or levies now or hereafter assessed or levied against any part of the Mortgaged Property (including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property) or upon the lien or estate of Mortgagee therein, as well as all claims for labor, materials or supplies that, if unpaid, might by law become a prior lien thereon (collectively, the "Impositions"), and within ten (10) days after request by Mortgagee will exhibit receipts showing payment of any of the foregoing; provided, however, that if by law any such Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Mortgagor may pay the same in installments (together with accrued interest on the unpaid balance thereof) as the same respectively become due, before any fine, penalty or cost attaches thereto.

(g) Maintenance of the Improvements and Equipment.

Mortgagor shall (i) not permit the Improvements or Fixtures to be removed or demolished; (ii) maintain the Mortgaged Property in good repair, working order and condition; and (iii) restore and repair the Improvements and Equipment or any part thereof now or hereafter affected by any Casualty Event or Taking in accordance with the Loan Agreement.

(h) Compliance With Laws.

Mortgagor covenants and agrees to (i) comply with all applicable laws, including, without limitation, Environmental Laws, in accordance with Article 5 of the Loan Agreement and the Environmental Indemnity and (ii) indemnify and hold Mortgagee and the Lenders harmless from and against any and all losses, liabilities, claims, damages or expenses arising from Mortgagor's failure to so comply with applicable law, including, without limitation, Environmental Laws, in accordance with the Loan Agreement and the Environmental Indemnity.

(i) Limitations of Use.

Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Premises or any part thereof without the prior written consent of Mortgagee. Mortgagor shall comply with the provisions of all Governmental Approvals and all licenses, agreements and private covenants, conditions and restrictions that at any time are applicable to the Mortgaged Property.

(j) Actions to Protect Mortgaged Property.

If Mortgagor shall fail beyond any applicable notice and/or grace period to (i) effect the insurance required by Section 2.05 hereof, (ii) make the payments required by Section 2.06 hereof or (iii) perform or observe any of its other covenants or agreements hereunder, Mortgagee may, without obligation to do so, and upon notice to Mortgagor (except in an emergency) effect or pay the same; provided however, any such payment by the Mortgagee shall not affect whether such failure by the Mortgagor constitutes an Event of Default. To the maximum extent permitted by law, all sums, including reasonable attorneys' fees and disbursements, so expended or expended to sustain the lien or estate of this Mortgage or its priority, or to protect or enforce any of the rights hereunder, or to recover any of the Obligations, shall be a lien on the Mortgaged Property, and shall, subject to the provisions of Section 1.02 hereof, be deemed to be added to the Obligations secured hereby, and shall be paid by Mortgagor within 10 days after demand therefor, together with interest thereon at the Post-Default Rate. For such purpose, Mortgagor expressly grants to Mortgagee, in addition to, and without prejudice to, any other rights and remedies hereunder, (1) the right to enter upon (and, in Mortgagee's discretion, to take possession of) the Mortgaged Property to such extent and as often as it may deem necessary or desirable to prevent or remedy any such default or to take any such action, and (2) the right to appear in, defend or bring any action or proceeding to protect Mortgagee's interest in the Mortgaged Property or, during the continuance of an Event of Default, to foreclose this Mortgage or collect the Obligations, and Mortgagor hereby irrevocably appoints and constitutes Mortgagee as Mortgagor's lawful attorney-in-fact, coupled with an interest and with full power of substitution, for such purposes and the taking of all acts incidental thereto. No such advance, performance or action or proceeding shall be deemed to have cured such Default or any Event of Default (as hereinafter defined) with respect thereto. In any action or proceeding to foreclose this Mortgage or recover or collect the Obligations, Mortgagee and the Lenders shall be entitled to recover the reasonable costs, expenses and attorneys' fees and disbursements incurred in foreclosing or attempting to collect upon the Obligations, which costs, expenses and attorneys' fees, to the extent permitted by applicable law, shall also be secured by this Mortgage.

(k) Insurance and Condemnation Proceeds.

Mortgagor assigns to Mortgagee on behalf of the Lenders, all of Mortgagor's right, title and interest in (i) all awards or payments, including interest thereon, and the right to receive the same, which may heretofore or hereafter be made with respect to the whole or part of the Mortgaged Property, whether from the exercise of the right of eminent domain (including any proceeding or transfer in lieu of or in anticipation of the exercise of such right), or for any other injury to or decrease in the value of the Mortgaged Property, including any award resulting from a change of any streets (whether as to grade, access or otherwise) and any award for severance damages and (ii) all proceeds of and any unearned premiums on any insurance policies that may now or hereafter cover the Mortgaged Property, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Mortgaged Property. Any Insurance Proceeds or Condemnation Awards shall be held and applied by Mortgagee in accordance with Article X of the Loan Agreement.

(l) Inspections.

Mortgagor shall permit Mortgagee and each Lender, and their agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may require pursuant to the Environmental Indemnity, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

11.

ASSIGNMENT OF LEASES AND RENTS

(a) Assignment of Rents, Issues and Profits.

(i) Mortgagor hereby absolutely and unconditionally assigns to Mortgagee, as part of the consideration for the transactions contemplated by this Mortgage and the other Loan Documents, the Rents and Leases and other documents or instruments evidencing the Rents now or hereafter in effect and any and all deposits or letters of credit held as security under the Leases, it being intended by Mortgagor and Mortgagee that such assignment constitutes an absolute and present assignment and not an assignment for additional security only. Nothing contained in the foregoing sentence shall be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or other document or otherwise to impose any obligation on Mortgagee (including any liability under the covenant of quiet enjoyment contained in any Lease), except that Mortgagee shall be accountable for any money or security actually received pursuant to such assignment. Such assignment and grant shall continue in effect until the Obligations have been indefeasibly paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Mortgagee and the exercise by Mortgagee of the rights and powers granted pursuant hereto, including, without limitation, those set forth in clauses (i) through (vii) below, regardless of whether foreclosure has been instituted and without applying for a receiver. Such assignment shall include, without limitation:

the immediate and continuing right to receive and collect all amounts payable by all Tenants, including without limitation (A) all Rents, (B) all damages or other amounts payable in the event of any expiration or termination of any Lease pursuant to the terms thereof, by operation of law or otherwise, (C) any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by Mortgagor under any Lease or otherwise, (D) any award in the event of the bankruptcy of any Tenant or guarantor of a Lease, and (E) all security deposits, other security instruments, other deposits or prepayments with respect to any such Leases;

all claims, rights, powers, privileges and remedies of Mortgagor, whether provided for in any Lease or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of any Tenant to perform or comply with any term of any Lease;

all right to take all action upon the happening of a default under any Lease as shall be permitted by any Lease or by law, including, without limitation, the commencement, conduct and consummation of proceedings at law or in equity;

the full power and authority, in the name of Mortgagor, or otherwise, to enforce, collect, receive and make receipt for any and all of the foregoing and to do any and all other acts and things whatsoever which Mortgagor, or any landlord is or may be entitled to do under any Lease;

the full power and authority, in the name of Mortgagor, or otherwise, to enforce any Lease;

the full power and authority, in the name of Mortgagor, or otherwise, to lease the Mortgaged Property; and

the right to apply the Rents to the payment of the Obligations in accordance with the Loan Agreement.

(ii) During the term hereof, all rights, powers and privileges of Mortgagee herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and Mortgagor will not take any action under any Lease or otherwise which is inconsistent with this Mortgage or any of the terms hereof or thereof and any such action inconsistent herewith or therewith shall, to the fullest extent permitted by applicable law, be void. Any further assignment of any rents, issues, or profits from the Mortgaged Property shall to the fullest extent permitted by law be void. To the fullest extent permitted by applicable law, Mortgagor hereby waives any requirement that Mortgagee commence any foreclosure proceeding with respect to any or all of the Mortgaged Property prior to enforcement of any remedies pursuant to this [Article 3](#), including the right to commence and prosecute an action to appoint a receiver for rents and all other amounts due under any Leases. Mortgagor will, from time to time, upon request of Mortgagee, execute all instruments and further assurances and all supplemental instruments and take all such action as Mortgagee from time to time may reasonably request in order to perfect, preserve and protect the interests intended to be assigned to Mortgagee hereby.

(iii) Mortgagor hereby agrees that it will not, unilaterally or by agreement, (i) subordinate, amend, modify, extend, discharge, terminate, surrender, waive or otherwise change any term of any Lease in any manner which would violate this Mortgage, the Loan Agreement or the other Loan Documents or (ii) except for security deposits, accept a prepayment of Rent in excess of Rent for one month. If any Lease shall be amended as permitted hereby, such Lease shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto, subject to the provisions of any non-disturbance agreement which Mortgagee may have granted in accordance with the provisions of this Mortgage.

(b) Grant of License; Revocation.

Until the occurrence of an Event of Default, Mortgagee waives its rights under Section 3.01 above, and grants Mortgagor a license to collect the Rents and enforce any rights, remedies, entitlements, benefits and/or powers assigned hereunder or granted to Mortgagee, including, without limitation, those enumerated in clauses (i) through (vii) of Section 3.01(a). Such license to collect, receive and retain the Rents and enforce such rights, remedies, entitlements, benefits and/or powers shall be automatically revoked and the rights of Mortgagor thereunder shall automatically cease and terminate upon the occurrence of an Event of Default under this Mortgage. In such event, (i) Mortgagor hereby authorizes Mortgagee to receive and collect the Rents due under the terms of each Lease and to direct any Tenant, by written notice from Mortgagee or otherwise, to forward such Rents by mail or in person to Mortgagee and (ii) Mortgagor shall immediately pay to Mortgagee any Rents held by or under the control of Mortgagor. Mortgagor hereby irrevocably appoints and constitutes Mortgagee as Mortgagor's lawful attorney-in-fact, coupled with an interest and with full power of substitution, for the purpose of taking any of the actions described in the immediately preceding sentence and all acts incidental thereto. Following the revocation of the license herein granted, Mortgagee may retain and apply the Rents toward payment of the Obligations in such order, priority and proportions as Mortgagee, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, and irrespective of whether Mortgagee shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver with respect thereto.

Mortgagor hereby irrevocably authorizes and directs each Tenant of the Mortgaged Property, upon receipt of notice from Mortgagee of an Event of Default, to pay all Rents due or to become due under its Lease directly to Mortgagee or to any appointed receiver of the Mortgaged Property. Each such Tenant shall have the right to rely upon any such notice of Mortgagee directing the payment of all Rents to Mortgagee, without any obligation to inquire as to the actual existence of the Event of Default, notwithstanding any claim of Mortgagor to the contrary and Mortgagor shall have no rights or claims against any Tenant for any Rents so paid to Mortgagee. Mortgagor shall facilitate, in all reasonable ways, the collection of the Rents by Mortgagee and will, upon request by Mortgagee, execute a written notice to each Tenant directing the Tenant to pay the Rents payable under such Tenant's respective Lease to Mortgagee. Each Tenant is hereby expressly authorized and directed, upon demand by Mortgagee and without the necessity of any further consent by, or notice from, Mortgagor, to attorn to Mortgagee as the owner of the Leases and to pay any and all Rents due to Mortgagor pursuant to such Tenant's Lease directly to Mortgagee or to any appointed receiver, and to observe and perform such Tenant's obligations under the Tenant's Lease to or for Mortgagee and to accept performance of the landlord's obligations under the Lease from Mortgagee. Each Tenant is hereby expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made. The payment of Rents to Mortgagee pursuant to Mortgagee's demand and the performance of obligations under any Lease to or for the benefit of Mortgagee shall not cause Mortgagee to assume or be bound by any of the provisions of any such Lease and shall not relieve Mortgagor of its obligations thereunder.

(d) Section 291-f Agreement.

(i) This Mortgage is intended to be, and shall operate as, the agreement described in Section 291-f of the Real Property Law of the State of New York and shall be entitled to the benefits afforded thereby.

(ii) Mortgagor shall (unless such notice is contained in such Tenant's Lease) deliver notice of this Mortgage, which notice shall be to all present and future holders of any interest in any Lease, by assignment or otherwise, and shall take such other action as may now or hereafter be reasonably required to afford Mortgagee the full protections and benefits of such Section 291-f; and

(iii) Mortgagor shall request the recipient of any such notice to acknowledge the receipt thereof.

12.

SECURITY AGREEMENT; FIXTURE FILING

(a) Creation of Security Interest.

This Mortgage constitutes both a real property mortgage and a "security agreement", within the meaning of the Uniform Commercial Code. 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 whether now or hereafter existing. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Obligations, a security interest in (a) the Mortgaged Property, and (b) the personal property identified on Exhibit B attached hereto whether now or hereafter existing, in each case to the fullest extent that the same may be subject to the Uniform Commercial Code (all of such personal property so subject to the Uniform Commercial Code, the "Personal Property Collateral"). If an Event of Default shall exist, (i) Mortgagee, in addition to any other rights and remedies that 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, including the right to take possession of the Personal Property Collateral, or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personal Property Collateral and (ii) upon request or demand of Mortgagee, Mortgagor shall, at Mortgagor's sole expense, assemble the Personal Property Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including reasonable attorneys' fees, costs and disbursements, incurred or paid by Mortgagee in protecting its interest in the Personal Property Collateral and in enforcing its rights hereunder with respect to the Personal Property Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personal Property Collateral sent to Mortgagor in accordance with the provisions of this Mortgage at least five (5) Business Days prior to such sale, disposition or other action, shall constitute reasonable notice to Mortgagor, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Uniform Commercial Code unless objected to by Mortgagor within three (3) Business Days after such notice. The proceeds of any sale or disposition of the Personal Property Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as Mortgagee in its discretion shall deem proper.

(b) Continuation Statements; Amendments.

Mortgagor hereby authorizes Mortgagee to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Personal Property Collateral without the signature of Mortgagor where permitted by applicable law.

(c) Fixture Filing.

This Mortgage shall also constitute a "fixture filing" filed as a fixture filing in the Official Records of the County Recorder of the county in which the Mortgaged Property is located for the purposes of the Uniform Commercial Code against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the address of Debtor (Mortgagor).

13.

DEFAULTS; REMEDIES

(a) Events of Default.

If any Event of Default (herein, an "Event of Default") under the Loan Agreement shall occur and be continuing then, as more particularly provided in the Loan Agreement, the unpaid principal of and accrued interest on the Notes and all other Obligations under the Loan Agreement may be declared, or may become, due and payable, without presentment, demand, protest or other formalities of any kind, all of which have been waived pursuant to the Loan Agreement.

(b) Remedies.

If an Event of Default shall have occurred and be continuing, this Mortgage may, to the maximum extent permitted by law, be enforced, and Mortgagee may exercise any right, power or remedy permitted to it hereunder, under the Loan Agreement or under any of the other Loan Documents or by law, and, without limiting the generality of the foregoing, Mortgagee may, personally or by its agents, exercise any of the following to the maximum extent permitted by law:

(i) Subject to any applicable provisions of the Notes, the Loan Agreement, the Hedge Agreement and the other Loan Documents, Mortgagee may declare all or any portion of the unpaid principal balance under the Notes, together with all accrued and unpaid interest (including, without limitation, any Additional Interest) thereon, and all other unpaid Obligations, to be immediately due and payable;

(ii) Mortgagee may enter into or upon the Premises, personally or by its agents, nominees or attorneys, and may dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee at its sole discretion may: (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every portion of the Mortgaged Property and conduct business thereon, in any case either in the name of Mortgagee or in such other name as Mortgagee shall deem best; (ii) complete any construction with respect to the Mortgaged Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (v) apply the receipts of all such Rents to the payment of the Obligations as provided in the Loan Agreement, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the operating costs for the Mortgaged Property and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its agents, nominees and attorneys.

(iii) With or without entry, personally or by its agents, nominees or attorneys, Mortgagee may sell all or any portion of the Mortgaged Property and all or any portion of Mortgagor's estate, right, title, interest, claim and demand therein and right of redemption thereof at one or more private or public sales in the manner and to the extent permitted by law, as an entirety or in parcels or portions, and Mortgagee shall have the statutory power of sale if and to the extent provided by applicable law.

(iv) Mortgagee may institute proceedings for the complete or partial foreclosure of this Mortgage against all or any portion of the Mortgaged Property, in which case the Mortgaged Property may be sold for cash or upon credit, as an entirety or in parcels or portions.

(v) Mortgagee may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Notes, the Loan Agreement or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(vi) Mortgagee may recover judgment on the Notes, either before, during or after any proceedings for the foreclosure (or partial foreclosure) or enforcement of this Mortgage.

(vii) Mortgagee may, as a matter of right, secure the appointment of a receiver, trustee, liquidator or similar official of the Mortgaged Property or any portion thereof, and Mortgagor hereby consents and agrees to such appointment, without notice to Mortgagor and without regard to the adequacy of the security for the Obligations and without regard to the solvency of Mortgagor or any other Person liable for the payment of the Obligations, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Mortgagee to receive the Rents with respect to the Mortgaged Property pursuant to this Mortgage.

(viii) In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Mortgagor and may require Mortgagor to vacate and surrender possession to Mortgagee of the Mortgaged Property or to such receiver and, Mortgagor may be evicted by summary proceedings or otherwise.

(ix) Mortgagee shall have all of the rights and remedies with respect to the Mortgaged Property and the Personal Property Collateral of a secured party under the Uniform Commercial Code (whether or not said Uniform Commercial Code is in effect in the jurisdiction where the rights and remedies are asserted) and such additional rights and remedies to which a secured party is entitled under the applicable laws, including, without limitation, the right, to the maximum extent permitted by law, to exercise all voting, consensual and other power of ownership pertaining to the Mortgaged Property or the Personal Property Collateral as if Mortgagee were the sole and absolute owner thereof (and Mortgagor agrees to take all such action as may be appropriate to give effect to such right).

(x) Mortgagee or the Lenders may pursue against Mortgagor, any other rights and remedies of Mortgagee permitted by law, equity or contract or as set forth herein or in the Loan Agreement, the Hedge Agreement or the other Loan Documents.

(xi) Reference is made to Section 1401(1) of the New York Real Property Actions and Proceedings Law. Mortgagor agrees that, during the existence of any Event of Default hereunder or the Notes secured hereby, Mortgagee shall have the right to sell the Land and without limitation, that this Mortgage may be foreclosed in the manner prescribed in Article 14 of the New York Real Property Actions and Proceedings Law for a non-judicial proceeding for foreclosure by power of sale in accordance with the requirements of such Article 14 or any provision of New York law which may hereafter be enacted permitting foreclosure by sale, power of sale or similar procedure.

(c) Application of Proceeds.

The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Mortgage, or of any monies held by Mortgagee hereunder shall be applied in the following order:

(i) First, to payment of the costs and expenses of taking possession of the Mortgaged Property, and of the costs and expenses of the sale, including but not limited to Mortgagee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Mortgagee;

(ii) Second, payment of all sums expended by Mortgagee under the terms of this Mortgage and not yet repaid, together with interest on such sums at the Post-Default Rate;

(iii) Third, to payment of the secured indebtedness and all other Obligations secured by this Mortgage, including, without limitation, interest at the Post-Default Rate provided for under the Loan Documents, and any charge expressly required to be paid under the Notes in order to prepay principal, in any order that Mortgagee chooses in its sole discretion; and

(iv) Finally, the remainder, if any, of such funds shall be disbursed to Mortgagor or to any other Person or Persons legally entitled thereto.

(d) Right to Sue.

Mortgagee shall have the right from time to time to sue for any sums required to be paid by Mortgagor under the terms of this Mortgage as the same become due, without regard to whether or not the Obligations shall be, or have become, due and without prejudice to the right of Mortgagee thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Event of Default existing at the time such earlier action was commenced.

(e) Powers of Mortgagee.

Mortgagee may at any time or from time to time renew or extend this Mortgage or (with the agreement of Mortgagor) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release any portion of the Mortgaged Property or any other security, and grant such extensions and indulgences in relation to the Obligations, or release any Person liable therefor as Mortgagee may determine without the consent of any junior lienor or encumbrancer, without in any manner affecting the priority of the Lien and estate of this Mortgage on or in any part of the Mortgaged Property, and without affecting the liability of any other Person liable for any of the Obligations.

(f) Remedies Cumulative.

(i) No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Mortgage and the other Loan Documents, or under applicable law, whether now or hereafter existing; the failure of Mortgagee to insist at any time upon the strict observance or performance of any of the provisions of this Mortgage or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(ii) Mortgagee shall be entitled to enforce payment and performance of any of the Obligations and to exercise all rights and powers under this Mortgage or under any Loan Document or any laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being stipulated that Mortgagee shall be entitled to enforce this Mortgage, any of the Security Documents and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may determine; every power or remedy given by the Loan Agreement, this Mortgage or any of the other Loan Documents to Mortgagee, or to which Mortgagee is otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

(g) General Provisions.

(i) Effect of Judgment. No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon any other property of Mortgagor shall adversely affect in any manner or to any extent the Lien of this Mortgage upon the Mortgaged Property, or any rights, powers or remedies of Mortgagee hereunder. Such Lien, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(ii) Continuing Power of Sale. The power of sale conferred upon Mortgagee in this Mortgage shall not be exhausted by any one or more sales as to any portion of the Mortgaged Property or the Personal Property Collateral remaining unsold, but shall continue unimpaired, to the fullest extent permitted by law, until all of the Obligations are paid in full.

(iii) Right to Purchase. At any sale of the Mortgaged Property or the Personal Property Collateral or any portion thereof pursuant to the provisions of this Mortgage, Mortgagee shall have the right to purchase the Mortgaged Property (or such portion thereof) being sold, and in such case shall have the right to credit against the amount of the bid made therefor (to the extent necessary) all or any portion of the Obligations.

(iv) Adjournment of Sale. Mortgagee may postpone or adjourn from time to time any sale of all or any part of the Mortgaged Property by it to be made hereunder or by virtue hereof by announcement at the time and place appointed for such sale or such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so postponed or adjourned, as the case may be.

(v) Right to Terminate Proceedings. Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this [Article 5](#) at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(vi) No Waiver or Release. Mortgagee may resort to any remedies and the security given by the Loan Documents, in whole or in part, and in such portions and in such order as determined in Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of an Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Obligations or any other indulgence given by Mortgagee to Mortgagor or any other Person, shall operate to release or in any manner affect the interest of Mortgagee in any remaining portion of the Mortgaged Property or the liability of Mortgagor to pay and perform the Obligations, except to the extent that such liability shall be reduced by net proceeds actually received by Mortgagee with respect to any portion of the Mortgaged Property. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated.

(vii) No Impairment; No Release. The interests and rights of Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Obligations; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any waiver, release or indulgence granted to any maker, endorser, guarantor or surety of any of the Obligations.

(viii) Waivers and Agreements Regarding Remedies. To the fullest extent Mortgagor may legally do so, Mortgagor, for itself and for all persons hereunder claiming through or under it or who may at any time acquire a lien on all or any part of the Mortgaged Property or any interest therein:

agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal or appraisement, stay of execution, extension and notice of election to accelerate or declare due the whole or any portion of the Obligations;

waives all rights to a marshaling of the assets of Mortgagor and others with interests in Mortgagor, and of the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any laws pertaining to the marshaling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the Loan Documents to a sale of the Mortgaged Property for the collection of the Obligations without any prior or different resort for collection, or the right of Mortgagee to the payment of the Obligations out of the net proceeds from the Mortgaged Property in preference to every other claimant whatsoever;

waives any right to bring or utilize any defense, counterclaim or setoff; provided, however, that if such counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damage (unless such claim is required by law or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Mortgagee), but such separate action shall not thereafter be consolidated with any foreclosure action of Mortgagee; and provided further that the bringing of such separate action for money damages shall not be deemed to afford any grounds for staying any such foreclosure action;

and
waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties;

waives any right which it may have to require the Mortgaged Property (or any part thereof) to be sold as one or more units.

(ix) Subrogation. If all or any portion of the proceeds of the Notes or any disbursement shall be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior Lien upon the Mortgaged Property or any portion thereof, then Mortgagee shall be subrogated to, and shall have the benefit of the priority of, such other Lien and any additional security held by the holder thereof.

(h) No Mortgagee-in-Possession.

None of the enforcement of any of the remedies under this Article 5, the assignment of the Leases and Rents under Article 3, the security interests under Article 4, nor any other remedies afforded to Mortgagee and/or the Lenders under the Loan Documents, at law or in equity shall cause Mortgagee or any Lender to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any Lender to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

MISCELLANEOUS

(a) Release by Mortgagee.

Upon the termination of the Commitments under and as defined in the Loan Agreement and the payment in full of the Obligations, Mortgagee shall release the lien of this Mortgage, or upon the request of Mortgagor, and, provided that Mortgagor shall pay Mortgagee's reasonable expenses, assign, without recourse, representation or warranty of any kind, this Mortgage to Mortgagor's designee, or to the person or persons legally entitled thereto, by an instrument duly acknowledged in form for recording.

(b) Notices.

All notices, demands, consents, requests or other communications that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in the Loan Agreement.

(c) No Waiver.

Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of this Mortgage or the other Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

(d) Amendments; etc.

This Mortgage cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, signed by Mortgagor and Mortgagee and, to the extent provided in the Loan Agreement, the consent of the Lenders. For purposes hereof, a statement by the Mortgagee in any modification or supplement to this Mortgage to the effect that such modification or supplement has been consented to by the Lenders as provided in the Loan Agreement shall be conclusive evidence of such consent and it shall not be necessary for a copy of such consent to be recorded with such modification or supplement as a condition to such modification or supplement being recorded in the appropriate real estate records.

(e) Successors and Assigns.

This Mortgage applies to, inures to the benefit of and binds Mortgagor and Mortgagee and their respective successors and assigns, as permitted under the Loan Agreement, and shall run with the Premises.

(f) Captions.

The captions or headings at the beginning of each Article and Section hereof are for the convenience of reference and are not a part of this Mortgage.

(g) Severability.

If any term or provision of this Mortgage or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Obligations shall for any reason not be secured by a valid and enforceable lien upon any part of the Mortgaged Property, then any payments made in respect of the Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Mortgage (except to the extent otherwise required by applicable law) be deemed to be made (i) first, in respect of the portion of the Obligations not secured by the lien of this Mortgage, (ii) second, in respect of the portion of the Obligations secured by the lien of this Mortgage, but which lien is on less than all of the Mortgaged Property, and (iii) last, to the portion of the Obligations secured by the lien of this Mortgage, and which lien is on all of the Mortgaged Property.

It is the intention of Mortgagor, Mortgagee and the Lenders to conform strictly to the usury and similar laws relating to interest payable on loans from time to time in force, and all agreements between Mortgagor, Mortgagee and the Lenders, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration of maturity hereof otherwise, shall the amount paid or agreed to be paid in the aggregate to the Lenders as interest (whether or not designated as interest, and including any amount otherwise designated by deemed constitute interest by a court of competent jurisdiction) hereunder or under the other Loan Documents or in any other agreement given to secure the Obligations, or in any other document evidencing, securing or pertaining to the Obligations, exceed the maximum amount (the "Maximum Rate") permissible under applicable laws. If under any circumstances whatsoever fulfillment of any provision hereof, of the Loan Agreement or of the other Loan Documents, at the time performance of such provisions shall be due, shall involve exceeding the Maximum Rate, then, ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Rate. For purposes of calculating the actual amount of interest paid and/or payable hereunder in respect of laws pertaining to usury or such other laws, all sums paid or agreed to be paid to the Lenders for the use, forbearance or detention of the Obligations evidenced hereby, outstanding from time to time shall, to the extent permitted by applicable law, be amortized, pro-rated, allocated and spread from the date of disbursement of the proceeds of the Notes until payment in full of all of such indebtedness, so that the actual rate of interest on account of such Obligations is uniform through the term hereof. If under any circumstances any Lender shall ever receive an amount which would exceed the Maximum Rate, such amount shall be deemed a payment in reduction of the principal amount of the Loans and shall be treated as a voluntary prepayment under the Loan Agreement and shall be so applied in accordance with the provisions of the Loan Agreement or if such excessive interest exceeds the Outstanding amount of the Loans and any other Obligations, the excess shall be deemed to have been a payment made by mistake and shall be refunded to Mortgagor.

(i) CERTAIN WAIVERS.

MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY FORECLOSURE OR OTHER ACTION BROUGHT BY MORTGAGEE TO ENFORCE ITS RIGHTS AND REMEDIES UNDER THIS MORTGAGE, ANY AND EVERY RIGHT MORTGAGOR MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM, AND (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT THE BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST THE ADMINISTRATIVE AGENT OR THE LENDERS WITH RESPECT TO ANY ASSERTED CLAIM.

(j) GOVERNING LAW.

THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(k) SUBMISSION TO JURISDICTION.

THE PROVISIONS OF SECTION 12.21 OF THE LOAN AGREEMENT SHALL BE APPLICABLE TO THIS AGREEMENT.

(l) WAIVER OF JURY TRIAL.

EACH OF MORTGAGOR, MORTGAGEE AND THE LENDERS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE, THE NOTES, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(m) Attorney-In-Fact.

Mortgagor hereby irrevocably appoints Mortgagee (on behalf of the Lenders) and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty and Fixtures in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (i) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (ii) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (iii) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (iv) neither Mortgagee nor any Lender shall be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

(n) New York Lien Law.

Pursuant to Section 13 of the Lien Law of the State of New York, Mortgagor shall receive the advances secured by this Mortgage 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 Premises before using any part of the total of the same for any other purpose.

(o) Limitation on Liability.

The liability of each Mortgagor hereunder is joint and several. Notwithstanding the foregoing, Mortgagor's liability hereunder is subject to the limitation on liability provisions of Section 13.1 of the Loan Agreement.

[signature page follows]

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor as of the day and year first above written.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: /s/Robert Masters
Name: Robert Masters
Title: Senior Vice President

FORDHAM PLACE OFFICE, LLC,
a Delaware limited liability company

By: /s/Robert Masters
Name: Robert Masters
Title: Senior Vice President

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 4th day of November, 2009, before me, the undersigned, personally appeared _____, personally known to me or proved 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 executed the same in his capacity and that by his signature on the instrument the individual or the person upon behalf of which the individual acted executed the instrument.

/s/ Debra Liebler-Jones
Signature and Office of individual
taking acknowledgement

EXHIBIT A
LEGAL DESCRIPTION OF LAND

The condominium units (the "Units" - each a "Unit") in the building known as The 400 E. Fordham Road Condominium and by the street number 2502 Webster Avenue, 2504 Webster Avenue and 400 East Fordham Road and 250 Webster Avenue, Bronx, New York (the "Building"), designated and described as the Retail Unit and the Office/Community Unit in that certain declaration made pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan for condominium ownership of the Building and the land (the "Land") on which the Building is situated (which Land is more particularly described below), dated October 23, 2008, and recorded in the Office of the New York City Register, Bronx County, on December 18, 2008, under CRFN 2008000481411, as amended (the "Declaration"). The Units are also designated as the Tax Lots 1001 (as to the Retail Unit) and 1002 (as to the Office/Community Unit) in Block 3033 on the Tax Map of the City of New York of the County of the Bronx on the Tax Map and on the Floor Plans of the Building, and filed with Real Property Assessment Department on December 15, 2008 as Condominium Plan No. 116 and also filed in the Office of the New York City Register, Bronx County, as Condominium Map No. under CRFN 2008000481412;

TOGETHER WITH an undivided 70.0% interest (as to the Retail Unit) and an undivided 30.0% interest (as to the Office/Community Unit) in the Common Elements (as such term is defined in the Declaration).

The Land upon which the Building containing the Units is located is described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Bronx, City, County and State of New York, bounded and described as follows:

BEGINNING at a point formed by the intersection of the easterly side of Webster Avenue (100 feet wide) with the southerly side of East Fordham Road (a.k.a. Pelham Avenue, variable width) and from said point of beginning running thence; the following three (3) courses along said southerly side of East Fordham Road;

1. South 84 degrees 34 minutes 46 seconds East, a distance of 43.27 feet to a point, thence;
2. South 54 degrees 01 minutes 22 seconds East, a distance of 29.77 feet to a point, thence;
3. South 40 degrees 09 minutes 32 seconds East, a distance of 85.32 feet to a point on the westerly side of Park Avenue (variable width). Thence;
4. Along said westerly side of Park Avenue, South 00 degrees 10 minutes 48 seconds East, a distance of 201.71 feet to a point, thence;
5. Along the common dividing line between lot 12, lot 8 and lot 4 (lands now or formerly of Automotive Realty Corporation), block 3033, North 85 degrees 39 minutes 56 seconds West, a distance of 164.24 feet to a point on the aforementioned easterly side of Webster Avenue; thence
6. Along said easterly side of Webster Avenue, North 08 degrees 26 minutes 11 seconds East, a distance of 279.09 feet to the point or place of BEGINNING.

EXHIBIT B

PERSONAL PROPERTY COLLATERAL

As used in this Exhibit B, the term "Premises" means that certain real property, including all improvements thereon, more particularly described in Schedule 1 attached hereto. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated as of November 4, 2009 by and from **ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC** and **FORDHAM PLACE OFFICE, LLC**, each a limited liability company duly organized and validly existing under the laws of the State of Delaware ("Debtor"), in favor of EUROHYPO AG, NEW YORK BRANCH, as Administrative Agent for the Lenders referred to therein (collectively, the "Secured Party") (as amended, modified, extended, split or consolidated, the "Mortgage").

(i) All personal property in all of its forms, including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory (including, without limitation, inventory as such term is defined in the Uniform Commercial Code), raw materials, work in process and construction materials which Debtor now or hereafter owns or in which Debtor now or hereafter acquires an interest or right, including, without limitation, those in which Debtor has an interest or right of any kind, those which are now or hereafter located on or affixed to the Premises, and those in transit thereto or in any other location, or used or useful in the operation, use or occupancy of the Premises or the construction of any improvements thereon, including, without limitation, all documents of title with respect to such personal property, any interest of Debtor in and to personal property that is leased or subject to any superior security interest, all books, records, ledger cards, leases, other documents of whatever kind or character, relating to the Premises;

(ii) All computer programs, tapes, disks, and related data processing software (owned by Debtor or in which it has an interest) that at any time evidence or contain information relating to the Premises or to Debtor's business thereon;

(iii) All fees, income, rents, issues, profits, earnings, receipts, royalties and revenues which, after the date hereof and while any portion of the indebtedness secured hereby remains unpaid, may accrue to Debtor from such goods, fixtures, furnishings, equipment and building materials or any part thereof located on the Premises, or which may be received or receivable by Debtor from any hiring, using, letting, leasing, subhiring, subletting, or subleasing of the Premises;

(iv) All of Debtor's present and future rights and claims to receive payments of money, utility deposits, services or property relating to the Premises, including, without limitation, rights to all deposits from tenants of the Premises, rights to receive payment with respect to media and advertising agreements and sponsorships, amounts payable on account of the sale of interests in Debtor, accounts receivable, deposit or other accounts (including, without limitation, deposit accounts maintained with Secured Party; and accounts as that term is defined in the Uniform Commercial Code), chattel paper, notes, drafts, contract rights, rights to performance, instruments (including, without limitation, instruments as such term is defined in the Uniform Commercial Code), general intangibles, principal, interest and payments due on account of goods sold, services rendered, loans made or credit extended, guaranties, letters of credit, documents, drafts, acceptances, and tax refunds, together with title or interest in all documents evidencing or securing the same, and judgments taken on any rights or claims which now or hereafter relate to, are derived from or used in connection with the Premises or the ownership, construction, use, operation, maintenance, occupancy or enjoyment thereof or the conduct of business or activities therefrom;

(v) All of Debtor's rights and interests in all other general intangibles including all payment intangibles (as the foregoing terms are defined in the Uniform Commercial Code) and Debtor's rights and interest relating to the Premises or the construction, development, use or operation thereof, or used in connection therewith, including but not limited to all governmental permits relating to construction or other activities on the Premises, all names under or by which the Premises may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names, trademarks and franchises relating in any way to the Premises, all patents and copyrights of Debtor relating in any way to the Premises, all good will in any way relating to the Premises, all licenses and permits relating in any way to, or to the operation of, the Premises, all contract rights, all options, all purchase orders, all manufacturers' warranties with respect to improvements, all construction contracts, all maintenance contracts, and all of Debtor's claims and rights arising under or pursuant to Section 365 of the Bankruptcy Code, 11 U.S.C. § 365;

(vi) All of Debtor's rights under all warranties, guaranties or insurance policies (whether or not Secured Party is the loss payee thereunder) covering the Premises or any of the aforesaid collateral, and all proceeds, loss payments and premium refunds payable regarding the same;

(vii) All of Debtor's rights and interests in reserves, deferred payments, deposits, refunds, cost savings and payments of any kind relating to the construction of any improvements on the Premises;

(viii) All of Debtor's rights and interests in all causes of action, claims compensation and recoveries for any damage to or condemnation or taking of the Premises or the aforesaid collateral, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Premises or the aforesaid collateral, or for any loss or diminution in value of the Premises or the aforesaid collateral;

(ix) All architectural, structural, mechanical and engineering plans and specifications prepared for construction of improvements or extraction of minerals or gravel from the Premises and all studies, data and drawings related thereto; and also all contracts and agreements relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings or to the construction of improvements on or extraction of minerals or gravel from the Premises;

(x) All sums on deposit with the Secured Party for any reason whatsoever pursuant to the terms and provisions of the Mortgage to be recorded in the office of the County Recorder of New York County, State of New York simultaneously with the filing of financing statements with respect to the collateral described above; and

(xi) All proceeds, products, offspring, rents, profits, income, benefits, accessions, substitutions and replacements from sale, collection, exchange or other disposition of the aforesaid collateral, whether such disposition is voluntary or involuntary.

SCHEDULE 1
LEGAL DESCRIPTION OF LAND

The condominium units (the "Units" - each a "Unit") in the building known as The 400 E. Fordham Road Condominium and by the street number 2502 Webster Avenue, 2504 Webster Avenue and 400 East Fordham Road and 250 Webster Avenue, Bronx, New York (the "Building"), designated and described as the Retail Unit and the Office/Community Unit in that certain declaration made pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan for condominium ownership of the Building and the land (the "Land") on which the Building is situated (which Land is more particularly described below), dated October 23, 2008, and recorded in the Office of the New York City Register, Bronx County, on December 18, 2008, under CRFN 2008000481411, as amended (the "Declaration"). The Units are also designated as the Tax Lots 1001 (as to the Retail Unit) and 1002 (as to the Office/Community Unit) in Block 3033 on the Tax Map of the City of New York of the County of the Bronx on the Tax Map and on the Floor Plans of the Building, and filed with Real Property Assessment Department on December 15, 2008 as Condominium Plan No. 116 and also filed in the Office of the New York City Register, Bronx County, as Condominium Map No. under CRFN 2008000481412;

TOGETHER WITH an undivided 70.0% interest (as to the Retail Unit) and an undivided 30.0% interest (as to the Office/Community Unit) in the Common Elements (as such term is defined in the Declaration).

The Land upon which the Building containing the Units is located is described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Bronx, City, County and State of New York, bounded and described as follows:

BEGINNING at a point formed by the intersection of the easterly side of Webster Avenue (100 feet wide) with the southerly side of East Fordham Road (a.k.a. Pelham Avenue, variable width) and from said point of beginning running thence; the following three (3) courses along said southerly side of East Fordham Road;

1. South 84 degrees 34 minutes 46 seconds East, a distance of 43.27 feet to a point, thence;
2. South 54 degrees 01 minutes 22 seconds East, a distance of 29.77 feet to a point, thence;
3. South 40 degrees 09 minutes 32 seconds East, a distance of 85.32 feet to a point on the westerly side of Park Avenue (variable width). Thence;
4. Along said westerly side of Park Avenue, South 00 degrees 10 minutes 48 seconds East, a distance of 201.71 feet to a point, thence;
5. Along the common dividing line between lot 12, lot 8 and lot 4 (lands now or formerly of Automotive Realty Corporation), block 3033, North 85 degrees 39 minutes 56 seconds West, a distance of 164.24 feet to a point on the aforementioned easterly side of Webster Avenue; thence

Exhibit B

Along said easterly side of Webster Avenue, North 08 degrees 26 minutes 11 seconds East, a distance of 279.09 feet to the point or place of beginning.

THIS REPLACEMENT NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN (I) ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO AMALGAMATED BANK DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,778,734.12, (II) BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO AMALGAMATED BANK DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$15,815,942.69 AND (III) PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO AMALGAMATED BANK DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$405,323.19.

REPLACEMENT NOTE

\$18,051,400.00

November 4, 2009
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC and FORDHAM PLACE OFFICE LLC, each a Delaware limited liability company ("**Borrower**"), hereby promises to pay to AMALGAMATED BANK (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of Eurohypo AG, New York Branch, at 1114 Avenue of the Americas, 2nd Floor, New York, New York 10036, the principal sum of Eighteen Million Fifty-One Thousand Four Hundred and 00/100 Dollars (\$18,051,400.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Note is one of the Notes referred to in the Consolidated, Amended and Restated Term Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") between Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder, and is issued pursuant to that certain Note Consolidation, Severance and Modification Agreement between said parties dated as of the date hereof as one of the four replacement notes described therein. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as expressly permitted by Section 12.24 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

[Remainder of page intentionally left blank]

Executed as of the date first written above.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters

Name: Robert Masters

Title: Senior Vice President-General Counsel

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

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By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters

Name: Robert Masters

Title: Senior Vice President-General Counsel

THIS REPLACEMENT NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN (I) ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO DEUTSCHE GENOSSENSCHAFTS - HYPOTHEKENBANK AG DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,251,075.89, (II) BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO DEUTSCHE GENOSSENSCHAFTS - HYPOTHEKENBANK AG DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$17,792,935.52 AND (III) PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO DEUTSCHE GENOSSENSCHAFTS - HYPOTHEKENBANK AG DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$455,988.59.

REPLACEMENT NOTE

\$20,313,200.00

November 4, 2009
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC and FORDHAM PLACE OFFICE LLC, each a Delaware limited liability company ("**Borrower**"), hereby promises to pay to DEUTSCHE GENOSSENSCHAFTS - HYPOTHEKENBANK AG (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of Eurohypo AG, New York Branch, at 1114 Avenue of the Americas, 2nd Floor, New York, New York 10036, the principal sum of Twenty Million Three Hundred Thirteen Thousand Two Hundred and 00/100 Dollars (\$20,313,200.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Note is one of the Notes referred to in the Consolidated, Amended and Restated Term Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") between Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder, and is issued pursuant to that certain Note Consolidation, Severance and Modification Agreement between said parties dated as of the date hereof as one of the four replacement notes described therein. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as expressly permitted by Section 12.24 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

[Remainder of page intentionally left blank]

Executed as of the date first written above.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

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By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters

Name: Robert Masters

Title: Senior Vice President-General Counsel

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

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By: /s/ Robert Masters

Name: Robert Masters

Title: Senior Vice President-General Counsel

THIS REPLACEMENT NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN (I) AMENDED AND RESTATED ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,302,088.81, (II) AMENDED AND RESTATED BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$18,006,450.75, (III) AMENDED AND RESTATED PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$461,460.44, (IV) ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$2,834,050.59, (V) BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$11,861,957.02 AND (VI) PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$303,992.39.

REPLACEMENT NOTE

\$34,099,000.00

November 4, 2009
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC and FORDHAM PLACE OFFICE LLC, each a Delaware limited liability company ("**Borrower**"), hereby promises to pay to EUROHYPO AG, NEW YORK BRANCH (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of Eurohypo AG, New York Branch, at 1114 Avenue of the Americas, 2nd Floor, New York, New York 10036, the principal sum of Thirty-Four Million Ninety-Nine Thousand and 00/100 Dollars (\$34,099,000.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Note is one of the Notes referred to in the Consolidated, Amended and Restated Term Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") between Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder, and is issued pursuant to that certain Note Consolidation, Severance and Modification Agreement between said parties dated as of the date hereof as one of the four replacement notes described therein. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as expressly permitted by Section 12.24 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

As long as a Hedge Agreement with the Eurohypo Counterparty is in effect, the interest payable under this Note shall be increased or decreased from time to time in accordance with such Hedge Agreement. Therefore, this Note also evidences such amounts as may become due and payable by Borrower under the Hedge Agreement with the Eurohypo Counterparty, including, without limitation, any amount payable upon or in connection with termination of such Hedge Agreement, all of which sums shall be deemed to constitute "Additional Interest" evidenced hereby and payable pursuant to this Note and in accordance with the terms and provisions of the Hedge Agreement with a Eurohypo Counterparty.

[Remainder of page intentionally left blank]

Executed as of the date first written above.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

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By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters

Name: Robert Masters

Title: Senior Vice President-General Counsel

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

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By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters

Name: Robert Masters

Title: Senior Vice President-General Counsel

THIS REPLACEMENT NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN (I) ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$2,834,050.59, WITH AN ALLONGE ENDORSEMENT DATED NOVEMBER 20, 2009 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$2,834,050.59 MADE PAYABLE TO COMMERCE BANK, N.A. (II) BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$11,861,957.02, WITH AN ALLONGE ENDORSEMENT DATED NOVEMBER 20, 2009 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$11,861,957.02 MADE PAYABLE TO COMMERCE BANK, N.A. AND (III) PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$303,992.39, WITH AN ALLONGE ENDORSEMENT DATED NOVEMBER 20, 2009 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$303,992.39 MADE PAYABLE TO COMMERCE BANK, N.A. .

REPLACEMENT NOTE

\$13,536,400.00

November 4, 2009
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC and FORDHAM PLACE OFFICE LLC, each a Delaware limited liability company ("**Borrower**"), hereby promises to pay to TD BANK, as successor-in-interest to Commerce Bank, N.A. (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of Eurohypo AG, New York Branch, at 1114 Avenue of the Americas, 2nd Floor, New York, New York 10036, the principal sum of Thirteen Million Five Hundred Thirty-Six Thousand Four Hundred and 00/100 Dollars (\$13,536,400.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Note is one of the Notes referred to in the Consolidated, Amended and Restated Term Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") between Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder, and is issued pursuant to that certain Note Consolidation, Severance and Modification Agreement between said parties dated as of the date hereof as one of the four replacement notes described therein. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as expressly permitted by Section 12.24 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

[Remainder of page intentionally left blank]

Executed as of the date first written above.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters

Name: Robert Masters

Title: Senior Vice President-General Counsel

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By: /s/ Robert Masters

Name: Robert Masters

Title: Senior Vice President-General Counsel

Table with columns: Tenants, Reg. Area (SQ), Reval Area (SQ), % of Existing C.L.A., % of New C.L.A., Reg. Base P.S.F., RCD Date, Expiration Date, Possible Rent Concessions, and Year Ending (Dec-04 to Dec-14).

Notes

- Estimated Renter Assumptions:
- Historical rent based on actual
- An expiration, summer rent is based on leaseable gross SF
- General Rent is \$4
- 10% concession with current bump, if
- Metal Health and Phrens continue bump of 4.0%
- Socialized Assumptions:
- 4.0% Rent
- New Rent based on leaseable gross SF
- 20%
- Annual increase of 3.0%
- Rent Assumptions:
- Rent 2: Added the 20% of New Rent 1
- New, Historical Rate for Public (10%)
- For non-leasable space, assumed to be 3% increase

Summary table with columns: Total, Reg. Area, Reval Area, % of Existing C.L.A., % of New C.L.A., Reg. Base P.S.F., RCD Date, Expiration Date, Possible Rent Concessions, and Year Ending (Dec-04 to Dec-14).

Acadia-PA East Fordham Acquisitions LLC
 Fordham Place - 400 E. Fordham
 Amortization Tables

Proposed Loan Amount	\$86,000,000	Amortization Pmt 1-12	\$1,107,098.65
Amortization Period	30 years	Amortization Pmt 13-2	\$1,172,417.57
Debt Constant	7.00%		
Assumed Interest Rate	5.74623%		

Payment	Beginning Balance	Payment	Interest	Principal	Ending Balance
1	\$86,000,000.00	\$501,666.67	\$411,813.09	\$89,853.57	\$85,910,146.43
2	\$85,910,146.43	\$501,666.67	\$411,382.83	\$90,283.84	\$85,819,862.58
3	\$85,819,862.58	\$501,666.67	\$410,950.50	\$90,716.17	\$85,729,146.42
4	\$85,729,146.42	\$501,666.67	\$410,516.10	\$91,150.56	\$85,637,995.85
5	\$85,637,995.85	\$501,666.67	\$410,079.63	\$91,587.04	\$85,546,408.81
6	\$85,546,408.81	\$501,666.67	\$409,641.06	\$92,025.61	\$85,454,383.21
7	\$85,454,383.21	\$501,666.67	\$409,200.39	\$92,466.27	\$85,361,916.93
8	\$85,361,916.93	\$501,666.67	\$408,757.62	\$92,909.05	\$85,269,007.88
9	\$85,269,007.88	\$501,666.67	\$408,312.72	\$93,353.95	\$85,175,653.93
10	\$85,175,653.93	\$501,666.67	\$407,865.69	\$93,800.98	\$85,081,852.96
11	\$85,081,852.96	\$501,666.67	\$407,416.52	\$94,250.14	\$84,987,602.82
12	\$84,987,602.82	\$501,666.67	\$406,965.20	\$94,701.46	\$84,892,901.35
13	\$84,892,901.35	\$501,666.67	\$406,511.72	\$95,154.94	\$84,797,746.41
14	\$84,797,746.41	\$501,666.67	\$406,056.07	\$95,610.60	\$84,702,135.81
15	\$84,702,135.81	\$501,666.67	\$405,598.24	\$96,068.43	\$84,606,067.39
16	\$84,606,067.39	\$501,666.67	\$405,138.21	\$96,528.45	\$84,509,538.93
17	\$84,509,538.93	\$501,666.67	\$404,675.98	\$96,990.68	\$84,412,548.25
18	\$84,412,548.25	\$501,666.67	\$404,211.54	\$97,455.13	\$84,315,093.12
19	\$84,315,093.12	\$501,666.67	\$403,744.87	\$97,921.79	\$84,217,171.33
20	\$84,217,171.33	\$501,666.67	\$403,275.97	\$98,390.69	\$84,118,780.64
21	\$84,118,780.64	\$501,666.67	\$402,804.83	\$98,861.84	\$84,019,918.80
22	\$84,019,918.80	\$501,666.67	\$402,331.43	\$99,335.24	\$83,920,583.56
23	\$83,920,583.56	\$501,666.67	\$401,855.76	\$99,810.91	\$83,820,772.64
24	\$83,820,772.64	\$501,666.67	\$401,377.81	\$100,288.86	\$83,720,483.79
25	\$83,720,483.79	\$501,666.67	\$400,897.57	\$100,769.09	\$83,619,714.69
26	\$83,619,714.69	\$501,666.67	\$400,415.04	\$101,251.63	\$83,518,463.06
27	\$83,518,463.06	\$501,666.67	\$399,930.19	\$101,736.47	\$83,416,726.59
28	\$83,416,726.59	\$501,666.67	\$399,443.02	\$102,223.64	\$83,314,502.95
29	\$83,314,502.95	\$501,666.67	\$398,953.52	\$102,713.14	\$83,211,789.81
30	\$83,211,789.81	\$501,666.67	\$398,461.68	\$103,204.99	\$83,108,584.82
31	\$83,108,584.82	\$501,666.67	\$397,967.48	\$103,699.19	\$83,004,885.63
32	\$83,004,885.63	\$501,666.67	\$397,470.91	\$104,195.75	\$82,900,689.88
33	\$82,900,689.88	\$501,666.67	\$396,971.97	\$104,694.70	\$82,795,995.18
34	\$82,795,995.18	\$501,666.67	\$396,470.64	\$105,196.03	\$82,690,799.15
35	\$82,690,799.15	\$501,666.67	\$395,966.90	\$105,699.76	\$82,585,099.39
36	\$82,585,099.39	\$501,666.67	\$395,460.76	\$106,205.91	\$82,478,893.48

FORM OF HEDGE AGREEMENT PLEDGE

(See attached)

ASSIGNMENT, PLEDGE AND SECURITY AGREEMENT

(Hedge Agreement)

ASSIGNMENT, PLEDGE AND SECURITY AGREEMENT (this "Agreement") dated as of the day of , 20_ between ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and FORDHAM PLACE OFFICE LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware (hereinafter, jointly and severally, and singly and collectively, "Pledgor") having its principal place of business at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, NY 10605, and EUROHYPO AG, NEW YORK BRANCH, having an office at 1114 Avenue of the Americas , New York, New York 10036, as Administrative Agent for the lenders referred to below (in such capacity, together with its successors in such capacity, the "Administrative Agent"),

RECITALS:

A. Pledgor, certain lenders (the "Lenders") and the Administrative Agent are parties to a Loan Agreement dated as of __, 2009 (said Loan Agreement, as modified and supplemented and in effect from time to time, being herein called the "Loan Agreement"; and, except as otherwise herein expressly provided, all terms defined in the Loan Agreement are being used herein as defined therein), which Loan Agreement provides, among other things, for Loans to be made by the lenders party thereto from time to time to Pled gor in an aggregate principal amount not exceeding \$ _____ to finance the property located at _____, _____. The loans are to be evidenced by, and repayable with interest thereon in accordance with those certain promissory notes dated of even date herewith (collectively, and in each case as the same may be consolidated, replaced, severed, modified, amended or extended from time to time, the "Notes") in the aggregate principal amount of \$ _____.

B. In consideration of the foregoing, Pledgor has agreed to assign, pledge and grant a security interest in the Collateral (as hereinafter defined) as security for the Secured Obligations (as hereinafter defined).

C. The execution of this Agreement is a condition precedent to the obligation of the Lenders to make the Loans.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Section 1 Certain Definitions. As used herein, the following terms shall have the following meanings (all terms defined in the singular to have the same meanings when used in the plural and vice versa):

"Accounts" shall have the meaning assigned to such term in Section 3(d) hereof. "Administrative Agent" shall have the meaning ascribed thereto in the heading of this Agreement.

"Agreement" shall have the meaning ascribed thereto in the preamble of this Agreement.

"Collateral" shall have the meaning ascribed thereto in Section 3 hereof.

"Counterparty" shall mean _____ as counterparty under the Hedge Agreement.

"Disposition" shall mean any sale, assignment, transfer or other disposition of any of the Collateral by Pledgor to any other Person (other than any such sale, assignment, transfer or other disposition to Administrative Agent as contemplated by this Agreement).

"Event of Default" shall have the meaning ascribed thereto in Section 8.01.

"Hedge Agreement" shall mean (a) during the initial term of the Loans, that certain [Agreement], dated as of _____, 200_, between Borrower and the Counterparty, together with the schedule thereto and a trade confirmation thereunder, each dated as of the date of the aforementioned [Agreement], with respect to an interest rate swap transaction in the notional amount of \$ _____ and attached hereto as Exhibit B and (b) any other Hedge Agreement entered into by Pledgor in accordance with the Loan Agreement.

"Instruments" shall have the meaning assigned to such term in Section 3(c) hereof.

"Lenders" shall have the meaning ascribed thereto in the recitals to this Agreement.

"Loan Agreement" shall have the meaning ascribed thereto in the recitals to this Agreement.

"Pledgor" shall have the meaning ascribed thereto in the preamble of this Agreement.

"Secured Obligations" shall mean, collectively, all obligations, liabilities and indebtedness of every nature of Pledgor, from time to time owing to the Administrative Agent or any Lender under or in connection with this Agreement, the Notes or any other Loan Document to which it is a party, including principal, interest, fees (including fees of counsel), and expenses whether now or hereafter existing under the Loan Documents.

"Uniform Commercial Code" shall mean the Uniform Commercial Code in effect from time to time in the State of _____ or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than _____, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

Section 2 Representations and Warranties. Pledgor represents and warrants to the Administrative Agent and the Lenders that:

(a) Pledgor is the sole beneficial owner of the Collateral and no Lien currently exists or will exist upon the Collateral, or any portion thereof, at any time (and no right or option to acquire the same exists or will exist in favor of any other Person), except for the pledge and security interest in favor of the Administrative Agent created, granted and confirmed herein, which pledge and security interest constitutes a first priority perfected pledge and security interest in and to all of the Collateral.

(b) There currently exists and will exist no offsets, counterclaims, defenses or deductions to Pledgor's right to receive any payments of money, or any other consideration, under or with respect to any of the Collateral.

Section 3 Assignment, Pledge and Security Interest. As collateral security for the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations, Pledgor hereby irrevocably assigns, pledges, sets over, delivers and grants to the Administrative Agent a security interest in all of Pledgor's right, title and interest in the following property, whether now owned by Pledgor or hereafter acquired and whether now existing or hereafter coming into existence and wherever located (collectively, the "Collateral");

(a) all of Pledgor's right title and interest in the Hedge Agreement;

(b) all moneys due and to become due, and all other consideration paid and to be paid, to Pledgor under, pursuant to or in connection with the Collateral, whether or not such property interest shall be classified as an account or a general intangible under the Uniform Commercial Code, and all accounts and general intangibles (each as defined in the Uniform Commercial Code) arising from or in connection with, existing in respect of, or relating to, the Collateral (such rights to the payment of money and other consideration, and such accounts and general intangibles, being collectively referred to herein as "Accounts");

(c) all instruments or chattel paper (each as defined in the Uniform Commercial Code) of Pledgor evidencing, representing, arising from or existing in respect of, relating to, securing or otherwise supporting the payment of any of the Accounts (herein collectively called "Instruments"); and

(d) all proceeds, products, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of Pledgor described in the preceding clauses of this Section 3.

Section 4 Counterparty. Pledgor shall, and hereby does, irrevocably direct Counterparty to make any payments to become payable under or pursuant to the Hedge Agreement into an Additional Cash Collateral Account established pursuant to the provisions of the Cash Management Agreement, or otherwise as directed by the Administrative Agent, until such time as this Agreement is terminated or otherwise canceled (and the parties hereto shall jointly notify Counterparty of the same) at which time any such payments shall be made as directed by or on behalf of the Pledgor. Pledgor shall cause Counterparty to execute and deliver to the Administrative Agent, not later than thirty (30) days from and after the date hereof, a letter agreement, substantially in the form of Exhibit A attached hereto, evidencing Counterparty's acknowledgment of such direction and agreement to act in accordance with the provisions of this Agreement, including without limitation this Section 4 and Section 6(h) hereof.

Section 5 Present Assignment. The assignment contained in Section 3 is present and absolute and Pledgor shall not take any action with respect to the Collateral without the Administrative Agent's prior approval.

Section 6 Covenants. Pledgor agrees that, at its sole cost and expense, until the payment and satisfaction in full of the Secured Obligations in accordance with their terms:

(a) Pledgor shall not take or omit to take any action, or do anything, or grant any consent, waiver or ratification, that may (i) impair the value of the Collateral or the value of the liens created, granted and/or confirmed herein, (ii) cause or permit any lien (other than the liens granted hereunder) to encumber any of the Collateral or (iii) result in a Disposition of the Collateral;

(b) Pledgor shall promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by it under or in respect of the Collateral, and any and all documents and agreements related thereto, including any confidentiality agreements executed by Pledgor in connection therewith, and shall do all things necessary to preserve and to keep unimpaired its rights thereunder;

(c) Pledgor shall promptly furnish the Administrative Agent with copies of any notice given or received under or in respect of any of the Collateral;

(d) If Pledgor shall fail promptly to perform or observe any of the terms, covenants or conditions required to be performed or observed by it under or in respect of the Collateral, the Administrative Agent may, in its sole discretion, take such action as is appropriate to cause such terms, covenants or conditions promptly to be performed or observed on behalf of Pledgor but no such action by the Administrative Agent shall release Pledgor from any of its obligations with respect to the Collateral, the Notes, the Security Documents, any of the other Loan Documents or this Agreement;

(e) Pledgor shall not and shall not agree to (i) surrender its rights and interests with respect to the Collateral, nor terminate or cancel or permit the termination or cancellation of any of its rights with respect to the Collateral, or (ii) modify, change, supplement, alter, terminate, cancel, waive, release or amend, nor permit the modification, change, supplementation, alteration, termination, cancellation, waiver, release or amendment of, its rights with respect to the Collateral or the terms thereof, either orally or in writing; and Pledgor does hereby expressly release, relinquish and surrender unto the Administrative Agent all its right, power and authority to terminate, cancel, modify, change, supplement, alter, waive, release or amend any of its rights with respect to the Collateral;

(f) Pledgor shall deliver to the Administrative Agent, promptly after Pledgor knows or has reason to believe that any breach or default by an account debtor or other Person obligated under with respect to the Collateral, a notice of such breach or default describing the same in reasonable detail and, together with such notice, a description of the action that Pledgor has taken or proposes to take with respect thereto. Without limiting the generality of the foregoing, and upon any such breach or default, Pledgor, at the written request of the Administrative Agent, shall promptly enforce its rights and remedies with respect to the Collateral as is necessary and appropriate in order to collect any defaulted payments, provided that the manner of such enforcement shall be approved by the Administrative Agent and, in any event, Pledgor shall not exercise any rights or remedies with respect to the Collateral on account of any breach or default under or in respect thereof without the prior written approval of the Administrative Agent;

(g) Pledgor shall warrant and defend its title to the Collateral and the pledge and security interest granted in favor of the Administrative Agent therein against all claims and demands of all Persons whomsoever, and shall maintain and preserve such pledge and security interest at all times;

(h) If Pledgor shall be entitled to receive any payments with respect to the Collateral, Pledgor shall cause such payments to be directly paid over to the Administrative Agent and applied to payments due under the Notes; and

(i) If Pledgor fails to perform any of the covenants or obligations contained herein, the Administrative Agent may itself perform, or cause performance of, such covenants or obligations, and the reasonable expenses of Administrative Agent incurred in connection therewith shall be payable by Pledgor to the Administrative Agent in accordance with Section 9 hereof.

Section 7 Perfection; Further Assurances.

7.01 Perfection.

(a) Pledgor authorizes the Administrative Agent to execute and deliver such financing statements and other documents as the Administrative Agent may reasonably require to perfect the security interests granted by Section 3 of this Agreement. In addition, Pledgor shall, from time to time, promptly execute, acknowledge and deliver, or cause the execution, acknowledgement and delivery of, such documents or instruments, and shall take or cause to be taken such other actions, as the Administrative Agent may reasonably request for the perfection against Pledgor and all third parties of the security interests granted herein, or for the continuation and protection thereof. Pledgor shall promptly give to the Administrative Agent evidence satisfactory to the Administrative Agent of all such actions. Without limiting the generality of the foregoing, Pledgor shall, promptly upon the execution and delivery of this Agreement, and at any time or from time to time thereafter upon the request of the Administrative Agent, execute, acknowledge and deliver such financing and continuation statements, notices and additional security agreements, make such notations on its records and take such other action as the Administrative Agent may reasonably request for the purpose of so perfecting, maintaining and protecting the security interests granted herein. Pledgor hereby irrevocably designates, makes, constitutes and appoints the Administrative Agent (and all Persons designated by the Administrative Agent) as Pledgor's true and lawful attorney (and agent-in-fact) to take any of the foregoing actions in the name of Pledgor, and Pledgor hereby further authorizes the Administrative Agent to effect any filing or recording which the Administrative Agent has requested pursuant to this Section 7 without the signature of Pledgor to the extent permitted by applicable law so long as the Administrative Agent has requested Pledgor to take any such action and Pledgor has failed to do so promptly.

(b) Pledgor shall deliver and pledge to the Administrative Agent all Instruments, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Administrative Agent may reasonably request.

7.02 Records and Inspection. Pledgor shall also:

(a) keep full and accurate books and records relating to the Collateral as required in order to reflect the security interests granted by this Agreement; and

(b) permit representatives of the Administrative Agent, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and forward copies of any notices or communications received by Pledgor with respect to the Collateral, in such manner as the Administrative Agent may reasonably request.

7.03 Other Financing Statements and Liens. Pledgor shall not file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to the Collateral in which the Administrative Agent is not named as the sole secured party.

7.04 Name; State of Formation. Pledgor shall not change its name, the location of its chief executive office, its state of formation or organizational structure unless Pledgor shall have complied with the provisions of Section [] of the Loan Agreement.

7.05 Preservation of Rights. The Administrative Agent shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

Section 8 Default; Remedies.

8.01 Events of Default. The following occurrences or happenings at any time and from time to time shall constitute events of default (each, an "Event of Default") under this Agreement which shall entitle Assignee to exercise its rights and remedies under this Agreement:

(a) the occurrence of an Event of Default under the Loan Agreement; or

(b) the failure of Pledgor to cause the deposit of any payments it is entitled to receive with respect to the Collateral directly with the Administrative Agent.

8.02 Remedies.

(a) If an Event of Default shall occur and be continuing:

(i) The Administrative Agent may (or at the direction of the Majority Lenders in accordance with the Loan Agreement shall) make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, any of the Collateral;

(ii) The Administrative Agent shall have all of the rights and remedies with respect to the Collateral of a secured party under the Uniform Commercial Code and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including, without limitation, the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if the Administrative Agent were the sole and absolute owner thereof (and Pledgor agrees to take all such action as may be appropriate to give effect to such right);

(iii) The Administrative Agent in its discretion may (or at the direction of the Majority Lenders in accordance with the Loan Agreement will), in its name or in the name of Pledgor or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation to do so;

(iv) The Administrative Agent may, upon ten days' prior written notice to Pledgor of the time and place, with respect to the Collateral or any part thereof which shall then be or shall thereafter come into the possession, custody or control of the Administrative Agent or any of its agents, sell, lease, assign or otherwise dispose of all or any part of such Collateral, at such place or places as the Administrative Agent deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required above or by applicable statute and cannot be waived), and the Administrative Agent or anyone else may be the purchaser, lessee, assignee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right of equity of redemption (statutory or otherwise), of Pledgor, any such demand, notice and right or equity being hereby expressly waived and released. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned; provided the Administrative Agent shall give Pledgor ten (10) days' prior notice of the date of such adjourned sale;

(v) Pledgor shall, at the request of the Administrative Agent, assemble the Collateral owned by it at such place or places, reasonably convenient to the Administrative Agent; and

(vi) the Administrative Agent may (or at the direction of the Majority Lenders in accordance with the Loan Agreement will) exercise such other rights and remedies as may be available to it or the Lenders pursuant to the other Loan Documents, or at law or in equity.

(b) Until the termination of this Agreement in accordance with Section 9, the power of sale and all other rights, powers and remedies granted to the Administrative Agent hereunder shall continue to exist and may be exercised by it at any time and from time to time. No sale or other disposition of all or any part of the Collateral by the Administrative Agent pursuant to this Section 8 shall be deemed to relieve Pledgor of its obligations under the Secured Obligations except to the extent the proceeds thereof are applied by the Administrative Agent to the payment of the Secured Obligations.

8.03 Private Sale, Etc.

(a) The Administrative Agent shall incur no liability as a result of the sale of the Collateral, or any part thereof, at any private sale pursuant to Section 8.02 hereof conducted in a commercially reasonable manner. Pledgor hereby waives any claims against the Administrative Agent arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price that might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Administrative Agent accepts the first offer received and does not offer the Collateral to more than one offeree.

(b) To the fullest extent it may lawfully so agree, Pledgor agrees that it will not at any time insist upon, claim, plead, or take any benefit or advantage of any appraisal, valuation, stay, extension, moratorium, redemption, or similar law now or hereafter in force in order to prevent, delay, or hinder the enforcement hereof or the absolute sale of any part of the Collateral or the possession thereof by any purchaser at any sale pursuant to this Agreement; and Pledgor for itself and all who claim through it, so far as it or they now or hereafter lawfully may do so, hereby waives the benefit of all such laws, and all right to have the Collateral marshalled upon any foreclosure hereof, and agrees that any court having jurisdiction to foreclose this Agreement may order the sale of the Collateral as an entirety. Without limiting the generality of the foregoing, Pledgor hereby: (i) authorizes the Administrative Agent and/or the Lenders, in their sole discretion and without notice to or demand upon Pledgor and without otherwise affecting the obligations of Pledgor hereunder or in respect of the Secured Obligations (and without affecting any such other collateral), from time to time to hold other collateral (in addition to the Collateral, including, without limitation, the Mortgage) for payment of the Secured Obligations or any other obligations, or any part thereof, and to exchange, enforce or release such other collateral or any part thereof and to accept and hold any endorsement or guarantee of payment of the Secured Obligations or any part thereof and to release or substitute any endorser or guarantor or any other person granting security for or in any other way obligated upon any Secured Obligations or any part thereof; and (ii) waives and releases any and all right to require the Administrative Agent to collect any of the Secured Obligations from any specific item or items of the Collateral, from any other party liable as guarantor or in any other manner in respect of any of the Secured Obligations or from any collateral (other than the Collateral) for any of such obligations.

8.04 Application of Proceeds. Except as otherwise herein expressly provided, the proceeds of any collection, sale or other realization of all or any part of the Collateral pursuant hereto, shall be applied by the Administrative Agent:

First, to the payment of the costs and expenses of such collection, sale or other realization, including reasonable out-of-pocket costs and expenses of the Administrative Agent and the fees and expenses of its agents and counsel, and all expenses incurred and advances made by the Administrative Agent in connection therewith;

Next, to the payment in full of the Secured Obligations, in each case equally and ratably in accordance with the respective amounts thereof then due and owing or as the Lenders holding the same may otherwise agree; and

Finally, to the payment to Pledgor, or its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining.

As used in this Section 8, "proceeds" of Collateral shall mean cash, securities and other property realized in respect of, and distributions in kind of, Collateral, including any thereof received under any reorganization, liquidation or adjustment of debt of Pledgor or any issuer of or obligor on any of the Collateral.

8.05 Attorney-in-fact; Etc. Pledgor hereby appoints the Administrative Agent as its true and lawful attorney, which appointment is irrevocable and coupled with interest, with full power of substitution, in the name of Pledgor (a) to give notice of this Agreement at any time to each Person or entity with obligations owing to Pledgor (provided such obligations are included in the Collateral), (b) to demand, receive, compromise, sue for, and give acquittance for, any and all moneys and claims for money due and to become due under or arising out of such obligations or this Agreement, (c) to endorse any checks or other Instruments or orders in connection therewith, (d) to file any claims or take any actions or institute any proceedings which the Administrative Agent may deem to be necessary or advisable in its discretion and to compromise, litigate or settle the same and (e) to take any other action which by the terms of this Agreement is to be taken by Pledgor; provided, that the Administrative Agent may not exercise such power of attorney until an Event of Default shall have occurred and be continuing. Notwithstanding any provision to the contrary contained herein, neither the Administrative Agent nor any of its nominees or assignees shall have any obligation or liability by reason of or arising out of this Agreement to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amounts to which it may be entitled at any time or times due to this Agreement.

8.06 Non-Waiver

(a) No right or remedy herein conferred upon or reserved to the Administrative Agent is intended to be exclusive of any other right or remedy, and each and every such right or remedy shall be cumulative and continuing, shall be in addition to every other right or remedy given hereunder or under the other Loan Documents, or now or hereafter existing at law or in equity, and may be exercised from time to time and as often as may be deemed expedient by the Administrative Agent (or as directed by the Majority Lenders in accordance with the Loan Agreement.

(b) No delay or omission by the Administrative Agent or any of the Lenders to exercise any right or remedy hereunder or under any other Loan Document upon any Default or Event of Default, or failure of the Administrative Agent to insist on strict performance of any term of this Agreement or other Loan Document shall impair such exercise, or be construed to be a waiver of any such Potential Default or Event of Default or an acquiescence therein. No act of the Administrative Agent or any of the Lenders shall be construed as an election to proceed under anyone provision of this Agreement or of any other Loan Document to the exclusion of any other provision.

(c) The failure, refusal or waiver by the Administrative Agent or any of the Lenders of its right to assert any right or remedy hereunder or under any other Loan Document upon any default or Event of Default on the part of Pledgor or other occurrence shall not be construed as waiving such right or remedy upon any other or subsequent default or Event of Default or other occurrence.

(d) Neither the Administrative Agent nor any of the Lenders shall have any obligation to pursue any rights or remedies it may have under any other agreement securing the Secured Obligations or any portion thereof, prior to pursuing its rights or remedies hereunder or under the other Loan Documents.

(e) Acceptance of any payment after the occurrence of any Potential Default or Event of Default shall not be deemed a waiver or a cure of such Potential Default or Event of Default, and acceptance of any payment in an amount less than any amount then due shall be deemed an acceptance on account only.

(f) Pledgor shall not be relieved of its obligation to satisfy the Secured Obligations, including, without limitation, its obligations to pay the Loans at the time and in the manner provided for its payment in the Loan Documents by reason of, and the rights of the Administrative Agent and the Lenders hereunder shall not be affected by, (i) any failure of the Administrative Agent or any of the Lenders to comply with any request of any other obligor for the Secured Obligations to take any action to foreclose this Agreement or otherwise enforce any of the provisions of any Loan Document, (ii) any release, regardless of consideration, of the whole or any part of the collateral covered by the Security Documents or any other security for the Secured Obligations, or (iii) any alteration, extension, renewal, change, modification, release, amendment, compromise or cancellation, in whole or in part, of any term, covenant or provision of any of the Loan Documents, including any increase or decrease in the principal amount of the Loans or in the rate of interest applicable thereto or any extension of time for payment thereof.

Section 9 Continuing Security Interest. This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured Obligations. When all Secured Obligations shall have been satisfied in full, this Agreement shall terminate, and the Administrative Agent shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, any remaining Collateral and money received in respect thereof, to or on the order of Pledgor. This Agreement shall also constitute a security agreement as that term is used in the UCC; provided that to the extent that the UCC is used to define any term herein or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than New York, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

Section 10 Expenses. Pledgor agrees to reimburse the Administrative Agent and each of the Lenders for all costs and expenses of the Administrative Agent (including, without limitation, the reasonable fees and expenses of legal counsel) in connection with (a) any Event of Default and any enforcement or collection proceeding resulting therefrom, including, without limitation, all manner of participation in or other involvement with (i) performance by the Administrative Agent of any obligations of Pledgor in respect of the Collateral that Pledgor has failed or refused to perform, (ii) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement in respect of any of the Collateral, and for the care of the Collateral and defending or asserting rights and claims of the Administrative Agent in respect thereof, by litigation or otherwise, including expenses of insurance, (iii) judicial or regulatory proceedings and (iv) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or other transaction contemplated thereby is consummated) and (b) the enforcement of this Section 10, and all such costs and expenses shall be Secured Obligations entitled to the benefits of the collateral security provided pursuant to Section 3 hereof. The provisions of this Section 10 shall survive the termination of this Agreement.

Section 11 No Obligation by the Administrative Agent or the Lenders. Neither the Administrative Agent nor any of the Lenders shall be obligated to perform or discharge, nor does any of them hereby undertake to perform or discharge, any obligation, duty or liability of Pledgor under any of the Collateral.

Section 12 Reasonable Care. Beyond the exercise of reasonable care in the custody thereof, the Administrative Agent shall not have any duty as to any Collateral or any income thereon in its possession or control or in the possession or control of any agents for, or of, the Administrative Agent for the preservation of rights against any Person or otherwise with respect thereto. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which a reasonable person would exercise under similar circumstances, it being understood that the Administrative Agent shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in value thereof by reason of any act or omission of the Administrative Agent or its agents, employees or bailees, except to the extent that such loss or damage results from the Administrative Agent's gross negligence or willful misconduct.

13.01 GOVERNING LAW; CONSENT TO JURISDICTION.

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY THE ADMINISTRATIVE AGENT AND LENDERS AND ACCEPTED BY PLEDGOR IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF PLEDGOR, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER OR PLEDGOR ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT THE ADMINISTRATIVE AGENT'S OPTION (WHICH DECISION SHALL BE MADE BY THE MAJORITY LENDERS) BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF [NEW YORK], COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND PLEDGOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND PLEDGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. PLEDGOR DOES HEREBY DESIGNATE AND APPOINT [.] AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO PLEDGOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON PLEDGOR, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. PLEDGOR (A) SHALL GIVE PROMPT NOTICE TO THE ADMINISTRATIVE AGENT OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Nothing in this Section 13.01 shall affect the right of the Administrative Agent or any Lender to serve legal process in any other manner permitted by law or affect the right of the Administrative Agent or any Lender to bring any suit, action or proceeding against Pledgor or the property of Pledgor in the courts of any other jurisdictions.

13.02 Notices. All notices, requests, demands, statements, authorizations, approvals, directions, consents and other communications provided for herein shall be given or made in writing and shall be deemed sufficiently given or served for all purposes as of the date (a) when hand delivered (provided that delivery shall be evidenced by a receipt executed by or on behalf of the addressee), (b) three (3) days after being sent by postage pre-paid registered or certified mail, return receipt requested, (c) one (1) Business Day after being sent by reputable overnight courier service (with delivery evidenced by written receipt), or (d) with a simultaneous delivery by one of the means in (a), (b) or (c) by facsimile, when sent, with confirmation and a copy sent by first class mail, in each case addressed to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Unless otherwise expressly provided herein, Pledgor shall only be required to send notices, requests, demands, statements, authorizations, approvals, directions, consents and other communications to the Administrative Agent on behalf of all of the Lenders.

(a) Notices and other communications to the Administrative Agent hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent. The Administrative Agent or Pledgor may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Address for Notices:

If to Pledgor:

[_____]

Attention: _____

Telecopier No.: _____



With Copies to:

[_____]

Attention: _____

Telecopier No.: _____

If to Administrative Agent:

Eurohypo AG, New York Branch
1114 Avenue of the Americas
New York, New York 10036
Attention: Head of Portfolio Administration
Telecopier No.: 866-267-7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas
New York, New York 10036
Attention: Head of Portfolio Administration
Telecopier No.: 866-267-7680

- and -

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

13.03 Amendments, Etc. The terms of this Agreement may be waived, modified and amended only by an instrument in writing duly executed by Pledgor and the Administrative Agent (with any required consent of the Lenders pursuant to the Loan Agreement). Any such waiver, modification or amendment shall be binding upon the Administrative Agent, each Lender, each holder of any of the Notes and Pledgor.

13.04 No Waiver. No failure on the part of the Administrative Agent, any Lender or any of their agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Administrative Agent, any Lender or any of their agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

13.05 Cumulative Remedies. All rights and remedies set forth in this Agreement are cumulative, and the Administrative Agent (on behalf of the Lenders) may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby; and no such right or remedy set forth in this Agreement shall be deemed exclusive of any of the remedies or rights granted to the Administrative Agent and the Lenders in the Notes, the Mortgage or any other Loan Document. Nothing contained in this Agreement shall be deemed to limit or restrict the rights and remedies of the Administrative Agent and/or the Lenders under any of the other documents related to the Secured Obligations.

13.06 Agent's Discretion. Whenever the Administrative Agent exercises any right pursuant to this Agreement to approve or disapprove, to determine whether any arrangement or term is satisfactory or to give its consent, the decision of the Administrative Agent to approve or disapprove, to decide whether such arrangements or terms are satisfactory or not satisfactory or to consent shall (except as is otherwise specifically herein provided) be in the sole discretion of the Administrative Agent and shall be final and conclusive. In the event that a claim or adjudication is made that the Administrative Agent has acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, it has an obligation to act reasonably or promptly, the Administrative Agent shall not be liable for any monetary damages, and Pledgor's remedies shall be limited to injunctive relief or declaratory judgment.

13.07 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of Pledgor, the Administrative Agent, the Lenders and any holder of any of the Secured Obligations (provided, however, that Pledgor shall not assign or transfer its rights or obligations hereunder without the prior written consent of the Administrative Agent).

13.08 Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

13.09 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 of the parties hereto may execute this Agreement by signing any such counterpart.

13.10 Severability. If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

13.11 WAIVERS BY PLEDGOR. EXCEPT AS IS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, PLEDGOR WAIVES (A) PRESENTMENT, DEMAND AND PROTEST AND NOTICE OF PRESENTMENT, PROTEST, DEFAULT, NON-PAYMENT, INTENT TO ACCELERATE, ACCELERATION, MATURITY, RELEASE, COMPROMISE, SETTLEMENT, EXTENSION OR RENEWAL OF ANY OR ALL COMMERCIAL PAPER, ACCOUNTS, CONTRACT RIGHTS, DOCUMENTS, INSTRUMENTS, CHATTEL PAPER AND GUARANTIES AT ANY TIME HELD BY ADMINISTRATIVE AGENT OR ANY OF THE LENDERS ON WHICH PLEDGOR MAY IN ANY WAY BE LIABLE AND HEREBY RATIFIES AND CONFIRMS WHATEVER THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS MAY DO IN THIS REGARD; (B) NOTICE PRIOR TO TAKING POSSESSION OR CONTROL OF THE COLLATERAL OR OBTAINING ANY BOND OR SECURITY WHICH MIGHT BE REQUIRED BY ANY COURT PRIOR TO ALLOWING THE ADMINISTRATIVE AGENT TO EXERCISE ANY OF THE ADMINISTRATIVE AGENT'S OR THE LENDERS' REMEDIES; (C) ANY AND ALL RIGHTS TO ASSERT ANY OFFSET, NONCOMPULSORY COUNTERCLAIM, CROSS-CLAIM OR DEFENSE (OTHER THAN PAYMENT) OF ANY NATURE WHATSOEVER WITH RESPECT TO THIS AGREEMENT OR THE SECURED OBLIGATIONS OR OTHERWISE IN ANY ACTION OR PROCEEDING BROUGHT BY THE ADMINISTRATIVE AGENT OR THE LENDERS WITH RESPECT TO THE SECURED OBLIGATIONS, OR ANY PORTION THEREOF, OR TO ENFORCE, FORECLOSE OR REALIZE UPON ANY OF THE LIENS OR SECURITY INTERESTS CREATED BY THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; AND (D) NOTICE OF ACCEPTANCE HEREOF. PLEDGOR ACKNOWLEDGES THAT THE FOREGOING WAIVERS ARE A MATERIAL INDUCEMENT TO THE ADMINISTRATIVE AGENT'S ENTERING INTO THIS AGREEMENT AND THAT THE ADMINISTRATIVE AGENT AND THE LENDERS ARE RELYING UPON THE FOREGOING WAIVERS IN MAKING THE LOANS AND IN THEIR FUTURE DEALINGS WITH PLEDGOR. PLEDGOR SHALL NOT BE ENTITLED TO ANY NOTICES OF ANY NATURE WHATSOEVER FROM THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS EXCEPT WITH RESPECT TO MATTERS FOR WHICH THIS AGREEMENT SPECIFICALLY AND EXPRESSLY PROVIDE FOR THE GIVING OF NOTICE BY THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS TO PLEDGOR AND EXCEPT WITH RESPECT TO MATTERS FOR WHICH PLEDGOR IS NOT, PURSUANT TO APPLICABLE LEGAL REQUIREMENTS, PERMITTED TO WAIVE THE GIVING OF NOTICE. PLEDGOR HEREBY EXPRESSLY WAIVES THE RIGHT TO RECEIVE ANY NOTICE FROM THE ADMINISTRATIVE AGENT AND ANY OF THE LENDERS WITH RESPECT TO ANY MATTER FOR WHICH THIS AGREEMENT DOES NOT SPECIFICALLY AND EXPRESSLY PROVIDE FOR THE GIVING OF NOTICE BY THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS TO PLEDGOR.

13.12 WAIVER OF JURY TRIAL. PLEDGOR, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR IN ANY WAY RELATING TO THE LOANS OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS ASSIGNMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS DEED OF TRUST WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT AND EACH LENDER TO ENTER THIS AGREEMENT.

13.13 Conflicts with Loan Agreement. Notwithstanding anything to the contrary contain in this Assignment, in the event of a conflict or ambiguity created between the Loan Agreement and any provision herein, the terms of the Loan Agreement shall govern and control.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware
limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a
Delaware limited liability company, its managing
member

By: Acadia Realty Acquisition II, LLC, a
Delaware limited liability company, its
managing member

By: Acadia Realty Limited Partnership, a
Delaware limited partnership, its sole
member

By: Acadia Realty Trust, a Maryland
real estate investment trust, its
general partner

By: _____

Name: Robert Masters

Title: Senior Vice President-General Counsel

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By:
Name: Robert Masters
Title: Senior Vice President-General Counsel

ADMINISTRATIVE AGENT:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

ACKNOWLEDGMENT OF SECURITY INTEREST

The undersigned, _____, Counterparty to the Hedge Agreement, by its execution of this acknowledgment of the security interest granted in the foregoing Assignment, Pledge and Security Agreement (the "Pledge Agreement"), hereby consents to the pledge and grant of the security interest in favor of Eurohypo, AG, New York Branch, as Administrative Agent (the "Administrative Agent"), and the other terms of the Pledge Agreement, and agrees that (i) it will make all termination payments into the following account: _____ Eurohypo AG, New York Branch, 1114 Avenue of the Americas, New York, New York 10036 or as otherwise directed by the Administrative Agent, and (ii) upon receipt by Counterparty of instructions from the Administrative Agent with respect to thereto (to be given to Counterparty at its address set forth below, but otherwise in accordance with the provision for notices set forth in the Pledge Agreement), Counterparty will make all payments of all sums (including, without limitation, all termination payments) payable or to become payable by it under or pursuant to the Hedge Agreement, into an account or as otherwise directed by the Administrative Agent. All such payments shall be made without offset or deduction for any claim by the undersigned against Pledgor, all of which such claims will be asserted directly or separately against Pledgor. In consideration of the foregoing agreement by Counterparty, Pledgor agrees that (i) Counterparty shall be entitled to conclusively rely (without any independent investigation) on the Administrative Agent's statement that the Administrative Agent is entitled to payment under the Hedge Agreement, and (ii) Counterparty shall be held harmless and shall be fully indemnified by Pledgor, from and against any and all claims, other than those ultimately determined to be founded on gross negligence or willful misconduct of Counterparty, and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorneys' fees and disbursements) incurred by Counterparty as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any actions taken or omitted to be taken by Counterparty in reliance upon any such notice provided by the Administrative Agent.

Counterparty agrees that, until such time as it receives from the Administrative Agent written notice that the Pledge Agreement is terminated or otherwise canceled, Counterparty shall not, without first obtaining the Administrative Agent's prior written consent, amend, modify, cancel or terminate the Hedge Agreement (except for partial reductions of the notional amount under the Hedge Agreement for which no consent of the Administrative Agent is required under the express terms of the Loan Agreement, that are certified by Pledgor to the Administrative Agent and Counterparty in a written instrument to be in compliance with the proviso set forth in Section 6(e)(i) of the Pledge Agreement), and no attempt to amend, modify, cancel or terminate the Hedge Agreement (except for partial reductions as provided above) without the Administrative Agent's prior written consent, shall be binding on the Administrative Agent or of any force or effect.

Ex. A-1

Counterparty hereby agrees that, in the event of any breach or default by the Pledgor under the Hedge Agreement that has not been cured by Pledgor, and in the event of any termination event that could be claimed by Counterparty under the Hedge Agreement as a result of any act, omission, event or condition attributable to Pledgor which could be cured through the payment of money or otherwise through performance by a person other than Pledgor, that has not been cured by Pledgor, Counterparty shall notify the Administrative Agent at its address set forth in the Pledge Agreement (and otherwise in accordance with the procedures for notice set forth in the Pledge Agreement) of the occurrence of such breach, default or event. Counterparty further agrees that the Administrative Agent shall have the right to cure any such breach, default or event; that the Counterparty shall accept any such cure tendered by the Administrative Agent within the same period for cure of such breach, default or event set forth in the Hedge Agreement, which cure period shall be measured, however, from the date notice of such breach, default or event is delivered to the Administrative Agent in accordance herewith) (herein, the "Cure Period"); and that Counterparty shall not terminate the Hedge Agreement or exercise any remedies on account of such breach, default or event, unless the Administrative Agent fails to cure such breach, default or event within the Cure Period. Counterparty acknowledges and agrees that the Administrative Agent shall have the right (but shall be under no obligation) to cure such breach, default or event, and that neither the tender of any such cure by or on behalf of the Administrative Agent, nor this Acknowledgment or any term or provision of the Pledge Agreement, shall be deemed to result in the assumption by the Administrative Agent of any obligations of the Pledgor under the Hedge Agreement.

ACKNOWLEDGED AND CONSENTED TO:

[COUNTERPARTY]

By: _____
Name:
Title:

Address For Notices:

LOAN AGREEMENT

Dated as of July 1, 2010

by and between

NEW YORK CITY CAPITAL RESOURCE CORPORATION,

a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038,
as "**Issuer**"

and

ALBEE RETAIL DEVELOPMENT LLC,

a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605,
as "**Company**"

\$20,000,000

New York City Capital Resource Corporation
Recovery Zone Facility Revenue Bonds
(Albee Retail Development LLC Project),
Series 2010

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LOAN AGREEMENT

This **LOAN AGREEMENT**, made and entered into as of June 1, 2010, by and between **NEW YORK CITY CAPITAL RESOURCE CORPORATION**, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038, party of the first part, and **ALBEE RETAIL DEVELOPMENT LLC**, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, party of the second part (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in Section 1.1 of this Agreement);

WITNESSETH:

WHEREAS, the Issuer is authorized pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended, and its Certificate of Incorporation, to promote community and economic development and the creation of jobs for the citizens of the City by developing and providing programs for manufacturing and industrial businesses and other entities to access low interest cost tax-exempt and non-tax-exempt financing for their eligible projects, and to issue and sell one or more series or classes of bonds, notes and other obligations through public letting, private placement, or negotiated underwriting to finance such activities above, on a secured or unsecured basis; and

WHEREAS, the Company entered into negotiations with officials of the Issuer for the construction, renovation, equipping and furnishing of the Improvements as part of the Facility; and

WHEREAS, pursuant to the American Recovery and Reinvestment Act of 2009, as amended, on June 9, 2009, as amended on February 9, 2010, the Board of Directors of the Issuer established a program for the issuance of recovery zone facility bonds including program requirements ("Program Requirements"), threshold requirements ("Threshold Requirements") and selection criteria ("Selection Criteria"), and designated certain areas within the City as "Recovery Zones"; and

WHEREAS, on July 17, 2009, the Mayor of the City ratified the designations made by the Issuer of the "Recovery Zones"; and

WHEREAS, on September 15, 2009, the Issuer adopted a resolution approving the eligibility of the Project to receive a \$20,000,000 allocation for the issuance of recovery zone facility bonds and determined, among other things, that the Project is located in a designated "Recovery Zone", and that, in applying the Threshold Requirements and the Selection Criteria, the Project qualifies for the issuance of recovery zone facility bonds; and

WHEREAS, the Issuer has determined that the providing of financial assistance to the Company for the Project will promote and is authorized by and will be in furtherance of the Program Requirements and the corporate purposes of the Issuer; and

WHEREAS, the site for the Facility, including the improvements to be constructed thereon, will be subject to the Ground Lease; and

WHEREAS, to facilitate the Project and the issuance by the Issuer of its recovery zone facility revenue bonds to finance a portion of the costs of the Project, the Issuer and the Company have entered into negotiations pursuant to which (i) the Issuer will make the Loan of the proceeds of the Initial Bonds, in the original principal amount of the Initial Bonds, to the Company pursuant to this Agreement, and (ii) the Company will execute the Promissory Note in favor of the Issuer and the Trustee to evidence the Company's obligation under this Agreement to repay the Loan; and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Initial Bonds, the Issuer has authorized the issuance of the Initial Bonds in the Authorized Principal Amount pursuant to the Bond Resolution and the Indenture; and

WHEREAS, concurrently with the execution hereof, in order to further secure the Initial Bonds, (i) the payment of the principal of, Sinking Fund Installments for, Purchase Price, redemption premium, if any, and interest on the Initial Bonds, and the payments, obligations, covenants and agreements of the Company under this Agreement and under the Promissory Note, will be guaranteed by the Guarantors pursuant to the Bond Guaranty Agreement in favor of the Trustee; (ii) the completion of the Project will be guaranteed by the Guarantors pursuant to the Project Completion Guaranty Agreement in favor of the Trustee; (iii) the Company will grant a lien in Facility Revenues and the remainder of the Pledged Collateral pursuant to the Pledge and Security Agreement in favor of the Trustee, subject only to the lien of the Mortgage; and (iv) the Company will grant mortgage liens on and security interests in its leasehold interest in the Facility under the Ground Lease, and an assignment of leases and rents, to the Trustee pursuant to the Mortgage;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. In addition to the definitions set forth in Section 7.1(a), the following terms shall have the respective meanings in this Agreement:

Additional Bonds shall mean one or more Series of additional bonds issued, executed, authenticated and delivered under the Indenture.

Additional Improvements shall have the meaning specified in Section 3.4(a).

Advance Interest Deposit Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

Agreement shall mean this Loan Agreement, dated as of July 1, 2010, between the Issuer and the Company, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith and with the Indenture.

Annual Administrative Fee shall mean that annual administrative fee established from time to time by the Issuer's Board of Directors as generally applicable to Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from such general applicability as may be established by the Issuer's Board of Directors).

Approved Facility shall mean the Facility as occupied, used and operated by the Company and all Facility Tenants substantially for the Approved Project Operations, including such other activities as may be substantially related to or substantially in support of such operations, all to be effected in accordance with this Agreement and the Ground Lease.

Approved Project Operations shall mean, subject to this Agreement, those uses and operations permitted under the Ground Lease, excluding, however, any Tax Prohibited Use or any use by a not-for-profit corporation.

Authorized Denomination shall mean, in the case of the Initial Bonds, \$100,000 or any integral multiple of \$5,000 in excess thereof.

Authorized Principal Amount shall mean, in the case of the Initial Bonds, \$20,000,000.

Authorized Representative shall mean:

(i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties;

(ii) in the case of the Company, a person named in Exhibit B — “Authorized Representative”, or any other officer or employee of the Company who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Company has given written notice from time to time to the Issuer and the Trustee; and

(iii) in the case of the Parent, a person named in Exhibit B — “Authorized Representative”, or any other officer or employee of the Parent who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Parent has given written notice from time to time to the Issuer and the Trustee;

provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Beneficial Owner shall mean, whenever used with respect to an Initial Bond, the Person in whose name such Initial Bond is recorded as the Beneficial Owner of such Initial Bond by the respective systems of DTC and each of the Participants of DTC. If at any time the Initial Bonds are not held in the Book-Entry System, Beneficial Owner shall mean “Holder” for purposes of the Security Documents.

Bond Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Bond Guaranty Agreement shall mean the Bond Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Bondholder, Holder of Bonds, Holder or holder shall mean any Person who shall be the registered owner of any Bond or Bonds.

Bond Payment Date shall mean, with respect to a Series of Bonds, each date upon which interest, principal and/or Sinking Fund Installments shall be scheduled to be paid under such Series of Bonds.

Bond Placement Agreement shall mean the Bond Placement Agreement, dated July 1, 2010, with respect to the placement of the Initial Bonds, among the Issuer, the Company and the Placement Agent.

Bond Registrar shall mean the Trustee acting as registrar as provided in Section 3.10 of the Indenture.

Bond Resolution shall mean the resolution of the Issuer adopted on February 9, 2010, as amended on April 13, 2010, authorizing the issuance of the Initial Bonds.

Bonds shall mean the Initial Bonds and any Additional Bonds.

Building Loan Agreement shall mean the Building Loan Agreement, dated as of even date herewith, among the Issuer, the Company and the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Business Day shall mean any day that shall not be:

- (i) a Saturday, Sunday or legal holiday;
- (ii) a day on which the Trustee, the Tender Agent, the Paying Agent or the Remarketing Agent is required or authorized by law or executive order to be closed;
- (iii) a day on which banking institutions in the City are authorized by law or executive order to close; or
- (iv) a day on which the New York Stock Exchange is closed.

Capitalized Interest Account shall mean the special trust account of the Project Fund so designated, established pursuant to Section 5.01 of the Indenture.

City shall mean The City of New York, New York.

Claims shall have the meaning set forth in Section 7.2(a).

Closing Date shall mean July 1, 2010, the date of the initial issuance and delivery of the Initial Bonds.

Code shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder. All references to Sections of the Code or regulations thereunder shall be deemed to include any such Sections or regulations as they may hereafter be renumbered in any subsequent amendments to the Code or such regulations.

Commencement Date shall mean July 1, 2010, on which date this Agreement was executed and delivered.

Company shall mean Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Company under Section 7.8 or 7.19.

Company's Property shall have the meaning specified in Section 3.4(c).

Company Purchase Account shall mean the special trust account of the Purchase Fund so designated, established pursuant to Section 5.01 of the Indenture.

Completed Improvements Rentable Square Footage shall mean approximately 44,728 rentable square feet, the rentable square footage of the Improvements upon completion of the Project Work.

Completion Date shall mean June 10, 2012, or such later date as shall be permitted by the landlord under the Ground Lease.

Conduct Representation shall mean any representation by the Company under Section 2.2(u), by the Parent under Section 2.1(h) of the Issuer Indemnification Agreement, or by any other Person in any Required Disclosure Statement delivered to the Issuer.

Construction Account shall mean the special trust account of the Project Fund so designated, established pursuant to Section 5.01 of the Indenture.

Control or Controls, including the related terms “controlled by” and “under common control with”, shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

Costs of Issuance shall mean issuance costs with respect to the Initial Bonds described in Section 147(g) of the Code and any regulations thereunder, including but not limited to the following: fees of the Placement Agent; counsel fees (including bond counsel to the Issuer, counsel to the Placement Agent, Trustee’s counsel, Issuer’s counsel, Company’s counsel, as well as any other specialized counsel fees incurred in connection with the borrowing); financial advisor fees of any financial advisor to the Issuer or the Company incurred in connection with the issuance of the Initial Bonds; engineering and feasibility study costs; guarantee fees (other than Qualified Guarantee Fees, as defined in the Tax Regulatory Agreement); Rating Agency fees; Trustee, Paying Agent and Tender Agent fees; accountant fees and other expenses related to issuance of the Initial Bonds; printing costs (for the Initial Bonds and of the preliminary and final Private Placement Memorandum relating to the Initial Bonds); printing costs for the Initial Bonds and offering documents; public approval and process costs; fees and expenses of the Issuer incurred in connection with the issuance of the Initial Bonds; and Blue Sky fees and expenses; and similar costs.

Defeasance Obligations shall mean Government Obligations that are not subject to redemption prior to maturity.

Determination of Taxability shall mean;

(i) the adoption, promulgation or enactment of any federal statute or regulation, or any determination, decision, decree or ruling made by the Commissioner or any District Director of the Internal Revenue Service;

(ii) the issuance of a public or private ruling or a technical advice memorandum by the Internal Revenue Service in which the Company has participated or has been given the opportunity to participate, and which ruling or memorandum the Company, in its discretion, does not contest or from which no further right of judicial review or appeal exists; or

(iii) a determination from which no further right of appeal exists of any court of competent jurisdiction in the United States in a proceeding in which the Company has participated or has been a party, or has been given the opportunity to participate or be a party;

in any case, to the effect that the interest payable on the Bonds of a Holder or a former Holder thereof (other than a Holder of any Bond who is a "substantial user" of the Facility or a "related person", within the meaning and for the purpose of Section 147(a) of the Code and the applicable regulations thereunder) is includable in gross income for federal income tax purposes; provided, however, that no such Determination of Taxability described in clauses (ii) or (iii) hereof shall be considered to exist unless (1) the Holder or former Holder of the Bond involved in such proceeding (A) gives the Company and the Trustee prompt notice of the commencement thereof and (B) (if the Company agrees to pay all expenses in connection therewith) offers the Company the opportunity to control the defense thereof and (2) either (A) the Company does not agree within thirty (30) days of receipt of such offer to pay such expenses and to control such defense or (B) the Company shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Company determines to be appropriate. No Determination of Taxability described above will result from the inclusion of interest on any Bond in the computation of minimum or indirect taxes.

DTC shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State, and its successors and assigns.

Due Date shall have the meaning set forth in Section 8.9(a).

Earnings Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Electronic Means shall mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

Employment Information shall have the meaning set forth in Section 7.6(c).

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Environmental Audit shall mean that certain Phase I Environmental Site Assessment Report dated April 2, 2010, prepared by the Environmental Auditor.

Environmental Auditor shall mean CNS Management Corp.

Event of Default shall have the meaning specified in Section 8.1.

Event of Taxability shall mean the date specified in a Determination of Taxability as the date interest paid or payable on any Bond becomes includable for federal income tax purposes in the gross income of any Holder thereof (other than a Holder of any Bond who is a “substantial user” of the Facility or a “related person”, within the meaning and for the purpose of Section 147(a) of the Code and the applicable regulations thereunder) as a consequence of any act, omission or event whatsoever, including any change of law, and regardless of whether the same was within or beyond the control of the Company.

Existing Facility Property shall have the meaning set forth in Section 3.5(a).

Expiration Date shall mean November 1, 2042.

Facility shall mean, collectively, the Land and the Improvements.

Facility Lease Payments shall have the meaning specified in Section 4.1 of the Mortgage.

Facility Leases shall mean, collectively, all leases or other occupancy or use agreements, other than the Ground Lease, entered into with any Person for the use, possession or occupancy of the Facility or any portion thereof.

Facility Revenues shall mean all revenues, income, fees, receipts, charges, income and other money received in any period by or on behalf of the Company, derived from the leasing or operation of the Facility, including proceeds derived from insurance (including environmental insurance) and/or condemnation proceeds with respect to the Facility and business interruption insurance and extra expense insurance, in each case whether existing as of the Closing Date or hereafter coming into existence.

Facility Tenants shall mean all Persons as shall use, possess or occupy all or any portion of the Facility pursuant to a Facility Lease.

Favorable Opinion of Bond Counsel shall mean, with respect to any action the occurrence of which requires such an opinion, an unqualified Opinion of Counsel, which shall be a Nationally Recognized Bond Counsel, to the effect that such action is permitted under the Indenture and will not adversely affect the exclusion of interest on a Series of Bonds from gross income for purposes of Federal income taxation (subject to the inclusion of any exceptions contained in the opinion delivered upon original issuance of such Series of Bonds).

Fiscal Year shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Company for accounting purposes as to which the Company shall have given prior written notice thereof to the Issuer and the Trustee at least ninety (90) days prior to the commencement thereof.

Fitch shall mean Fitch, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

Fixed Date Deliverables shall have the meaning set forth in Section 8.9(a)(ii).

GAAP shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Company, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Government Obligations shall mean the following:

- (i) direct and general obligations of, or obligations unconditionally guaranteed by, the United States of America;
- (ii) obligations of a Person controlled or supervised by and acting as an Issuer or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America for the timely payment thereof; or
- (iii) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clauses (i) or (ii) above.

Ground Lease shall mean that certain Severance Lease (Site 1A), dated June 30, 2010, between the City, as landlord, and Albee Development, LLC, a Delaware limited liability company ("Albee Development"), as assigned on July 1, 2010 by Albee Development to, and assumed by, the Company, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith, herewith and with the Mortgage.

Guarantors shall mean, collectively, the Company and the Parent, and their respective successors and assigns.

Hazardous Materials shall include any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

Impositions shall have the meaning set forth in Section 7.16(a).

Improvements shall mean:

- (i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date and erected or situated on the Land;
- (ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land throughout the term of this Agreement (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2); and
- (iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

Indemnification Commencement Date shall mean September 15, 2009, the date on which the Issuer adopted the Preliminary Resolution.

Indemnified Parties shall have the meaning set forth in Section 7.2(a).

Indenture shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Independent Accountant shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Issuer and the Trustee (such approvals not to be unreasonably withheld or delayed).

Independent Engineer shall mean a Person (not an employee of any of the Issuer, the Company, the Parent or any Affiliate of any thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Company, and approved in writing by the Trustee (which approval shall not be unreasonably withheld and shall be at the written direction of the Majority Holders).

Information Recipients shall have the meaning set forth in Section 7.6(c).

Initial Annual Administrative Fee shall mean \$850.

Initial Bonds shall mean the Issuer's \$20,000,000 Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010 authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

Interest Payment Date shall mean, with respect to the Initial Bonds, February 1, May 1, August 1 and November 1 of each year, commencing August 1, 2010, and with respect to any Series of Additional Bonds, the dates set forth therefor in the Supplemental Indenture pursuant to which such Series of Additional Bonds are issued.

Issuer shall mean New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

Issuer Indemnification Agreement shall mean the Issuer Indemnification Agreement, dated as of even date herewith, from the Parent to the Issuer, and shall include any and all amendments thereof and supplements thereto hereafter made.

Issuer's Reserved Rights shall mean, collectively,

- (i) the right of the Issuer in its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Issuer under this Agreement;
- (ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under this Agreement;
- (iii) the right of the Issuer to enforce in its own behalf the obligation of the Company to complete the Project;
- (iv) the right of the Issuer in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.4, 4.5, 4.6, 4.7, 4.8, 5.1, 5.2, 5.3, 5.4, 6.1, 6.3, 6.4, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17, 7.18, 7.19, 7.21, 7.22, 7.23, 7.26, 7.28, 7.29, 7.30, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 9.1, 9.2, 9.3, 10.1, 10.3, 10.6, 11.1, 11.3, 11.4, 11.5, 11.6, 11.11, 11.13, 11.14 and 11.15; and
- (v) the right of the Issuer in its own behalf to declare a default with respect to any of the Issuer's Reserved Rights and exercise the remedies set forth in Section 8.2(b).

Land shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn (County of Kings), Block 149 and Lot 103, generally known by the street address 1 DeKalb Avenue, Brooklyn, New York, all as more particularly described in Exhibit A - "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 7.9(c).

Land Square Footage shall mean approximately 10,000 square feet.

Legal Requirements shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Company or any Facility Tenant, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Letter of Representation and Indemnity Agreement shall mean the Letter of Representation and Indemnity Agreement, dated the Closing Date, from the Guarantors to the Issuer, the Trustee and the original purchaser(s) of the Initial Bonds.

Liability shall have the meaning set forth in Section 7.2(a).

Liens shall have the meaning specified in Section 7.10(a).

Loan shall mean the loan made by the Issuer to the Company pursuant to this Agreement as described in Section 4.1.

Loan Payment Date shall mean the fifth (5th) Business Day immediately preceding each Bond Payment Date.

Loss Event shall have the meaning specified in Section 5.1.

Majority Holders shall mean the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

Maximum Interest Rate shall mean, with respect to the Initial Bonds, a rate of interest equal to the lesser of (i) twelve percent (12%) per annum, or (ii) the maximum rate permitted by, or enforceable under, applicable law.

Merge shall have the meaning specified in Section 7.19(a)(v).

Moody's shall mean Moody's Investors Service Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

Mortgage shall mean, collectively, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Nationally Recognized Bond Counsel shall mean counsel acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

Notice Parties shall mean the Issuer, the Company, the Parent, the Bond Registrar, the Paying Agents, the Trustee, the Tender Agent and the Remarketing Agent.

Notification of Failure to Deliver shall have the meaning specified in Section 8.9(b).

NYCEDC shall mean New York City Economic Development Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State, and any successor thereof.

NYCIDA shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Opinion of Counsel shall mean a written opinion of counsel for the Company, the Parent or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Outstanding, when used with reference to a Bond or Bonds, as of any particular date, shall mean all Bonds which have been issued, executed, authenticated and delivered under the Indenture, except:

(i) Bonds cancelled by the Trustee because of payment or redemption prior to maturity or surrendered to the Trustee under the Indenture for cancellation;

(ii) any Bond (or portion of a Bond) for the payment or redemption of which, in accordance with Article X of the Indenture, there has been separately set aside and held in the Redemption Account of the Bond Fund either:

(A) moneys, and/or

(B) Defeasance Obligations in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications as shall be necessary to provide moneys,

in an amount sufficient to effect payment of the principal or applicable Redemption Price of such Bond, together with accrued interest on such Bond to the payment or redemption date, which payment or redemption date shall be specified in irrevocable instructions given to the Trustee to apply such moneys and/or Defeasance Obligations to such payment on the date so specified, provided, that, if such Bond or portion thereof is to be redeemed, notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(iii) Bonds in exchange for or in lieu of which other Bonds shall have been authenticated and delivered under Article III of the Indenture,

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder or under any other Security Document, Bonds owned by the Company, the Parent or any Affiliate of the Company or of the Parent shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. Bonds which have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Company, the Parent or any Affiliate of the Company or of the Parent.

Parent shall mean Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Parent under Section 3.6 of the Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement.

Participants shall mean those financial institutions for whom the Securities Depository effects book entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

Paying Agent shall mean any paying agent for the Bonds appointed pursuant to the Indenture (and may include the Trustee) and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to the Indenture.

Per Diem Fees shall mean, collectively, the Per Diem Late Fee and the Per Diem Supplemental Late Fee.

Per Diem Holdover Amount shall mean that per diem holdover amount established from time to time by the Issuer's Board of Directors generally imposed upon Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from such general applicability as may be established by the Issuer's Board of Directors) and that have failed to terminate this Agreement within the ten (10) day period referred to in Section 9.1.

Per Diem Late Fee shall mean that per diem late fee established from time to time by the Issuer's Board of Directors generally imposed upon Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from such general applicability as may be established by the Issuer's Board of Directors) and that have not (x) paid to the Issuer the Annual Administrative Fee on the date required under Section 7.3, (y) delivered to the Issuer all or any of the Fixed Date Deliverables on the respective dates required under Section 7.13 or 7.15, and/or (z) delivered to the Issuer all or any of the Requested Document Deliverables under Section 7.14 within five (5) Business Days of the Issuer having made the request therefor.

Per Diem Supplemental Late Fee shall mean that supplemental per diem late fee established from time to time by the Issuer's Board of Directors generally imposed upon Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from general applicability as may be established by the Issuer's Board of Directors).

Permitted Encumbrances shall mean:

- (i) the Ground Lease, the Mortgage, the Pledge and Security Agreement, the Building Loan Agreement, all Facility Leases and any other Project Document;
- (ii) liens for real estate taxes, if any, payments in lieu of real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien, security interest, encumbrance or charge or right in respect thereof, placed on or with respect to the Facility or any part thereof, if payment is not yet due and payable, or if such payment is being disputed pursuant to Section 7.10(b);
- (iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Issuer and the Trustee will not materially interfere with or impair the use and enjoyment of the Facility by the Company and the Facility Tenants as herein provided;
- (v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Company delivered to the Issuer and the Trustee, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired or purport to impose liabilities or obligations on the Issuer;
- (vi) those exceptions to title to the Facility enumerated in the title insurance policy delivered pursuant to Section 3.7 insuring the Trustee's mortgagee interest under the Mortgage in the Facility, a copy of which is on file at the offices of the Issuer and at the designated corporate trust office of the Trustee;

(vii) liens arising by reason of good faith deposits with the Company in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Company to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental entity or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Company to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(ix) any judgment lien against the Company, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed;

(x) any purchase money security interest in movable personal property, including equipment leases and financing;

(xi) liens on property due to rights of governmental entities or third party payors for recoupment of excess reimbursement paid;

(xii) a lien, restrictive declaration or performance mortgage with respect to the operation of the Facility arising by reason of a grant or other funding received by the Company from the City, the State or any governmental entity;

(xiii) a subordinate mortgage granted by the Company to the Parent, as subordinate mortgagee, in an amount not to exceed \$5.3 million, together with an intercreditor agreement among the Trustee, the Company and the subordinate mortgagee in form and substance acceptable to the Trustee; and

(xiv) any lien, security interest, encumbrances or charge which exists in favor of the Trustee or to which the Trustee shall consent in writing.

Person shall mean an individual or any Entity.

Placement Agent shall mean, in the case of the Initial Bonds, Roosevelt & Cross, Incorporated, New York, New York.

Plans and Specifications shall mean the plans and specifications prepared for the Project by or on behalf of the Company, as amended from time to time by or on behalf of the Company to reflect any remodeling or relocating of the Project or substitutions, additions, modifications and improvements to the Project made by the Company in compliance with this Agreement, said plans and specifications being duly certified by an Authorized Representative of the Company and filed in the designated corporate trust office of the Trustee and available to the Issuer.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, dated as of even date herewith, from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Pledged Collateral shall have the meaning specified in Section 3.1 of the Pledge and Security Agreement.

Policy(ies) shall have the meaning specified in Section 7.1(a).

Predecessor Company shall have the meaning specified in Section 7.19(b)(ii).

Preliminary Resolution shall mean the resolution of the Issuer adopted on September 15, 2009 approving the eligibility of the Project to receive an allocation for the issuance of up to \$20,000,000 of recovery zone facility bonds to finance the Project.

Principal Account shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

Principals shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity, and any Person as shall have the power to Control such Entity, and "principal" shall mean any of such Persons.

Private Placement Memorandum shall mean, in the case of the Initial Bonds, the Private Placement Memorandum, dated July 1, 2010, distributed by the Placement Agent and the Company in connection with the private placement of the Initial Bonds.

Project shall mean the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility to be leased to retail commercial tenants.

Project Application Information shall mean the eligibility application and questionnaire submitted to the Issuer by or on behalf of the Company, for approval by the Issuer of the Project and the providing of financial assistance by the Issuer therefor, together with all other letters, documentation, reports and financial information submitted in connection therewith.

Project Completion Guaranty Agreement shall mean the Project Completion Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project Costs shall mean:

(i) all costs of engineering and architectural services with respect to the Project, including the cost of test borings, surveys, estimates, permits, Plans and Specifications and for supervising demolition, construction and renovation, as well as for the performance of all other duties required by or consequent upon the proper site preparation, construction of, and the making of alterations, renovations, additions and improvements in connection with, the completion of the Project;

(ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the completion of the Project;

(iii) the interest on the Bonds during the construction and renovation of the Project until the completion of the Project;

(iv) payments pursuant to the Ground Lease during the construction and renovation of the Project until the completion of the Project;

(v) all costs of contract bonds and of insurance that may be required or necessary during the period of Project construction and renovation;

(vi) all costs of title insurance as provided in Section 3.7;

(vii) that portion of the mortgage recording tax payable upon the recording of the Mortgage as specified in the Tax Regulatory Agreement as eligible to be financed from the proceeds of the Bonds;

(viii) the payment of the Costs of Issuance with respect to the Initial Bonds;

(ix) the payment of the fees and expenses of the Trustee during the period of construction and renovation of the Project;

(x) all costs which the Company shall be required to pay, under the terms of any contract or contracts, for the completion of the Project, including any amounts required to reimburse the Company for advances made for any item otherwise constituting a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Project; and

(xi) all other costs and expenses relating to the completion of the Project or the issuance of a Series of Additional Bonds.

“Project Costs” shall not include (i) fees or commissions of real estate brokers; (ii) moving expenses; (iii) amounts payable as rent under the Ground Lease; or (iv) operational costs.

Project Documents shall mean, collectively, the Ground Lease, the Issuer Indemnification Agreement, the Remarketing Agreement, the Bond Placement Agreement, the Facility Leases and the Security Documents.

Project Fee shall mean \$125,000, representing the Issuer’s financing fee.

Project Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Project Work shall mean the design and construction of the Improvements in accordance with the Plans and Specifications.

Promissory Note shall mean, with respect to the Initial Bonds, that certain Promissory Note in substantially the form of Exhibit C to this Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to this Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with this Agreement and the Indenture.

Purchase Date shall have the meaning assigned to such term in the Indenture.

Purchase Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Purchase Price shall mean an amount equal to the principal amount of any Initial Bond purchased on any Purchase Date, plus accrued interest to the Purchase Date (unless the Purchase Date is an Interest Payment Date, in which case the Purchase Price shall not include accrued interest, which shall be paid in the normal course).

Qualified Investments shall mean, to the extent permitted by applicable law, the following: (i) obligations of the State or the United States of America, (ii) obligations, the principal and interest of which are guaranteed by the State or the United States of America, (iii) obligations of any agency of the United States of America which may from time to time be legally purchased by savings banks within the State as an investment of funds belonging to them or under their control, (iv) bankers' acceptances of, or certificates of deposit issued by, or demand, trust or time deposits with, any bank, trust company or national banking association (including the Trustee and any of its affiliates) having undivided capital and surplus aggregating at least \$25,000,000, (v) repurchase agreements or other contracts for the purchase and sale of and secured by obligations of the type specified in (i) through (iii) above, (vi) commercial paper of any Person other than the Company or any Affiliate of the Company which has been classified for rating purposes by Moody's as Prime-1 or by S&P's as A-1, (vii) money market mutual funds investing in the obligations described in (i), (ii), (iii) or (v) described above, including, without limitation, the JPMorgan Money Market Mutual Funds or any other fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (x) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (y) the Trustee charges and collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (z) services performed for such funds and pursuant to the Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates, or (viii) investment agreements or repurchase agreements with any bank, trust company, national banking association (which may include the Trustee or any of its affiliates) or any other financial institution or insurance company or guaranteed thereby, provided that the institution providing such investment agreements or repurchase agreements shall be rated "A" (or its equivalent) or better by a Rating Agency, or the principal amount of such investment agreements or repurchase agreements then outstanding shall be fully secured and collateralized by the pledge and deposit of securities (including wireable securities) described in (i) above or obligations of the Federal National Mortgage Association with a market value equal to one hundred two and one-half percent (102 1/2%) of such principal amount, that the Trustee has a perfected first security interest in the collateral, that the Trustee or any agent has possession of the collateral, and that such obligations are free and clear of claims by third parties. The investment agreements or repurchase agreements described in (viii) above shall be only of institutions whose capital surplus (or in the case of financial institutions other than banks, net worth) is in excess of \$50,000,000.

Rating Agency shall mean any of S&P, Moody's or Fitch and such other nationally recognized securities rating agency as shall have awarded a rating to the Initial Bonds.

Rating Category shall mean one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

Rebate Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Redemption Account shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

Redemption Date shall mean the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Indenture.

Redemption Price shall mean, with respect to any Bond or a portion thereof, the principal amount thereof to be redeemed in whole or in part, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or the Indenture.

Remarketing Account shall mean the special trust account of the Purchase Fund so designated, established pursuant to Section 5.01 of the Indenture.

Remarketing Agent shall mean (a) initially, Roosevelt & Cross, Incorporated, New York, New York, and (b) thereafter, any Person meeting the qualifications of and designated from time to time to act as Remarketing Agent for the Initial Bonds under Section 8.9(a) of the Indenture.

Remarketing Agreement shall mean, as of any date, the Remarketing Agreement between the Company and the then Remarketing Agent.

Renewal Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

Requested Document Deliverables shall have the meaning set forth in Section 8.9(a).

Required Disclosure Statement shall mean that certain Required Disclosure Statement in the form of Exhibit E — “Form of Required Disclosure Statement”.

S&P shall mean Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, Inc., a corporation organized and existing under the laws of the State, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

Securities Depository shall mean any securities depository that is a clearing Issuer under federal law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book-entry interests in the Bonds, and to effect transfers of book-entry interests in the Bonds in book-entry form, and includes and means initially DTC.

Security Documents shall mean, collectively, this Agreement, the Promissory Note, the Pledge and Security Agreement, the Indenture, the Bond Guaranty Agreement, the Project Completion Guaranty Agreement, the Tax Regulatory Agreement, the Building Loan Agreement and the Mortgage.

Series shall mean all of the Bonds designated as being of the same series authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter authenticated and delivered in lieu thereof or in substitution therefor pursuant to the Indenture.

Sinking Fund Installment shall mean an amount so designated and which is established for mandatory redemption on a date certain of the Bonds of any Series of Bonds pursuant to the Indenture. The portion of any such Sinking Fund Installment of a Series of Bonds remaining after the deduction of any amounts credited pursuant to the Indenture toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments of such Series of Bonds due on a future date.

Sinking Fund Installment Account shall mean the special trust account of the Bond Fund so designated, which is established pursuant to Section 5.01 of the Indenture.

Sign shall have the meaning specified in Section 7.4.

State shall mean the State of New York.

Successor Company shall have the meaning specified in Section 7.19(b)(ii).

Supplemental Indenture shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with Article XI of the Indenture.

Tax Prohibited Uses shall mean rental of residential property for family units, any private or commercial golf course, any airplane, skybox or other private luxury box, health club facility, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or any other use as shall not constitute a permitted use for recovery zone facility bonds under the Code.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Tender Agent shall mean initially, The Bank of New York Mellon, New York, New York, and any successor tender agent appointed pursuant to Section 9.11 of the Indenture.

Termination Date shall mean such date on which this Agreement may terminate pursuant to its terms and conditions prior to the Expiration Date.

Transfer shall have the meaning specified in Section 7.19(a)(iv).

Trust Estate shall mean all property, interest, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

Trustee shall mean The Bank of New York Mellon, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

VENDEX shall mean such background information as the Company is required to provide the City and as is required to establish that the relevant party is not a "Prohibited Person", as such term is generally defined by the City.

Section 1.2. Construction. In this Agreement, unless the context otherwise requires:

- (a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Commencement Date.
- (b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.
- (c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.
- (d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- (e) Unless the content indicates otherwise, references to designated “Exhibits”, “Articles”, “Sections”, “Subsections”, “clauses” and other subdivisions are to the designated Exhibits, Articles, Sections, Subsections, clauses and other subdivisions of or to this Agreement.
- (f) The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.
- (g) The word “will” shall be construed to have the same meaning and effect as the word “shall”.
- (h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).
- (i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person’s successors and assigns or such Person’s successors in such capacity, as the case may be.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties by Issuer. The Issuer makes the following representations and warranties:

(i) The Issuer is a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and is duly organized and validly existing under the laws of the State.

(ii) Assuming the accuracy of representations made by the Company and by the Parent, the Issuer is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Issuer is a party, to carry out its obligations hereunder and thereunder, and to issue and sell the Initial Bonds.

(iii) By proper action of its board of directors, the Issuer has duly authorized the execution and delivery of this Agreement and each of the other Project Documents to which the Issuer is a party.

(iv) In order to finance a portion of the cost of the Project, the Issuer proposes to issue the Initial Bonds in the Authorized Principal Amount. The Initial Bonds will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Indenture.

(v) The Facility is located in a recovery zone designated by the Issuer and ratified by the Mayor of the City.

(vi) The Mayor of the City has confirmed the findings of the Issuer as required under the Issuer's Organizational Documents.

(vii) The Issuer has all requisite power, authority and legal right to execute and deliver the Project Documents to which it is a party and all other instruments and documents to be executed and delivered by the Issuer pursuant hereto and thereto and to perform its obligations under the Project Documents and all such other instruments and documents to which it is a party. All corporate action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Project Documents and all such other instruments and documents to which it is a party has been duly authorized and effectively taken, and such execution, delivery, performance and observance by the Issuer do not contravene the Issuer's Organizational Documents or any applicable Legal Requirements or any contractual restriction binding on or affecting the Issuer.

(viii) There is no action or proceeding before any court, governmental agency or arbitrator pending or, to the knowledge of the Issuer, threatened against the Issuer which seeks (i) to restrain or enjoin the issuance or delivery of the Initial Bonds, the pledge and grant of the Trust Estate or the collection of any revenues pledged under the Indenture, (ii) to contest or affect in any way the authority for the issuance of the Initial Bonds or the validity of any of the Project Documents, or (iii) to contest in any way the existence or powers of the Issuer.

Section 2.2. Representations and Warranties by the Company. The Company makes the following representations and warranties:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing under the laws of the State, is not in violation of any provision of any of the Company's Organizational Documents, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

(b) This Agreement and the other Project Documents to which the Company is a party (x) have been duly authorized by all necessary action on the part of the Company, (y) have been duly executed and delivered by the Company, and (z) constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

(c) The execution, delivery and performance of this Agreement and each other Project Document to which the Company is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Company's Organizational Documents, or any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or, to the best of the Company's knowledge, after diligent inquiry, threatened, by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under this Agreement or any other Project Document to which it is or shall be a party.

(e) The financial assistance provided by the Issuer to the Company as contemplated by this Agreement is necessary to induce the Company to proceed with the Project.

(f) The transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Company or any other occupant or user of the Facility from one area of the State outside of the City to within the City or in the abandonment of one or more facilities or plants of the Company or any other occupant or user of the Facility located within the State, but outside of the City; provided, however, that neither restriction shall apply if the Issuer shall determine on the basis of the application before it that the Project is reasonably necessary to discourage the Facility occupant or user from removing such other plant or facility to a location outside the State or is reasonably necessary to preserve the competitive position of the Facility occupant or user in its respective industry.

(g) Undertaking the Project is anticipated to serve the corporate purposes of the Issuer by increasing the overall number of permanent, private sector jobs in the State.

(h) No funds of the Issuer shall be used by the Company in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Issuer be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(i) No Person other than the Company and Facility Tenants (and their respective invitees) is or will be in use, occupancy or possession of any portion of the Facility.

(j) The Company has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Commencement Date in connection with the execution and delivery of this Agreement and each other Project Document to which it shall be a party or in connection with the performance of its obligations hereunder and under each of the Project Documents.

(k) The Project will be designed, and the operation of the Facility will be, in compliance with all applicable Legal Requirements.

(l) The Company is in compliance, and will continue to comply, with all applicable Legal Requirements relating to the Project, the Project Work and the operation of the Facility.

(m) The Company has delivered to the Issuer a true, correct and complete copy of the Environmental Audit.

(n) The Company has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and except as set forth in the Environmental Audit, to the best of the Company's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(o) The estimated cost of the Project is \$24,220,000. Expenses for supervision by the officers or employees of the Company or its Affiliates and expenses for work done by such officers or employees in connection with the Project will be included as a Project Cost only to the extent that such Persons dedicated their time exclusively for such particular purpose, the expenses do not exceed the actual cost thereof and are to be treated on the books of the Company as a capital expenditure in conformity with GAAP. Any costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Initial Bonds shall be treated on the books of the Company as capital expenditures in conformity with GAAP.

(p) The total cost of the Project Work being funded with the Initial Bonds is not less than the Authorized Principal Amount. That portion of the cost of the Project as shall not derive from the proceeds of the Initial Bonds shall be provided from equity on the part of the Company and/or the Parent. The amounts provided to the Company from the proceeds of the Initial Bonds, together with other moneys available to the Company and/or the Parent, are sufficient to pay all costs in connection with the completion of the Project.

(q) All of the Land comprises one complete tax lot and no portion of any other tax lot that is not part of the Land.

(r) Subject to Section 3.5 and Article V, no property constituting part of the Facility shall be located at any site other than at the Facility.

(s) The Completed Improvements Rentable Square Footage and the Land Square Footage (as each are set forth in Section 1.1) are true and correct.

(t) The Fiscal Year (as set forth in Section 1.1) is true and correct.

(u) None of the Company, the Principals of the Company, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Company:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Issuer, the NYCIDA, the NYCEDC or the City, unless such default or breach has been waived in writing by the Issuer, the NYCIDA, the NYCEDC or the City, as the case may be;

(ii) has been convicted of a felony and/or any crime involving moral turpitude in the ten (10) preceding years;

(iii) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(iv) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

(v) The Project Application Information was true, correct and complete as of the date submitted to the Issuer, and no event has occurred or failed to occur since such date of submission which would cause any of the Project Application Information to include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make such statements not misleading.

- (w) The Principals of the Company and of the Parent, and their respective ownership interests in and titles to the Company and the Parent, as set forth in Exhibit C — “Principals of Company and Parent”, are true, correct and complete.
- (x) The representations, warranties, covenants and statements of expectation of the Company set forth in the Tax Regulatory Agreement are by this reference incorporated in this Agreement as though fully set forth herein.
- (y) The property included in the Project is either property of the character subject to the allowance for depreciation under Section 167 of the Code, or land.
- (z) Except as may be expressly permitted under the Tax Regulatory Agreement, no part of the proceeds of the Initial Bonds will be used to finance inventory or will be used for operational or non-capital costs or for working capital, or will be used for any other property not constituting part of the Facility.
- (aa) No Project Cost to be reimbursed from the proceeds of the Initial Bonds relates to property constructed, reconstructed, renovated or acquired by purchase by the Company (or any of its Affiliates) prior to July 17, 2009.
- (bb) The original use of any of the property to comprise part of the Facility commenced with the Company.
- (cc) Substantially all of the use of the property comprising the Facility is within a “Recovery Zone” designated by the Issuer (and ratified by the Mayor of the City), and the Facility will be used by the Company in such “Recovery Zone” in the active conduct of a “qualified business” (as defined in Section 1400U-3(c) of the Code) by the Company.
- (dd) No portion of the proceeds of the Initial Bonds is intended to be used to provide any “profit” to an Entity affiliated with, or related to, the Company.
- (ee) No portion of the Facility is intended to be used or otherwise made available for a Tax Prohibited Use or for use by a not-for-profit corporation.
- (ff) The Ground Lease continues in full force and effect as the legal, valid and binding obligation of the Company without default by the Company or, to the knowledge of the Company, by the City thereunder. The Company has neither received nor delivered any notice of default or termination thereunder, and the initial term of the Ground Lease expires on August 26, 2078. Pursuant to the Ground Lease, the Company has a valid leasehold estate in the Facility.
- (gg) No Facility Leases exist as of the Closing Date.
- (hh) The Company does not intend to engage in any business or enterprise other than (x) the design, acquisition, construction, renovation, equipping, furnishing, leasing, operation, maintenance and management of the Facility, (y) the performance of its obligations under the Ground Lease and all other Project Documents to which it is a party, and all other agreements relating to the Facility and its financing, construction, equipping, leasing, management, maintenance, repair, restoration, improvement and operation, and (z) activities in furtherance thereof or ancillary or reasonably related thereto.

(ii) The Company has obtained all consents, approvals, authorizations, permits, licenses, certificates and orders of any governmental or regulatory authority that are required for the construction, leasing, operation and maintenance of the Facility, including, without limitation, any and all required building permits, except for any other thereof that cannot be (or, in accordance with prevailing industry practices, are not customarily) obtained until a later stage of construction of the Facility or completion of the Facility, none of which the Company has any reason to believe will not be granted or will be unduly delayed.

(jj) The Company has no present intention to sell, directly or indirectly, in whole or in part, its interest in the Facility.

ARTICLE III

THE PROJECT; MAINTENANCE; REMOVAL OF PROPERTY
AND TITLE INSURANCE

Section 3.1. Agreement to Undertake Project.

The Company covenants and agrees to undertake and complete the Project Work in accordance with the Ground Lease and this Agreement, including, without limitation:

- (i) effecting the Project Work,
- (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons, and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project Work,
- (iii) paying all fees, costs and expenses incurred in the Project Work from funds made available therefor in accordance with or as contemplated by this Agreement and the Indenture, and
- (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever that may be due, owing and payable to the Company under the terms of any contract, order, receipt or writing in connection with the Project Work and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project Work.

Section 3.2. Manner of Project Completion.

(a) The Company will substantially complete the Project Work, or cause the Project Work to be substantially completed, and effect "Complete Construction of the Building" (as defined in the Ground Lease) by the Completion Date, in accordance with this Agreement, the Plans and Specifications and the Ground Lease, in a first class workmanlike manner, substantially free of defects in materials and workmanship (including latent defects); provided, however, that subject to the Ground Lease, the Company may revise the scope of the Project Work, subject to the prior written consents of the Issuer and the Trustee (which consents shall not be unreasonably withheld, delayed or conditioned).

(b) In undertaking the Project Work, the Company shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project Work in accordance with the terms of the contracts therefor including the correction of any defective work. Upon request, the Company will extend to the Issuer and the Trustee all vendors' warranties received by the Company in connection with the Project, including any warranties given by contractors, manufacturers or service organizations who perform Project Work.

(c) Project Costs shall be paid from the Project Fund or other funds provided by the Company or the Parent. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Company shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in the Project Fund and shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Company be entitled to any diminution of the loan payments payable or other payments to be made under this Agreement, under the Promissory Note, under the Bond Guaranty Agreement or under any other Project Document. All expenses incurred by the Company or the Issuer in connection with the performance of its obligations under this Section to be considered a Project Cost. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Project, shall be deposited into the Construction Account of the Project Fund and made available for payment of Project Costs, or if recovered after such date of completion, be deposited in the Redemption Account of the Bond Fund.

(d) The Company shall pay all taxes and charges payable in connection with the Project Work, including all shipping and delivery charges and other expenses or claims incurred in connection with the Project Work.

(e) The Company will perform or cause to be performed the Project Work in accordance with the Plans and Specifications, the Ground Lease and all applicable Legal Requirements and with the conditions and requirements of all policies of insurance with respect to the Facility and the Project Work. Promptly upon finishing of the Project Work and the completion of the Improvements, the Company will obtain or cause to be obtained all required permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility as an Approved Facility and shall furnish copies of same to the Trustee immediately after the receipt thereof upon demand by the Trustee and to the Issuer immediately upon demand therefor.

(f) Upon completion of the Project Work, the Company shall evidence completion of the Project by delivering to the Issuer and the Trustee a certificate of an Authorized Representative of the Company in substantially the form set forth in Exhibit E – “Form of Project Completion Certificate”, together with all attachments required thereunder.

(g) Upon request by the Issuer or the Trustee, the Company shall make available to the Issuer and the Trustee copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project Work.

Section 3.3. Maintenance. a) During the term of this Agreement, the Company will:

- (i) keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted,

(ii) cause the Facility to be occupied, used and operated, as the Approved Facility, and

(iii) make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that (x) the interest on the Bonds shall not cease to be excludable from gross income for federal income tax purposes, (y) the operations of the Company at the Facility shall not be materially impaired or diminished, and (z) the security for the Bonds shall not be materially impaired.

(b) All replacements, renewals and repairs shall be similar in utility to the original work and be made and installed in compliance with all applicable Legal Requirements.

(c) The Issuer shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility, and the Company hereby agrees to assume full responsibility therefor.

Section 3.4. Alterations and Improvements.

(a) The Company shall have the privilege of making such alterations of or additions to the Facility ("**Additional Improvements**") or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that:

(i) as a result of the Additional Improvements, the fair market value of the Facility is not reduced below its value before the Additional Improvements are made and the usefulness, structural integrity or operating efficiency of the Facility is not materially impaired,

(ii) the Additional Improvements are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements,

(iii) the Additional Improvements are promptly and fully paid for by the Company (or on its behalf) in accordance with the terms of the applicable contract(s) therefor,

(iv) the Additional Improvements do not change the nature of the Facility so that it would not constitute the Approved Facility, and

(v) the Additional Improvements are effected in accordance with the Ground Lease.

(b) All Additional Improvements shall constitute a part of the Facility, subject to the Ground Lease, this Agreement and the Mortgage.

(c) The Company shall have the right to install or permit to be installed at the Facility, machinery, equipment and other personal property at the Company's own cost and expense (the "Company's Property"). Once so installed, the Company's Property shall not constitute part of the Facility or of the Pledged Collateral and shall not be subject to this Agreement, nor constitute part of the Facility, or subject to the lien and security interest of the Mortgage or of the Pledge and Security Agreement, provided that the same is not made fixtures appurtenant to the Facility. The Company shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Company's Property, without the consent of or notice to the Issuer or the Trustee.

Section 3.5. Removal of Property of the Facility.

(a) Subject to the Ground Lease, the Company shall have the right from time to time to remove from the Facility any fixture constituting part of the Facility (in any such case, the "Existing Facility Property") and thereby removing such Existing Facility Property from this Agreement, and the lien and security interest of the Mortgage, provided, however:

(i) such Existing Facility Property is substituted or replaced by property (y) having equal or greater fair market value, operating efficiency and utility and (z) free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances, or

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration, the Company shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund and thereby cause a redemption of Bonds to be effected in an amount (to the nearest integral multiple of Authorized Denomination) equal to the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition; provided that no such redemption shall be required when such amount received in connection with any removal or series of removals does not exceed, in the aggregate, \$25,000.

No such removal set forth in paragraph (i) or (ii) above shall be effected if (v) such removal would cause the interest on the Bonds to cease to be excludable from gross income for federal income tax purposes, (w) such removal would change the nature of the Facility as the Approved Facility, (x) such removal would materially impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal (except by the amount by which the Bonds are to be redeemed as provided in paragraph (ii) above), or (z) there shall exist and be continuing an Event of Default hereunder. Any amounts received pursuant to paragraph (ii) above in connection with any removal or series of removals, which are not in excess of \$25,000, shall be retained by the Company.

(b) The removal from the Facility of any Existing Facility Property pursuant to the provisions of Section 3.5(a) shall not entitle the Company to any abatement or reduction in the loan payments and other amounts payable by the Company under this Agreement, under the Promissory Note or under any other Project Document.

Section 3.6. Implementation of Additional Improvements and Removals.

(a) The Company agrees to pay all costs and expenses (including reasonable counsel fees) in subjecting to, or releasing from, this Agreement and the lien and security interest of the Mortgage, any property installed or placed on, or removed from, the Facility as part of the Facility pursuant to Section 3.4 or 3.5.

(b) Reference is made to Section 7.14(d) and (e) pursuant to which the Company has agreed to furnish a report or certificate to the Issuer of any action taken by the Company pursuant to the provisions of Section 3.4 or 3.5.

Section 3.7. Title Insurance. On or prior to the Closing Date, the Company will obtain and deliver (y) to the Trustee a mortgagee title insurance policy in an amount not less than the Authorized Principal Amount insuring the Trustee's interest under the Mortgage as holder of mortgage liens on the Facility, subject only to Permitted Encumbrances, and (z) a current or updated survey of each of the Land and the Improvements certified to the Issuer and the Trustee and to the title company issuing such title insurance policies. The title insurance policy shall be subject only to Permitted Encumbrances and shall provide for, among other things, the following: (1) full coverage against mechanics' liens; (2) no exceptions other than those approved by the Issuer and the Trustee; (3) an undertaking by the title insurer to provide the notice of title continuation or endorsement; and (4) such other matters as the Issuer and/or the Trustee shall request. Any proceeds of such mortgagee title insurance (subject to the provisions of the Ground Lease) shall be paid to the Trustee for deposit in the Renewal Fund and applied to remedy the applicable defect in title in respect of which such proceeds shall be derived (including the reimbursement to the Company for any costs incurred by the Company in remedying such defect in title). If not so capable of being applied or if a balance remains after such application, the amounts in the Renewal Fund shall be transferred by the Trustee to the Redemption Account of the Bond Fund and used to redeem an equivalent principal amount of the Initial Bonds to the nearest integral multiple of Authorized Denominations.

ARTICLE IV

LOAN; PAYMENT PROVISIONS

Section 4.1. Loan of Proceeds. The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to make the Loan and lend to the Company an amount equal to the principal amount of the Initial Bonds. The loan shall be made by depositing on the Closing Date the proceeds from the sale of the Initial Bonds into the Project Fund in accordance with Section 4.01 of the Indenture. Such proceeds shall be disbursed to or on behalf of the Company as provided in Section 3.2(c) and Section 5.02 of the Indenture. The Company's obligation to repay the Loan shall be evidenced by this Agreement and the Promissory Note.

Section 4.2. Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire at 11:58 p.m. (New York City time) on the earlier of the Expiration Date or the Termination Date, if any; provided, however, that neither the occurrence of the Expiration Date or the Termination Date shall by itself release the Company from its obligations under the Promissory Note or this Agreement.

Section 4.3. Loan Payments; Pledge of this Agreement and of the Promissory Note.

(a) The Company covenants to pay the Promissory Note and repay the Loan made pursuant to this Agreement by making loan payments which the Issuer agrees shall be paid in immediately available funds by the Company directly to the Trustee for deposit in the Bond Fund (except to the extent that amounts are on deposit in the applicable Account of the Bond Fund and available therefor) in an amount equal to the sum of:

(i) with respect to interest due and payable on the Initial Bonds, on each Loan Payment Date, an amount equal to the interest next becoming due on the Initial Bonds on the immediately succeeding Interest Payment Date;

(ii) with respect to principal due on the Initial Bonds (other than such principal amount as shall become due as a mandatory Sinking Fund Installment payment), on that Loan Payment Date as shall immediately precede the final maturity date of the Initial Bonds, an amount sufficient to pay the principal of the Initial Bonds Outstanding becoming due on such final maturity date of the Initial Bonds; provided, however, that in the event of the acceleration of the principal of the Initial Bonds, a loan payment in the amount of the principal amount of the Bonds Outstanding (together with all interest accrued thereon to the date of payment), shall be due and payable on such date of acceleration;

(iii) with respect to Sinking Fund Installment payments due on the Initial Bonds, on each Loan Payment Date an amount equal to the Sinking Fund Installment of the Initial Bonds Outstanding next becoming due on the immediately succeeding Sinking Fund Installment payment date;

(iv) on each Redemption Date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Initial Bonds, whether as an optional or mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Initial Bonds being redeemed on such redemption date; and

(v) with respect to interest due and payable on the Initial Bonds, the Company shall further pay such additional amounts as set forth in the Indenture in the event of the occurrence of a Determination of Taxability with respect to the Initial Bonds or an Event of Default under the Indenture.

(b) In the event the Company should fail to make or cause to be made any of the payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Company until the amount not so paid shall have been fully paid.

(c) The Company has the option to make advance loan payments for deposit in the Bond Fund to effect the retirement, defeasance or redemption of the Bonds in whole or in part, all in accordance with the terms of the Indenture; provided, however, that unless the Holders of one hundred percent (100%) of the Bonds Outstanding shall have consented thereto, no partial redemption of the Bonds may be effected through advance loan payments hereunder if there shall exist and be continuing an Event of Default. In making any such advance loan payments, the Company shall have the right to direct the Trustee in crediting Sinking Fund Installments, all in accordance with the Indenture. The Company shall exercise its option to make such advance loan payments by delivering a written notice of an Authorized Representative of the Company to the Trustee in accordance with the Indenture, with a copy to the Issuer, setting forth (i) the amount of the advance loan payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance loan payment (which principal amount shall be in such minimum amount or integral Authorized Denomination as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed (which date shall be not earlier than forty-five (45) days after the date of such notice). In the event the Company shall exercise its option to make advance loan payments to effect the redemption in whole of the Bonds, and such redemption is expressly permitted under the Indenture as a result of the damage, destruction or condemnation of the Facility, or changes in law, or executive or judicial action, the Company shall further deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Company stating that, as a result of the occurrence of the event giving rise to such redemption, the Company has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes. Such advance loan payment shall be paid to the Trustee in legal tender, for deposit in the Redemption Account of the Bond Fund on or before the Redemption Date and shall be an amount which, when added to the amounts on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Issuer, the Trustee, the Bond Registrar, the Tender Agent, the Paying Agents and the Remarketing Agent in connection with such redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Company shall further pay on or before such Redemption Date, in legal tender, to the Issuer, the Trustee, the Bond Registrar, the Tender Agent, the Paying Agents and the Remarketing Agent, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (i) all other amounts due and payable under this Agreement and the other Security Documents, and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement.

(d) At its option, to be exercised on or before the forty-fifth (45th) day next preceding the date any Bonds of a Series are to be redeemed from mandatory Sinking Fund Installments, the Company may deliver to the Trustee Bonds of such Series which are subject to mandatory Sinking Fund Installment redemption in an aggregate principal amount not in excess of the principal amount of Bonds of such Series to be so redeemed on such date. Each such Bond so delivered shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date and any excess over such Sinking Fund Installment shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by operation of the mandatory Sinking Fund Installments shall be accordingly reduced.

(e) In the event Defaulted Interest (as defined in Section 2.02(f) of the Indenture) shall become due on any Initial Bond, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Initial Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with Section 2.02(e) of the Indenture), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment.

(f) No further loan payments need be made to the Issuer on account of the Bonds during the term of this Agreement when and so long as the amount of cash and/or Defeasance Obligations on deposit in the Bond Fund is sufficient to satisfy and discharge the obligations of the Issuer under the Indenture and pay the Bonds as provided in Article X of the Indenture.

(g) Any amounts remaining in the Earnings Fund, the Rebate Fund, the Bond Fund, the Advance Interest Deposit Fund, the Project Fund or the Renewal Fund upon the expiration or sooner termination of the term of this Agreement as provided in this Agreement, after payment in full of (i) the Bonds (in accordance with Article X of the Indenture), (ii) the fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar, the Tender Agent, the Paying Agents and the Remarketing Agent in accordance with the Indenture, (iii) all loan payments and all other amounts payable hereunder and under the Promissory Note, and after all amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or the Indenture, and (iv) all amounts required to be paid under any Project Document (other than the Ground Lease), shall have been so paid, shall belong to and be paid to the Company by the Trustee as overpayment of the Loan.

(h) In the event that the Company fails to make any loan payment required in this Section 4.3, the installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid.

(i) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Company shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund.

Section 4.4. Payment of Purchase Price. b) The Company agrees, as provided in Section 2.03 of the Indenture, to pay loan payments to the Tender Agent, for the account of the Issuer, equal to all amounts necessary for the purchase of Initial Bonds pursuant to such Section but not deposited with the Tender Agent by the Remarketing Agent from the proceeds of the remarketing of the Initial Bonds under Section 2.03 of the Indenture. Each such payment by the Company to the Tender Agent in accordance with this Section shall be in immediately available funds and paid to the Tender Agent at its principal office by 2:30 p.m., New York City time, on each Purchase Date. The Company further agrees to pay such immediately available funds to the Tender Agent at the times and in the manner specified in the Indenture.

(b) The Company acknowledges that it and its Affiliates shall have no title to or interest in, beneficial or otherwise, and no right to control, any proceeds of the remarketing of Initial Bonds, all of which shall be held in trust by the Trustee or the Tender Agent for the sole benefit of the Holders of the Initial Bonds.

(c) The Company hereby approves and agrees to be bound by the provisions of the Indenture regarding the purchase, offer, sale and delivery of Initial Bonds tendered for purchase thereunder, including particularly those set forth in Articles II, V and IX of the Indenture. The Company shall have all of the rights and obligations provided in the Indenture with respect to the Company in connection with such transactions and the appointment of the Tender Agent and the Remarketing Agent thereunder. The Issuer shall have no obligation or responsibility with respect to the purchase of Initial Bonds or any related arrangements, except that the Issuer at the expense of the Company shall cooperate in the making of any such arrangements.

(d) Upon the occurrence of an Interest Rate Change pursuant to Section 2.03 of the Indenture, the Company shall deliver or cause to be delivered the notice, the Favorable Opinion of Bond Counsel (if so required under the Indenture) and such other documents required under the Indenture in connection with such re-set, all as provided in Section 2.03 of the Indenture

Section 4.5. Loan Payments and Other Payments Payable Absolutely Net. The obligation of the Company to pay the loan payments and other payments under this Agreement and the Promissory Note shall be absolutely net to the Issuer and to the Trustee without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement and the Promissory Note shall yield, net, to the Issuer and to the Trustee, the loan payments and other payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Facility, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Company and the Indemnified Parties shall be indemnified by the Company for, and the Company shall hold the Indemnified Parties harmless from, any such costs, expenses and charges.

Section 4.6. Nature of Company's Obligation Unconditional. The Company's obligation under this Agreement and the Promissory Note to pay the loan payments and all other payments provided for in this Agreement and in the Promissory Note shall be absolute, unconditional and a general obligation of the Company, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Issuer, the Trustee or the Holder of any Bond and the obligation of the Company shall arise whether or not (y) the Project has been completed as provided in this Agreement, or (z) any provider of a credit facility or liquidity facility with respect to the Bonds shall be honoring its obligations thereunder. The Company will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder), or suspend the performance or observance of any covenant or agreement required on the part of the Company hereunder, for any cause whatsoever, and the Company waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Company under this Agreement except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the loan payments or other payments hereunder or under the Promissory Note.

Section 4.7. Advances by the Trustee. In the event the Company fails to make any payment or to perform or to observe any obligation required of it under this Agreement, under the Promissory Note or under any other Security Document, the failure of which payment, or performance or observance of which obligation, would materially adversely affect the security for the Bonds, the Trustee, after first notifying the Company in writing of any such failure on its part (except that no prior notification of the Company shall be required in the event of an emergency condition that, in the reasonable judgment of the Trustee, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Trustee under this Agreement or any other Security Document to which the Trustee is a party, make such payment or otherwise cure any failure by the Company to perform and to observe its other obligations hereunder or thereunder. All amounts so advanced therefor by the Trustee shall become an additional obligation of the Company to the Trustee, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, compounded daily, from the date advanced, the Company will pay upon demand therefor by the Trustee. Any remedy vested in the Trustee herein or in any other Security Document for the collection of the loan payments or other payments or amounts due hereunder, under the Promissory Note or under any other Security Document shall also be available to the Trustee for the collection of all such amounts so advanced. No advance shall be made by the Trustee except upon the written direction of the Majority Holders.

Section 4.8. No Warranty of Condition or Suitability. THE ISSUER HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE FACILITY TENANTS OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE INITIAL BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE COMPANY IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY AND THE FACILITY TENANTS. THE ISSUER SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1. Damage, Destruction and Condemnation. In the event that at any time during the term of this Agreement the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement to which the Company and those authorized to exercise such right are parties, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "**Loss Event**"):

(i) the Issuer shall have no obligation to rebuild, replace, repair or restore the Facility or to advance funds therefor,

(ii) there shall be no abatement, postponement or reduction in the loan payments or other amounts payable by the Company under this Agreement or the Promissory Note or any other Security Document to which it is a party, and the Company hereby waives, to the extent permitted by law, any provisions of law which would permit the Company to terminate this Agreement or eliminate or reduce its payments hereunder, and

(iii) the Company will promptly give written notice of such Loss Event to the Issuer and the Trustee, generally describing the nature and extent thereof.

Section 5.2. Loss Proceeds.

(a) The Issuer, the Trustee and the Company shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromise, arbitration or adjustment of any such claim or demand shall, as between the Issuer and the Company, be subject to the written approval of the Company and the Trustee (such approvals not to be unreasonably withheld).

(b) Subject to the terms and provisions of the Ground Lease, the Net Proceeds with respect to the Facility shall be paid to the Trustee (who shall constitute the "Depository" under the Ground Lease) and deposited in the Renewal Fund (except as provided in Section 3.12 of the Bond Guaranty Agreement). Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied, and may be invested, as provided in the Indenture. The Company shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award, compensation or damages attributable to the Company's Property.

Section 5.3. Election to Rebuild or Terminate.

(a) In the event a Loss Event shall occur, the Company shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds), within one (1) year of the Loss Event, promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Company shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Issuer, the Trustee or any Bondholder, nor shall the loan payments or other amounts payable by the Company under this Agreement or the Promissory Note or any other Security Document be abated, postponed or reduced, or

(ii) to the extent and upon the conditions permitted to do so under Sections 9.1 and 9.2 and under the Indenture, exercise its option to terminate this Agreement and cause the Bonds to be redeemed in whole;

provided that if all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Company and the Facility Tenants as contemplated hereby, the Company shall exercise its option to terminate this Agreement pursuant to Sections 9.1 and 9.2.

Not later than ninety (90) days after the occurrence of a Loss Event, the Company shall advise the Issuer and the Trustee in writing of the action to be taken by the Company under this Section 5.3(i), a failure to so timely notify being deemed an election in favor of Section 5.3(a)(i) to be exercised in accordance with the provisions of Section 5.3(b).

(b) If the Company shall elect to or shall otherwise be required to rebuild, replace, repair or restore the Facility as set forth in Section 5.3(a)(i), the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.04 of the Indenture to pay or reimburse the Company, at the election of the Company, either as such work progresses or upon the completion thereof, provided, however, the amounts so disbursed by the Trustee to the Company shall not exceed the actual cost of such work. If the Company shall exercise its option in Section 5.3(a)(ii), the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Redemption Account of the Bond Fund, and the Company shall thereupon pay to the Trustee for deposit in the Redemption Account of the Bond Fund an amount which, when added to any amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or Redemption Date and redemption premium, if any), and shall pay the expenses of redemption, the fees and expenses of the Issuer, the Trustee, the Bond Registrar, the Tender Agent, the Paying Agents and the Remarketing Agent, together with all other amounts due under the Indenture, under this Agreement and under each other Security Document, as well as any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement, and such amount so deposited shall be applied, together with such other available amounts in the Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date.

Section 5.4. Effect of Election to Build.

(a) All rebuilding, replacements, repairs or restorations of the Facility in respect of or occasioned by a Loss Event shall:

(i) automatically be deemed a part of the Facility and be subject to the Ground Lease and the terms of this Agreement, and be subject to the lien and security interest of the Mortgage,

(ii) be effected only if the Company shall deliver to the Issuer and the Trustee a certificate of an Authorized Company Representative acceptable to the Issuer and the Trustee to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Facility as the Approved Facility,

(iii) be effected with due diligence in a good and workmanlike manner, in compliance with the Ground Lease and all applicable Legal Requirements and be promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor,

(iv) restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, and to a state and condition that will permit the Company and the Facility Tenants to use and operate the Facility as the Approved Facility,

(v) be effected only if the Company shall have complied with Section 7.1(c), and

(vi) unless such rebuilding is done by the original contractor (or an Affiliate thereof) who performed the Project Work, be preceded by the furnishing by the Company to the Trustee of a labor and materials payment bond, or other security, satisfactory to the Trustee.

(b) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Issuer and the Trustee by a certificate of an Authorized Representative of the Company stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Trustee, has been made, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that all property constituting part of the Facility is subject to the Ground Lease and this Agreement, and the mortgage liens and security interests of the Mortgage, subject to Permitted Encumbrances, (v) the Rebate Amount (as defined in the Indenture) applicable with respect to the Net Proceeds and the earnings thereon (with a statement as to the determination of the Rebate Amount and a direction to the Trustee of any required transfer to the Rebate Fund), and (vi) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and Section 5.04 of the Indenture and (z) that no Person other than the Issuer or the Trustee may benefit therefrom.

(c) The certificate delivered pursuant to Section 5.4(b) shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Company will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Ground Lease and this Agreement; and (ii) a certificate of an Authorized Representative of the Company that all contracts relating to the rebuilding, repair, restoration and reconstruction of the Facility have been paid (or will promptly be paid) in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Trustee that such costs have been appropriately bonded or that the Company shall have posted a surety or security at least equal to the amount of such costs).

ARTICLE VI

COVENANTS OF THE ISSUER

Section 6.1. Issuance of Initial Bonds. On the Closing Date, subject to the satisfaction of the conditions to the issuance of the Initial Bonds, the Issuer will sell and deliver the Initial Bonds in the principal amount of \$20,000,000 under and pursuant to the Bond Resolution and under and pursuant to the Indenture. The proceeds of sale of the Initial Bonds shall be deposited and applied in accordance with the provisions of the Indenture.

Section 6.2. Issuance of Additional Bonds. The Issuer and the Company recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Issuer is authorized to enter into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Initial Bonds for the purpose of (w) completing the Project, (x) providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (y) providing extensions, additions or improvements to the Facility, or (z) refunding Outstanding Bonds. If the Company is not in default hereunder, the Issuer will consider the issuance of a Series of Additional Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture.

Section 6.3. Pledge and Assignment to Trustee. As security for the payment of the Bonds and the obligations of the Company under the Security Documents, the Issuer shall pledge and assign to the Trustee pursuant to the Indenture all of the Issuer's right, title and interest in the Promissory Note and all (except for the Issuer's Reserved Rights) of the Issuer's right, title and interest in this Agreement, including all loan payments hereunder and under the Promissory Note, and in furtherance of said pledge the Issuer will unconditionally assign such loan payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture. The Company consents to the pledge and assignment of this Agreement and the Promissory Note described in this Section 6.3.

Section 6.4. Issuer to Make Bond Registration Books Available. The Issuer shall at all times make available or cause to be made available to the Company its registration books (maintained at the designated corporate trust office of the Trustee) containing the names and addresses of the Bondholders if known.

COVENANTS OF THE COMPANY

Section 7.1. **Insurance.**

(a) **Definitions.** For purposes of this Section 7.1, the following terms shall have the meanings specified below:

Certificate means an ACORD certificate evidencing insurance.

CGL means commercial general liability insurance.

Contractor(s) means, individually or collectively, a contractor or subcontractor providing materials and/or labor and/or other services in connection with any Construction, but not including a GC, CM or any architect or engineer providing professional services.

CM means a construction manager providing construction management services in connection with any Construction.

Construction means any construction, reconstruction, restoration, renovation, alteration and/or repair on, in, at or about the Facility, including the Project Work or any other construction reconstruction, restoration, alteration and/or repair required under this Agreement or the Ground Lease in connection with the Facility, provided, that, one or both of the following conditions applies to the foregoing: (i) the cost thereof, labor and materials combined, is \$500,000 or greater, or (ii) the work being performed, whether in whole or in part, is roof work or work that is performed at a height of more than eight (8) feet above the ground.

GC means any general contractor providing general contracting services in connection with any Construction.

Insured means the Company.

Insurer means any entity writing issuing a Policy.

ISO means the Insurance Services Office or its successor.

ISO Form CG-0001 means the CGL form published by ISO at the Commencement Date.

Policy(ies) means, collectively or individually, the policies required to be obtained and maintained pursuant to Section 7.1(b) and (c).

SIR means self-insured retention.

U/E means Umbrella or Excess Liability insurance.

Workers' Compensation means Workers' Compensation, disability and employer liability insurance.

(b) Required Insurance. Throughout the term of this Agreement, except during periods of Construction, the Insured shall obtain and maintain for itself as a primary insured the following insurance:

(i) CGL with \$1,000,000 minimum per occurrence; \$2,000,000 minimum in the aggregate; and per-location aggregate. This Policy shall contain coverage for contractual liability, premises operations, and products and completed operations.

(ii) U/E with \$4,000,000 minimum per occurrence on terms consistent with CGL. The excess coverage provided under U/E shall be incremental to the CGL to achieve minimum required coverage of \$5,000,000 per occurrence; such incremental coverage must also apply to auto liability (see Section 7.1(b)(iii)), whether auto liability coverage is provided by endorsement to the Insured's CGL or by a stand-alone policy.

(iii) Auto liability insurance with \$1,000,000 combined single limit and \$1,000,000 for uninsured or under-insured vehicles. If the Insured does not own any vehicles, the Insured shall obtain auto liability insurance in the foregoing amounts for hired and non-owned vehicles. Coverage should be at least as broad as ISO Form CA0001, ed. 10/01.

(iv) Workers Compensation satisfying State statutory limits. Coverage for employer liability shall be in respect of any work or operations in, on or about the Facility.

(c) Required Insurance During Periods of Construction. In connection with any Construction and throughout any period of such Construction, the Company shall cause the following insurance requirements to be satisfied:

(i) The Insured shall obtain and maintain for itself Policies in accordance with all requirements set forth in Section 8.1(b), except that CGL and U/E shall be in an aggregate minimum amount of \$10,000,000 per project aggregate.

(ii) Any GC or CM shall obtain and maintain for itself as a primary insured the following Policies:

(A) CGL and U/E in accordance with the requirements in Section 7.1(b), subject to the following modifications: (x) coverage shall be in an aggregate minimum amount of \$10,000,000 per project aggregate, and (y) completed operations coverage shall extend (or be extended) for an additional five (5) years after completion of the Construction;

(B) Auto liability insurance in accordance with the requirements in Section 7.1(b); and

(C) Workers' Compensation in accordance with the requirements in Section 7.1(b).

(iii) Each Contractor shall obtain and maintain for itself as a primary insured the following insurance:

(A) CGL and U/E in accordance with the requirements in Section 7.1(b) except that, in addition, completed operations coverage shall extend (or be extended) for an additional five (5) years after completion of the Construction;

(B) Auto Liability insurance in accordance with the requirements in Section 7.1(b); and

(C) Workers' Compensation in accordance with the requirements in Section 7.1(b).

(d) Required Policy Attributes. Except as the Issuer and the Trustee shall expressly otherwise agree in writing in their sole and absolute discretion:

(i) The Company shall cause each Policy (other than Worker's Compensation insurance) to name the Issuer and the Trustee as additional insureds on a primary and non-contributory basis as more particularly required in Section 7.1(f)(i).

(ii) No Policy shall have a deductible in excess of \$25,000.

(iii) CGL shall not be subject to SIR in excess of \$10,000.

(iv) CGL shall be written on either ISO Form CG-0001 or on such other form that the Company may request provided that any requested substitute shall provide an additional insured with substantially equivalent coverage to that enjoyed by an additional insured in a policy written on ISO Form CG-0001 and provided further that the substitute is reasonably approved by the Issuer. If the Insured intends to renew its CGL on a form that is not ISO Form CG-0001, the Insured shall provide the Issuer and the Trustee with a copy of the substitute form at least sixty (60) days prior to the intended date on which the renewal Policy is to be effective.

(v) The Company acknowledges that the Issuer and the Trustee are materially relying upon the content of ISO Form CG-0001 to implement the Issuer's insurance requirements under this Section 7.1; accordingly, the Company agrees that non-standard exclusions and other modifications to ISO Form CG-0001 are prohibited under the terms and conditions of this Section 7.1. In the event that ISO either ceases to exist or discontinues ISO Form CG-0001, the Issuer or the Trustee shall have the right to require, for all purposes hereunder, a different CGL form, provided that the replacement is substantially similar to ISO Form CG-0001.

(vi) Without limiting Section 7.1(d)(v) or the application of any other requirement under this Section 7.1, no Policy delivered hereunder shall limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

- (A) contractual liability coverage insuring the contractual obligations of the Insured;
- (B) the right of the Insured to name additional insureds including the Issuer and the Trustee;
- (C) the applicability of CGL coverage to the Issuer and the Trustee as additional insureds in respect of liability arising out of any of the following claims: (x) claims against the Issuer and/or the Trustee by employees of the Insured, or (y) claims against the Issuer and/or the Trustee by any GC, CM, Contractor, architect or engineer or by the employees of any of the foregoing, or (z) claims against the Issuer and/or the Trustee arising out of any work performed by a GC, CM, Contractor, architect or engineer.
 - (vii) U/E shall follow the form of CGL except that U/E may be broader.
 - (viii) Each Policy shall provide primary insurance and the issuing Insurer shall not have a right of contribution from any other insurance policy insuring the Issuer and/or the Trustee.
 - (ix) In each Policy, the Insurer shall waive, as against any Person insured under such Policy including any additional insured, the following: (x) any right of subrogation, (y) any right to set-off or counterclaim against liability incurred by a primary insured or any additional insured, and (z) any other deduction, whether by attachment or otherwise, in respect of any liability incurred by any primary insured or additional insured.
 - (x) Policies shall not be cancellable without at least thirty (30) days' prior written notice to the Issuer and the Trustee as additional insureds.
 - (xi) Each Policy under which the Issuer and the Trustee is an additional insured shall provide that the Issuer and the Trustee will not be liable for any insurance premium, commission or assessment under or in connection with any Policy.
- (e) Required Insurer Attributes. All Policies must be issued by Insurers satisfying the following requirements:
 - (i) Insurers shall have a minimum AM Best rating of A minus.
 - (ii) Each Insurer must be an authorized insurer in accordance with Section 107(a) of the New York State Insurance Law.
 - (iii) Insurers must be admitted in the State; provided, however, that if the Insured requests the Issuer to accept a non-admitted Insurer, and if the Issuer reasonably determines that for the kind of operations performed by the Insured an admitted Insurer is commercially unavailable to issue a Policy or is non-existent, then the Issuer shall provide its written consent to a non-admitted Insurer. For purposes of this paragraph, an "admitted" Insurer means that the Insurer's rates and forms have been approved by the State Insurance Department and that the Insurer's obligations are entitled to be insured by the State's insurance guaranty fund.

Section 7.1(f): (f) Required Evidence of Compliance. The Company shall deliver or cause to be delivered, throughout the term of this Agreement, evidence of all Policies required hereunder as set forth in this

(i) All Policies. With respect to all Policies on which the Insured is to be a primary insured, the Insured shall deliver to the Issuer and the Trustee a Certificate or Certificates evidencing all Policies required by this Section 7.1, (x) at the Commencement Date, (y) prior to the expiration or sooner termination of Policies, and (z) prior to the commencement of any Construction. If the Certificate in question evidences CGL, such Certificate shall name the Issuer and the Trustee as additional insureds in the following manner:

New York City Capital Resource Corporation and The Bank of New York Mellon, as Trustee, are additional insureds on a primary and non-contributory basis. The referenced CGL is written on ISO Form CG-0001 without modification to the contractual liability provisions thereof, covering the following premises: 1 DeKalb Avenue, Brooklyn, New York;

For purposes of the foregoing, the phrase "at appropriate times" shall mean: (i) at the Commencement Date; and (ii) prior to the expiration or sooner termination of Policies; and (iii) prior to the commencement of any Construction.

(ii) CGL. With respect to CGL on which the Insured is to be a primary insured, the Insured shall additionally deliver to the Issuer and the Trustee the following:

(A) Prior to the Commencement Date the Insured shall deliver to the Issuer and the Trustee the declarations page and the schedule of forms and endorsements pertinent thereto.

(B) Upon the expiration or sooner termination of any CGL, the Insured shall deliver to the Issuer and the Trustee a declarations page and schedule of forms and endorsements pertinent to the new or replacement CGL.

(C) Prior to the commencement of any Construction, the Insured shall deliver to the Issuer and the Trustee a declarations page and a schedule of forms and endorsements pertinent to the CGL under which the Insured is to be the primary insured during the period of such Construction.

(iii) Insurance to be obtained by GCs and CMs. Prior to the commencement of any Construction that entails the services of a GC or CM, the Company shall provide to the Issuer and the Trustee, in a form satisfactory to the Issuer and the Trustee, evidence that the GC or CM (as the case may be) has obtained the Policies that it is required to obtain and maintain in accordance with Section 7.1(c).

(iv) Insurance to be obtained by Contractors. In connection with any Construction, the Company shall, upon the written request of the Issuer or the Trustee, cause any or all Contractors to provide evidence satisfactory to the Issuer and the Trustee, that such Contractors have obtained and maintain the Policies that they are required to obtain and maintain in accordance with the requirements of Section 7.1(c).

(g) Notice. The Company shall immediately give the Issuer and the Trustee notice of each occurrence that is reasonably probable to give rise to a claim under the insurance required to be maintained by this Section 7.1.

(h) Miscellaneous.

(i) If, in accordance with the terms and conditions of this Section 7.1, an Insured is required to obtain the consent of the Issuer and/or the Trustee, the Company shall request such consent in a writing provided to the Issuer and/or the Trustee at least thirty (30) days in advance of the commencement of the effective period (or other event) to which the consent pertains.

(ii) Throughout the term of this Agreement, the delivery by the Insured of a Certificate evidencing auto liability insurance for hired and non-owned vehicles shall, unless otherwise stated by the Company to the contrary, constitute a representation and warranty from the Insured to the Issuer and the Trustee that the Insured does not own vehicles.

(iii) The Insured shall neither do nor omit to do any act, nor shall it suffer any act to be done, whereby any Policy would or might be terminated, suspended or impaired.

(iv) If, throughout the term of this Agreement, insurance industry standards applicable to properties similar to the Facility and/or operations similar to the operations of the Company and/or any of the Facility Tenants, materially change; and if, as a consequence of such change, the requirements set forth in this Section 7.1 become inadequate in the reasonable judgment of the Issuer or the Trustee for the purpose of protecting the Issuer and the Trustee against third-party claims, then the Issuer or the Trustee shall have the right to supplement and/or otherwise modify such requirements, provided, however, that such supplements or modifications shall be commercially reasonable.

(v) THE ISSUER AND THE TRUSTEE DO NOT REPRESENT THAT THE INSURANCE REQUIRED IN THIS SECTION 7.1, WHETHER AS TO SCOPE OR COVERAGE OR LIMIT, IS ADEQUATE OR SUFFICIENT TO PROTECT THE INSURED AND ITS OPERATIONS AGAINST CLAIMS AND LIABILITY.

(vi) The Issuer, in its sole discretion and without obtaining the consent of the Trustee or any Guarantor or any other party to the transactions contemplated by this Agreement, may make exceptions to the requirements under this Section 7.1 by a written instrument executed by the Issuer. In the event the Company shall request the Issuer to make any exception to the requirements under this Section 7.1, the Issuer shall not unreasonably withhold its consent. The Company acknowledges that the Issuer's decision in this respect will be deemed reasonable if made in furtherance of protecting the Issuer from liability.

Section 7.2. Indemnity.

(a) The Company shall at all times indemnify, defend, protect and hold the Issuer, the Trustee, the Tender Agent, the Bond Registrar, the Paying Agents and the Remarketing Agent, and any director, member, officer, employee, servant, agent (excluding for this purpose the Company, which is not obligated hereby to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Issuer's control or supervision (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses (collectively, "**Claims**") of any kind for losses, damage, injury and liability (collectively, "**Liability**") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing on the Indemnification Commencement Date, and continuing throughout the term of this Agreement, arising upon, about, or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Facility or the Project and the marketing, offering, issuance, sale and remarketing of the Bonds for such purpose,
- (ii) the planning, design, acquisition, site preparation, Project Work, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,
- (iv) the execution and delivery by an Indemnified Party, the Company, the Parent or any other Person of, or performance by an Indemnified Party, the Company or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,

(v) any damage or injury to the person or property of any Person in or on the premises of the Facility,

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including failure to comply with the requirements of the City's zoning resolution and related regulations, or

(vii) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Issuer, which are based upon or in any way related to such Hazardous Materials.

(b) The Company releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Company or its Affiliates for, any Claim or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 7.2(a) including any Claim or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party, or at the direction of the Company, the Parent or any Facility Tenant with respect to any of such matters above referred to.

(c) An Indemnified Party shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 7.2; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section 7.2.

(d) Anything to the contrary in this Agreement notwithstanding, the covenants of the Company contained in this Section 7.2 shall be in addition to any and all other obligations and liabilities that the Company may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

Section 7.3. Compensation and Expenses of the Issuer, the Trustee, the Bond Registrar, the Tender Agent, the Paying Agents and the Remarketing Agent; Administrative and Project Fees.

(a) The Company shall pay the fees, costs and expenses of the Issuer together with any fees and disbursements incurred by lawyers or other consultants in performing services for the Issuer in connection with this Agreement or any other Project Document, together with all fees and costs incurred in connection with complying with Section 7.11(b) (including fees and disbursements of lawyers and other consultants).

(b) On the Commencement Date, the Company shall pay to the Issuer the following amounts: (i) the Initial Annual Administrative Fee, and (ii) the Project Fee.

(c) The Company further agrees to pay the Annual Administrative Fee to the Issuer on each July 1 following the Commencement Date until the earlier of the Expiration Date or the Termination Date. In the event the Company shall fail to pay the Annual Administrative Fee on the date due, the Issuer shall have no obligation to deliver notice of such failure to the Company.

(d) The Company shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following fees, charges and expenses and other amounts: (i) the initial and annual fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including fees and expenses as Bond Registrar and in connection with preparation of new Bonds upon exchanges or transfers or making any investments in accordance with the Indenture, (ii) the reasonable fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, including the reasonable fees of its counsel, (iii) the reasonable fees, charges, and expenses of the Trustee for extraordinary services rendered by it under the Indenture, including reasonable counsel fees, and (iv) the reasonable fees, costs and expenses of the Bond Registrar, the Tender Agent and the Remarketing Agent.

Section 7.4. Signage at Facility Site. Upon commencement of the Project renovations and/or construction of the Improvements at the Facility (including the commencement of any demolition and/or excavation), the Company shall erect on the Facility site, at its own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign with the following information upon it (hereinafter, the "Sign"):

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NEW YORK CITY CAPITAL RESOURCE CORPORATION
Mayor Michael Bloomberg*

In addition, the Sign shall satisfy the following requirements: (x) format and appearance generally shall be stipulated by the Issuer in writing or electronically; (y) the minimum size of the Sign shall be four (4) feet by eight (8) feet; and (z) the Sign shall have no other imprint upon it other than that of the Issuer. The Sign shall remain in place at the Facility until completion of the renovations and/or construction. The Company may erect other signs in addition to the Sign.

Section 7.5. Environmental Matters.

(a) The Company has provided, and the Issuer acknowledges receipt of, a letter from the Environmental Auditor addressed to the Issuer, stating that the Issuer may rely upon the Environmental Audit as if it was prepared for the Issuer in the first instance.

(b) The Company shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

(c) The Company shall comply with, and require and enforce compliance by, all occupants and users of the Facility (including, without limitation, all Facility Tenants) with all applicable Legal Requirements pertaining to Hazardous Materials, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of the Facility (including, without limitation, all Facility Tenants) obtain and comply with, any and all approvals, registrations or permits required thereunder.

(d) The Company shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility in accordance with all applicable Legal Requirements.

(e) In the event the Mortgage is foreclosed, or a deed in lieu of foreclosure is tendered, or this Agreement is terminated as provided in Article VIII, the Company shall deliver the Facility so that the conditions of the Facility with respect to any and all Hazardous Materials shall conform with all applicable Legal Requirements affecting the Facility.

(f) The parties hereto agree that the reference in Section 2.2(n) to the Environmental Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Company's obligations to carry out and perform all of the covenants stated throughout this Section 7.5 and in Section 7.2.

Section 7.6. Employment Matters.

(a) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created by the Company as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Act of 1998 (29 U.S.C. §2801) in which the Facility is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Company agrees, where practicable, to consider first, and cause each of its Affiliates at the Facility, to consider first, persons eligible to participate in the Workforce Investment Act of 1998 (29 U.S.C. §2801) programs who shall be referred by administrative entities of service delivery areas created pursuant to such Act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(b) Upon the Issuer's written request, the Company shall provide to the Issuer any employment information in the possession of the Company which is pertinent to the Company and the Facility Tenants and the employees of the Company and of the Facility Tenants to enable the Issuer and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations.

(c) The Company hereby authorizes any private or governmental entity, including The New York State Department of Labor (“DOL”), to release to the Issuer and/or NYCEDC, and/or to the successors and assigns of either (collectively, the “**Information Recipients**”), any and all employment information under its control and pertinent to the Company or the Facility Tenants and the employees of the Company or of the Facility Tenants to enable the Issuer and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Company or by the Facility Tenants, or any information previously released as provided by all or any of the foregoing parties (collectively, “**Employment Information**”) may be disclosed by the Information Recipients in connection with the administration of the programs of the Issuer, and/or NYCEDC, and/or the successors and assigns of either, and/or the City, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to City Charter §1301, (y) other reports required of the Issuer, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(d) Upon the request of the Issuer, the Company shall cooperate with the Issuer in the development of programs for the employment and/or training of members of minority groups in connection with performing work at the Facility.

(e) Nothing in this Section shall be construed to require the Company to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 7.7. Non-Discrimination.

(a) At all times during the maintenance and operation of the Facility, the Company shall not discriminate nor permit any of its Affiliates to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with any Facility Tenant are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term “treated” shall mean and include the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Company shall furnish to the Issuer all information required by the Issuer pursuant to this Section and will cooperate with the Issuer for the purposes of investigation to ascertain compliance with this Section.

Section 7.8. Assignment or Sublease.

(a) The Company shall not at any time (y) except as permitted by Section 7.19, assign or transfer this Agreement, or (z) sublet all or substantially all of the Facility (a "Transfer Equivalent Sublease"), without the prior written consents of the Issuer and the Trustee (which consents may be withheld by the Issuer or the Trustee in their absolute discretion); provided further, that, the Company shall deliver to the Issuer and the Trustee a letter of an Authorized Representative of the Company requesting such consent at least thirty (30) days prior to the execution of the proposed assignment, transfer or Transfer Equivalent Sublease, which letter (the "Request Letter") shall be accompanied by the following documentation:

(i) the name, phone number and address of, and the name of a contact person for, the proposed assignee, transferee or sublessee under the Transfer Equivalent Sublease (the "Transfer Equivalent Sublessee");

(ii) a description of the business activities and operations to be conducted at the Facility by the proposed assignee, transferee or Transfer Equivalent Sublessee, if any such business activities and operations are to be different from the Approved Project Operations;

(iii) a copy of the Organizational Documents for the proposed assignee, transferee or Transfer Equivalent Sublessee, certified by an authorized officer of such Entity, together with a certificate of good standing with respect to such Entity from the Secretary of State of the State of New York dated not earlier than sixty (60) days prior to the date of the Request Letter;

(iv) a certificate of an authorized officer of such assignee, transferee or Transfer Equivalent Sublessee to the effect that such assignment or transfer of this Agreement, or Transfer Equivalent Sublease, as the case may be, and any resultant effects, will not result in the removal of a plant or facility of such Entity or of any other occupant or user of the Facility located outside of the City (but within the State) to the Facility or in the abandonment of one or more of such plants or facilities of such Entity or of any other occupant or user of the Facility located outside of the City (but within the State); provided however, that if such Entity shall be unable as a factually correct basis to make such certification, (y) such Entity shall instead certify that such Entity's location at the Facility is reasonably necessary to discourage such Entity from removing its business to a location outside of the State or is reasonably necessary to preserve the competitive position of such Entity in its industry, and (z) an Authorized Representative of the Company shall request the Issuer to make a determination in writing as to whether the Issuer concurs in such latter certification (any failure of the Issuer to so determine being deemed a failure of the Issuer to consent to the proposed assignment, transfer or Transfer Equivalent Sublease);

(v) evidence reasonably satisfactory to the Issuer and the Trustee that the proposed assignee, transferee or Transfer Equivalent Sublessee is subject to service of process in the State;

- to the Issuer;
- (vi) the same documentation required of the Company under the Ground Lease with respect to the proposed assignee, transferee or Transfer Equivalent Sublessee with results satisfactory to the Issuer;
 - (vii) to the extent required under the Ground Lease, evidence of approval of the landlord under the Ground Lease;
 - (viii) a certificate of an Authorized Representative of the Company acceptable to the Issuer and the Trustee to the effect that the assignment, transfer or Transfer Equivalent Sublease shall not cause the Facility to cease being the Approved Facility;
 - (ix) written evidence satisfactory to the Issuer and the Trustee (which may be a letter to such effect from the Company's insurance brokers) that the insurance coverage provided by the Company and the Parent under this Agreement, the Bond Guaranty Agreement and the Ground Sublease shall in no manner be diminished or impaired by reason of such assignment, transfer or Transfer Equivalent Sublease;
 - (x) a Required Disclosure Statement of the assignee, transferee or Transfer Equivalent Sublessee in form and substance reasonably satisfactory to the Issuer acting in its sole discretion, in the form annexed hereto as Exhibit E-1;
 - (xi) a certificate of an authorized officer of the assignee, transferee or Transfer Equivalent Sublessee to the effect that such Entity does not intend to use the Facility or any portion thereof, or allow the Facility or any portion thereof to be used, for a Tax Prohibited Use or by a not-for-profit corporation; and
 - (xii) a certificate of an Authorized Representative of the Company to the effect that all consents and approvals required under the Ground Lease, if any, in connection with such assignment, transfer or Transfer Equivalent Sublease have been obtained, copies of which shall accompany such certificate, together with any other documentation provided to the landlord under the Ground Lease.

If the Issuer and the Trustee shall consent to such assignment, transfer or Transfer Equivalent Sublease, such consent shall be conditioned upon:

- (A) the Company and the Parent remaining primarily liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which the Company or the Parent shall be a party, provided, however, that if, in connection with the assignment or transfer of this Agreement, the Company shall have requested the release of the Company and of the Parent under the Security Documents and the Issuer Indemnification Agreement, and the Issuer and the Trustee shall have consented to such release, the Company and the Parent shall not be required to remain so liable; provided, however, that unless the transferee or assignee of this Agreement (or any guarantor thereof) shall have assumed, subject to the approval of the Issuer and the Trustee, any accrued or unpaid payment or performance obligations of the Company, together with any indemnifications with respect to events occurring prior to any such transfer or assumption, and the Company shall have paid over to the transferee or assignee any insurance or other moneys held by the Company under this Agreement or any other Project Document, the Company and the Parent shall be required to remain liable to the extent of any accrued or unpaid payment or performance obligations, the application of such insurance or other moneys, and for any indemnified liabilities with respect to events occurring prior to any such release;

(B) the execution and delivery by the assignee, transferee or Transfer Equivalent Sublessee of a written assumption (the "Assumption"), in form and substance acceptable to the Issuer and the Trustee, pursuant to which such Entity shall assume in writing and agree to keep and perform all of the terms of this Agreement and each other Project Document on the part of the Company to be kept and performed, and shall be jointly and severally liable with the Company for the performance thereof;

(C) any assignee, transferee or Transfer Equivalent Sublessee shall agree within the Assumption to utilize the Facility as the Approved Facility;

(D) such assignment, transfer or Transfer Equivalent Sublease not violating any provision of this Agreement or of any other Project Document;

(E) the delivery to the Issuer and the Trustee of an Opinion of Counsel addressed to the Issuer and the Trustee to the effect that (x) the Assumption shall constitute the legally valid, binding and enforceable obligation of the assignee, transferee or Transfer Equivalent Sublessee, and, unless a release of the Company and of the Parent shall have been effected as provided in Section 7.8(a)(A) above, shall not legally impair in any respect the obligations of the Company or of the Parent for the making of all payments nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Project Document to which the Company or the Parent shall be a party, and (y) , unless a release of the Company and of the Parent shall have been effected as provided in Section 7.8(a)(A) above, this Agreement and each of the other Project Documents to which the Company or the Parent is a party continue to constitute the legally valid, binding and enforceable obligation of the Company and of the Parent, as applicable;

(F) such assignment, transfer or Transfer Equivalent Sublease in no way diminishing or impairing the insurance coverage provided under Section 3.12 of the Bond Guaranty Agreement or under Section 7.1;

(G) the delivery to the Issuer and the Trustee of an opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee, to the effect that such assignment, transfer or Transfer Equivalent Sublease shall not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes; and

(H) such assignment, transfer or Transfer Equivalent Sublease containing such other provisions as the Issuer or the Trustee may reasonably require.

(b) Subject to Section 7.8(a), the Company shall not at any time enter into a Facility Lease without the prior written consent of the Issuer (which consent shall not be reasonably withheld, such consent to be requested by the Company of the Issuer in the form prescribed by the Issuer); provided, further, that, the Company shall deliver to the Issuer (with a copy to the Trustee) a letter of an Authorized Representative of the Company requesting such consent of the Issuer at least ten (10) Business Days prior to the execution of the proposed Facility Lease, which letter (the "Request Letter") shall be accompanied by the following documentation (a copy of which shall be delivered to the Trustee):

(i) the name, phone number and address of, and the name of a contact person for, the proposed Facility Tenant;

(ii) a description of the business activities and operations to be conducted at the Facility by the proposed Facility Tenant together with a statement of the aggregate rentable square footage to be the subject of the Facility Lease as both a fixed number and as a percentage of total rentable square footage at the Facility, and the balance, if any, of rentable square footage at the Facility which shall not be the subject of any Facility Lease;

(iii) a certificate of an Authorized Representative of the Company to the effect that the use or occupancy by such Facility Tenant of the Facility will not result in the removal of a plant or facility of such Entity or of any other occupant or user of the Facility located outside of the City (but within the State) to the Facility or in the abandonment of one or more of such plants or facilities of such Entity or of any other occupant or user of the Facility located outside of the City (but within the State); provided however, that if the Company shall be unable as a factually correct basis to make such certification, (y) an authorized officer of such Entity shall instead certify that such Entity's location at the Facility is reasonably necessary to discourage such Entity from removing its business to a location outside of the State or is reasonably necessary to preserve the competitive position of such Entity in its industry, and (z) an Authorized Representative of the Company shall request the Issuer to make a determination in writing as to whether the Issuer concurs in such latter certification (any failure of the Issuer to so determine being deemed a failure of the Issuer to consent to the proposed Facility Lease);

(iv) a certificate of an Authorized Representative of the Company acceptable to the Issuer and the Trustee to the effect that the Facility Tenant shall use or occupy the Facility only for the Approved Project Operations;

(v) written evidence satisfactory to the Issuer and the Trustee (which may be a letter to such effect from the Company's insurance brokers) that the insurance coverage provided by the Company and the Parent under this Agreement, the Bond Guaranty Agreement and the Ground Sublease shall in no manner be diminished or impaired by reason of such Facility Lease;

(vi) a Required Disclosure Statement of the Facility Tenant in form and substance satisfactory to the Issuer acting in its sole discretion in the form annexed hereto as Exhibit E-2;

(vii) a certificate of an Authorized Representative of the Company to the effect that all consents and approvals required under the Ground Lease, if any, in connection with such Facility Lease have been obtained, copies of which shall accompany such certificate; and

(viii) a certificate of an Authorized Representative of the Company to the effect that the Facility Lease will obligate the Facility Tenant (x) to provide to the Company the applicable information that the Company needs in order to satisfy the reporting requirements of Sections 7.6, 7.7, 7.13, 7.14 and 7.15; (y) to acknowledge and agree that the Facility Lease, together with all rentals, charges and amounts payable thereunder, have been pledged and assigned to the Trustee pursuant to the Mortgage as security for the Bonds; and (z) to agree to use that portion of the Facility subject to the Facility Lease for Approved Project Operations.

If, within ten (10) Business Days following the receipt by the Issuer of the Request Letter accompanied by the documentation required in paragraphs (i) through (viii), inclusive, above, the Issuer shall fail to request any clarification or completion of any of such documentation or to state that upon the basis of such documentation that no consent of the Issuer will be forthcoming to the entering into by the Company of such Facility Lease, then, the Issuer shall, subject to the next sentence, be deemed to have consented to the Company's entering into of such Facility Lease. If the Issuer shall consent (or be deemed to have consented) to such Facility Lease, such consent (or deemed consent) shall be conditioned upon:

(A) the Company and the Parent remaining liable for the making of all loan and other payments and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which the Company or the Parent shall be a party;

(B) such Facility Lease not violating any provision of this Agreement or any other Project Document;

(C) such Facility Lease in no way diminishing or impairing the obligation of the Company or the Parent to carry the insurance required under Section 3.12 of the Bond Guaranty Agreement or under Section 7.1; and

(D) the delivery to the Issuer and the Trustee within thirty (30) days of the delivery by the Issuer of its consent (or deemed consent) to the Facility Lease of an executed copy of the Facility Lease.

(c) Any consent by the Issuer or the Trustee to any assignment, transfer, Transfer Equivalent Sublease or Facility Lease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Company, or the successors or assigns of the Company, to obtain from the Issuer and the Trustee consent to any other or subsequent assignment, transfer, Transfer Equivalent Sublease or Facility Lease, or as modifying or limiting the rights of the Issuer or the Trustee under the foregoing covenant by the Company.

(d) If the Facility or any part thereof is sublet or occupied by any Facility Tenant or any other Person not constituting the Company or the Trustee, in the event of the Company's default in the payment of loan payments or other payments hereunder may, and is hereby empowered to, collect rentals from any such Facility Tenant or other occupant or tenant during the continuance of any such default. In case of such events, the Issuer or the Trustee may apply the net amount received by it to the loan or other payments herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignments, transfers, Transfer Equivalent Subleases or Facility Leases or constitute the acceptance of the undertenant or occupant as Facility Tenant, or a release of the Company from the further performance of the covenants herein contained on the part of the Company.

(e) For purposes of this Section 7.8, any license or other right of possession or occupancy granted by the Company with respect to the Facility shall be deemed subject to the provisions of this Section 7.8.

(f) Upon request of the Company to the Trustee, prior to the execution of any Facility Lease, the Trustee, the Company and the Facility Tenant shall execute a subordination and non-disturbance agreement in substantially the form set forth in Exhibit H attached hereto.

Section 7.9. Retention of Interest in Facility; Grant of Easements; Release of Portions of Facility.

(a) The Company shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its leasehold estate in the Facility under the Ground Lease, including the Improvements, or any part of the Facility or interest therein during the term of this Agreement, except as set forth in Section 3.5, Article V, Section 7.8, Section 7.31 or Section 8.2 or in this Section, without the prior written consents of the Issuer and of the Trustee, and any purported disposition without such consents shall be void.

(b) The Company may, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, its leasehold interest in the Facility, or grant such permits or licenses in respect to the use thereof, free from this Agreement and the lien and security interest of the Mortgage, as shall be necessary or convenient in the opinion of the Company for the operation or use of the Facility, or required by any utility company for its utility business, provided that, in each case, such rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility as the Approved Facility, and provided, further, that any consideration received by the Company from the granting of said rights-of-way, easements, permits or licenses shall be paid to the Trustee and deposited in the Redemption Account of the Bond Fund.

(c) So long as there exists no Event of Default hereunder, and the Company delivers to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that the following action will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes, the Company may from time to time request in writing to the Issuer and the Trustee the release of and removal from this Agreement and from the lien and security interest of the Mortgage, of any unimproved part of the Land (on which none of the Improvements, including the buildings, structures, major appurtenances, fixtures or other property comprising the Facility, is situated) provided that such release and removal will not adversely affect the use or operation of the Facility as the Approved Facility and such release is effected simultaneously with the release of such unimproved Land under the Ground Lease. Upon any such request by the Company, the Issuer shall, at the sole cost and expense of the Company, direct the Trustee to execute and deliver any and all instruments necessary or appropriate to so release and remove such unimproved Land from this Agreement and from the lien and security interest of the Mortgage, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject on the Commencement Date; (ii) any liens, easements and encumbrances created at the request of the Company or the City or to the creation or suffering of which the Company or the City consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Company or the City to perform or observe any of the agreements on its respective part contained in this Agreement or any other Project Document; (iv) Permitted Encumbrances (other than the liens of the Mortgage); and (v) any liens for taxes or assessments not then delinquent; provided, that, no such release shall be effected unless there shall be deposited with the Trustee the following:

(1) a certificate of an Independent Engineer, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the person signing such certificate, the unimproved Land and the release thereof so proposed to be made is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility as the Approved Facility and will not destroy the means of ingress thereto and egress therefrom; and

(2) an amount of cash for deposit in the Redemption Account of the Bond Fund equal to greater of (A) the fair market value of such unimproved Land, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, and (B) if such unimproved Land is released in connection with its sale, the amount received by the Company upon such sale.

(d) No conveyance or release effected under the provisions of this Section 7.9 shall entitle the Company to any abatement or diminution of the loan payments or other amounts payable under Section 4.3 or any other payments required to be made by the Company under this Agreement, the Promissory Note or any other Security Document to which it shall be a party.

Section 7.10. Discharge of Liens and Claims.

(a) If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued (such liens, encumbrances, charges, judgments, decrees, orders, levies and processes being herein collectively called "**Liens**"), whether or not valid, is made against the Trust Estate, the Facility or any part thereof or the interest of the Company in the Facility, in the Ground Lease or in a Facility Lease, or against any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Company in any Project Document, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 7.10(b), the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Issuer and the Trustee and take all action (including the payment of money and/or, to the extent applicable, the securing of a bond, with respect to any such Lien) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full of such Lien and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Issuer for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien not permitted under this Section 7.10(a).

(b) The Company may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (i) such proceeding shall suspend the execution or enforcement of such Lien against the Trust Estate, the Facility or any part thereof or the interest of the Company in the Facility, in the Ground Lease or in a Facility Lease, or against any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Company in any Project Document, (ii) neither the Facility nor any part thereof or interest therein, nor the Trust Estate or any portion thereof would be in any danger of being sold, forfeited or lost, (iii) neither the Company, the Parent, the Issuer nor the Trustee would be in any danger of any criminal liability or any material civil liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Company or the Parent shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents.

Section 7.11. Filing.

(a) The security interest granted by the Issuer to the Trustee pursuant to the Indenture in the rights and other intangible interests described therein, shall be perfected by the filing of financing statements at the direction of the Issuer (at the sole cost and expense of the Company) in the office of the Secretary of State of the State in the City of Albany, New York, and in the appropriate office of the Register of the City, which financing statements shall be in accordance with the New York State Uniform Commercial Code-Secured Transactions.

(b) The Issuer and the Company acknowledge that, as of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a “public-financed transaction” is effective for a period of thirty (30) years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least twenty (20) years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

(c) The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Initial Bonds, and because the Initial Bonds are municipal securities with a term that is at least twenty (20) years in duration, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statements in order to preserve the liens and security interests that they create for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

Subsequent to the foregoing recordation and filings, if in the Opinion of Counsel to the Company (described hereinbelow), to preserve (after the thirtieth (30th) anniversary of the Closing Date) the lien and security interest of the Indenture, it is necessary to re-record and/or reindex documents, re-file financing statements and/or file continuation statements and/or take any other actions (individually or collectively, the “**Continuation Action(s)**”), then, the Company in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Trustee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Trustee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Trustee written certification (upon which the Trustee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause “(i)” and the others in the manner described in clause “(ii)”; and (B) deliver or cause to be delivered to the Issuer and the Trustee the Opinion of Counsel to the Company as described below. The Trustee may conclusively rely upon (y) when applicable, the certification referred to in clause “(A)(i),” and (z) in all instances, the Opinion of Counsel to the Company. In the event the Company chooses to have the Trustee perform all or some of the Continuation Actions, as provided in clause “(A)(i)” hereinabove, the Trustee shall reasonably promptly perform such Continuation Actions at the Company’s sole expense. The Company shall perform the obligations described hereinabove in clauses “(A)” and “(B)” no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause “(i)”) on which a Continuation Action is to be taken to preserve the lien and security interest of the Indenture.

The Opinion of Counsel to the Company shall be addressed to the Company, the Issuer and the Trustee. Counsel shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year period thereafter through the term of the Initial Bonds, and/or (ii) the date of any required Continuation Action not covered by clause "(i)," in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Company, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Trustee with instruments and papers prepared by the Company, or (ii) the Company through electronic filing, or (iii) the Trustee as to some Continuation Actions, and the Company as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Company, the Issuer and the Trustee then requisite to the maintenance of the perfection of the security interest of the Trustee in and to all property and interests which by the terms of the Indenture are to be subjected to the lien and security interest of the Indenture.

(d) Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Issuer shall have the right to designate a company (which shall be reasonably acceptable to the Trustee) to facilitate the filing of the Uniform Commercial Code financing statements.

(e) The Company acknowledges and agrees that neither the Issuer nor the Trustee, nor any of their respective directors, members, officers, employees, servants, agents, persons under its control or supervision, or attorneys (including Bond Counsel to the Issuer), shall have any responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section, or the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

(f) The Company agrees to perform all other acts (including the payment of all fees and expenses) necessary in order to enable the Issuer and the Trustee to comply with this Section and with Section 7.07 of the Indenture, including but not limited to, providing prompt notice to the Trustee of any change in either of the name or address of the Company. The Company agrees that the Issuer and the Trustee, if permitted by applicable law, may provide for the re-recording of the Indenture or any other Security Document or the filing or re-filing of continuation statements without the cooperation of the Company as necessary at the sole cost and expense of the Company.

Section 7.12. No Further Encumbrances Permitted. The Company shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Trust Estate, the Facility or any part thereof, or the interest of the Company in the Facility, in the Ground Lease or in a Facility Lease, or the interest of the Company in any Project Document, except for Permitted Encumbrances. The Company covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that there are no mortgage liens on, or security interests in, the Mortgaged Property (as defined in the Mortgage) prior to the mortgage liens thereon, and security interests therein, granted by the Mortgage.

Section 7.13. Documents Automatically Deliverable to the Issuer.

(a) The Company shall immediately notify the Issuer of the occurrence of any Event of Default, or any event that with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Company and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Company shall state this fact on the notice.

(b) The Company shall promptly provide written notice to the Issuer if any representation or warranty made by the Company pursuant to Section 2.2(u) would, if made on any date during the term of the Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect.

(c) Within ten (10) Business Days after receipt from the Issuer of any subtenant survey and questionnaire pertaining to the Facility, the Company shall complete and execute such survey and questionnaire and return the same to the Issuer.

(d) The Company shall deliver all insurance-related documents required by Sections 7.1(f) and 7.1(g).

(e) Within 120 days after the close of each Fiscal Year during which action was taken by the Company pursuant to Section 3.4, the Company shall deliver written notice of the Additional Improvement(s) to the Issuer.

(f) If a removal involving property having a value in the aggregate exceeding \$25,000 was taken by the Company pursuant to Section 3.5(a), the Company shall deliver written notice of such removal to the Issuer within five (5) Business Days following such removal.

(g) Promptly following completion of the Project, but no later than thirty (30) days following the receipt of a temporary or permanent certificate of occupancy with respect to the Facility, the Company shall deliver to the Issuer the certificate as to Project completion in substantially the form set forth in Exhibit E – “Form of Project Completion Certificate”, together with all attachments required thereunder.

(h) If the Company shall request the consent of the Issuer under Section 7.8 to any assignment, transfer, Transfer Equivalent Sublease or Facility Lease, the Company shall submit such request to the Issuer in the form prescribed by the Issuer.

Section 7.14. Requested Documents. Upon request of the Issuer, the Company shall deliver or cause to be delivered to the Issuer within five (5) Business Days of the date so requested:

(a) a copy of the most recent compiled financial statements of the Company and of the most recent annual audited consolidated combined and combining financial statements reflecting the financial condition of the Parent (including balance sheets as of the end of the Fiscal Year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such Fiscal Year, prepared in accordance with GAAP and certified by an Independent Accountant;

(b) a certificate of an Authorized Representative of the Company that the insurance the Company maintains complies with the provisions of Section 7.1, that such insurance has been in full force and effect at all times during the preceding Fiscal Year, and that duplicate copies of all policies or certificates thereof have been filed with the Issuer and are in full force and effect and the evidence required by Section 7.1(f);

(c) copies of any (x) bills, invoices or other evidences of cost as shall have been incurred in connection with the Project Work, and (y) permits, authorizations and licenses from appropriate authorities relative to the occupancy, operation and use of the Facility;

(d) if no action was taken by the Company pursuant to Section 3.4 or no action involving the removal of property having a value in the aggregate exceeding \$25,000 was taken by the Company pursuant to Section 3.5(a), a certificate of an Authorized Representative of the Company certifying to the fact that no such action was taken by the Company pursuant to such Section 3.4 or 3.5(a) during such preceding Fiscal Year;

(e) if action was taken by the Company pursuant to Section 3.4 or involving the removal of property having a value in the aggregate exceeding \$25,000 pursuant to Section 3.5(a), a written report of an Authorized Representative of the Company summarizing the action taken by the Company and stating that, in his/her opinion, such action complied with the provisions of Section 3.4 or 3.5(a), as applicable;

(f) a certificate of an Authorized Representative of the Company as to whether or not, as of the close of the immediately preceding Fiscal Year, and at all times during such Fiscal Year, the Company was in compliance with all the provisions that relate to the Company in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Company with respect thereto;

(g) upon twenty (20) days prior request by the Issuer, a certificate of an Authorized Representative of the Company either stating that to the knowledge of such Authorized Representative after due inquiry there is no default under or breach of any of the terms hereof that, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge;

- (h) employment information requested by the Issuer pursuant to Section 7.6(b); and
- (i) information regarding non-discrimination requested by the Issuer pursuant to Section 7.7.

Section 7.15. Periodic Reporting Information for the Issuer.

(a) The Company shall not assert as a defense to any failure of the Company to deliver to the Issuer any reports specified in this Section 7.15 that the Company shall not have timely received any of the forms from or on behalf of the Issuer unless, (i) the Company shall have requested in writing such form from the Issuer not more than thirty (30) days nor less than fifteen (15) days prior to the date due, and (ii) the Company shall not have received such form from the Issuer at least one (1) Business Day prior to the due date. For purposes of this Section 7.15, the Company shall be deemed to have "received" any such form if it shall have been directed by the Issuer to a website at which such form shall be available. In the event the Issuer, in its sole discretion, elects to replace one or more of the reports required by this Agreement with an electronic or digital reporting system, the Company shall make its reports pursuant to such system.

(b) Annually, by August 1 of each year, commencing on the August 1 immediately following the Commencement Date, until the termination of this Agreement, the Company shall submit to the Issuer the Annual Employment and Benefits Report (as such report is so characterized, in substance, by the Issuer) with respect to the Company and all Facility Tenants relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, in the form prescribed by the Issuer, certified as to accuracy by an officer of the Company. Upon termination of this Agreement, the Company shall submit to the Issuer the Annual Employment and Benefits Report with respect to the Company and all Facility Tenants relating to the period commencing the date of the last such Report submitted to the Issuer and ending on the last payroll date of the preceding month in the form prescribed by the Issuer, certified as to accuracy by the Company. Nothing herein shall be construed as requiring the Company or any Facility Tenant to maintain a minimum number of employees on its respective payroll.

(c) If there shall have been a Facility Tenant at any time during the immediately preceding calendar year, the Company shall file with the Issuer by the next following February 1, a certificate of an Authorized Representative of the Company with respect to all Facility Leases in effect at the Facility, in the form prescribed by the Issuer.

(d) If there shall have been a Facility Tenant at any time during the twelve-month period terminating on the immediately preceding June 30, the Company shall deliver to the Issuer by the next following August 1, a completed Subtenant's Employment and Benefits Report with respect to such twelve-month period, in the form prescribed by the Issuer.

(e) If the Company shall have had the benefit of a Business Incentive Rate (*i.e.*, discounted energy) at any time during the twelve-month period terminating on the immediately preceding June 30, the Company shall deliver to the Issuer by the next following August 1, a completed Business Incentive Rate Report (as such report is so characterized, in substance, by the Issuer) with respect to such twelve-month period, in the form prescribed by the Issuer.

(f) The Company shall deliver to the Issuer on August 1 of each year, commencing on the August 1 immediately following the Commencement Date, a completed location and contact information report in the form prescribed by the Issuer.

Section 7.16. Taxes, Assessments and Charges.

(a) The Company shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Trust Estate, the Facility or any part thereof or interest of the Company in the Facility, in the Ground Lease or in a Facility Lease, or against any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Company in any Project Document, during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions**". The Company may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance. The Issuer shall forward, as soon as practicable, to the Company any notice, bill or other statement received by the Issuer concerning any Imposition.

(b) The Company may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition, if (i) such proceeding shall suspend the execution or enforcement of such Imposition against the Trust Estate, the Facility or any part thereof or interest of the Company in the Facility, in the Ground Lease or in a Facility Lease, or against any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Company in any Project Document, (ii) none of the Trust Estate, the Facility or any part thereof or interest of the Company in the Facility, in the Ground Lease or in a Facility Lease, or any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Company in any Project Document, would be in any danger of being sold, forfeited or lost, (iii) neither the Company, the Parent, the Issuer nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Company or the Parent shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents.

Section 7.17. Compliance with Legal Requirements.

(a) The Company shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

(b) Throughout the term of this Agreement and at its sole cost and expense, the Company shall promptly observe and comply with all applicable Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Company, the Facility, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including zoning variances, special exception and non conforming uses), privileges, franchises and concessions. The Company will not, without the prior written consent of the Issuer and the Trustee (which consents shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof.

(c) The Company may at its sole cost and expense contest in good faith the validity, existence or applicability of any of the matters described in Section 7.17(b) if (i) such contest shall not result in the Trust Estate, the Facility or any part thereof or interest of the Company in the Facility, in the Ground Lease or in a Facility Lease, or any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Company in any Project Document, being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Company, the Parent, the Issuer or the Trustee being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Company or the Parent shall have furnished such security, if any, as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents for failure to comply therewith.

Section 7.18. Operation as Approved Facility.

(a) The Company will not take any action, or suffer or permit any action, if such action would cause the Facility not to be the Approved Facility.

(b) The Company will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be the Approved Facility.

(c) The Company will permit the Trustee and its duly authorized agents, at all reasonable times upon written notice to enter upon the Facility and to examine and inspect the Facility and exercise its rights hereunder, under the Indenture and under the other Security Documents with respect to the Facility. The Company will further permit the Issuer, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facility, but solely for the purpose of assuring that the Company is operating the Facility, or is causing the Facility to be operated, as the Approved Facility consistent with the Approved Project Operations and with the corporate purposes of the Issuer.

Section 7.19. Restrictions on Dissolution and Merger.

- (a) The Company covenants and agrees that at all times during the term of this Agreement, it will
- (i) maintain its existence as a limited liability company,
 - (ii) continue to be subject to service of process in the State,
 - (iii) continue to be organized under the laws of, or qualified to do business in, the State,
 - (iv) not liquidate, wind up or dissolve or otherwise dispose of all or substantially all of its property, business or assets (“**Transfer**”) remaining after the Commencement Date, except as provided in Section 7.19(b),
 - (v) not consolidate with or merge into another Entity or permit one or more Entities to consolidate with or merge into it (“**Merge**”), except as provided in Section 7.19(b), and
 - (vi) not change or permit the change of any Principal of the Company and/or the Parent, or a change in the relative ownership and/or Control of the Company and/or the Parent of any of the existing Principals, except in each case as provided in Section 7.19(c).
- (b) Notwithstanding Section 7.19(a), the Company may Merge or participate in a Transfer if the following conditions are satisfied on or prior to the Merger or Transfer, as applicable:
- (i) when the Company is the surviving, resulting or transferee Entity,
 - (1) the Company shall not have a negative net worth (as determined by an Independent Accountant in accordance with GAAP),
 - (2) the Company shall deliver to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such action will not cause the interest on the Bonds to become includable in gross income for federal income tax purposes, and
 - (3) the Company shall deliver to the Issuer a Required Disclosure Statement with respect to itself as surviving Entity in form and substance reasonably satisfactory to the Issuer;
 - (ii) when the Company is not the surviving, resulting or transferee Entity (the “**Successor Company**”),
- or

- (1) the predecessor Company (the “**Predecessor Company**”) shall not have been in default under this Agreement or under any other Project Document,
 - (2) the Issuer and the Trustee shall have consented in writing to the transaction,
 - (3) the Successor Company shall be solvent and subject to service of process in the State and organized under the laws of the State, or under the laws of any other state of the United States and duly qualified to do business in the State,
 - (4) the Successor Company shall have assumed in writing (or by operation of law) all of the obligations of the Predecessor Company contained in this Agreement and in all other Project Documents to which the Predecessor Company shall have been a party,
 - (5) the Successor Company shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion,
 - (6) each Principal of the Successor Company shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion,
 - (7) the Successor Company shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an Opinion of Counsel to the effect that (y) this Agreement and all other Project Documents to which the Predecessor Company shall be a party constitute the legal, valid and binding obligations of the Successor Company and each is enforceable in accordance with their respective terms to the same extent as it was enforceable against the Predecessor Company, and (z) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents,
 - (8) the Parent shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an opinion of an Independent Accountant to the effect that the Parent has a net worth (as determined in accordance with GAAP) after the Merger or Transfer at least equal to the Parent Closing Date Net Worth, and
 - (9) the Successor Company delivers to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such action will not cause the interest on the Bonds to become includable in gross income for federal income tax purposes.
- (c) If there is a change in Principals of the Company and/or the Parent, or a change in the relative ownership and/or Control of the Company and/or the Parent or any of the existing Principals, the Company shall deliver to the Issuer prompt written notice thereof (including all details that would result in a change to Exhibit C — “Principals of Company and Parent”) to the Issuer together with a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion.

Section 7.20. Security Interest and Further Assurances. c) The Issuer shall pledge and assign to the Trustee pursuant to the Indenture all of the Issuer's right, title and interest in the Promissory Note and all (except for the Issuer's Reserved Rights) of the Issuer's right, title and interest in this Agreement, including all loan payments hereunder and under the Promissory Note, and in furtherance of said pledge the Issuer will unconditionally assign such loan payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture.

(b) The Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Company, as the Issuer or the Trustee deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of the Trust Estate and any rights of the Issuer or the Trustee hereunder, under the Indenture or under any other Security Document.

Section 7.21. Continuing Disclosure. The Company shall, if required by the initial purchaser or underwriter of the Bonds in accordance with Securities and Exchange Commission Rule 15c2-12(b)(5), enter into and comply with and carry out all of the provisions of a continuing disclosure agreement. Notwithstanding any other provision of this Agreement, failure of the Company to comply with such continuing disclosure agreement shall not be considered an Event of Default; however, the Trustee may (and, at the request of any participating underwriter or the Holders of at least twenty-five percent (25%) aggregate principal amount in Outstanding Bonds, shall, upon receipt of reasonable indemnification for its fees and costs acceptable to it), and any Holder or Beneficial Owner may, take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Company to comply with its obligations under this Section 7.21. The Company agrees that the Issuer shall have no continuing disclosure obligations.

Section 7.22. Tax Regulatory Agreement.

(a) The Company shall comply with all of the terms, provisions and conditions set forth in the Tax Regulatory Agreement, including, without limitation, the making of any payments and filings required thereunder.

(b) Promptly following receipt of notice from the Trustee as provided in Section 5.08 of the Indenture that the amount on deposit in the Rebate Fund is less than the Rebate Amount, the Company shall deliver the amount necessary to make up such deficiency to the Trustee for deposit in the Rebate Fund.

Section 7.23. Compliance with the Indenture. The Company will comply with the provisions of the Indenture with respect to the Company. The Trustee shall have the power, authority, rights and protections provided in the Indenture. The Company will use its best efforts to cause there to be obtained for the Issuer any documents or opinions of counsel required of the Issuer under the Indenture.

Section 7.24. Reporting Information for the Trustee.

(a) The Company shall furnish or cause to be furnished to the Trustee, (i) as soon as available and in any event within one hundred twenty (120) days after the close of each Fiscal Year, a copy of the annual compiled financial statements of the Company and the most recent annual audited consolidated combined and combining financial statements reflecting the financial condition of the Parent, including balance sheets as at the end of each such Fiscal Year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for each such Fiscal Year, as compiled by the Company's and the Parent's respective Independent Accountant and prepared in accordance with GAAP, and (ii) as soon as available and in any event within sixty (60) days after the close of each quarter of each Fiscal Year, a copy of the compiled financial statements of the Company, and the unaudited consolidated combined and combining financial statements reflecting the financial condition of the Parent, including balance sheets as at the end of such quarter, and the related statements of income, balances, earnings, retained and changes in financial position for such quarter, prepared in accordance with GAAP, certified by an Authorized Representative of the Company and an Authorized Representative of the Parent, respectively.

(b) The Company shall deliver to the Trustee with each delivery of annual financial statements required by Section 7.24(a)(i), (i) a certificate of an Authorized Representative of the Company as to whether or not, as of the close of such preceding Fiscal Year, and at all times during such Fiscal Year, the Company was in compliance with all the provisions which relate to the Company in this Agreement and in any other Project Document to which it shall be a party, and as to whether or not a Determination of Taxability has occurred, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default or Determination of Taxability, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Company with respect thereto, and (ii) a certificate of an Authorized Representative of the Company that the insurance it maintains complies with the provisions of Section 7.1 of this Agreement and Section 3.12 of the Bond Guaranty Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year, and that duplicate copies of all policies or certificates thereof have been filed with the Issuer and the Trustee and are in full force and effect. In addition, upon twenty (20) days prior request by the Trustee, the Company will execute, acknowledge and deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Company either stating that to the knowledge of such Authorized Representative after due inquiry no default or breach exists hereunder or specifying each such default or breach of which such Authorized Representative has knowledge.

(c) The Company shall immediately notify the Trustee of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Company and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Company shall state this fact on the notice.

(d) The Company shall deliver to the Trustee all insurance-related documents required by Sections 7.1(f)(i), 7.1(f)(ii), 7.1(f)(iii) and 7.1(g).

Section 7.25. Contracts with Affiliates. The Company shall not enter into any contract or transaction with any Affiliate of the Company, including, without limitation, any Facility Lease, except upon such terms as are customarily acceptable to a bona fide third party in an arms'-length transaction.

Section 7.26. Business of Company. The Company shall engage in no business or enterprise other than (i) the design, acquisition, construction, renovation, equipping, furnishing, leasing, operation, maintenance, repair, restoration, improvement and management of the Facility, (ii) the performance of its obligations under the Ground Lease and all other Project Documents to which it is a party, and all other agreements relating to the Facility and its financing, construction, leasing, maintenance and operation, and (iii) activities in furtherance thereof or a ancillary or reasonably related thereto.

Section 7.27. No Material Impairment of Value. The Company shall not take any action that would impair, in any material respect, the value or utility of the Facility as intended for the purposes of this Agreement or the Facility Revenues to be derived from the operation of the Facility.

Section 7.28. Certain Covenants with Respect to the Ground Lease. i) At least ten (10) days prior to the execution by the Company of any amendment, supplement or modification to the Ground Lease, the Company shall deliver a copy of same in substantially final form to each of the Issuer and the Trustee. Promptly upon the execution thereof, the Company shall furnish certified copies of such amendment, supplement or modification to the Issuer and the Trustee. Prior to the completion of the Project in accordance with this Agreement and the Ground Lease, the Company shall not enter into any amendment, supplement or modification to the Ground Lease without the prior written consent of the Parent.

(b) The Company shall immediately transmit to each of the Issuer and the Trustee (y) notice of any default by the Company under the Ground Lease including a full description of the nature of the default and the amount or act necessary to cure the same, and (z) copies of any termination or default notice it shall receive or deliver under the Ground Lease.

Section 7.29. Certain Covenants with Respect to the Facility Leases.

ii) Prior to commencing its broadly marketing efforts to seek tenants for the Facility, the Company covenants and agrees to use its best efforts to identify and locate former tenants from the Gallery at Fulton Street in Brooklyn, New York and offer to such tenants suitable retail space within the Facility (taking into account the amount of available retail space within the Facility and the location of such space within the Facility) on a competitive market basis.

(b) Upon the execution by the Company of any amendment, supplement or modification to any of the Facility Leases, the Company shall promptly deliver a certified copy of same to each of the Issuer and the Trustee.

(c) The Company shall immediately transmit to each of the Issuer and the Trustee copies of any termination or default notice it shall receive or deliver under any Facility Lease.

Section 7.30. Waiver of Defenses. The Company covenants and agrees, for the benefit of the Issuer, the Trustee and the Holders of the Bonds, not to assert that any inconsistency between the terms, covenants, conditions and provisions of the Ground Lease with the Mortgage or any of the other Security Documents shall have the effect of modifying, releasing, impairing or otherwise limiting any of the obligations, covenants and agreements of the Company under the Mortgage or under any of the other Security Documents.

Section 7.31. Leasehold Condominium. Pursuant to the General Lease, the Company has reserved for itself the right to subject the Facility to a condominium regime of ownership pursuant to the provisions of Article 9-B of the New York Real Property Law and, in connection therewith, request the landlord under the Ground Lease to enter into a separate lease with the owners of each condominium unit created thereunder. However, the Company agrees that it shall not effect any sale, transfer or other disposition of any such separate lease or condominium unit so created without the prior written consent of the Trustee, and the delivery to the Issuer and the Trustee of an opinion of Nationally Recognized Bond Counsel to the effect that such action will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes.

ARTICLE VIII

REMEDIES AND EVENTS OF DEFAULT

Section 8.1. Events of Default. Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) Failure of the Company to pay or cause to be paid any loan payment that has become due and payable by the terms of Section 4.3(a) or (e), or to pay any other payment that has become due and payable under Section 4.4, which in any case results in an Event of Default under the Indenture;

(b) Failure of the Company to pay any amount (except as set forth in Section 8.1(a) hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 5.1, 5.2, 5.3, 5.4, 7.1, 7.2, 7.3, 7.4, 7.8, 7.10, 7.11, 7.12, 7.16, 7.17, 7.19, 7.24, 7.25, 7.28, 7.29, 7.31, 8.7, 8.8, 8.9, 10.2, 10.3, 10.5, 11.2 or 11.3 and continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Company specifying the nature of such failure by the Issuer or the Trustee or the Holders of more than twenty-five per cent (25%) in aggregate principal amount of the Bonds Outstanding;

(c) Failure of the Company to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 8.1(a) or (b)) and (i) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Company specifying the nature of same by the Issuer or the Trustee or the Holders of more than twenty-five per cent (25%) in aggregate principal amount of the Bonds Outstanding, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Company fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure;

(d) The Company or the Parent shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Company or the Parent, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Company or the Parent, or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Company or the Parent shall be entered in an involuntary case under such Bankruptcy Code; the terms “dissolution” or “liquidation” of the Company or the Parent as used above shall not be construed to prohibit any action otherwise permitted by Section 7.19, Section 3.6 of the Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement;

(f) Any representation or warranty made by the Company or the Parent (i) in the application and related materials submitted to the Issuer or the initial purchaser(s) of the Bonds for approval of the Project or its financing, or (ii) herein or in any other Project Document, or (iii) in the Letter of Representation and Indemnity Agreement, or (iv) in the Tax Regulatory Agreement, or (v) by or on behalf of the Company or the Parent or any other Person in any Required Disclosure Statement, or (vi) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

- (g) The commencement of proceedings to appoint a receiver or to foreclose any mortgage lien on or security interest in the Ground Lease including the Mortgage;
- (h) If any Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion; or
- (i) An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing.

Section 8.2. Remedies on Default. d) Whenever any Event of Default referred to in Section 8.1 shall have occurred and be continuing, the Issuer, to the extent specifically authorized herein or in the Issuer Indemnification Agreement, or the Trustee where so provided, may, take any one or more of the following remedial steps:

(i) The Trustee, as and to the extent provided in Article VIII of the Indenture, may cause all principal installments of loan payments payable under Section 4.3(a) for the remainder of the term of this Agreement to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due and payable, without presentment, demand, protest or any other notice whatsoever, all of which are hereby expressly waived by the Company; provided, however, that upon the occurrence of an Event of Default under Section 8.1(d) or (e), all principal installments of loan payments payable under Section 4.3(a) for the remainder of the term of this Agreement, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Issuer, the Trustee, the Holders of the Bonds or any other Person being a condition to such acceleration;

(ii) The Issuer or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the loan payments then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Company under this Agreement; and

(iii) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder.

(b) Upon the occurrence of a default with respect to any of the Issuer's Reserved Rights, the Issuer, without the consent of the Trustee or any other Person, may proceed to enforce the Issuer's Reserved Rights by

(i) bringing an action for damages, injunction or specific performance, or

(ii) taking whatever action at law or in equity as may appear necessary or desirable to collect payment of amounts due by the Company under the Issuer's Reserved Rights or to enforce the performance or observance of any obligations, covenants or agreements of the Company under the Issuer's Reserved Rights,

(c) No action taken pursuant to this Section 8.2 (including termination of this Agreement) or by operation of law or otherwise shall, except as expressly provided herein, relieve the Company from the Company's obligations hereunder, all of which shall survive any such action.

Section 8.3. Bankruptcy Proceedings. In case proceedings shall be pending for the bankruptcy or for the reorganization of the Company or the Parent under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee (other than the Trustee under the Indenture) shall have been appointed for the property of the Company or the Parent or in the case of any other similar judicial proceedings relative to the Company or the Parent or the creditors or property of the Company or the Parent, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Agreement and the Promissory Note, irrespective of whether the principal of the Bonds (and the loan payments payable pursuant to the Promissory Note and Section 4.3(a)) shall have been accelerated by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand for payment hereunder or thereunder, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Company or the Parent, the creditors or property of the Company or the Parent, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution.

Section 8.4. Remedies Cumulative. The rights and remedies of the Issuer or the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Issuer or the Trustee allowed by law with respect to any default under this Agreement. Failure by the Issuer or the Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Company hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy the strict compliance by the Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated.

Section 8.5. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Issuer and/or the Trustee and the Company or any delay or omission on the part of the Issuer and/or the Trustee in exercising any rights hereunder or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Company hereby waives the benefit and advantage of, and covenants not to assert against the Issuer or the Trustee, any valuation, inquisition, stay, appraisalment, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or reletting made under the judgment, order or decree of any court or under the powers of sale and reletting conferred by this Agreement or otherwise.

Section 8.6. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Issuer or the Trustee under the Indenture or this Agreement or under any other Security Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuer or the Trustee, then, and in every such case, the Issuer, the Trustee and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Issuer and the Trustee shall continue as in effect prior to the commencement of such proceedings.

Section 8.7. Agreement to Pay Fees and Expenses of Attorneys and Other Consultants. In the event the Company should default under any of the provisions of this Agreement, and the Issuer or the Trustee should employ outside attorneys or other consultants or incur other expenses for the collection of loan payments or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained or contained in any other Security Document, the Company agrees that it will on demand therefor pay to the Issuer or the Trustee, as the case may be, the reasonable fees and disbursements of such attorneys or other consultants and such other expenses so incurred.

Section 8.8. Certain Continuing Representations. If at any time during the term of this Agreement, any representation or warranty made by the Company pursuant to Section 2.2(u) would, if made on any date during the term of this Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect, then, the Company shall be deemed to be in default under this Agreement unless the Issuer shall, upon written request by the Company, either waive such default in writing or consent in writing to an exception to such representation or warranty so that such representation or warranty shall no longer be false, misleading or incorrect in a material respect. Upon the occurrence of any such default, the Issuer shall have the right to require the redemption of the Bonds in accordance with Section 10.3(a).

Section 8.9. Late Delivery Fees.

(a) In the event the Company shall fail:

(i) to pay the Annual Administrative Fee on the date required under Section 7.3,

(ii) to file and/or deliver any of the documents required of the Company under Section 7.13 or Section 7.15 by the date therein stated (collectively, the “**Fixed Date Deliverables**”), or

(iii) to deliver to the Issuer any of the documents as shall have been requested by the Issuer of the Company under Section 7.14 within five (5) Business Days of the date so requested (collectively, the “**Requested Document Deliverables**”),

then the Issuer may charge the Company a daily calendar basis commencing with the day immediately following the date on which the payment, filing or delivery was due (the “**Due Date**”), the Per Diem Late Fee.

(b) If the Issuer shall deliver written notice (a “**Notification of Failure to Deliver**”) to the Company of such failure to deliver on the Due Date the Annual Administrative Fee, a Fixed Date Deliverable and/or a Requested Document Deliverable, and such payment or document shall not be delivered to the Issuer within ten (10) Business Days following delivery by the Issuer to the Company of the Notification of Failure to Deliver, then, commencing from and including the eleventh (11th) Business Day following the delivery by the Issuer to the Company of the Notification of Failure to Deliver, the Issuer may charge the Company on a daily calendar basis the Per Diem Supplemental Late Fee in respect of each noticed failure which shall be in addition to, and be imposed concurrently with, the applicable Per Diem Late Fee.

(c) The Per Diem Late Fee and the Per Diem Supplemental Late Fee shall each, if charged by the Issuer, (i) accrue until the Company delivers to the Issuer the Annual Administrative Fee, the Fixed Date Deliverable(s) and/or the Requested Document Deliverable(s), as the case may be, and (ii) be incurred on a daily basis for each such Annual Administrative Fee, Fixed Date Deliverable and/or Requested Document Deliverable as shall not have been delivered to the Issuer on the Due Date.

(d) No default on the part of the Company under Section 7.3, 7.13, 7.14, or 7.15 to deliver to the Issuer an Annual Administrative Fee, a Fixed Date Deliverable or a Requested Document Deliverable shall be deemed cured unless the Company shall have delivered same to the Issuer and paid to the Issuer all accrued and unpaid Per Diem Fees in connection with the default.

ARTICLE IX

OPTIONS TO TERMINATE

Section 9.1. Termination of this Agreement.

(a) The Company shall have the option to terminate this Agreement by causing the redemption or defeasance in whole of all Outstanding Bonds in accordance with the terms set forth in the Indenture.

(b) i) After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Article X of the Indenture, but not later than the receipt by the Company of ten (10) days prior written notice from the Issuer directing termination of this Agreement, the Company shall terminate this Agreement by giving the Issuer notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to (x) the delivery of those documents referred to in Section 9.2 , and (y) the survival of those obligations of the Company set forth in Section 9.3.

(ii) In the event the Company does not terminate this Agreement (including taking all actions required to be taken by the Company pursuant to Sections 9.1(b)(i) and 9.2 within such ten (10) day period), then, commencing on the eleventh (11th) day after transmittal of the notice directing termination as provided in Section 9.1(b)(i), the Company shall, in addition to all other payment obligations due to the Issuer hereunder, make additional loan payments to the Issuer in the amount of the Per Diem Holdover Amount until the Company shall have terminated this Agreement in accordance with the provisions thereof and hereof.

(c) The Company shall not, at any time, assign or transfer its option to terminate this Agreement as contained in this Section 9.1 separate and apart from a permitted assignment of this Agreement pursuant to Section 7.8, without the prior written consents of the Issuer and the Trustee.

Section 9.2. Actions on Termination. e) As a condition precedent to the termination of this Agreement, the Company shall

(i) pay to the Trustee

(A) the expenses of redemption, the fees and expenses of the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents;

(B) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement; and

- (ii) pay to the Issuer
 - (A) the fees and expenses of the Issuer, and
 - (B) all other amounts due and payable under this Agreement and the other Security Documents, and
- (iii) perform all accrued obligations hereunder or under any other Project Document,

(b) Upon the termination of this Agreement in accordance with Section 9.1, the Issuer will deliver or cause to be delivered, at the sole cost and expense of the Company, to the Company (i) a termination of this Agreement, and (ii) all necessary documents releasing all of the Issuer's rights and interests in and to any rights of action under this Agreement (other than as against the Company or the Parent or any insurer of the insurance policies under Section 7.1), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Issuer) or condemnation awards, with respect to the Facility or any portion thereof. Concurrently with the delivery of such instruments, there shall be delivered by the Issuer (at the sole cost and expense of the Company), to the Trustee any instructions or other instruments required by Article X of the Indenture to defease and pay the Outstanding Bonds, together with a direction to the Trustee that the Trustee deliver to the Company a release, satisfaction or termination of the Indenture and, except as provided in Section 8.19 of the Mortgage, of the mortgage lien and security interest of the Mortgage.

Section 9.3. Survival of Company Obligations. Upon compliance with Section 9.2, this Agreement and all obligations of the Company hereunder shall be terminated except the obligations of the Company under Sections 7.2, 7.22, 8.2, 8.7, 8.9, 10.2, 11.4, 11.5, 11.6, 11.11, 11.13 and 11.14 shall survive such termination.

ARTICLE X

CERTAIN PROVISIONS RELATING TO THE BONDS

Section 10.1. Issuance of Additional Bonds. If a Series of Additional Bonds are to be issued pursuant to the Indenture, the Issuer and the Company shall enter into an amendment to the Promissory Note and this Agreement, providing, among other things, for the payment by the Company of such additional loan payments as are necessary in order to amortize in full the principal of and interest on such Series of Additional Bonds and any other costs in connection therewith.

Any such completion, repair, relocation, replacement, rebuilding, restoration, additions, extensions or improvements shall become a part of the Facility and shall be included under this Agreement to the same extent as if originally included hereunder.

Section 10.2. Determination of Taxability. f) If any Holder of Bonds receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Bond (except a notice and demand based upon the assertion that the Bondholder is a "substantial user", as defined in Section 147 of the Code, or a "related person", as defined in the Tax Regulatory Agreement), an appeal may be taken by such Holder at the option of either such Holder or the Company. If such appeal is taken at the option of the Company (exercised in accordance with the procedures set forth in the definition of "Determination of Taxability"), all expenses of the appeal including reasonable counsel fees shall be paid by the Company, and the Company shall control the procedures and terms relating to such appeal, and such Holder and the Company shall cooperate and consult with each other in all matters pertaining to any such appeal which the Company has elected to take, except that no Holder of Bonds shall be required to disclose or furnish any non-publicly disclosed information, including without limitation, financial information and tax returns. Before the taking of any appeal which the Company has elected to take, however, the Bondholder shall have the right to require the Company to pay the tax assessed and conduct the appeal as a contest for reimbursement.

(b) Not later than one hundred twenty (120) days following a Determination of Taxability, the Company shall pay to the Trustee an amount sufficient, when added to the amounts then in the Bond Fund and available for such purpose, to retire and redeem all Bonds then Outstanding, in accordance with the Indenture. The Bonds shall be redeemed in whole unless redemption of a portion of the Bonds Outstanding would have the result that interest payable on the Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of a Bond (other than a Holder who is a "substantial user" of the Facility or a "related person", within the meaning of the Code). In such event, the Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

(c) The obligation of the Company to make the payments provided for in this Section shall be absolute and unconditional, and the failure of the Issuer, the Trustee or any other Person to execute or deliver or cause to be delivered any documents or to take any action required under this Agreement or otherwise shall not relieve the Company of its obligation under this Section.

Section 10.3. Mandatory Redemption of Bonds as Directed by the Issuer.

g) Upon the determination by the Issuer that (w) the Company is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not as a qualified “project” in accordance with the Act and the failure of the Company within thirty (30) days of the receipt by the Company of written notice of such noncompliance from the Issuer to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), (x) the Company, any Principal of the Company or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Company has committed a material violation of a material Legal Requirement and the failure of the Company within thirty (30) days of the receipt by the Company of written notice of such determination from the Issuer to cure such material violation (which cure, in the case of a Principal who shall have committed the material violation of a material Legal Requirement, may be effected by the removal of such Principal), (y) as set forth in Section 8.8, any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, the Company covenants and agrees that it shall, no later than ten (10) days following the termination of such thirty (30) day period, pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of 100% of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to the redemption date. The Issuer shall give prior written notice of the meeting at which the Board of Directors of the Issuer are to consider such resolution to the Company and the Trustee, which notice shall be no less than fifteen (15) days prior to such meeting.

(b) In the event the Company fails to obtain or maintain the public liability insurance with respect to the Facility required under Section 7.1, and the Company shall fail to cure such circumstance within ten (10) days of the receipt by the Company of written notice of such noncompliance from the Issuer and a demand by the Issuer on the Company to cure such noncompliance, upon notice or waiver of notice as provided in the Indenture, the Company shall pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Bonds, together with interest accrued thereon to the date of redemption.

Section 10.4. Right to Cure Issuer Defaults. The Issuer hereby grants the Company full authority for account of the Issuer to perform any covenant or obligation the non-performance of which is alleged to constitute a default in any notice received by the Company, in the name and stead of the Issuer, with full power of substitution.

Section 10.5. Option to Purchase or Invite Tenders of Bonds. The Company shall have the option, at any time during the term of this Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof. The Bonds so purchased by the Company or by any Affiliate of the Company (including the Parent) shall be delivered to the Trustee for cancellation within ninety (90) days of the date of purchase unless the Company shall deliver to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that the failure to surrender such Bonds by such date will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes.

Section 10.6. Investment of Funds. Any moneys held as part of the Rebate Fund, the Earnings Fund, the Project Fund, the Bond Fund, the Additional Interest Deposit Fund or the Renewal Fund or in any special fund provided for in this Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Company, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Regulatory Agreement). Neither the Issuer nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged.

Section 10.7. Deposit to Additional Interest Deposit Fund. On or prior to the Commencement Date, the Company shall pay or cause to be paid to the Trustee the amount of \$4,000,000 for deposit in the Advance Interest Deposit Fund.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Force Majeure. In case by reason of *force majeure* either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than (i) the obligations of the Company to make (or cause to be made) the loan payments or other payments required under the terms hereof and under the Promissory Note, or (ii) the obligations of the Company to comply with Sections 7.1 or 7.2), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, war, terrorism, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. Notwithstanding anything to the contrary herein, in no event shall the Company's financial condition or inability to obtain financing constitute a *force majeure*. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

The Company shall promptly notify the Issuer and the Trustee upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Company shall also promptly notify the Issuer and the Trustee upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Issuer or the Trustee, and the Issuer or the Trustee shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Company.

Section 11.2. Pledge under Indenture and Mortgage. Pursuant to the Mortgage, the Company will mortgage its interest in the Facility under the Ground Lease to the Trustee as security for the Bonds and the obligations of the Company and of the Parent under the Security Documents. Pursuant to the Indenture, the Issuer will pledge and assign the Promissory Note and the loan payments and certain other moneys receivable under this Agreement to the Trustee as security for the payment of the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, Purchase Price and interest on the Bonds.

Section 11.3. Amendments. This Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture and only by a written instrument executed by the parties hereto.

Section 11.4. Service of Process. The Company represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Company under this Agreement shall be satisfied and met. If for any reason the Company should cease to be so subject to service of process in the State, the Company hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing General Counsel, at Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Company hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Company's obligations hereunder.

For such time as any of the obligations, covenants and agreements of the Company under this Agreement remain unsatisfied, the Company's agent(s) designated in this Section 11.4 shall accept and acknowledge on the Company's behalf each service of process in any such suit, action or proceeding brought in any such court. The Company agrees and consents that each such service of process upon such agents and written notice of such service to the Company in the manner set forth in Section 11.5 shall be taken and held to be valid personal service upon the Company whether or not the Company shall then be doing, or at any time shall have done, business within the State and that each such service of process shall be of the same force and validity as if service were made upon the Company according to the laws governing the validity and requirements of such service in the State, and waives all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Company or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Company.

Section 11.5. Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

(1) if to the Issuer, to

New York City Capital Resource Corporation
110 William Street
New York, New York 10038
Attention: General Counsel (with a copy to the
Executive Director of the Issuer at the
same address)

(2) if to the Company, to

Albee Retail Development LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue
Suite 260
White Plains, New York 10605
Attention: General Counsel

with a copy to

Washington Square Partners
675 Third Avenue, 25th Floor
New York, New York 10017
Attention: Paul Travis

and

Akerman Senterfitt LLP
335 Madison Avenue, 26th Floor
New York, New York 10017
Attention: Steven Polivy, Esq., and

(3) if to the Trustee, to

The Bank of New York Mellon
101 Barclay Street, Floor 7W
New York, New York 10286
Attention: Corporate Trust Administration

The Issuer, the Company and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 11.6. Consent to Jurisdiction. The Company irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Agreement or any other Project Document, the Facility, the Project, the relationship between the Issuer and the Company, the Company's leasehold, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Company commences any action against the Issuer or the Trustee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Company shall, upon request of the Issuer or the Trustee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 11.7. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Issuer and the Company relating to the Facility, other than any other Project Document.

Section 11.8. Severability. If any one or more of the provisions of this Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Agreement shall be construed and enforced as of such illegal or invalid provision had not been contained herein.

Section 11.9. Effective Date; Counterparts. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on the Commencement Date. This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.10. Binding Effect. This Agreement shall inure to the benefit of the Issuer, the Trustee, the Bond Registrar, the Tender Agent, the Paying Agents, the Remarketing Agent, the Indemnified Parties and the Holders of the Bonds, and shall be binding upon the Issuer and the Company and their respective successors and assigns.

Section 11.11. Third Party Beneficiaries. h) The Issuer and the Company agree that this Agreement is executed in part to induce the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Issuer and the Company as set forth in this Agreement are hereby declared to be for the benefit of the Holders from time to time of the Bonds and may be enforced as provided in Article VIII of the Indenture on behalf of the Bondholders by the Trustee.

(b) Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Issuer, the Trustee, the Bond Registrar, the Tender Agent, the Company, the Paying Agents, the Remarketing Agent and the Holders of the Bonds any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof. All the covenants, stipulations, promises and agreements herein contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Trustee, the Bond Registrar, the Tender Agent, the Company, the Paying Agents, the Remarketing Agent and the Holders of the Bonds.

Section 11.12. Law Governing. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 11.13. Waiver of Trial by Jury. The Company does hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement, the Company's obligations hereunder, the Facility, the Project, the relationship between the Issuer and the Company, the Company's leasehold, use or occupancy of the Facility and/or any claim for injury or damages.

The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 11.14. Recourse Under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Issuer or the Company contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer or the Company, as the case may be, and not of any member (other than the Parent), director, officer, employee or agent of the Issuer or the Company, respectively, or any natural person executing this Agreement on behalf of either of them in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member (other than the Parent), director, officer, employee or agent of the Issuer or the Company, respectively, or any natural person executing this Agreement on behalf of the Issuer or the Company. No recourse shall be had for the payment of the principal of, redemption premium, if any, Sinking Fund Installments for, Purchase Price or interest on the Bonds or for any claim based thereon or hereunder against any member (other than the Parent), director, officer, employee or agent of the Issuer or the Company, respectively, or any natural person executing the Bonds. In addition, in the performance of the agreements of the Issuer herein contained, any obligation the Issuer may incur for the payment of money shall not subject the Issuer to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Issuer by the Company hereunder and under the Promissory Note.

IN WITNESS WHEREOF, the Issuer has caused its corporate name to be subscribed unto this Loan Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and the Company has caused its name to be hereunto subscribed by its duly Authorized Representative, all being done as of the year and day first above written.

NEW YORK CITY CAPITAL RESOURCE CORPORATION

By: /s/ Kyle Kimball
Kyle Kimball
Executive Director

ALBEE RETAIL DEVELOPMENT LLC

By: /s/ Robert Masters
Robert Masters
Senior Vice President

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the 29th day of June, in the year two thousand two, before me, the undersigned, personally appeared Kyle Kimball, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Carol M. Hyde
Notary Public/Commissioner of Deeds

Carol M. Hyde
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 20, 2011

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the 30th day of June, in the year two thousand ten, before me, the undersigned, personally appeared Robert Masters, personally known to me or proved to me on the basis of satisfactory evidence to me the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Kara A. Lobdell

Notary Public

Kara A. Lobdell
Notary Public, State of New York
No. 02LO6031220
Qualified in New York County
Commission Expires Sept. 27, 2013

APPENDICES

DESCRIPTION OF THE LAND

(Block 149, Lot 103)

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:

BEGINNING at the corner formed by the intersection of the northerly side of Dekalb Avenue

with the easterly side of Gold Street;

RUNNING THENCE easterly, along the easterly side of Gold Street, 114 feet to a point;

RUNNING THENCE easterly, at right angles to the easterly side of Gold Street, 129.12 feet to

the northwesterly side of Fleet Street

RUNNING THENCE southwesterly, along the northwesterly side of Fleet Street, 132.02 feet to

the corner formed by the intersection of the northwesterly side of Fleet Street, with the northerly

side of Dekalb Avenue;

RUNNING THENCE westerly, along the northerly side of Dekalb Avenue, 63.76 feet to the

point or place of BEGINNING.

END OF SCHEDULE A

AUTHORIZED REPRESENTATIVE

(i) of the Company:

Name
Kenneth F. Bernstein

Michael L. Nelsen
Robert Masters

Title
President and CEO
Senior Vice President and Treasurer

Senior Vice President and Secretary

(ii) of the Parent:

Name
Kenneth F. Bernstein

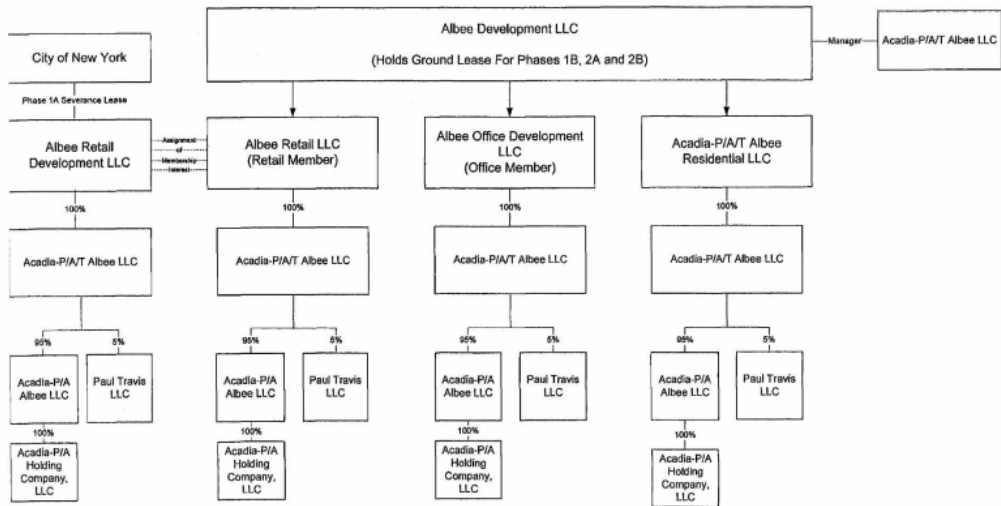
Michael L. Nelsen
Robert Masters

Title
President and CEO
Senior Vice President and Treasurer

Senior Vice President and Secretary

SEE ATTACHED ORGANIZATIONAL CHART

Pre Closing of Bond Financing



[Reserved]

[FORM OF REQUIRED DISCLOSURE STATEMENT

FOR OTHER THAN FACILITY TENANTS]

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Capital Resource Corporation (the "Issuer") pursuant to [Section 7.19] [Section 7.8] of that certain Loan Agreement, dated as of July 1, 2010, between the Issuer and Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Loan Agreement") THAT:

[if being delivered pursuant to 7.19 of the Loan Agreement] None of the surviving, resulting or transferee Entity, any of the Principals of such Entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Entity:

[if being delivered pursuant to 7.8 of the Loan Agreement] None of the assignee, transferee, Transfer Equivalent Sublessee or Facility Tenant, any of the Principals of such Entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Entity:

(1) _____ is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Issuer, the NYCIDA, the NYCEDC or the City, unless such default or breach has been waived in writing by the Issuer, the NYCIDA, the NYCEDC or the City, as the case may be;

(2) _____ has been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years;

(3) _____ has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(4) _____ has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

"City" shall mean The City of New York.

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

“Entity” shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean an individual or any Entity.

“Principal(s)” shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity, and any Person as shall have the power to Control such Entity, and “principal” shall mean any of such Persons.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, 201_.

[NAME OF CERTIFYING ENTITY]

By:

Name:

Title:

**[FORM OF REQUIRED DISCLOSURE STATEMENT
FOR FACILITY TENANTS]**

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Capital Resource Corporation (the "Issuer") pursuant to Section 7.8(b) of that certain Loan Agreement, dated as of July 1, 2010, between the Issuer and Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Loan Agreement") THAT:

Neither the undersigned as Facility Tenant, nor any of the Principals of the undersigned:

- (1) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Issuer, the NYCIDA, the NYCEDC or the City, unless such default or breach has been waived in writing by the Issuer, the NYCIDA, the NYCEDC or the City, as the case may be;
- (2) has been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years;
- (3) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or
- (4) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

"City" shall mean The City of New York.

"Control" or "Controls" shall mean, with respect to a company that is not subject to the public reporting requirements of the Securities Act of 1933, as amended, the power to direct the management and policies of a Person through the direct ownership of not less than a majority of its voting securities.

"Entity" shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean an individual or any Entity.

“Principal(s)” shall mean, with respect to any Entity, the most senior three officers of such Entity or any Person as shall have the power to Control such Entity.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, 201_.

[NAME OF CERTIFYING ENTITY]

By:

Name:
Title:

**PROJECT COMPLETION CERTIFICATE OF COMPANY AS
REQUIRED BY SECTIONS 3.2(f) AND 7.13(g) OF THE LOAN AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Loan Agreement referred to below) of Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Company"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.2(f) and 7.13(g) of that certain Loan Agreement, dated as of July 1, 2010 (the "Loan Agreement"), between the New York City Capital Resource Corporation (the "Issuer") and the Company, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Loan Agreement):

(i) the Project Work has been completed substantially in accordance with the plans and specifications therefor, "Complete Construction of the Building" (as defined in the Ground Lease) has occurred under the Ground Lease and the date of completion of the Project was _____;

(ii) except for any Project costs not currently due and payable or the liability for payment of which is being contested or disputed by the Company in good faith, all labor, service, machinery, equipment, materials and supplies used therefor have been paid for;

(iii) all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid;

(iv) all property constituting the Facility is subject to the Ground Lease and the Mortgage, subject only to Permitted Encumbrances;

(v) in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes;

(vi) this Certificate is given without prejudice to any rights of the Company against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Issuer may benefit from this Certificate; and

(vii) attached hereto are (a) releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project Work, (b) a temporary or permanent certificate of occupancy and, (c) any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Ground Lease and the Loan Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, ____.

ALBEE RETAIL DEVELOPMENT LLC

By: _____
Name:
Title:

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH OF WHICH ARE REFERRED TO HEREIN.

\$20,000,000

July 1, 2010

PROMISSORY NOTE

FOR VALUE RECEIVED, ALBEE RETAIL DEVELOPMENT LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Borrower"), by this promissory note hereby promises to pay to the order of NEW YORK CITY CAPITAL RESOURCE CORPORATION (the "Issuer") and THE BANK OF NEW YORK MELLON, as Trustee (the "Trustee") the principal sum of Twenty Million Dollars (\$20,000,000), together with interest on the unpaid principal amount hereof, from the date of the issuance and delivery of the Initial Bonds (as such term is hereinafter defined) until paid in full, at a rate per annum equal to the respective rates of interest borne from time to time by the Initial Bonds, together with all Sinking Fund Installments, Redemption Price and Purchase Price payments as and when due. All capitalized terms used but not defined in this Promissory Note shall have the respective meanings assigned such terms by the Indenture (as hereinafter defined) or by the Loan Agreement (as hereinafter defined). All such payments shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America and shall be paid at the designated corporate trust office of the Trustee or its successor under the Indenture.

The principal amount, interest, Sinking Fund Installments, Redemption Price, and Purchase Price shall be payable on the dates and in the amounts that principal of, interest, Sinking Fund Installments, Redemption Price and Purchase Price on the Initial Bonds are payable under the Loan Agreement (as defined below), subject to prepayments and credits to the extent provided in the Indenture and the Loan Agreement.

This promissory note is the "Promissory Note" referred to in the Loan Agreement, dated as of July 1, 2010 (the "Loan Agreement"), between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Promissory Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture of Trust, dated as of July 1, 2010 (the "Indenture"), by and between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer's \$20,000,000 in aggregate principal amount of Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010 (the "Initial Bonds") issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture, the Loan Agreement and the Initial Bonds are hereby incorporated as a part of this Promissory Note.

The Borrower may at its option, and may under certain circumstances be required to, prepay together with accrued interest, all or any part of the amounts due under this Promissory Note, as provided in the Loan Agreement and the Indenture.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay costs of collection and attorneys' fees in case of default on this Promissory Note.

This Promissory Note shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflicts of law principles thereof.

ALBEE RETAIL DEVELOPMENT LLC

By: _____
Robert Masters
Senior Vice President

ENDORSEMENT

Pay to the order of The Bank of New York Mellon, without recourse, as Trustee under the Indenture referred to in the within mentioned Loan Agreement, as security for the Initial Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Promissory Note.

NEW YORK CITY CAPITAL RESOURCE CORPORATION

By: _____
Kyle Kimball
Executive Director

Dated: July 1, 2010

[Form of Subordination and Non-Disturbance Agreement]

THE BANK OF NEW YORK-MELLON, AS TRUSTEE

and

·
(Tenant)

SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENr AGREEMENT

Dated: _____, 20__

Location: City Point, Site 1A
1 DeKalb Avenue,
Brooklyn, New York 11201

UPON RECORDATION
RETURN TO:
Robert Masters, Esq.
Albee Retail Development LLC
1311 Mamaroneck Avenue, Suite 260
White Plains, NY 10605

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the _____ day of _____, 2010 by and between THE BANK OF NEW YORK-MELLON, AS TRUSTEE, having an address 101 Barclay Street, 7W, New York, New York 10286 ("Trustee") and _____, having an address at _____ ("Tenant").

RECITALS:

- A. Tenant is the holder of a leasehold estate in a portion of the property known as City Point, Site 1A, located at 1 DeKalb Avenue, Brooklyn, New York, as more particularly described on Exhibit A (the "Property") under and pursuant to the provisions of a certain lease dated _____ between Albee Retail Development LLC, as landlord ("Landlord") and Tenant, as tenant (as amended through the date hereof, the "Lease");
- B. The Property is or is to be encumbered by one or more mortgages, deeds of trust, deeds to secure debt or similar security agreements (collectively, the "Security Instrument") from Landlord, or its successor in interest, in favor of Trustee; and
- C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Trustee has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, the parties hereto mutually agree as follows:

- Subordination. The Lease shall be subject and subordinate in all respects to the lien and terms of the Security Instrument, to any and all advances to be made thereunder and to all renewals, modifications, consolidations, replacements and extensions thereof.
 - Nondisturbance. So long as Tenant pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond the expiration of applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Trustee agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure (an "Acquiring Party"), that Tenant's possession of the premises as described in the Lease will not be disturbed during the term of the Lease, as said term may be extended pursuant to the terms of the Lease or as said premises may be expanded as specified in the Lease, by reason of a foreclosure. For purposes of this agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instrument, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation, to the generality of the foregoing, an assignment or sale in lieu of foreclosure.
 - Attornment. Tenant agrees to attorn to, accept and recognize any Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness. Tenant agrees, however, to execute and deliver, at any time and from time to time, upon the request of the Trustee or any Acquiring Party any reasonable instrument which may be necessary or appropriate to evidence such attornment.
-

4. No Liability. Notwithstanding anything to the contrary contained herein or in the Lease, it is specifically understood and agreed that neither the Trustee, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord (other than to cure defaults of a continuing nature with respect to the maintenance or repair of the demised premises or the Property); provided, however, that any Acquiring Party shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes title to the Property; or

(b) except as set forth in (a) above, liable for any failure of any prior landlord to construct any improvements;

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord; or

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord; or

(e) be liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property.

(f) liable or responsible for or with respect to the retention, application and or/return to the Tenant of any security deposit paid to Borrower or any prior Landlord, unless and until Trustee or such Acquiring Party has actually received for its own account as landlord the full amount of such security deposit.

Notwithstanding the foregoing, Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages and against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.

5. Rent. Tenant has notice that the Lease and the rents and all other sums due thereunder have been assigned to Trustee as security for the loan secured by the Security Instrument. In the event Trustee furnishes written notice to Tenant of the occurrence of a default under the Security Instrument and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Trustee, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Trustee or as otherwise authorized in writing by Trustee. Landlord hereby irrevocably authorizes Tenant to make the foregoing payments to Trustee upon such notice and demand.

6. Trustee to Receive Notices. Tenant shall notify Trustee of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Trustee shall have received notice of default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default.

7. NOTICES. All notices hereunder shall be in writing and shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above, and:

if to Tenant, to
the attention of:

with duplicate copy to:

if to Trustee:

to the attention of:
The Bank of New York-Mellon, As Trustee
101 Barclay Street, 7W
New York, New York 10286
Fax: (212) 815-5595
Attention: Corporate Trust Group-(NYCCRC-Albee Retail Development LLC Project), Series 2010

or addressed as such party may from time to time designate by written notice to the other parties in accordance with this Paragraph 7. For purposes of this Paragraph 7, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York.

Either party by notice to the other in accordance with this Paragraph 7 may designate additional or different addresses for subsequent notices or communications.

8. Successors. The obligations and rights of the parties pursuant to this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different than the Landlord named in the Recitals.

9. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

IN WITNESS WHEREOF, Trustee and Tenant have duly executed this Agreement as of the date first above written.

TRUSTEE:

THE BANK OF NEW YORK-MELLON, AS TRUSTEE

By: _____
Name:
Authorized Signatory

TENANT:

By: _____
Name:
Title:

The undersigned as the Landlord named in the Recitals or as successor thereto hereby accepts and agrees to be bound by the provisions of Paragraph 5 hereof.

ALBEE RETAIL DEVELOPMENT LLC

By: _____
Name:
Title:

STATE OF)
 : 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 _____, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF)
 : 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 _____, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
 : ss.:
COUNTY OF WESTCHESTER)

On the _____ day of _____ in the year 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH OF WHICH ARE REFERRED TO HEREIN.

\$20,000,000

July 1, 2010

PROMISSORY NOTE

FOR VALUE RECEIVED, ALBEE RETAIL DEVELOPMENT LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Borrower"), by this promissory note hereby promises to pay to the order of NEW YORK CITY CAPITAL RESOURCE CORPORATION (the "Issuer") and THE BANK OF NEW YORK MELLON, as Trustee (the "Trustee") the principal sum of Twenty Million Dollars (\$20,000,000), together with interest on the unpaid principal amount hereof, from the date of the issuance and delivery of the Initial Bonds (as such term is hereinafter defined) until paid in full, at a rate per annum equal to the respective rates of interest borne from time to time by the Initial Bonds, together with all Sinking Fund Installments, Redemption Price and Purchase Price payments as and when due. All capitalized terms used but not defined in this Promissory Note shall have the respective meanings assigned such terms by the Indenture (as hereinafter defined) or by the Loan Agreement (as hereinafter defined). All such payments shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America and shall be paid at the designated corporate trust office of the Trustee or its successor under the Indenture.

The principal amount, interest, Sinking Fund Installments, Redemption Price, and Purchase Price shall be payable on the dates and in the amounts that principal of, interest, Sinking Fund Installments, Redemption Price and Purchase Price on the Initial Bonds are payable under the Loan Agreement (as defined below), subject to prepayments and credits to the extent provided in the Indenture and the Loan Agreement.

This promissory note is the "Promissory Note" referred to in the Loan Agreement, dated as of July 1, 2010 (the "Loan Agreement"), between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Promissory Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture of Trust, dated as of July 1, 2010 (the "Indenture"), by and between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer's \$20,000,000 in aggregate principal amount of Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010 (the "Initial Bonds") issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture, the Loan Agreement and the Initial Bonds are hereby incorporated as a part of this Promissory Note.

The Borrower may at its option, and may under certain circumstances be required to, prepay together with accrued interest, all or any part of the amounts due under this Promissory Note, as provided in the Loan Agreement and the Indenture.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay costs of collection and attorneys' fees in case of default on this Promissory Note.

This Promissory Note shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflicts of law principles thereof.

ALBEE RETAIL DEVELOPMENT LLC

By: /s/ Robert Masters

Robert Masters
Senior Vice President

ENDORSEMENT

Pay to the order of The Bank of New York Mellon, without recourse, as Trustee under the Indenture referred to in the within mentioned Loan Agreement, as security for the Initial Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Promissory Note.

**NEW YORK CITY CAPITAL
RESOURCE CORPORATION**

By: /s/ Kyle Kimball
Kyle Kimball
Executive Director

Dated: July 1, 2010

NEW YORK CITY CAPITAL RESOURCE CORPORATION,
a local development corporation created pursuant to the Not-for-Profit
Corporation Law of the State of New York at the direction of the Mayor of
The City of New York, having its principal office at 110 William Street,
New York, New York 10038,
as “**Issuer**”

TO

THE BANK OF NEW YORK MELLON,
a banking corporation organized and existing under the laws of the State of
New York, having a corporate trust office at 101 Barclay Street, Floor 7W,
New York, New York 10286, together with any successor trustee at the time
serving as such under this Indenture of Trust,
as “**Trustee**”

INDENTURE OF TRUST

Dated as of July 1, 2010

\$20,000,000
New York City Capital Resource Corporation
Recovery Zone Facility Revenue Bonds
(Albee Retail Development LLC Project), Series 2010

INDENTURE OF TRUST

THIS INDENTURE OF TRUST dated as of July 1, 2010, by and between the **NEW YORK CITY CAPITAL RESOURCE CORPORATION**, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038, party of the first part, to **THE BANK OF NEW YORK MELLON**, a New York banking corporation together with any successor trustee at the time serving as such under this Indenture of Trust, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286, party of the second part (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in Section 1.01),

WITNESSETH:

WHEREAS, the Issuer is authorized pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended, and its Certificate of Incorporation, to promote community and economic development and the creation of jobs for the citizens of the City by developing and providing programs for manufacturing and industrial businesses and other entities to access low interest cost tax-exempt and non-tax-exempt financing for their eligible projects, and to issue and sell one or more series or classes of bonds, notes and other obligations through public letting, private placement, or negotiated underwriting to finance such activities above, on a secured or unsecured basis; and

WHEREAS, the Company entered into negotiations with officials of the Issuer for the construction, renovation, equipping and furnishing of the Improvements as part of the Facility; and

WHEREAS, pursuant to the American Recovery and Reinvestment Act of 2009, as amended, on June 9, 2009, as amended on February 9, 2010, the Board of Directors of the Issuer established a program for the issuance of recovery zone facility bonds including program requirements ("Program Requirements"), threshold requirements ("Threshold Requirements") and selection criteria ("Selection Criteria"), and designated certain areas within the City as "Recovery Zones"; and

WHEREAS, on July 17, 2009, the Mayor of the City ratified the designations made by the Issuer of the "Recovery Zones"; and

WHEREAS, on September 15, 2009, the Issuer adopted a resolution approving the eligibility of the Project to receive a \$20,000,000 allocation for the issuance of recovery zone facility bonds and determined, among other things, that the Project is located in a designated "Recovery Zone", and that, in applying the Threshold Requirements and the Selection Criteria, the Project qualifies for the issuance of recovery zone facility bonds; and

WHEREAS, the Issuer has determined that the providing of financial assistance to the Company for the Project will promote and is authorized by and will be in furtherance of the Program Requirements and the corporate purposes of the Issuer; and

WHEREAS, the site for the Facility, including the improvements to be constructed thereon, will be subject to the Ground Lease; and

WHEREAS, to facilitate the Project and the issuance by the Issuer of its recovery zone facility revenue bonds to finance a portion of the costs of the Project, the Issuer and the Company have entered into negotiations pursuant to which (i) the Issuer will make the Loan of the proceeds of the Initial Bonds, in the original principal amount of the Initial Bonds, to the Company pursuant to the Loan Agreement, and (ii) the Company will execute the Promissory Note in favor of the Issuer and the Trustee to evidence the Company's obligation under the Loan Agreement to repay the Loan; and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Initial Bonds, the Issuer has authorized the issuance of the Initial Bonds in the Authorized Principal Amount pursuant to the Bond Resolution and this Indenture; and

WHEREAS, concurrently with the execution hereof, in order to further secure the Initial Bonds, (i) the payment of the principal of, Sinking Fund Installments for, Purchase Price, redemption premium, if any, and interest on the Initial Bonds, and the payments, obligations, covenants and agreements of the Company under the Loan Agreement and under the Promissory Note, will be guaranteed by the Guarantors pursuant to the Bond Guaranty Agreement in favor of the Trustee; (ii) the completion of the Project will be guaranteed by the Guarantors pursuant to the Project Completion Guaranty Agreement in favor of the Trustee; (iii) the Company will grant a lien in Facility Revenues and the remainder of the Pledged Collateral pursuant to the Pledge and Security Agreement in favor of the Trustee, subject only to the lien of the Mortgage; and (iv) the Company will grant mortgage liens on and security interests in its leasehold interest in the Facility under the Ground Lease, and an assignment of leases and rents, to the Trustee pursuant to the Mortgage; and

WHEREAS, additional moneys may be necessary to finance the cost of completing the Project, providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, or providing extensions, additions or improvements to the Facility or refunding outstanding Bonds and provision should therefore be made for the issuance from time to time of additional bonds; and

WHEREAS, the Initial Bonds and the Trustee's Certificate to be endorsed thereon are all to be in substantially the form set forth in Exhibit C, with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture; and

WHEREAS, all things necessary to make the Bonds when authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal special limited revenue obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid pledge and assignment of the loan payments, revenues and receipts herein made to the payment of the principal of, Sinking Fund Installments for, Purchase Price, redemption premium, if any, and interest on the Bonds, have been done and performed, and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS INDENTURE WITNESSETH:

That the Issuer in consideration of the premises and of the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Holders and owners thereof, and of the sum of One Dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of, Purchase Price, and Sinking Fund Installments for, the Bonds and the indebtedness represented thereby and the redemption premium, if any, and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby grant, bargain, convey, transfer, grant a security interest in, pledge and assign unto the Trustee, and unto its respective successors in trust, and to their respective assigns, forever for the securing of the performance of the obligations of the Issuer hereinafter set forth, the following:

GRANTING CLAUSES

I

All right, title and interest of the Issuer in and to the Loan Agreement, including all loan payments, revenues and receipts payable or receivable thereunder, excluding, however, the Issuer's Reserved Rights, which Issuer's Reserved Rights may be enforced by the Issuer and the Trustee, jointly or severally.

II

All right, title and interest of the Issuer in and to the Promissory Note.

III

All moneys and securities from time to time held by the Trustee under the terms of this Indenture including amounts set apart and transferred to the Earnings Fund, the Project Fund, the Purchase Fund, the Renewal Fund, the Bond Fund, the Advance Interest Deposit Fund or any special fund, and all investment earnings of any of the foregoing, subject to disbursements from the Earnings Fund, the Project Fund, the Renewal Fund, the Advance Interest Deposit Fund or any such special fund in accordance with the provisions of the Loan Agreement and this Indenture; provided, however, (i) there is hereby expressly excluded from any assignment, pledge, lien or security interest any amounts set apart and transferred to the Rebate Fund, and (ii) amounts held in the Purchase Fund shall be held in trust in favor of only those Persons entitled to amounts therein as provided in this Indenture.

IV

Any and all other property of every kind and nature from time to time which was heretofore or hereafter is by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder, by the Issuer or by any other Person with or without the consent of the Issuer, to the Trustee which is hereby authorized to receive any and all such property at any time and at all times to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said Trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders and owners of the Bonds issued under and secured by this Indenture, without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any of the others of the Bonds, except as otherwise expressly provided in this Indenture, provided, however, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal and any applicable redemption premium, of the Bonds and the interest due or to become due thereon, at the times and in the manner provided in the Bonds according to the true intent and meaning thereof and shall make the payments into the Bond Fund as required under this Indenture or shall provide, as permitted hereby, for the payment thereof by depositing or causing to be deposited with the Trustee sufficient amounts, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture to be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared that, all the Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said loan payments revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant with the Trustee and with the respective Holders and owners, from time to time of the Bonds or any part thereof, as follows, that is to say:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Indenture, except as the context otherwise requires:

Additional Bonds shall mean one or more Series of additional bonds issued, executed, authenticated and delivered under the Indenture.

Adjustable Fixed Interest Rate shall mean the interest rate on the Initial Bonds as determined in accordance with Section 2.02, from and including the Closing Date through the Final Maturity Date of the Initial Bonds.

Adjustable Fixed Interest Rate Commencement Date shall mean the original date of issuance of the Initial Bonds.

Adjustable Fixed Interest Rate Term shall mean (i) the Initial Adjustable Fixed Interest Rate Term, and (ii) each period of years thereafter commencing on an Adjustment Date and continuing to but excluding the next succeeding Adjustment Date, with the final Adjustable Fixed Interest Rate Term to continue through but not including the Final Maturity Date.

Adjustment Date shall mean (i) the Initial Adjustment Date, (ii) the first day of each Adjustable Fixed Interest Rate Term (other than the Initial Adjustable Fixed Interest Rate Term) as shall constitute a November 1, provided that if any such date shall not be a Business Day, the Adjustment Date shall be the next succeeding Business Day.

Advance Interest Deposit Fund shall mean the special trust fund so designated, established pursuant to Section 5.01.

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

Approved Facility shall mean the Facility as occupied, used and operated by the Company and all Facility Tenants substantially for the Approved Project Operations, including such other activities as may be substantially related to or substantially in support of such operations, all to be effected in accordance with the Loan Agreement and the Ground Lease.

Approved Project Operations shall mean, subject to the Loan Agreement, those uses and operations permitted under the Ground Lease, excluding, however, any Tax Prohibited Use or any use by a not-for-profit corporation.

Authorized Denomination shall mean, in the case of the Initial Bonds, \$100,000 or any integral multiple of \$5,000 in excess thereof.

Authorized Principal Amount shall mean, in the case of the Initial Bonds, \$20,000,000.

Authorized Representative shall mean:

(i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties;

(ii) in the case of the Company, a person named in Exhibit B — “Authorized Representative” to the Loan Agreement, or any other officer or employee of the Company who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Company has given written notice from time to time to the Issuer and the Trustee; and

(iii) in the case of the Parent, a person named in Exhibit B — “Authorized Representative” to the Loan Agreement, or any other officer or employee of the Parent who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Parent has given written notice from time to time to the Issuer and the Trustee;

provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Indenture or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Beneficial Owner shall mean, whenever used with respect to an Initial Bond, the Person in whose name such Initial Bond is recorded as the Beneficial Owner of such Initial Bond by the respective systems of DTC and each of the Participants of DTC. If at any time the Initial Bonds are not held in the Book-Entry System, Beneficial Owner shall mean “Holder” for purposes of the Security Documents.

Bond Fund shall mean the special trust fund so designated, established pursuant to Section 5.01.

Bond Guaranty Agreement shall mean the Bond Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith.

Bondholder, Holder of Bonds, Holder or holder shall mean any Person who shall be the registered owner of any Bond or Bonds.

Bond Payment Date shall mean, with respect to a Series of Bonds, each date upon which interest, principal and/or Sinking Fund Installments shall be scheduled to be paid under such Series of Bonds.

Agent.

Bond Placement Agreement shall mean the Bond Placement Agreement, dated July 1, 2010, with respect to the placement of the Initial Bonds, among the Issuer, the Company and the Placement

Bond Registrar shall mean the Trustee acting as registrar as provided in Section 3.10.

Bond Resolution shall mean the resolution of the Issuer adopted on February 9, 2010, as amended on April 13, 2010, authorizing the issuance of the Initial Bonds.

Bonds shall mean the Initial Bonds and any Additional Bonds.

Building Loan Agreement shall mean the Building Loan Agreement, dated as of even date herewith, among the Issuer, the Company and the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith.

Business Day shall mean any day other than:

- (i) a Saturday or Sunday or a legal holiday;
- (ii) a day on which the Trustee, the Tender Agent, the Paying Agent or the Remarketing Agent is required or authorized by law or executive order to be closed;
- (iii) a day on which banking institutions in the City are authorized by law or executive order to remain closed; or
- (iv) a day on which The New York Stock Exchange or DTC is closed.

Capitalized Interest Account shall mean the special trust account of the Project Fund so designated, established pursuant to Section 5.01.

Capitalized Interest Period shall have the meaning assigned to such term in Section 5.02(b).

City shall mean The City of New York, New York.

Closing Date shall mean July 1, 2010, the date of the initial issuance and delivery of the Initial Bonds.

Code shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder. All references to Sections of the Code or regulations thereunder shall be deemed to include any such Sections or regulations as they may hereafter be renumbered in any subsequent amendments to the Code or such regulations.

Commencement Date shall mean July 1, 2010, on which date the Loan Agreement was executed and delivered.

Company shall mean Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Company under Section 7.8 or 7.19 of the Loan Agreement.

Company's Property shall have the meaning specified in Section 3.4(c) of the Loan Agreement.

Company Purchase Account shall mean the special trust account of the Purchase Fund so designated, established pursuant to Section 5.01.

Computation Date shall have the meaning assigned to that term in the Tax Regulatory Agreement.

Computation Period shall have the meaning assigned to that term in the Tax Regulatory Agreement.

Conduct Representation shall mean any representation by the Company under Section 2.2(u) of the Loan Agreement, by the Parent under Section 2.1(h) of the Issuer Indemnification Agreement, or by any other Person in any Required Disclosure Statement delivered to the Issuer.

Construction Account shall mean the special trust account of the Project Fund so designated, established pursuant to Section 5.01.

Control or Controls, including the related terms "controlled by" and "under common control with", shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

Costs of Issuance shall mean issuance costs with respect to the Initial Bonds described in Section 147(g) of the Code and any regulations thereunder, including but not limited to the following: fees of the Placement Agent; counsel fees (including bond counsel to the Issuer, counsel to the Placement Agent, Trustee's counsel, Issuer's counsel, Company's counsel, as well as any other specialized counsel fees incurred in connection with the borrowing); financial advisor fees of any financial advisor to the Issuer or the Company incurred in connection with the issuance of the Initial Bonds; engineering and feasibility study costs; guarantee fees (other than Qualified Guarantee Fees, as defined in the Tax Regulatory Agreement); Rating Agency fees; Trustee, Paying Agent and Tender Agent fees; accountant fees and other expenses related to issuance of the Initial Bonds; printing costs (for the Initial Bonds and of the preliminary and final Private Placement Memorandum relating to the Initial Bonds); printing costs for the Initial Bonds and offering documents; public approval and process costs; fees and expenses of the Issuer incurred in connection with the issuance of the Initial Bonds; and Blue Sky fees and expenses; and similar costs.

Default Rate shall mean fifteen percent (15%) per annum.

Defaulted Interest shall have the meaning specified in Section 2.02(f).

Defeasance Obligations shall mean Government Obligations that are not subject to redemption prior to maturity.

Determination Date shall mean, for any Adjustable Fixed Interest Rate Term other than the Initial Adjustable Fixed Interest Rate Term, the seventh (7th) Business Day immediately preceding the Adjustment Date for such Adjustable Fixed Interest Rate Term.

Determination of Taxability shall mean;

(i) the adoption, promulgation or enactment of any federal statute or regulation, or any determination, decision, decree or ruling made by the Commissioner or any District Director of the Internal Revenue Service;

(ii) the issuance of a public or private ruling or a technical advice memorandum by the Internal Revenue Service in which the Company has participated or has been given the opportunity to participate, and which ruling or memorandum the Company, in its discretion, does not contest or from which no further right of judicial review or appeal exists; or

(iii) a determination from which no further right of appeal exists of any court of competent jurisdiction in the United States in a proceeding in which the Company has participated or has been a party, or has been given the opportunity to participate or be a party;

in any case, to the effect that the interest payable on the Bonds of a Holder or a former Holder thereof (other than a Holder of any Bond who is a "substantial user" of the Facility or a "related person", within the meaning and for the purpose of Section 147(a) of the Code and the applicable regulations thereunder) is includable in gross income for federal income tax purposes; provided, however, that no such Determination of Taxability described in clauses (ii) or (iii) hereof shall be considered to exist unless (1) the Holder or former Holder of the Bond involved in such proceeding (A) gives the Company and the Trustee prompt notice of the commencement thereof and (B) (if the Company agrees to pay all expenses in connection therewith) offers the Company the opportunity to control the defense thereof and (2) either (A) the Company does not agree within thirty (30) days of receipt of such offer to pay such expenses and to control such defense or (B) the Company shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Company determines to be appropriate. No Determination of Taxability described above will result from the inclusion of interest on any Bond in the computation of minimum or indirect taxes.

DTC shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State, and its successors and assigns.

Earnings Fund shall mean the special trust fund so designated, established pursuant to Section 5.01.

Electronic Means shall mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Event of Default shall have the meaning specified in Section 8.01(a).

Event of Taxability shall mean the date specified in a Determination of Taxability as the date interest paid or payable on any Bond becomes includable for federal income tax purposes in the gross income of any Holder thereof (other than a Holder of any Bond who is a "substantial user" of the Facility or a "related person", within the meaning and for the purpose of Section 147(a) of the Code and the applicable regulations thereunder) as a consequence of any act, omission or event whatsoever, including any change of law, and regardless of whether the same was within or beyond the control of the Company.

Facility shall mean, collectively, the Land and the Improvements.

Facility Lease Payments shall have the meaning specified in Section 4.1 of the Mortgage.

Facility Leases shall mean, collectively, all leases or other occupancy or use agreements, other than the Ground Lease, entered into with any Person for the use, possession or occupancy of the Facility or any portion thereof.

Facility Revenues shall mean all revenues, income, fees, receipts, charges, income and other money received in any period by or on behalf of the Company, derived from the leasing or operation of the Facility, including proceeds derived from insurance (including environmental insurance) and/or condemnation proceeds with respect to the Facility and business interruption insurance and extra expense insurance, in each case whether existing as of the Closing Date or hereafter coming into existence.

Facility Tenants shall mean all Persons as shall use, possess or occupy all or any portion of the Facility pursuant to a Facility Lease.

Favorable Opinion of Bond Counsel shall mean, with respect to any action the occurrence of which requires such an opinion, an unqualified Opinion of Counsel, which shall be a Nationally Recognized Bond Counsel, to the effect that such action is permitted under the Indenture and will not adversely affect the exclusion of interest on a Series of Bonds from gross income for purposes of Federal income taxation (subject to the inclusion of any exceptions contained in the opinion delivered upon original issuance of such Series of Bonds).

Final Maturity Date shall mean, in the case of the Initial Bonds, November 1, 2042.

First Optional Redemption Date shall have the meaning assigned to that term by Section 2.04(a)(ii).

Fitch shall mean Fitch, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

GAAP shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Company, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Government Obligations shall mean the following:

- (i) direct and general obligations of, or obligations unconditionally guaranteed by, the United States of America;
- (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America for the timely payment thereof; or
- (iii) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clauses (i) or (ii) above.

Ground Lease shall mean that certain Severance Lease (Site 1A), dated June 30, 2010, between the City, as landlord, and Albee Development, LLC, a Delaware limited liability company ("Albee Development"), as assigned on July 1, 2010 by Albee Development to, and assumed by, the Company, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Loan Agreement and the Mortgage.

Guarantors shall mean, collectively, the Company and the Parent, and their respective successors and assigns.

Improvements shall mean:

- (i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date and erected or situated on the Land;
- (ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land throughout the term of the Loan Agreement (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2 of the Loan Agreement); and
- (iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

Indenture shall mean this Indenture of Trust, dated as of April 1, 2010, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI.

Independent Engineer shall mean a Person (not an employee of any of the Issuer, the Company, the Parent or any Affiliate of any thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Company, and approved in writing by the Trustee (which approval shall not be unreasonably withheld and shall be at the written direction of the Majority Holders).

Initial Adjustable Fixed Interest Rate Term shall mean the period commencing on the original date of issuance of the Initial Bonds and continuing to but excluding the Initial Adjustment Date (or, if such day is not a Business Day, the next succeeding Business Day).

Initial Adjustment Date shall mean November 1, 2014 (or, if such day shall not be a Business Day, the next succeeding Business Day).

Initial Bonds shall mean the Issuer's \$20,000,000 Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010 authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

Initial Purchase Date shall mean November 1, 2014 (or, if such day shall not be a Business Day, the next succeeding Business Day).

Interest Account shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01.

Interest Payment Date shall mean, with respect to the Initial Bonds, February 1, May 1, August 1 and November 1 of each year, commencing August 1, 2010, and with respect to any Series of Additional Bonds, the dates set forth therefor in the Supplemental Indenture pursuant to which such Series of Additional Bonds are issued.

Interest Rate Change shall mean the establishment of an Adjustable Fixed Interest Rate for an Adjustable Fixed Interest Rate Term (other than the Initial Adjustable Fixed Interest Rate Term).

Issuer shall mean New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

Issuer Indemnification Agreement shall mean the Issuer Indemnification Agreement, dated as of even date herewith, from the Parent to the Issuer, and shall include any and all amendments thereof and supplements thereto hereafter made.

Issuer's Reserved Rights shall mean, collectively,

- (i) the right of the Issuer in its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Issuer under the Loan Agreement;
- (ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under the Loan Agreement;
- (iii) the right of the Issuer to enforce in its own behalf the obligation of the Company under the Loan Agreement to complete the Project;
- (iv) the right of the Issuer in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.4, 4.5, 4.6, 4.7, 4.8, 5.1, 5.2, 5.3, 5.4, 6.1, 6.3, 6.4, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17, 7.18, 7.19, 7.21, 7.22, 7.23, 7.26, 7.28, 7.29, 7.30, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 9.1, 9.2, 9.3, 10.1, 10.3, 10.6, 11.1, 11.3, 11.4, 11.5, 11.6, 11.11, 11.13, 11.14 and 11.15 of the Loan Agreement; and
- (v) the right of the Issuer in its own behalf to declare a default with respect to any of the Issuer's Reserved Rights and exercise the remedies set forth in Section 8.2(b) of the Loan Agreement.

Land shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn (County of Kings), Block 149 and Lot 103, generally known by the street address 1 DeKalb Avenue, Brooklyn, New York, all as more particularly described in Exhibit A - "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 7.9(c) of the Loan Agreement.

Liens shall have the meaning specified in Section 7.10(a) of the Loan Agreement.

Loan shall mean the loan made by the Issuer to the Company pursuant to the Loan Agreement as described in Section 4.1 of the Loan Agreement.

Loan Agreement shall mean the Loan Agreement, dated as of even date herewith, between the Issuer and the Company, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Loan Payment Date shall mean the fifth (5th) Business Day immediately preceding each Bond Payment Date.

Loss Event shall have the meaning specified in Section 5.1 of the Loan Agreement.

Majority Holders shall mean the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

Maximum Interest Rate shall mean, with respect to the Initial Bonds, a rate of interest equal to the lesser of (i) twelve percent (12%) per annum, or (ii) the maximum rate permitted by, or enforceable under, applicable law.

Moody's shall mean Moody's Investors Service Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

Mortgage shall mean, collectively, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith.

Nationally Recognized Bond Counsel shall mean counsel acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

Notice Parties shall mean the Issuer, the Company, the Parent, the Bond Registrar, the Paying Agents, the Trustee, the Tender Agent and the Remarketing Agent.

Opinion of Counsel shall mean a written opinion of counsel for the Company, the Parent or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Outstanding, when used with reference to a Bond or Bonds, as of any particular date, shall mean all Bonds which have been issued, executed, authenticated and delivered under the Indenture, except:

- (i) Bonds cancelled by the Trustee because of payment or redemption prior to maturity or surrendered to the Trustee under the Indenture for cancellation;
- (ii) any Bond (or portion of a Bond) for the payment or redemption of which, in accordance with Article X, there has been separately set aside and held in the Redemption Account of the Bond Fund either:
 - (A) moneys, and/or
 - (B) Defeasance Obligations in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications as shall be necessary to provide moneys,

in an amount sufficient to effect payment of the principal or applicable Redemption Price of such Bond, together with accrued interest on such Bond to the payment or redemption date, which payment or redemption date shall be specified in irrevocable instructions given to the Trustee to apply such moneys and/or Defeasance Obligations to such payment on the date so specified, provided, that, if such Bond or portion thereof is to be redeemed, notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

- (iii) Bonds in exchange for or in lieu of which other Bonds shall have been authenticated and delivered under Article III,

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder or under any other Security Document, Bonds owned by the Company, the Parent or any Affiliate of the Company or of the Parent shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. Bonds which have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Company, the Parent or any Affiliate of the Company or of the Parent.

Parent shall mean Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Parent under Section 3.6 of the Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement.

Participants shall mean those financial institutions for whom the Securities Depository effects book entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

Paying Agent shall mean any paying agent for the Bonds appointed pursuant to the Indenture (and may include the Trustee) and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to the Indenture.

Permitted Encumbrances shall mean:

- (i) the Ground Lease, the Mortgage, the Pledge and Security Agreement, the Building Loan Agreement, all Facility Leases and any other Project Document;
- (ii) liens for real estate taxes, if any, payments in lieu of real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien, security interest, encumbrance or charge or right in respect thereof, placed on or with respect to the Facility or any part thereof, if payment is not yet due and payable, or if such payment is being disputed pursuant to Section 7.10(b) of the Loan Agreement;
- (iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Issuer and the Trustee will not materially interfere with or impair the use and enjoyment of the Facility by the Company and the Facility Tenants as provided in the Loan Agreement;
- (v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Company delivered to the Issuer and the Trustee, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired or purport to impose liabilities or obligations on the Issuer;
- (vi) those exceptions to title to the Facility enumerated in the title insurance policy delivered pursuant to Section 3.7 of the Loan Agreement insuring the Trustee's mortgagee interest under the Mortgage in the Facility, a copy of which is on file at the offices of the Issuer and at the designated corporate trust office of the Trustee;

(vii) liens arising by reason of good faith deposits with the Company in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Company to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental entity or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Company to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(ix) any judgment lien against the Company, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed;

(x) any purchase money security interest in movable personal property, including equipment leases and financing;

(xi) liens on property due to rights of governmental entities or third party payors for recoupment of excess reimbursement paid;

(xii) a lien, restrictive declaration or performance mortgage with respect to the operation of the Facility arising by reason of a grant or other funding received by the Company from the City, the State or any governmental entity;

(xiii) a subordinate mortgage granted by the Company to the Parent, as subordinate mortgagee, in an amount not to exceed \$5.3 million, together with an intercreditor agreement among the Trustee, the Company and the subordinate mortgagee in form and substance acceptable to the Trustee; and

(xiv) any lien, security interest, encumbrances or charge which exists in favor of the Trustee or to which the Trustee shall consent in writing.

Person shall mean an individual or any Entity.

Placement Agent shall mean, in the case of the Initial Bonds, Roosevelt & Cross, Incorporated, New York, New York.

Plans and Specifications shall mean the plans and specifications prepared for the Project by or on behalf of the Company, as amended from time to time by or on behalf of the Company to reflect any remodeling or relocating of the Project or substitutions, additions, modifications and improvements to the Project made by the Company in compliance with the Loan Agreement, said plans and specifications being duly certified by an Authorized Representative of the Company and filed in the designated corporate trust office of the Trustee and available to the Issuer.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, dated as of even date herewith, from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith.

Pledged Collateral shall have the meaning specified in Section 3.1 of the Pledge and Security Agreement.

Preliminary Resolution shall mean the resolution of the Issuer adopted on September 15, 2009 approving the eligibility of the Project to receive an allocation for the issuance of up to \$20,000,000 of recovery zone facility bonds to finance the Project.

Principal Account shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01.

Principal Office of the Remarketing Agent shall mean the office designated by the Remarketing Agent in a written notice delivered to the other Notice Parties.

Principal Office of the Tender Agent shall mean The Bank of New York Mellon, 101 Barclay Street, Floor 7W, New York, New York 10286, Attention: Corporate Trust Administration, or such other office to which the Tender Agent shall have delivered written notice to the other Notice Parties.

Private Placement Memorandum shall mean, in the case of the Initial Bonds, the Private Placement Memorandum, dated July 1, 2010, distributed by the Placement Agent and the Company in connection with the private placement of the Initial Bonds.

Project shall mean the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility to be leased to retail commercial tenants.

Project Completion Guaranty Agreement shall mean the Project Completion Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith.

Project Costs shall mean:

(i) all costs of engineering and architectural services with respect to the Project, including the cost of test borings, surveys, estimates, permits, Plans and Specifications and for supervising demolition, construction and renovation, as well as for the performance of all other duties required by or consequent upon the proper construction of, and the making of alterations, renovations, additions and improvements in connection with, the completion of the Project;

- (ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the completion of the Project;
- (iii) the interest on the Bonds during the construction and renovation of the Project until the completion of the Project;
- (iv) payments pursuant to the Ground Lease during the construction and renovation of the Project until the completion of the Project;
- (v) all costs of contract bonds and of insurance that may be required or necessary during the period of Project construction and renovation;
- (vi) all costs of title insurance as provided in Section 3.7 of the Loan Agreement;
- (vii) that portion of the mortgage recording tax payable upon the recording of the Mortgage as specified in the Tax Regulatory Agreement as eligible to be financed from the proceeds of the Bonds;
- (viii) the payment of the Costs of Issuance with respect to the Initial Bonds;
- (ix) the payment of the fees and expenses of the Trustee during the period of construction and renovation of the Project;
- (x) all costs which the Company shall be required to pay, under the terms of any contract or contracts, for the completion of the Project, including any amounts required to reimburse the Company for advances made for any item otherwise constituting a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Project; and
- (xi) all other costs and expenses relating to the completion of the Project or the issuance of a Series of Additional Bonds.

“Project Costs” shall not include (i) fees or commissions of real estate brokers; (ii) moving expenses; (iii) amounts payable as rent under the Ground Lease; or (iv) operational costs.

Project Documents shall mean, collectively, the Ground Lease, the Issuer Indemnification Agreement, the Remarketing Agreement, the Bond Placement Agreement, the Facility Leases and the Security Documents.

Project Fund shall mean the special trust fund so designated, established pursuant to Section 5.01.

Project Work shall mean the design and construction of the Improvements in accordance with the Plans and Specifications.

Promissory Note shall mean, with respect to the Initial Bonds, that certain Promissory Note in substantially the form of Exhibit G to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and herewith.

Purchase Date shall mean each Adjustment Date, commencing on the Initial Purchase Date, on which the Initial Bonds are required to be mandatorily tendered for purchase at the Purchase Price pursuant to this Indenture.

Purchase Fund shall mean the special trust fund so designated, established pursuant to Section 5.01.

Purchase Price shall mean an amount equal to the principal amount of any Initial Bond purchased on any Purchase Date, plus accrued interest to the Purchase Date (unless the Purchase Date is an Interest Payment Date, in which case the Purchase Price shall not include accrued interest, which shall be paid in the normal course).

Qualified Investments shall mean, to the extent permitted by applicable law, the following: (i) obligations of the State or the United States of America, (ii) obligations, the principal and interest of which are guaranteed by the State or the United States of America, (iii) obligations of any agency of the United States of America which may from time to time be legally purchased by savings banks within the State as an investment of funds belonging to them or under their control, (iv) bankers' acceptances of, or certificates of deposit issued by, or demand, trust or time deposits with, any bank, trust company or national banking association (including the Trustee and any of its affiliates) having undivided capital and surplus aggregating at least \$25,000,000, (v) repurchase agreements or other contracts for the purchase and sale of and secured by obligations of the type specified in (i) through (iii) above, (vi) commercial paper of any Person other than the Company or any Affiliate of the Company which has been classified for rating purposes by Moody's as Prime-1 or by S&P's as A-1, (vii) money market mutual funds investing in the obligations described in (i), (ii), (iii) or (v) described above, including, without limitation, the JPMorgan Money Market Mutual Funds or any other fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (x) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (y) the Trustee charges and collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (z) services performed for such funds and pursuant to the Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates, or (viii) investment agreements or repurchase agreements with any bank, trust company, national banking association (which may include the Trustee or any of its affiliates) or any other financial institution or insurance company or guaranteed thereby, provided that the institution providing such investment agreements or repurchase agreements shall be rated "A" (or its equivalent) or better by a Rating Agency, or the principal amount of such investment agreements or repurchase agreements then outstanding shall be fully secured and collateralized by the pledge and deposit of securities (including wireable securities) described in (i) above or obligations of the Federal National Mortgage Association with a market value equal to one hundred two and one-half percent (102 1/2%) of such principal amount, that the Trustee has a perfected first security interest in the collateral, that the Trustee or any agent has possession of the collateral, and that such obligations are free and clear of claims by third parties. The investment agreements or repurchase agreements described in (viii) above shall be only of institutions whose capital surplus (or in the case of financial institutions other than banks, net worth) is in excess of \$50,000,000.

Rating Agency shall mean any of S&P, Moody's or Fitch and such other nationally recognized securities rating agency as shall have awarded a rating to the Initial Bonds.

Rating Category shall mean one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

Rebate Amount shall have the meaning assigned to that term in the Tax Regulatory Agreement.

Rebate Fund shall mean the special trust fund so designated, established pursuant to Section 5.01.

Record Date shall mean, with respect to any Interest Payment Date for the Initial Bonds, the close of business on the fifteenth (15th) day of the month next preceding such Interest Payment Date, or, if such day is not a Business Day, the next preceding Business Day.

Redemption Account shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01.

Redemption Date shall mean the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Indenture.

Redemption Price shall mean, with respect to any Bond or a portion thereof, the principal amount thereof to be redeemed in whole or in part, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or the Indenture.

Refunding Bonds shall have the meaning assigned to that term in Section 2.08(c).

Related Security Documents shall mean all Security Documents other than the Indenture.

Remarketing Account shall mean the special trust account of the Purchase Fund so designated, established pursuant to Section 5.01.

Remarketing Agent shall mean (a) initially, Roosevelt & Cross, Incorporated, New York, New York, and (b) thereafter, any Person meeting the qualifications of and designated from time to time to act as Remarketing Agent for the Initial Bonds under Section 9.13(a).

Remarketing Agreement shall mean, as of any date, the Remarketing Agreement between the Company and the then Remarketing Agent.

Renewal Fund shall mean the special trust fund so designated, established pursuant to Section 5.01.

Representations Letter shall mean the Blanket Agency Letter of Representations from the Issuer and the Trustee to DTC with respect to the Initial Bonds.

Responsible Officer shall mean, with respect to the Trustee, any officer within the corporate trust office of the Trustee, including any vice-president, any assistant vice-president, any secretary, any assistant secretary, the treasurer, any assistant treasurer or other officer of the corporate trust office of the Trustee customarily performing functions similar to those performed by any of the above designated officers, who has direct responsibility for the administration of the trust granted in the Indenture, and shall also mean, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

S&P shall mean Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., a corporation organized and existing under the laws of the State, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

Securities Depository shall mean any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book-entry interests in the Bonds, and to effect transfers of book-entry interests in the Bonds in book-entry form, and includes and means initially DTC.

Security Documents shall mean, collectively, the Loan Agreement, the Promissory Note, the Pledge and Security Agreement, this Indenture, the Bond Guaranty Agreement, the Project Completion Guaranty Agreement, the Tax Regulatory Agreement, the Building Loan Agreement and the Mortgage.

Series shall mean all of the Bonds designated as being of the same series authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter authenticated and delivered in lieu thereof or in substitution therefor pursuant to the Indenture.

Sinking Fund Installment shall mean an amount so designated and which is established for mandatory redemption on a date certain of the Bonds of any Series of Bonds pursuant to the Indenture. The portion of any such Sinking Fund Installment of a Series of Bonds remaining after the deduction of any amounts credited pursuant to the Indenture toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments of such Series of Bonds due on a future date.

Sinking Fund Installment Account shall mean the special trust account of the Bond Fund so designated, which is established pursuant to Section 5.01.

Special Record Date shall have the meaning specified in Section 2.02(f).

State shall mean the State of New York.

Supplemental Indenture shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with Article XI.

Taxable Rate shall mean thirteen percent (13%) per annum.

Tax Prohibited Uses shall mean rental of residential property for family units, any private or commercial golf course, any airplane, skybox or other private luxury box, health club facility, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or any other use as shall not constitute a permitted use for recovery zone facility bonds under the Code.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Tender Agent shall mean initially, The Bank of New York Mellon, New York, New York, and any successor tender agent appointed pursuant to Section 9.11.

Trustee shall mean The Bank of New York Mellon, New York, New York, in its capacity as trustee under this Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Trust Estate shall mean all property, interests, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

Yield shall have the meaning assigned to such term in the Tax Regulatory Agreement.

Section 1.02. Construction.

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Indenture, refer to this Indenture, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Indenture, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Indenture, nor shall they affect its meaning, construction or effect.

(e) Unless the content indicates otherwise, references to designated "Exhibits", "Articles", "Sections", "Subsections", "clauses" and other subdivisions are to the designated Exhibits, Articles, Sections, Subsections, clauses and other subdivisions of or to this Indenture.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

ARTICLE II

AUTHORIZATION AND ISSUANCE OF BONDS

Section 2.01. Authorized Amount of Bonds; Pledge Effected by this Indenture. i) No Bond may be authenticated and delivered under the provisions of this Indenture except in accordance with this Article. Except as provided in Sections 2.08 and 3.07, the total aggregate principal amount of Bonds that may be authenticated and delivered hereunder is limited to the Authorized Principal Amount.

(b) The proceeds of the Bonds deposited in the Project Fund and certain of the loan payments, receipts and revenues derived from or in connection with the Facility, including moneys which are required to be set apart, transferred and pledged to the Earnings Fund, to the Bond Fund, to the Purchase Fund, to the Advance Interest Deposit Fund, to the Renewal Fund or to certain special funds, including the investments, if any, thereof (subject to disbursements from such Funds in accordance with the provisions of this Indenture) are pledged by this Indenture for the payment of the principal or Redemption Price, if any, of, Sinking Installments for, Purchase Price, and interest on, the Bonds. All such Funds shall be held by the Trustee in trust for the benefit of the Bondholders, and while held by the Trustee constitute part of the Trust Estate and be subject to the lien hereof. The Rebate Fund (including amounts on deposit therein) shall not be subject to any assignment, pledge, lien or security interest in favor of the Trustee or any Bondholder or any other Person. The Purchase Fund shall be held in trust only in favor of those Persons entitled thereto as provided in this Indenture. The Bonds shall be the special limited revenue obligations of the Issuer and shall be payable by the Issuer as to the principal or Redemption Price, if any, of the Bonds, Sinking Fund Installments for the Bonds, Purchase Price, and interest on the Bonds only from the Funds, special funds and loan payments, revenues and receipts pledged therefor. The Bonds are additionally secured by a pledge and assignment of (y) the Promissory Note, and (z) substantially all of the Issuer's right, title and interest in and to the Loan Agreement. The payment of the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Initial Bonds, and the payments, obligations, covenants and agreements of the Company under the Loan Agreement, have been guaranteed by the Guarantors pursuant to the Bond Guaranty Agreement. The completion of the Project, in accordance with the Ground Lease and the Loan Agreement, has been guaranteed by the Guarantors pursuant to the Project Completion Guaranty Agreement. Further, the Company has granted a first lien in Facility Revenues and the remainder of the Pledged Collateral to the Trustee pursuant to the Pledge and Security Agreement. In addition, the Company has granted mortgage liens on and security interests in its leasehold interest in the Facility under the Ground Lease, and an assignment of leases and rents, to the Trustee pursuant to the Mortgage.

In no event shall any obligations of the Issuer under this Indenture or the Bonds or under the Loan Agreement or under any other Security Document or related document for the payment of money create a debt of the State or the City and neither the State nor the City shall be liable on any obligation so incurred, but any such obligation shall be a special limited revenue obligation of the Issuer secured and payable solely as provided in this Indenture.

Section 2.02. Issuance and Terms of the Initial Bonds. ii) The Initial Bonds in the Authorized Principal Amount shall be issued under and secured by this Indenture. The Initial Bonds shall be issuable in fully registered form without coupons substantially in the form set forth in Exhibit C and shall be dated as provided in Section 3.01.

(b) The Initial Bonds shall mature on the Final Maturity Date, and shall bear interest at the Adjustable Fixed Interest Rate, all as provided in this Article II. Interest shall be payable on each Interest Payment Date and shall be computed on the basis of a 360-day year of twelve 30-day months. Notwithstanding anything herein to the contrary, the interest rate borne by the Initial Bonds shall not exceed the Maximum Interest Rate.

(c) If there shall occur an Event of Default (other than by reason of a failure to redeem the Initial Bonds in whole if there shall occur a Determination of Taxability), the rate of interest on the Initial Bonds shall be the Default Rate commencing with the date of the occurrence of the Event of Default and any additional interest thereby due with respect to a period of time for which interest has already been paid shall be payable on the Interest Payment Date next following the Event of Default. Any former Bondholder who was a Bondholder commencing on or after the date of the occurrence of the Event of Default, but who subsequent to such date sold or otherwise disposed of its Initial Bonds or whose Initial Bonds were redeemed or matured, shall be entitled to receive from the Company under the Loan Agreement the following, in an amount allocable to such period during which it held the Initial Bonds subsequent to the Event of Default and the date upon the Initial Bonds were sold, or otherwise disposed of, or redeemed or matured: the difference between the rate of interest borne by the Initial Bonds prior to the Event of Default and the rate borne by the Initial Bonds on and subsequent to such date.

(d) If there shall occur a Determination of Taxability, the rate of interest on the Initial Bonds shall be the Taxable Rate commencing with the date of the Event of Taxability and any additional interest thereby due with respect to a period of time for which interest has already been paid shall be payable on the Interest Payment Date next following the Determination of Taxability. Any former Bondholder who was a Bondholder commencing on or after the date of the occurrence of an Event of Taxability, but who subsequent to such date sold or otherwise disposed of its Initial Bonds or whose Initial Bonds were redeemed or matured, shall be entitled to receive from the Company under the Loan Agreement the following, in an amount allocable to such period during which it held the Initial Bonds subsequent to the Event of Taxability and the date upon which the Initial Bonds were sold, or otherwise disposed of, or redeemed or matured: the difference between the rate of interest borne by the Initial Bonds prior to the Event of Taxability and the rate borne by the Initial Bonds on and subsequent to such date.

(e) The Initial Bonds shall be numbered from R-1 upward in consecutive numerical order. Initial Bonds issued upon any exchange or transfer hereunder shall be numbered in such manner as the Trustee in its discretion shall determine.

(f) The principal of, Sinking Fund Installments for, and the Redemption Price, if applicable, on all Initial Bonds shall be payable by check or draft at maturity or upon earlier redemption to the Persons in whose names such Initial Bonds are registered on the bond registration books maintained by the Trustee as Bond Registrar at the maturity or redemption date thereof, upon presentation and surrender of such Initial Bonds, at the designated corporate trust office of the Trustee or of any Paying Agent.

The interest payable on each Initial Bond on any Interest Payment Date shall be paid by the Trustee to the registered owner of such Initial Bond as shown on the bond registration books of the Trustee as Bond Registrar at the close of business on the Regular Record Date for such interest, (1) by check or draft mailed to such registered owner at his address as it appears on the bond registration books or at such other address as is furnished to the Trustee in writing by such owner, or (2) if such Initial Bonds are held by a Securities Depository or, at the written request addressed to the Trustee by any registered owner of Initial Bonds in the aggregate principal amount of at least \$1,000,000 that all such payments be made by wire transfer, by electronic transfer in immediately available funds to the bank for credit to the ABA routing number and account number filed with the Trustee no later than five (5) Business Days before an Interest Payment Date, but no later than a Regular Record Date for any interest payment.

Interest on any Initial Bond that is due and payable but not paid on the date due ("**Defaulted Interest**") shall cease to be payable to the owner of such Initial Bond on the relevant Regular Record Date and shall be payable to the owner in whose name such Initial Bond is registered at the close of business on a special record date (the "**Special Record Date**") for the payment of such Defaulted Interest, which Special Record Date shall be fixed in the following manner. It is provided in the Loan Agreement that the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Initial Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment. Money deposited with the Trustee on account of Defaulted Interest shall be held in trust for the benefit of the owners of the Initial Bonds entitled to such Defaulted Interest as provided in this Section. Following receipt of such funds the Trustee shall fix the Special Record Date for the payment of such Defaulted Interest which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt of such funds by the Trustee. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each owner of an Initial Bond entitled to such notice at the address of such owner as it appears on the bond registration books not less than ten (10) days prior to such Special Record Date.

Subject to the foregoing provisions of this Section, each Initial Bond delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Initial Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Initial Bond and each such Initial Bond shall bear interest from such date, so that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

(g) The Initial Bonds are issuable in the form of fully registered bonds in the Authorized Denominations.

(h) Anything in the Initial Bonds or in this Indenture to the contrary notwithstanding, the obligations of the Issuer hereunder and under the Initial Bonds shall be subject to the limitation that payments of interest or other amounts on the Initial Bonds shall not be required to the extent that receipt of any such payment by a Holder of an Initial Bond would be contrary to the provisions of law applicable to such Holder which would limit the maximum rate of interest which may be charged or collected by such Holder of an Initial Bond.

Section 2.03. Determination of Adjustable Fixed Interest Rate. iii) For the Initial Adjustable Fixed Interest Rate Term, the Initial Bonds shall bear interest at seven and one-quarter percent (7¼%) per annum. The interest rate payable on the Initial Bonds shall be adjusted on each Adjustment Date in accordance with the provisions of this Indenture and the Initial Bonds.

(b) Each Adjustable Fixed Interest Rate Term (other than the Initial Adjustable Fixed Interest Rate Term which shall commence on the Closing Date) shall commence on the Adjustment Date immediately following the end of the preceding Adjustable Fixed Interest Rate Term and will continue to but excluding the next succeeding Adjustment Date. For each Adjustable Fixed Interest Rate Term after the Initial Adjustable Fixed Interest Rate Term, the Adjustable Fixed Interest Rate Term shall be a period determined at the direction of the Company which is equal to one (1) whole year or any integral multiple of whole years, but in no event shall any such Adjustable Fixed Interest Rate Term extend beyond the Final Maturity Date of the Initial Bonds. The Business Day immediately following the last day of each Adjustable Fixed Interest Rate Term as determined pursuant to this Section 2.03(b) shall be the Adjustment Date. The Initial Bonds are subject to mandatory purchase on each Adjustment Date pursuant to Section 2.03(h).

(c) Subject to subsection (e) below, the interest rate applicable to the Initial Bonds on and after each Adjustment Date shall be the interest rate determined by the Remarketing Agent on the Determination Date immediately preceding such Adjustment Date. The Adjustable Fixed Interest Rate applicable to the Initial Bonds shall be the lower of (i) the lowest rate which, in the best professional judgment of the Remarketing Agent (having due regard to the prevailing market conditions), would be necessary to enable the Initial Bonds to be sold at par on the Adjustment Date, provided that the Adjustable Fixed Interest Rate shall not exceed the Maximum Rate, or (ii) The Bond Buyer Revenue Bond Index (as published in The Bond Buyer or any successor publication thereto) for the most recent period for which such information is available as of the date the Adjustable Fixed Interest Rate is established, plus two hundred fifty (250) basis points. Upon such determination of the Adjustable Fixed Interest Rate, the Remarketing Agent shall promptly notify the Trustee and the Company of the Adjustable Fixed Interest Rate. Not less than the fifth (5th) Business Day prior to the Adjustment Date, the Trustee shall promptly notify each Holder of the Initial Bonds of the Adjustable Fixed Interest Rate which will be applicable to the Initial Bonds during the next succeeding Adjustable Fixed Interest Rate Term.

(d) The interest rate on the Initial Bonds (other than for the Initial Adjustable Fixed Interest Rate Term) will not be reset on any Adjustment Date unless (i) at least thirty (30) days prior to such Adjustment Date and (ii) again on such Adjustment Date, the Company shall cause to be delivered at its expense to the Issuer, the Trustee and the Remarketing Agent, a Favorable Opinion of Bond Counsel. The Company shall use its best efforts to cause such Favorable Opinion of Bond Counsel to be delivered to the Issuer, the Trustee and the Remarketing Agent by such date. In the event that any such Favorable Opinion of Bond Counsel is not delivered when required, the interest rate on the Initial Bonds then in effect shall remain in effect as the Adjustable Fixed Interest Rate for the next succeeding Adjustable Fixed Interest Rate Term, and the term of the next Adjustable Fixed Interest Rate Term shall be the shorter of (i) the same period as the immediately preceding Adjustable Fixed Interest Rate Term, or (ii) the period until the Final Maturity Date of the Initial Bonds.

(e) If the Remarketing Agent is unable to remarket all of the Initial Bonds at the Adjustable Fixed Interest Rate determined by the Remarketing Agent pursuant to subsection (c) above, the Remarketing Agent may at any time prior to the Adjustment Date increase the Adjustable Fixed Interest Rate to that rate of interest which, as of the date of determination, is the lowest rate which, in the best professional judgment of the Remarketing Agent (having due regard to the prevailing market conditions), would be necessary to enable the Initial Bonds to be sold at par on the Adjustment Date; provided, however, that such re-determined Adjustable Fixed Interest Rate shall not exceed the Maximum Interest Rate. No more than five (5) days prior to the Adjustment Date, the Trustee shall notify by mail the Company and the Holders of the Initial Bonds of any such revision in the Adjustable Fixed Interest Rate. The Remarketing Agent shall not increase the Adjustable Fixed Interest Rate later than five (5) days prior to the Adjustment Date (except with the consent of the Company) and notice of the increased Adjustable Fixed Interest Rate shall in that event be given by the Remarketing Agent concurrently to the Trustee and the Company.

(f) If, for any reason, the Adjustable Fixed Interest Rate for the Initial Bonds is not or cannot be determined by the Remarketing Agent in the manner specified above, the Adjustable Fixed Interest Rate will be equal to the closing yield, plus two hundred fifty (250) basis points, for Treasury Bills, Notes or Bonds, as applicable, of the maturity closest to, without exceeding, the term of the Adjustable Fixed Interest Rate Term determined in accordance with Section 2.03(b), as such yield is published in the table captioned "U.S. Securities Prices" in the edition of The Bond Buyer (or if The Bond Buyer or such table is no longer published, any other published similar rate as is determined by the Trustee in its sole discretion to be appropriate) published on the day on which such Adjustable Fixed Interest Rate is determined, or if such yield or other similar rate is not published on that day, the day of the most recent publication of such yield or other similar rate.

(g) The determination in accordance with the Indenture of the Adjustable Fixed Interest Rate to be borne by the Initial Bonds shall, in the absence of manifest error, be conclusive and binding on the Holders of the Initial Bonds and the Notice Parties. Failure by the Trustee to give any notice required hereunder, or any defect therein, shall not affect the interest rate borne by the Initial Bonds.

(h) On each Purchase Date, the Initial Bonds shall be subject to mandatory tender for purchase by the Tender Agent at the Purchase Price.

IN THE EVENT OF A FAILURE BY HOLDERS OF INITIAL BONDS TO TENDER INITIAL BONDS FOR PURCHASE ON A PURCHASE DATE AS PROVIDED ABOVE, SAID HOLDERS OF INITIAL BONDS SHALL NOT BE ENTITLED TO ANY PAYMENT (INCLUDING ANY INTEREST TO ACCRUE SUBSEQUENT TO THE PURCHASE DATE) OTHER THAN THE PURCHASE PRICE FOR SUCH UNTENDERED INITIAL BONDS, AND THE HOLDERS OF ANY UNTENDERED INITIAL BONDS SHALL NO LONGER BE ENTITLED TO THE BENEFITS OF THIS INDENTURE, EXCEPT FOR THE PURPOSE OF PAYMENT OF THE PURCHASE PRICE THEREOF, AND SHALL BE DEEMED PURCHASED, CANCELLED AND NO LONGER OUTSTANDING UNDER THIS INDENTURE.

(i) The Trustee shall give notice to the Notice Parties and the registered Holders of the Initial Bonds, not later than ten (10) Business Days prior to each Purchase Date, which notice shall state:

(A) the Purchase Date;

(B) that an Interest Rate Change on the Initial Bonds will occur on the Adjustment Date;

(C) the Determination Date for the next Adjustable Fixed Interest Rate;

(D) the commencement and termination dates of the next Adjustable Fixed Interest Rate Term; and

(E) that all Initial Bonds will be deemed sold to the Tender Agent on the Purchase Date at the Purchase Price, that such Initial Bonds should be delivered to the Principal Office of the Tender Agent by no later than 11:30 a.m., New York City time, on the Purchase Date, and that said Holders of Initial Bonds deemed sold shall not be entitled to any payment (including any interest to accrue subsequent to the Purchase Date) other than the Purchase Price for such untendered Initial Bonds.

(j) Funds for the payment of the Purchase Price of Initial Bonds shall be derived solely from the following sources in the order of priority indicated and none of the Issuer, the Tender Agent, the Trustee nor the Remarketing Agent shall be obligated to provide funds from any other source:

(A) immediately available funds on deposit in the Remarketing Account of the Purchase Fund; and

(B) moneys of the Company on deposit in the Company Purchase Account.

Section 2.04. Redemption of Initial Bonds. iv) General Optional Redemption. (1) During the Initial Adjustable Fixed Interest Rate Term, the Initial Bonds shall be subject to redemption, on or after May 1, 2012, in whole at any time or in part on any Interest Payment Date (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$100,000) at the option of the Issuer (which option shall be exercised only upon the giving of notice by the Company of its intention to prepay loan payments due under the Loan Agreement pursuant to Section 4.3(c) thereof), at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Initial Bonds to be redeemed, plus accrued interest to the date of redemption.

(ii) During any Adjustable Fixed Interest Rate Term (other than the Initial Adjustable Fixed Interest Rate Term), the Initial Bonds shall be subject to redemption, in whole at any time or in part on any Interest Payment Date (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$100,000) at the option of the Issuer (which option shall be exercised only upon the giving of notice by the Company of its intention to prepay loan payments due under the Loan Agreement pursuant to Section 4.3(c) thereof), at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Initial Bonds to be redeemed, plus accrued interest to the date of redemption, commencing on or after that date (the "**First Optional Redemption Date**") as determined below:

(A) if there shall be ten (10) or less years in such Adjustable Fixed Interest Rate Term, the First Optional Redemption Date shall be the second (2nd) anniversary of the date of commencement of such Adjustable Fixed Interest Rate Term, and

(B) if there shall be more than ten (10) years in such Adjustable Fixed Interest Rate Term, the First Optional Redemption Date shall be the fifth (5th) anniversary of the date of commencement of such Adjustable Fixed Interest Rate Term.

(b) Extraordinary Redemption. The Initial Bonds are also subject to redemption prior to maturity, at the option of the Issuer exercised at the direction of the Company (which option shall be exercised only upon the giving of notice by the Company of its intention to prepay loan payments due under the Loan Agreement pursuant to Section 4.3(c) thereof), as a whole on any date, upon notice or waiver of notice as provided in this Indenture, at a Redemption Price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the date of redemption if one or more of the following events shall have occurred:

(i) The Facility shall have been damaged or destroyed to such extent that, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee, (A) the Facility cannot be reasonably restored within a period of one year from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Company is thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of one year from the date of such damage or destruction, or (C) the restoration cost of the Facility would exceed the total amount of all insurance proceeds, including any deductible amount, in respect of such damage or destruction; or

(ii) Title to, or the temporary use of, all or substantially all of the Facility shall have been taken or condemned by a competent authority which taking or condemnation results, or is likely to result, in the Company being thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of one year from the date of such taking or condemnation, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee; or

(iii) As a result of changes in the Constitution of the United States of America or of the State or of legislative or executive action of the State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court after the contest thereof by the Company, the Loan Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein or unreasonable burdens or excessive liabilities are imposed upon the Company by reason of the operation of the Facility.

If the Initial Bonds are to be redeemed in whole as a result of the occurrence of any of the events described above, the Company shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Company stating that, as a result of the occurrence of the event giving rise to such redemption, the Company has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes.

(c) **Mandatory Sinking Fund Installment Redemption.** The Initial Bonds shall be subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the date of redemption, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in Sections 5.06(d) and (f):

Sinking Fund Installment Payment Date	Sinking Fund Installment
May 1, 2015	\$115,000
November 1, 2015	120,000
May 1, 2016	125,000
November 1, 2016	125,000
May 1, 2017	130,000
November 1, 2017	135,000
May 1, 2018	140,000
November 1, 2018	145,000
May 1, 2019	150,000
November 1, 2019	155,000
May 1, 2020	165,000
November 1, 2020	170,000
May 1, 2021	175,000
November 1, 2021	180,000
May 1, 2022	190,000
November 1, 2022	195,000
May 1, 2023	200,000
November 1, 2023	210,000
May 1, 2024	215,000
November 1, 2024	225,000
May 1, 2025	235,000
November 1, 2025	240,000

Sinking Fund Installment Payment Date	Sinking Fund Installment
May 1, 2026	\$250,000
November 1, 2026	260,000
May 1, 2027	270,000
November 1, 2027	280,000
May 1, 2028	290,000
November 1, 2028	300,000
May 1, 2029	310,000
November 1, 2029	320,000
May 1, 2030	335,000
November 1, 2030	345,000
May 1, 2031	355,000
November 1, 2031	370,000
May 1, 2032	385,000
November 1, 2032	400,000
May 1, 2033	410,000
November 1, 2033	425,000
May 1, 2034	440,000
November 1, 2034	460,000
May 1, 2035	475,000
November 1, 2035	490,000
May 1, 2036	510,000
November 1, 2036	530,000
May 1, 2037	545,000
November 1, 2037	565,000
May 1, 2038	590,000
November 1, 2038	610,000
May 1, 2039	630,000
November 1, 2039	655,000
May 1, 2040	680,000
November 1, 2040	700,000
May 1, 2041	730,000
November 1, 2041	755,000
May 1, 2042	780,000
November 1, 2042 (final maturity)	810,000

(d) Mandatory Redemption from Excess Proceeds and Certain Other Amounts. The Initial Bonds shall be redeemed at any time in whole or in part by lot prior to maturity in the event and to the extent

(i) excess Bond proceeds shall remain after the completion of the Project,

- (ii) excess title insurance or property insurance proceeds or condemnation awards shall remain after the application thereof pursuant to the Loan Agreement and this Indenture, or
- (iii) excess proceeds shall remain after the release or substitution of fixtures or other portions of the Facility,

in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Initial Bonds to be redeemed, together with interest accrued thereon to the date of redemption.

(e) Mandatory Redemption Upon Failure to Operate the Facility for Approved Project Operations, Material Violation of Material Legal Requirements, False Representation or Failure to Maintain Liability Insurance. The Initial Bonds are also subject to mandatory redemption prior to maturity, at the option of the Issuer, as a whole only, in the event (i) the Issuer shall determine that (w) the Company is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations, (x) the Company, any Principal of the Company or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Company has committed a material violation of a material Legal Requirement, (y) any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, or (ii) the Company shall fail to obtain or maintain the public liability insurance with respect to the Facility required under the Loan Agreement, and, in the case of clause (i) or (ii) above, the Company shall fail to cure any such default or failure within the applicable time periods set forth in the Loan Agreement following the receipt by the Company of written notice of such default or failure from the Issuer and a demand by the Issuer on the Company to cure the same. Any such redemption shall be made upon notice or waiver of notice to the Bondholders as provided in this Indenture, at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Initial Bonds, together with interest accrued thereon to the date of redemption.

(f) Mandatory Taxability Redemption. Upon the occurrence of a Determination of Taxability, the Initial Bonds shall be redeemed prior to maturity on any date within one hundred twenty (120) days following such Determination of Taxability, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest at the Taxable Rate from the occurrence of the Event of Taxability to the date of redemption. The Initial Bonds shall be redeemed in whole unless redemption of a portion of the Initial Bonds Outstanding would have the result that interest payable on the Initial Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of an Initial Bond (other than a Holder who is a "substantial user" of the Facility or a "related person", within the meaning of the Code). In such event, the Initial Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

(g) Purchase in Lieu of Optional Redemption. In lieu of calling Initial Bonds for optional redemption, Initial Bonds shall be subject to mandatory tender for purchase at the direction of the Issuer, upon the direction of the Company, in whole or in part (and, if in part, in such manner as determined by the Company) on any date, at a Purchase Price equal to the applicable Redemption Price for any optional redemption of such Initial Bonds as provided in Section 2.04(a), plus accrued interest to the purchase date. Purchases of tendered Initial Bonds may be made without regard to any provision of the Indenture relating to the selection of Initial Bonds in a partial optional redemption. Initial Bonds purchased pursuant to any mandatory tender(s) are not required to be cancelled (subject to Section 10.5 of the Loan Agreement), and if not so cancelled, shall, prior to any resale by or on behalf of the Company, not be deemed Outstanding in connection with any subsequent partial optional redemption solely for purposes of those provisions of the Indenture relating to the selection of Initial Bonds in a partial redemption.

Purchases in lieu of an optional redemption shall be permitted, with the consent of the Issuer, upon the delivery to the Issuer and the Trustee of (i) an opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee substantially to the effect that (A) such purchases in lieu of optional redemption comply with the provisions of the Indenture and (B) neither such purchases in lieu of an optional redemption nor any transaction directly related thereto will adversely affect the exclusion from gross income of interest on the Initial Bonds for purposes of federal income taxation, and (ii) such other opinions, certificates or documentation as the Issuer may require.

(h) Redemption of Initial Bonds permitted or required by this Article II shall be made as follows, and the Trustee shall give the notice of redemption required by Section 6.03 in respect of each such redemption:

(1) Redemption shall be made pursuant to the general optional redemption provisions of Section 2.04(a) or (b) at such times as are permitted under such Section and, in the case of Section 2.04(a), in such principal amounts, as the Company shall request in a written notice to the Trustee in accordance with Section 4.3(c) of the Loan Agreement.

(2) Redemption shall be made pursuant to the mandatory Sinking Fund Installment redemption provisions of Section 2.04(c) as and when required by this Section without the necessity of any request by, or notification from the Issuer or from the Company, but subject to the provisions of Section 5.06(d) and (f).

(3) Redemption shall be made pursuant to the mandatory redemption provisions of Section 2.04(d) at the earliest possible date following the deposit of the excess proceeds or other amounts in the Redemption Account of the Bond Fund, without the necessity of any instructions or further act of the Issuer or the Company.

(4) Redemption shall be made pursuant to the mandatory redemption provisions of Section 2.04(e) on the date specified therein in the event redemption is required under such circumstances, without the necessity of any instructions or further act of the Company.

(5) Redemption shall be made pursuant to the mandatory taxability redemption provisions of Section 2.04(f) at the earliest possible date, but no later than one hundred twenty (120) days following the Determination of Taxability, without the necessity of any instructions or further act of the Issuer or the Company.

Section 2.05. Delivery of Initial Bonds. The Initial Bonds shall be executed in the form and manner set forth in this Indenture and shall be deposited with the Trustee and thereupon shall be authenticated by the Trustee. Upon payment to the Trustee of the proceeds of sale of the Initial Bonds including the interest, if any, accrued on the Initial Bonds to the Closing Date, the Initial Bonds shall be delivered by the Trustee on behalf of the Issuer to or upon the order of the purchaser(s) thereof, but only upon receipt by the Trustee of:

- Resolution;
- (a) a copy, duly certified by the Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Issuer, of the Bond
 - (b) an original executed counterpart of all Security Documents;
 - (c) a written opinion by Nationally Recognized Bond Counsel to the effect that the issuance of the Initial Bonds and the execution thereof have been duly authorized and that all conditions precedent to the delivery thereof have been fulfilled; and
 - (d) the written order to the Trustee executed by an Authorized Representative of the Issuer to authenticate and deliver the Initial Bonds to the purchaser(s) therein identified upon payment to the Trustee for the account of the Issuer of the purchase price therein specified, plus accrued interest, if any.

Section 2.06. Execution of Bonds. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Issuer, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the manual or facsimile signature of the Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Issuer. Any facsimile signatures shall have the same force and effect as if the appropriate officers had personally signed each of said Bonds. In case one or any of the officers who shall have signed or attested the Bonds or whose reproduced facsimile signature appears thereon shall cease to be such officer or officers before the Bonds so signed and attested shall have been actually issued and delivered, the Bonds may be issued and delivered as though the person who signed or attested or whose reproduced facsimile signature appears on the Bonds had not ceased to be such officer. Neither the members, directors, officers or agents of the Issuer nor any person executing the Bonds shall be liable personally or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 2.07. Authentication. Only such Bonds as shall have endorsed thereon a certificate of authentication, in substantially the form set forth in the Form of Initial Bond in Exhibit C, duly executed by the Trustee, shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless and until such certificate of authentication on such Bond shall have been duly executed by the Trustee, and such certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Trustee shall note, with respect to each Bond to be authenticated under this Indenture in the space provided in the certificate of authentication for such Bond, the date of the authentication and delivery of such Bond. The Trustee's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds.

Section 2.08. Additional Bonds. v) So long as the Ground Lease, the Mortgage, the Loan Agreement, the Pledge and Security Agreement, the Promissory Note and the Bond Guaranty Agreement are each in effect, and the prior written consent of the Holders of at least sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds shall have been obtained, one or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of (i) completing the Project, (ii) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, the purpose of which shall be for the Approved Project Operations, or (iv) refunding Outstanding Bonds. Such Additional Bonds shall be payable from the loan payments, receipts and revenues of the Facility including such extensions, additions and improvements thereto. Prior to the issuance of a Series of Additional Bonds and the execution of a Supplemental Indenture in connection therewith, the Issuer and the Company shall enter into an amendment to the Loan Agreement, and the Company shall execute a new Promissory Note, which shall provide, among other things, that the loan payments payable under the Loan Agreement and the aggregate amount to be paid under all Promissory Notes, shall be increased and computed so as to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith. In addition, each of the Guarantors and the Issuer shall enter into an amendment to each Security Document with the Trustee which shall provide that the amounts guaranteed or otherwise secured thereunder be increased accordingly.

(b) Each such Series of Additional Bonds shall be deposited with the Trustee and thereupon shall be authenticated by the Trustee. Upon payment to the Trustee of the proceeds of sale of such Series of Additional Bonds, they shall be made available by the Trustee for pick-up by the order of the purchaser or purchasers thereof, but only upon receipt by the Trustee of:

(1) a copy of the resolution, duly certified by the Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Issuer, authorizing, issuing and awarding the Series of Additional Bonds to the purchaser or purchasers thereof and providing the terms thereof and authorizing the execution of any Supplemental Indenture and any amendments of or supplements to the Loan Agreement and any other Security Document to which the Issuer shall be a party;

(2) original executed counterparts of the Supplemental Indenture and an amendment of or supplement to the Loan Agreement expressly providing that, to the extent applicable, for all purposes of the Supplemental Indenture, the Loan Agreement and the Mortgage, the Facility referred to therein and the premises subject thereto shall include the buildings, structures, improvements, machinery, equipment or other facilities being financed, and the Bonds referred to therein shall mean and include the Series of Additional Bonds being issued as well as the Initial Bonds and any Series of Additional Bonds theretofore issued;

(3) a written opinion by Nationally Recognized Bond Counsel, to the effect that the issuance of the Series of Additional Bonds and the execution thereof have been duly authorized and that all conditions precedent to the delivery thereof have been fulfilled and that the issuance of the Series of Additional Bonds will not cause the interest on any Series of Bonds Outstanding to become includable in gross income for Federal income tax purposes;

(4) except in the case of a Series of Refunding Bonds (defined below) refunding all Outstanding Bonds, a certificate of an Authorized Representative of each Guarantor to the effect that each Security Document to which it is a party continues in full force and effect and that there is no Event of Default nor any event which upon notice or lapse of time or both would become an Event of Default;

(5) written evidence from each Rating Agency by which any Series of Outstanding Bonds are then rated, if any, to the effect that it has reviewed the documentation pertaining to the issuance of the Series of Additional Bonds, and that the issuance of such Series of Additional Bonds will not result in a withdrawal, a suspension or a reduction of the long and short-term ratings, if applicable, then assigned to any Series of Outstanding Bonds by such Rating Agency;

(6) an original, executed counterpart of the amendment to each Security Document; and

(7) a written order to the Trustee executed by an Authorized Representative of the Issuer to authenticate and make available for pick-up the Series of Additional Bonds to the purchaser or purchasers therein identified upon payment to the Trustee of the purchase price therein specified, plus accrued interest, if any.

(c) (a) Upon the request of the Company, one or more Series of Additional Bonds may be authenticated and made available for pick-up upon original issuance to refund ("**Refunding Bonds**") all Outstanding Bonds or any Series of Outstanding Bonds or any part of one or more Series of Outstanding Bonds. Bonds of a Series of Refunding Bonds shall be issued in a principal amount sufficient, together with other moneys available therefor, to accomplish such refunding and to make such deposits required by the provisions of this Indenture and of the resolution authorizing said Series of Refunding Bonds. In the case of the refunding under this Section 2.08 of less than all Bonds Outstanding of any Series or of any maturity within such Series, the Trustee shall proceed to select such Bonds in accordance with Section 6.02.

(2) A Series of Refunding Bonds may be authenticated and made available for pick-up only upon receipt by the Trustee (in addition to the receipt by it of the documents required by Section 2.08(b), as may be applicable) of:

(A) Irrevocable instructions from the Issuer to the Trustee, satisfactory to it, to give due notice of redemption pursuant to Section 6.03 to the Holders of all the Outstanding Bonds to be refunded prior to maturity on the redemption date specified in such instructions; and

(B) Either:

(i) moneys in an amount sufficient to effect payment at maturity or upon redemption at the applicable Redemption Price of the Bonds to be refunded, together with accrued interest on such Bonds to the maturity or redemption date, which moneys shall be held by the Trustee or any Paying Agent in a separate account irrevocably in trust for and assigned to the respective Holders of the Outstanding Bonds being refunded, or

(ii) Defeasance Obligations in such principal amounts, having such maturities, bearing such interest, and otherwise having such terms and qualifications, as shall be necessary to comply with the provisions of Article X, and any moneys required pursuant to said Section (with respect to all Outstanding Bonds or any part of one or more Series of Outstanding Bonds being refunded), which Defeasance Obligations and moneys shall be held in trust and used only as provided in Article X.

(3) The Company shall furnish to the Trustee and the Issuer at the time of delivery of the Series of Refunding Bonds a certificate of an independent certified public accountant stating that the Trustee and/or the Paying Agent (and/or any escrow agent as shall be appointed in connection therewith) hold in trust the moneys or such Defeasance Obligations and moneys required to effect such payment at maturity or earlier redemption.

(d) Each Series of Additional Bonds issued pursuant to this Section shall be equally and ratably secured under this Indenture with the Initial Bonds and all other Series of Additional Bonds, if any, issued pursuant to this Section, without preference, priority or distinction of any Bond over any other Bonds except as expressly provided in or permitted by this Indenture.

(e) No Series of Additional Bonds shall be issued unless the Ground Lease, the Loan Agreement, the Promissory Note, the Mortgage, the Pledge and Security Agreement and the Bond Guaranty Agreement are in effect and at the time of issuance there is no Event of Default nor any event which upon notice or lapse of time or both would become an Event of Default.

Section 2.09. CUSIP Numbers. The Issuer in issuing the Bonds may use CUSIP numbers (if then generally in use), and, if so, the Trustee shall use such CUSIP numbers in notices of redemption as a convenience to registered owners; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Bonds or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Bonds, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee of any change in the CUSIP numbers of which it has actual knowledge.

Section 2.10. Book Entry Bonds. vi) Except as provided in Section 2.10(c), the Initial Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest for any Initial Bond registered in the name of Cede & Co. shall be made by wire transfer of New York Clearing House or equivalent same day funds to the account of Cede & Co. on the Interest Payment Date for the Initial Bonds at the address indicated for Cede & Co. in the registration books of the Issuer kept by the Trustee. It is anticipated that during the term of the Initial Bonds, the Securities Depository will make book entry transfers among its Participants and receive and transmit payment of principal of, Sinking Fund Installments for, Purchase Price, redemption premium, if any, and interest on, the Initial Bonds to the Participants until and unless the Trustee authenticates and delivers replacement bonds to the Beneficial Owners as described in Section 2.10(c).

(b) The Initial Bonds shall be initially issued in the form of a separate single authenticated fully registered certificate for the single maturity thereof. Upon initial issuance, the ownership of such Initial Bonds shall be registered in the registration books of the Issuer kept by the Trustee in the name of Cede & Co., as nominee of DTC. The Trustee, the Tender Agent, the Bond Registrar, the Remarketing Agent, the Paying Agent and the Issuer shall treat DTC (or its nominee) as the sole and exclusive Holder of the Initial Bonds registered in its name for the purposes of payment of the principal, Sinking Fund Installments, Purchase Price, Redemption Price of or interest on the Initial Bonds, selecting the Initial Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Indenture, registering the transfer of Initial Bonds, obtaining any consent or other action to be taken by Holders of the Initial Bonds and for all other purposes whatsoever; and neither the Trustee, the Tender Agent, the Bond Registrar, the Remarketing Agent, the Paying Agent, the Company, nor the Issuer shall be affected by any notice to the contrary. All notices with respect to the Initial Bonds shall be made and given to DTC as provided in the Representations Letter. Neither the Trustee, the Tender Agent, the Bond Registrar, the Remarketing Agent, the Paying Agent nor the Issuer shall have any responsibility or obligation to any Participant, any Person claiming a beneficial ownership interest in the Initial Bonds under or through DTC or any Participant, or any other Person that is not shown on the registration books of the Trustee as being a Holder, with respect to the accuracy of any records maintained by DTC or any Participant; the payment of DTC or any Participant of any amount in respect of the principal, Sinking Fund Installments, Purchase Price, Redemption Price of or interest on the Initial Bonds; any notice that is permitted or required to be given to Bondholders under this Indenture or any other Security Documents; the selection by DTC or any Participant of any Person to receive payment in the event of a partial redemption of the Initial Bonds; or any consent given or other action taken by DTC as Bondholder. The Trustee shall pay all principal of, Sinking Fund Installments, Purchase Price, redemption premium, if any, and interest on the Initial Bonds only to or "upon the order of" (as that term is used in the Uniform Commercial Code as adopted in the State) DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of, Sinking Fund Installments, Purchase Price, redemption premium, if any, and interest on the Initial Bonds to the extent of the sum or sums so paid. Except as otherwise provided in Section 2.10(c), no Person other than DTC shall receive an authenticated Initial Bond certificate evidencing the obligation of the Issuer to make payments of principal of, Sinking Fund Installments, Purchase Price, redemption premium, if any, and interest pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions of this Indenture with respect to transfers of Bonds, the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

(c) In the event the Issuer determines that it is in the best interest of the Beneficial Owners that they be able to obtain Initial Bond certificates, the Issuer may notify DTC and the Trustee, whereupon DTC will notify the Participants, of the availability through DTC of Initial Bond certificates. In such event, the Trustee shall issue, transfer and exchange Initial Bond certificates as requested by DTC in appropriate amounts within the guidelines set forth in this Indenture. DTC may determine to discontinue providing its services with respect to the Initial Bonds at any time by giving written notice to the Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the Issuer and the Trustee shall be obligated to deliver Initial Bond certificates as described in this Indenture. In the event Initial Bond certificates are issued, the provisions of this Indenture shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of, Sinking Fund Installments, Purchase Price, redemption premium, if any, and interest on such certificates. Whenever DTC requests the Issuer and the Trustee to do so, the Issuer will direct the Trustee (at the sole cost and expense of the Company) to cooperate with DTC in taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the Initial Bonds to any DTC Participant having Initial Bonds credited to its DTC account or (ii) to arrange for another securities depository to maintain custody of certificates evidencing the Initial Bonds.

(d) In connection with any notice or other communication to be provided to Bondholders pursuant to this Indenture or any other Security Document by the Issuer or the Trustee with respect to any consent or other action to be taken by Bondholders, the Issuer or the Trustee, as the case may be, shall establish a record date for such consent or other action and give DTC notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible. Such notice to DTC shall be given only when DTC is the sole Bondholder.

(e) NEITHER THE ISSUER, THE COMPANY NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO THE PARTICIPANTS OR THE BENEFICIAL OWNERS WITH RESPECT TO (1) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY PARTICIPANT; (2) THE PAYMENT BY DTC OR ANY PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT, SINKING FUND INSTALLMENTS, PURCHASE PRICE, REDEMPTION PRICE OF OR INTEREST ON THE INITIAL BONDS; (3) THE DELIVERY BY DTC OR ANY PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE INDENTURE TO BE GIVEN TO BONDHOLDERS; OR (4) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE INITIAL BONDS.

(f) SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE INITIAL BONDS, AS NOMINEE OF DTC, REFERENCES HEREIN TO THE INITIAL BONDHOLDERS OR REGISTERED HOLDERS OF THE INITIAL BONDS SHALL MEAN CEDE & CO. AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF THE INITIAL BONDS.

(g) For so long as the Holder of all of the Initial Bonds shall be DTC, and all Initial Bonds shall be registered in the name of Cede & Co. as nominee for DTC, (i) only DTC may tender Initial Bonds for purchase or upon redemption or retirement in whole and (ii) unless all Initial Bonds are being redeemed or retired in whole, Initial Bonds shall not be required to be presented to the Trustee for payment of principal, Sinking Fund Installments, Purchase Price or Redemption Price except upon final maturity or redemption in whole.

(h) In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Trustee receives written evidence satisfactory to the Trustee with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository that is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Trustee upon its receipt of an Initial Bond or Bonds for cancellation shall cause the delivery of an Initial Bond or Bonds to the successor Securities Depository in appropriate Authorized Denominations and form as provided herein.

ARTICLE III

GENERAL TERMS AND PROVISIONS OF BONDS

Section 3.01. Date of Bonds. The Initial Bonds shall be dated their date of original issuance (subject to the provisions set forth below with respect to transfers and exchanges) and will bear interest from their date at the applicable rate or rates until the entire principal amount of the Initial Bonds has been paid. Bonds authenticated prior to the first Interest Payment Date shall bear interest from their date of original issuance. Bonds issued in exchange for or upon the registration of transfer of Bonds on or after the first Interest Payment Date thereon shall bear interest from and including the Interest Payment Date next preceding the date of the authentication thereof, unless the date of such authentication shall be an Interest Payment Date to which interest on the Bonds has been paid in full or duly provided for, in which case they shall bear interest from and including such Interest Payment Date; provided that if, as shown by the records of the Trustee, interest on the Bonds shall be in default, Bonds issued in exchange for or upon the registration of transfer of Bonds shall bear interest from the date to which interest has been paid in full on the Bonds, or if no interest has been paid on the Bonds, the date of the first delivery of fully executed and authenticated Bonds hereunder.

Section 3.02. Form and Denominations. Bonds shall be issued in fully registered form, without coupons, in any authorized denomination not exceeding the aggregate principal amount of Bonds of the same series, maturity and interest rate as the Bond for which the denomination is to be specified. Subject to the provisions of Section 3.03, the Initial Bonds shall be in substantially the form set forth in Exhibit C, with such variations, omissions and insertions as are permitted or required by this Indenture.

Section 3.03. Legends. Each Bond shall contain on the face thereof a statement to the effect that "THIS BOND SHALL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE STATE OF NEW YORK OR OF THE CITY OF NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR THE CITY OF NEW YORK SHALL BE LIABLE HEREON, NOR SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OF THE NEW YORK CITY CAPITAL RESOURCE CORPORATION OTHER THAN THOSE PLEDGED THEREFOR." The Bonds may in addition contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Indenture as may be necessary or desirable to comply with custom or otherwise as may be determined by the Issuer prior to the delivery thereof.

Section 3.04. Medium of Payment. The principal or Redemption Price, if any, of, Sinking Fund Installments for, Purchase Price, and interest on the Bonds shall be payable in any coin or currency of the United States of America which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Such payment may be made as provided in Section 2.02.

Section 3.05. Bond Details. Subject to the provisions hereof, the Bonds shall be dated, shall mature in such years and such amounts, shall bear interest at such rate or rates per annum, shall be subject to redemption on such terms and conditions and shall be payable as to principal or Redemption Price, if any, Sinking Fund Installments, Purchase Price, and interest at such place or places as shall be specified in this Indenture.

Section 3.06. Interchangeability, Transfer and Registry. vii) Each Bond shall be transferable only upon compliance with the restrictions on transfer set forth on such Bond and only upon the books of the Issuer, which shall be kept for the purpose at the designated corporate trust office of the Trustee, by the registered owner thereof in person or by his duly authorized attorney-in-fact, upon surrender of such Bond together with a written instrument of transfer in the form appearing on such Bond duly executed by the registered owner or his duly authorized attorney-in-fact with a guaranty of the signature thereon by a member of the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15. Upon the transfer of any Bond the Trustee shall prepare and issue in the name of the transferee one or more new Bonds of the same aggregate principal amount, related Series, maturity and interest rate as the surrendered Bond.

(b) Any Bond, upon surrender thereof at the designated corporate trust office of the Trustee in the City with a written instrument of transfer in the form appearing on such Bond, duly executed by the registered owner or his duly authorized attorney-in-fact, with a guaranty of the signature thereon by a member of the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15, may, at the option of the owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series, maturity and interest rate of any other Authorized Denominations. However, the Trustee will not be required to (i) transfer or exchange any Bonds during the period between a Record Date and the following Interest Payment Date or during the period of fifteen (15) days next preceding any day for the selection of Bonds to be redeemed, (ii) transfer or exchange any Bonds selected, called or being called for redemption in whole or in part, or (iii) register any transfer of or exchange any Bond which is subject to mandatory purchase.

(c) The Issuer, the Bond Registrar, the Trustee, the Tender Agent, the Remarketing Agent and any Paying Agent may deem and treat the Person in whose name any Bond shall be registered as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and Redemption Price, if any, of, Sinking Fund Installments for, Purchase Price, and interest on such Bond and for all other purposes, and all payments made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer, the Company, the Bond Registrar, the Trustee, the Tender Agent, the Remarketing Agent nor any Paying Agent shall be affected by any notice to the contrary.

(d) In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Issuer or the Trustee may make a charge sufficient to reimburse it for any expenses and any tax, fee or other governmental charge required to be paid in connection therewith; any such expenses shall be paid by the Company but any such tax, fee or other governmental charge shall be paid by the Holder requesting such transfer or exchange.

Section 3.07. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer shall execute, and thereupon the Trustee shall authenticate and deliver, a new Bond of like Series, maturity, unpaid principal amount and interest rate as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and in substitution for the Bond destroyed, stolen or lost, upon filing with the Trustee evidence reasonably satisfactory to it that such Bond has been destroyed, stolen or lost, and upon furnishing the Issuer and the Trustee with indemnity (an undertaking from an insurance company acceptable to the Trustee and the Issuer) satisfactory to the Trustee and to the Issuer and complying with such other reasonable regulations as the Trustee may prescribe and paying such expenses as the Issuer and the Trustee may incur. All Bonds so surrendered to the Trustee shall be cancelled by it. Every new Bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is destroyed, lost or stolen, shall, with respect to such Bond, constitute an additional contractual obligation of the Issuer whether or not the destroyed, lost or stolen Bond shall be found and shall be enforceable at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder. In the event any such destroyed, stolen or lost Bond shall have matured, or be about to mature, the Issuer may, instead of issuing a new Bond, cause the Trustee to pay the same without surrender thereof upon compliance with the condition in the first sentence of this Section out of moneys held by the Trustee and available for such purpose. All Bonds shall be held and owned upon the express condition (to the extent lawful) that the foregoing provisions are exclusive with respect to the replacement or payment of any mutilated, destroyed or lost or stolen Bond and shall preclude any and all other rights and remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 3.08. Cancellation and Destruction of Bonds. All Bonds paid or redeemed, either at or before maturity, shall be delivered to the Trustee when such payment or redemption is made, and such Bonds together with all Bonds purchased by the Trustee, shall thereupon be promptly cancelled. Bonds so cancelled shall be destroyed by the Trustee.

Section 3.09. Requirements With Respect to Transfers. In all cases in which the privilege of transferring Bonds is exercised, the Issuer shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such transfer shall forthwith be cancelled by the Trustee. For every such transfer of Bonds, the Issuer or the Trustee may, as a condition precedent to the privilege of making such transfer, make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer and may charge a sum sufficient to pay the cost of preparing each new Bond issued upon such transfer, which sum or sums shall be paid by the Person requesting such transfer.

Section 3.10. Bond Registrar. The Trustee shall also be Bond Registrar for the Bonds, and shall maintain a register showing the names of all registered Holders of Bonds, Bond numbers and amounts, and other information appropriate to the discharge of its duties hereunder. The Trustee shall make available to the Company for its inspection during normal business hours the registration books for the Bonds, as may be requested by the Company in connection with any purchase or tender offer by it with respect to the Bonds.

Section 3.11. Payments Due on Saturdays, Sundays and Holidays. In any case where any payment date of principal, Purchase Price, Sinking Fund Installment and/or interest on the Bonds, or the date fixed for redemption of any Bonds, shall be a day other than a Business Day, then payment of such principal, Purchase Price, Sinking Fund Installment and/or interest or the Redemption Price, if applicable, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the principal, Purchase Date, Sinking Fund Installment and/or Interest Payment Date or the date fixed for redemption, as the case may be, except that interest shall continue to accrue on any unpaid principal.

ARTICLE IV

APPLICATION OF BOND PROCEEDS AND OTHER AMOUNTS

Section 4.01. Application of Proceeds of Initial Bonds. Upon the receipt by the Trustee of the original proceeds of the sale and delivery of the Initial Bonds, including the amount received as accrued interest, if any, thereon, the Trustee shall apply such proceeds as follows:

- (i) \$0, being the amount received as accrued interest on the Initial Bonds, if any, shall be deposited in the Interest Account of the Bond Fund;
- (ii) \$2,456,944, being an amount equal to capitalized interest on the Initial Bonds from the Closing Date through March 1, 2012, shall be deposited in the Capitalized Interest Account of the Project Fund; and
- (iii) \$17,543,056, being the balance of the proceeds of the Initial Bonds, shall be deposited in the Construction Account of the Project Fund.

Section 4.02. Deposit in the Advance Interest Deposit Fund. Upon the Closing Date, and the receipt by the Trustee of \$4,000,000 from the Company as provided in Section 10.7 of the Loan Agreement, the Trustee shall deposit such amount within the Advance Interest Deposit Fund.

ARTICLE V

CUSTODY AND INVESTMENT OF FUNDS

Section 5.01. Creation of Funds and Accounts. viii) The Issuer hereby establishes and creates the following special trust Funds and Accounts comprising such Funds:

- (1) Project Fund
 - (a) Capitalized Interest Account
 - (b) Construction Account
- (2) Bond Fund
 - (a) Principal Account
 - (b) Interest Account
 - (c) Redemption Account
 - (d) Sinking Fund Installment Account
- (3) Advance Interest Deposit Fund
- (4) Purchase Fund
 - (a) Remarketing Account
 - (b) Company Purchase Account
- (5) Renewal Fund
- (6) Earnings Fund
- (7) Rebate Fund

(b) All of the Funds and Accounts created hereunder shall be held by the Trustee, except that the Purchase Fund shall be held by the Tender Agent. All moneys required to be deposited with or paid to the Trustee for the credit of any Fund or Account under any provision of this Indenture and all investments made therewith shall be held by the Trustee in trust and applied only in accordance with the provisions of this Indenture, and while held by the Trustee shall constitute part of the Trust Estate (subject to the granting clauses of this Indenture), other than the Rebate Fund, and, to the extent provided herein, the Purchase Fund, and be subject to the lien hereof.

Section 5.02. Project Fund. ix) There shall be deposited in the Project Fund any and all amounts required to be deposited therein pursuant to Sections 4.01, 5.07 and 5.08 or otherwise required to be deposited therein pursuant to the Loan Agreement or this Indenture.

The Trustee shall apply the amounts on deposit in the Project Fund to the payment, or reimbursement to the extent the same have been paid by or on behalf of the Company or the Issuer, of Project Costs (including interest on the Bonds during the period of Project construction and renovation) to the extent requisitioned under subsection (c) hereto.

(b) The Trustee shall apply the amounts in the Capitalized Interest Account of the Project Fund for the payment of interest on the Bonds as the same shall become due until the earlier of the Completion Date (as evidenced in accordance with the provisions of Section 3.2(f) of the Loan Agreement) or the exhaustion of amounts in such Account (the “**Capitalized Interest Period**”). On the seventh (7th) Business Day immediately preceding each Interest Payment Date during the Capitalized Interest Period, the Trustee shall transfer from the Capitalized Interest Account of the Project Fund to the Interest Account of the Bond Fund an amount which, together with any amounts on deposit in such Interest Account and available therefor, shall be sufficient to pay the interest on the Bonds becoming due on such Interest Payment Date. Upon the Completion Date, the Trustee shall transfer any balance remaining in the Capitalized Interest Account of the Project Fund, first, to the extent of the amount of interest accrued on the Bonds from the Interest Payment Date immediately preceding the Completion Date through but not including the Completion Date, to the Interest Account of the Bond Fund, and second, the balance to the Construction Account of the Project Fund to pay any remaining Project Costs.

(c) The Trustee is hereby authorized to disburse from the Construction Account of the Project Fund amounts required to pay (in whole or in part) the Project Costs and is directed to issue its checks (or, at the direction of the Company, make wire transfers) for each disbursement from the Construction Account of the Project Fund for the Project Costs, upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Company; provided, however, that the Trustee shall retain in the Construction Account of the Project Fund an amount equal to \$100,000, until an Authorized Representative of the Company shall have delivered the completion certificate and other documents required by Section 3.2(f) of the Loan Agreement.

The requisition from the Construction Account of the Project Fund shall be accompanied by bills or invoices (stamped “paid” by the Person to whom payment was due or with other evidence of payment if reimbursement is to be made to the Company), including evidence that the bill, invoice or other evidence was not incurred on a date prior to sixty (60) days prior to the date of adoption by the Issuer of its Preliminary Resolution for the Project. Such requisition shall be as set forth in Exhibit D—“Form of Requisition from the Construction Account of the Project Fund” and shall be submitted to the Trustee. The Trustee shall disburse amounts from the Construction Account of the Project Fund not later than five (5) Business Days following the receipt of the executed requisition and accompanying bills or invoices, except that any such requisition and accompanying bills or invoices submitted on the Closing Date shall have disbursements made by the Trustee on such Closing Date. The Trustee shall be entitled to conclusively rely on the correctness and accuracy of such requisition as well as the propriety of the signature thereon.

(d) The Trustee shall keep and maintain adequate records pertaining to each Account of the Project Fund and all disbursements therefrom and shall furnish copies of same to the Issuer or the Company upon reasonable written request.

(e) The Trustee shall on written request furnish to the Issuer and the Company within a reasonable time period a written statement of disbursements from each Account of the Project Fund, enumerating, among other things, item, cost, amount disbursed, date of disbursement and the person to whom payment was made, together with copies of all bills, invoices or other evidences submitted to the Trustee for such disbursement.

(f) The completion of the Project shall be evidenced as set forth in Section 3.2(f) of the Loan Agreement including the filing of the certificate of an Authorized Representative of the Company referred to therein. Upon the filing of such certificate, the balance in the Project Fund in excess of the amount, if any, stated in such certificate for the payment of any remaining part of the costs of the Project, shall, after making any transfer to the Rebate Fund as directed pursuant to Section 7.5 of the Tax Regulatory Agreement and Section 5.08, be deposited by the Trustee in the Redemption Account of the Bond Fund. &# 160;Upon payment of all the costs and expenses incident to the completion of the Project, any balance of such remaining amount in the Project Fund, together with any amount on deposit in the Earnings Fund derived from transfers made thereto from the Project Fund, shall, after making any such transfer to the Rebate Fund, be deposited in the Redemption Account of the Bond Fund to be applied to the redemption of Bonds at the earliest practicable date. The Trustee shall promptly notify the Company of any amounts so deposited in the Redemption Account of the Bond Fund pursuant to this Section 5.02(f).

(g) In the event the Company shall be required to or shall elect to cause the Bonds to be redeemed in whole pursuant to the Loan Agreement, the balance in the Project Fund, in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to Section 7.5 of the Tax Regulatory Agreement and Section 5.08) shall be deposited in the Redemption Account of the Bond Fund. In the event the unpaid principal amount of the Bonds shall be accelerated upon the occurrence of an Event of Default hereunder, the balance in the Project Fund, in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to Section 7.5 of the Tax Regulatory Agreement and Section 5.08) shall be deposited in the Bond Fund as provided in Section 8.03.

(h) Except as provided in Section 5.07, all earnings on amounts held in the Project Fund shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Project Fund.

Section 5.03. Application of Advance Interest Deposit Fund. Commencing with that Interest Payment Date with respect to which insufficient amounts are on deposit in the Capitalized Interest Account of the Project Fund to pay into the Interest Account of the Bond Fund that amount required to pay the interest on the Bonds next coming due on such Interest Payment Date, the Trustee shall apply the amounts on deposit in the Advance Interest Deposit Fund to the payment of interest on the Bonds by transferring such amount as is so required for such purpose to the Interest Account of the Bond Fund on the seventh (7th) Business Day immediately preceding such Interest Payment Date.

Section 5.04. Payments into Renewal Fund; Application of Renewal Fund.

x) The Net Proceeds resulting from any Loss Event with respect to the Facility, together with any other amounts so required to be deposited therein under the Loan Agreement, the Bond Guaranty Agreement or the Mortgage, shall be deposited in the Renewal Fund (except as otherwise provided in Section 3.12 of the Bond Guaranty Agreement).

(b) In the event the Bonds shall be subject to redemption in whole (either by reason of such Loss Event or otherwise) pursuant to the terms thereof or this Indenture, and the Company shall have so directed the Trustee in writing within ninety (90) days of the occurrence of such Loss Event, the Trustee shall, after making any transfer to the Rebate Fund as directed pursuant to Section 7.5 of the Tax Regulatory Agreement and Section 5.08, transfer the amounts deposited in the Renewal Fund to the Redemption Account of the Bond Fund.

If, on the other hand,

- (1) the Bonds shall not be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise), or
- (2) the Bonds shall be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise) and the Company shall have failed to take action to effect such redemption, or
- (3) the Company shall have notified the Trustee of its intent to rebuild, replace, repair and restore the Facility,

the Trustee shall apply the amounts on deposit in the Renewal Fund, after making any transfer to the Rebate Fund as directed pursuant to Section 7.5 of the Tax Regulatory Agreement and Section 5.08, to such rebuilding, replacement, repair and restoration.

(c) If an Event of Default shall exist at the time of the receipt by the Trustee of the Net Proceeds in the Renewal Fund, the Trustee shall promptly request the written direction of the Majority Holders and shall thereupon apply such Net Proceeds, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and Section 5.08, to the rebuilding, replacement, repair and restoration of the Facility, or for deposit in the Redemption Account of the Bond Fund, as directed by the Majority Holders (or if no such direction shall be received within ninety (90) days after request therefor by the Trustee shall have been made, for deposit in the Redemption Account of the Bond Fund).

(d) The Trustee is hereby authorized to apply the amounts in the Renewal Fund to the payment (or reimbursement to the extent the same have been paid by or on behalf of the Company or the Issuer) of the costs required for the rebuilding, replacement, repair and restoration of the Facility upon written instructions from the Company. The Trustee is further authorized and directed to issue its checks for each disbursement from the Renewal Fund upon a requisition submitted to the Trustee and signed by an Authorized Representative of the Company. Each such requisition shall be accompanied by bills, invoices or other evidences or documentation (including, without limitation, a title continuation or other evidence that no mechanics or other liens have been filed) satisfactory to the Trustee. The Trustee shall be entitled to rely on such requisition. The Trustee shall keep and maintain adequate records pertaining to the Renewal Fund and all disbursements therefrom and shall furnish copies of same to the Issuer and the Company upon reasonable written request therefor.

(e) The date of completion of the restoration of the Facility shall be evidenced to the Issuer and the Trustee by a certificate of an Authorized Representative of the Company stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Trustee, has been made, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Company has a good and valid leasehold interest in all property constituting part of the Facility, and all property constituting part of the Facility is subject to the Ground Lease and the Loan Agreement, and the mortgage liens and security interests of the Mortgage, subject to Permitted Encumbrances, (v) the Rebate Amount applicable with respect to the Net Proceeds and the earnings thereon (with a statement as to the determination of the Rebate Amount and a direction to the Trustee of any required transfer to the Rebate Fund), and (vi) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and Section 5.4 of the Loan Agreement, and (z) that no Person other than the Issuer or the Trustee may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if is a temporary certificate of occupancy, the Company will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Loan Agreement and the Ground Lease; (ii) a certificate of an Authorized Representative of the Company that all costs of rebuilding, repair, restoration and reconstruction of the Facility have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Trustee that such costs have been appropriately bonded or that the Company shall have posted a surety or security at least equal to the amount of such costs); and (iii) a search prepared by a title company, or other evidence satisfactory to the Trustee, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances other than those encumbrances consented to by the Issuer and the Trustee.

(f) All earnings on amounts on deposit in the Renewal Fund shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Renewal Fund.

(g) Any surplus remaining in the Renewal Fund after the completion of the rebuilding, replacement, repair and restoration of the Facility shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and Section 5.08, be transferred by the Trustee to the Redemption Account of the Bond Fund.

Section 5.05. Payments into Bond Fund. The Trustee shall promptly deposit the following receipts into the Bond Fund:

(a) The interest accruing on any Series of Bonds from the date of original issuance thereof to the date of delivery, which shall be credited to the Interest Account of the Bond Fund and applied to the payment of interest on such Series of Bonds.

(b) Amounts disbursed from the Capitalized Interest Account of the Project Fund for the payment of interest on the Bonds during the Capitalized Interest Period, which shall be credited to the Interest Account of the Bond Fund and applied to the payment of interest on the Bonds;

(c) Amounts transferred from the Advance Interest Deposit Fund as provided in Section 5.03, which shall be credited to the Interest Account of the Bond Fund and applied to the payment of interest on the Bonds.

(d) Excess or remaining amounts in the Project Fund required to be deposited (subject to any transfer required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Regulatory Agreement and Section 5.08) (i) in the Redemption Account of the Bond Fund pursuant to Section 5.02(f) or the first sentence of Section 5.02(g), which shall be kept segregated from any other moneys within such Account, or (ii) in the Bond Fund pursuant to the second sentence of Section 5.02(g).

(e) Loan payments received by the Trustee pursuant to Section 4.3(a)(i), (ii), (iii), (iv) or (v) of the Loan Agreement, which shall be deposited in and credited, to the extent necessary, first to the Interest Account, second to the Principal Account, and third to the Sinking Fund Installment Account of the Bond Fund.

(f) Advance loan payments received by the Trustee pursuant to Section 4.3(c) of the Loan Agreement, which shall be deposited in and credited to the Redemption Account of the Bond Fund.

(g) Any amounts transferred from the Earnings Fund pursuant to Section 5.07, which shall be deposited in and credited to the Interest Account of the Bond Fund.

(h) The excess amounts referred to in Section 5.06(d), which shall be deposited in and credited to the Interest Account of the Bond Fund.

(i) Any amounts transferred from the Redemption Account pursuant to Section 5.06(h), which shall be deposited to the Interest Account, the Principal Account and the Sinking Fund Installment Account of the Bond Fund, as the case may be and in such order of priority, and applied solely to such purposes.

(j) Amounts in the Renewal Fund required by Section 5.04 or by the Mortgage to be deposited (subject to any transfer required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Regulatory Agreement and Section 5.08) to the Redemption Account of the Bond Fund pursuant to Section 5.04(g).

(k) All other receipts when and if required by the Loan Agreement or by this Indenture or by any other Security Document to be paid into the Bond Fund, which shall be credited (except as provided in Section 8.03) to the Redemption Account of the Bond Fund.

Section 5.06. Application of Bond Fund Moneys. xi) The Trustee shall (i) on each Interest Payment Date pay or cause to be paid out of the Interest Account in the Bond Fund the interest due on the Bonds, and (ii) further pay out of the Interest Account of the Bond Fund any amounts required for the payment of accrued interest upon any purchase or redemption (including any mandatory Sinking Fund Installment redemption) of Bonds.

(b) The Trustee shall on each principal payment date on the Bonds pay or cause to be paid to the respective Paying Agents therefor out of the Principal Account of the Bond Fund, the principal amount, if any, due on the Bonds (other than such as shall be due by mandatory Sinking Fund Installment redemption), upon the presentation and surrender of the requisite Bonds.

(c) There shall be paid from the Sinking Fund Installment Account of the Bond Fund to the Paying Agents on each Sinking Fund Installment payment date in immediately available funds the amounts required for the Sinking Fund Installment due and payable with respect to Bonds which are to be redeemed from Sinking Fund Installments on such date (accrued interest on such Bonds being payable from the Interest Account of the Bond Fund). Such amounts shall be applied by the Paying Agents to the payment of such Sinking Fund Installment when due. The Trustee shall call for redemption, in the manner provided in Article VI, Bonds for which Sinking Fund Installments are applicable in a principal amount equal to the Sinking Fund Installment then due with respect to such Bonds. Such call for redemption shall be made even though at the time of mailing of the notice of such redemption sufficient moneys therefor shall not have been deposited in the Bond Fund.

(d) Amounts in the Redemption Account of the Bond Fund shall be applied, at the written direction of the Company, as promptly as practicable, to the purchase of Bonds at prices not exceeding the Redemption Price thereof applicable on the earliest date upon which the Bonds are next subject to optional redemption, plus accrued interest to the date of redemption. Any amount in the Redemption Account not so applied to the purchase of Bonds by forty-five (45) days prior to the next date on which the Bonds are so redeemable shall be applied to the redemption of Bonds on such redemption date. Any amounts deposited in the Redemption Account and not applied within twelve (12) months of their date of deposit to the purchase or redemption of Bonds (except if held in accordance with Article X) shall be transferred to the Interest Account. Upon the purchase of any Bonds out of advance loan payments as provided in this subsection, or upon the redemption of any Bonds, an amount equal to the principal of such Bonds so purchased or redeemed shall be credited against the next ensuing and future Sinking Fund Installments for such Bonds in chronological order of the due dates of such Sinking Fund Installments until the full principal amount of such Bonds so purchased or redeemed shall have been so credited. The portion of any such Sinking Fund Installment remaining after the deduction of such amounts so credited shall constitute and be deemed to be the amount of such Sinking Fund Installment for the purposes of any calculation thereof under this Indenture. The Bonds to be purchased or redeemed shall be selected by the Trustee in the manner provided in Section 6.02. Amounts in the Redemption Account to be applied to the redemption of Bonds shall be paid to the respective Paying Agents on or before the redemption date and applied by them on such redemption date to the payment of the Redemption Price of the Bonds being redeemed plus interest on such Bonds accrued to the redemption date.

(e) In connection with purchases of Bonds out of the Bond Fund as provided in this Section, the Company shall arrange and the Trustee shall execute such purchases (through brokers or otherwise, and with or without receiving tenders) at the written direction of the Company. The payment of the purchase price shall be made out of the moneys deposited in the Redemption Account of the Bond Fund and the payment of accrued interest shall be made out of moneys deposited in the Interest Account of the Bond Fund.

(f) The Issuer shall receive a credit in respect of Sinking Fund Installments for any Bonds which are subject to mandatory Sinking Fund Installment redemption and which are delivered by the Issuer or the Company to the Trustee on or before the forty-fifth (45th) day next preceding any Sinking Fund Installment payment date and for any Bonds which prior to said date have been purchased or redeemed (otherwise than through the operation of the Sinking Fund Installment Account) and cancelled by the Trustee and not theretofore applied as a credit against any Sinking Fund Installment (whether pursuant to Section 5.06(d) or otherwise). Each Bond so delivered, cancelled or previously purchased or redeemed shall be credited by the Trustee at one hundred per cent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date with respect to Bonds of such Series and maturity and the principal amount of such Bonds to be redeemed by operation of the Sinking Fund Installment Account on the due date of such Sinking Fund Installment shall be reduced accordingly, and any excess over such principal amount shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by application of Sinking Fund Installment payments shall be accordingly reduced.

(g) The Company shall on or before the forty-fifth (45th) day next preceding each Sinking Fund Installment payment date furnish the Trustee with the certificate of an Authorized Representative of the Company indicating whether or not and to what extent the provisions of this Section are to be availed of with respect to such Sinking Fund Installment payment, stating, in the case of the credit provided for, that such credit has not theretofore been applied against any Sinking Fund Installment and confirming that immediately available cash funds for the balance of the next succeeding prescribed Sinking Fund Installment payment will be paid on or prior to the next succeeding Sinking Fund Installment payment date.

(h) Moneys in the Redemption Account of the Bond Fund which are not set aside or deposited for the redemption or purchase of Bonds shall be transferred by the Trustee to the Interest Account to the Principal Account or to the Sinking Fund Installment Account of the Bond Fund.

Section 5.07. Payments into Earnings Fund; Application of Earnings Fund.

xii) All investment income or earnings on amounts held in the Project Fund, the Renewal Fund, the Advance Interest Deposit Fund or any other special fund (other than the Rebate Fund or the Bond Fund) shall be deposited upon receipt by the Trustee into the Earnings Fund. The Trustee shall keep separate accounts of all amounts deposited in the Earnings Fund and by journal entry indicate the Fund source of the income or earnings.

(b) On the first Business Day following each Computation Period, the Trustee shall withdraw from the Earnings Fund and deposit to the Rebate Fund an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of the last day of the Computation Period. In the event of any deficiency, the balance required shall be provided by the Company pursuant to the Tax Regulatory Agreement. Computations of the amounts on deposit in each Fund and of the Rebate Amount shall be furnished to the Trustee by the Company in accordance with the Tax Regulatory Agreement.

The foregoing notwithstanding, the Trustee shall not be required to transfer amounts from the Earnings Fund to the Rebate Fund (and shall instead apply such amounts in the Earnings Fund as provided in the immediately following sentence), if the Company shall deliver to the Trustee a certificate of an Authorized Representative of the Company to the effect that (x) the applicable requirements of a spending exception to rebate has been satisfied as of the relevant semiannual period as set forth in the Tax Regulatory Agreement, (y) the proceeds of the Bonds have been invested in obligations the interest on which is not included in gross income for Federal income tax purposes under Section 103 of the Code or (z) the proceeds of the Bonds have been invested in obligations the Yield on which (calculated as set forth in the Tax Regulatory Agreement) does not exceed the Yield on such Bonds (calculated as set forth in the Tax Regulatory Agreement). Any amounts on deposit in the Earnings Fund following the transfers to the Rebate Fund required by this Section shall be deposited in the Project Fund until the completion of the Project as provided in Section 3.2(f) of the Loan Agreement, and thereafter in the Interest Account of the Bond Fund.

Section 5.08. Payments into Rebate Fund; Application of Rebate Fund.

b) The Rebate Fund and the amounts deposited therein shall not be subject to a security interest, pledge, assignment, lien or charge in favor of the Trustee, any Bondholder or any other Person.

(b) The Trustee, upon the receipt of a certification of the Rebate Amount from an Authorized Representative of the Company, shall deposit in the Rebate Fund within sixty (60) days following each Computation Date, an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of such Computation Date. If there has been delivered to the Trustee a certification of the Rebate Amount in conjunction with the completion of the Project pursuant to Section 3.2(f) of the Loan Agreement or the restoration of the Facility pursuant to Section 5.04, at any time during a Bond Year, the Trustee shall deposit in the Rebate Fund at that time an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated at the completion of the Project or the restoration of the Facility as aforesaid. The amount deposited in the Rebate Fund pursuant to the previous sentences shall be withdrawn from the Earnings Fund. If the amount on deposit in the Rebate Fund following such deposit is less than the Rebate Amount, the Trustee shall promptly deliver a notice stating the amount of such deficiency to the Company. It is provided in the Loan Agreement that promptly upon receipt of such notice, the Company shall deliver the amount necessary to make up such deficiency to the Trustee for deposit in the Rebate Fund.

(c) If within sixty (60) days following any Computation Date, the amount on deposit in the Rebate Fund exceeds the Rebate Amount, the Trustee, upon the receipt of written instructions from an Authorized Representative of the Company, shall withdraw such excess amount and deposit it in the Construction Account of the Project Fund until the completion of the Project as provided in Section 3.2(f) of the Loan Agreement, or, after the completion of the Project, deposit it in the Interest Account of the Bond Fund.

(d) The Trustee, upon the receipt of written instructions from an Authorized Representative of the Company, shall pay to the United States, out of amounts in the Rebate Fund, (i) not less frequently than once each five (5) years after the Closing Date, an amount such that, together with prior amounts paid to the United States, the total paid to the United States is equal to 90% of the Rebate Amount with respect to the Initial Bonds as of the date of such payment and (ii) notwithstanding the provisions of Article X, not later than thirty (30) days after the date on which all Initial Bonds have been paid in full, 100% of the Rebate Amount as of the date of payment.

Section 5.09. Purchase Fund. c) The Purchase Fund shall consist of Accounts for the Initial Bonds to be designated respectively the "Remarketing Account" and the "Company Purchase Account".

(b) The Tender Agent shall promptly deposit the following receipts into the respective Account of the Purchase Fund:

(i) Upon receipt of the proceeds of a remarketing of the Initial Bonds on the date the Initial Bonds are to be purchased, the Tender Agent shall deposit such proceeds in the Remarketing Account for application to the Purchase Price of the Initial Bonds.

(ii) Upon receipt of funds from the Company pursuant to Section 2.03(j)(B), the Tender Agent shall deposit such funds in the Company Purchase Account for application to the Purchase Price of the Initial Bonds. Any amounts deposited in the Company Purchase Account and not needed with respect to the Purchase Price for any Initial Bonds shall be immediately refunded to the Company.

(c) On each Purchase Date, the Tender Agent shall pay to the Holder of each Initial Bond tendered or deemed tendered for purchase pursuant to Section 2.03 on such Purchase Date the Purchase Price of such Initial Bond.

(d) No amounts held in the Purchase Fund shall be invested.

(e) The Tender Agent shall disburse moneys from the Remarketing Account or the Company Purchase Account, as applicable, to pay the Purchase Price of Initial Bonds tendered or deemed tendered for purchase upon surrender of such Initial Bonds.

(f) The funds held by the Tender Agent in the Purchase Fund shall not be subject to the lien of this Indenture. The moneys in the Purchase Fund shall be used solely to pay the Purchase Price of Initial Bonds as aforesaid and may not be used for any other purposes. It shall be the duty of the Tender Agent to hold the moneys in the Purchase Fund, without liability for interest thereon, for the benefit of the Holders of Initial Bonds that have been tendered or deemed tendered for purchase on the Purchase Date, and if sufficient funds to pay the Purchase Price for the Initial Bonds shall be held by the Tender Agent in the Purchase Fund for the benefit of the Holders thereof, each such Holder shall thereafter be restricted exclusively to the Purchase Fund for any claim of whatever nature on such Holder's part under this Indenture or on, or with respect to, such Initial Bonds. Moneys in the Purchase Fund that remain unclaimed two years after the applicable Purchase Date shall, at the request of the Company, and if the Company is not, at the time, to the knowledge of the Tender Agent, in default with respect to any covenant in the Loan Agreement or any other Security Document, be paid to the Company, and the Holders of the Initial Bonds for which the deposit was made shall thereafter be limited to a claim against the Company.

Section 5.10. Transfer to Rebate Fund. The Trustee shall have no obligation under this Indenture to transfer any amounts to the Rebate Fund unless the Trustee shall have received specific written instructions from an Authorized Representative of the Company to make such transfer.

Section 5.11. Investment of Funds and Accounts. i) Amounts in any Fund or Account established under this Indenture may, if and to the extent then permitted by law, be invested only in Qualified Investments provided that any Qualified Investment shall not have a maturity date greater than five (5) years from the date of the making of such investment unless such Qualified Investment may be put at par at any time at the option of the owner thereof. Any investment herein authorized is subject to the condition that no portion of the proceeds derived from the sale of the Bonds shall be used, directly or indirectly, in such manner as to cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. In particular, unexpended Bond proceeds transferred from the Project Fund (or from the Earnings Fund with respect to amounts deposited therein from the Project Fund) to the Redemption Account of the Bond Fund pursuant to Section 5.02(f) may not be invested at a Yield which is greater than the Yield on the applicable Series of Bonds. Such investments shall be made by the Trustee only at the written request of an Authorized Representative of the Company; and if such investment is to be in one or more certificates of deposit, investment agreements or guaranteed investment contracts, then such written request shall include written assurance to the effect that such investment complies with the Tax Regulatory Agreement. Any investment hereunder shall be made in accordance with the Tax Regulatory Agreement, and the Company shall so certify to the Trustee with each such investment direction as referred to below. Such investments shall mature in such amounts and at such times as may be necessary to provide funds when needed to make payments from the applicable Fund. Net income or gain received and collected from such investments shall be credited and losses charged to (i) the Rebate Fund with respect to the investment of amounts held in the Rebate Fund, (ii) the Bond Fund with respect to the investment of amounts held in the Bond Fund, and (iii) the Earnings Fund with respect to the investment of amounts held in any other Fund.

(b) At the written request of an Authorized Representative of the Company no sooner than ten (10) days prior to each Loan Payment Date under the Loan Agreement, the Trustee shall notify the Company of the amount of such net investment income or gain received and collected subsequent to the last such loan payment and the amount then available in the various Accounts of the Bond Fund.

(c) Upon the written direction of an Authorized Representative of the Company, the Trustee shall sell at the best price reasonably obtainable, or present for redemption or exchange, any obligations in which moneys shall have been invested to the extent necessary to provide cash in the respective Funds or Accounts, to make any payments required to be made therefrom, or to facilitate the transfers of moneys or securities between various Funds and Accounts as may be required from time to time pursuant to the provisions of this Article. The Trustee shall not be liable for losses incurred as a result of actions taken in good faith in accordance with this Section 5.11(c). As soon as practicable after any such sale, redemption or exchange, the Trustee shall give notice thereof to the Issuer and the Company.

(d) Neither the Trustee nor the Issuer shall be liable for any loss arising from, or any depreciation in the value of any obligations in which moneys of the Funds and Accounts shall be invested in accordance with this Indenture. The investments authorized by this Section 5.09 shall at all times be subject to the provisions of applicable law, as amended from time to time.

(e) In computing the amount in any Fund or Account, obligations purchased as an investment of moneys therein shall be valued at fair market value as determined by the Trustee one month prior to each Interest Payment Date.

The fair market value of Qualified Investments shall be determined as follows:

(i) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*), the average bid and asked prices for such investments so published on or most recently prior to such time of determination;

(ii) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*, the average bid price at such nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or as quoted in the Interactive Data Service; and

(iii) as to certificates of deposit and bankers acceptances and other investments, the face amount thereof, plus accrued interest.

If more than one provision of this definition of "fair market value" shall apply at any time to any particular investment, the fair market value thereof at such time shall be determined in accordance with the provision establishing the lowest value for such investment.

Section 5.12. Application of Moneys in Certain Funds for Retirement of Bonds. Notwithstanding any other provisions of this Indenture, if on any Interest Payment Date or redemption date the amounts held in the Funds established under this Indenture (other than the Purchase Fund, the Earnings Fund and the Rebate Fund) are sufficient to pay one hundred percent (100%) of the principal or Redemption Price, as the case may be, of all Outstanding Bonds and the interest accruing on such Bonds to the next date on which such Bonds are redeemable or payable, as the case may be, whichever is earlier, the Trustee shall so notify the Issuer and the Company. Upon receipt of written instructions from an Authorized Representative of the Company directing such redemption, the Trustee shall proceed to redeem all such Outstanding Bonds in the manner provided for redemption of such Bonds by this Indenture.

Section 5.13. Repayment to the Company from the Funds. After payment in full of the Bonds (in accordance with Article X) and the payment of all fees, charges and expenses of the Issuer, the Trustee, the Tender Agent, the Remarketing Agent, the Bond Registrar and the Paying Agents and all other amounts required to be paid hereunder and under each of the Security Documents, and the payment of any amounts which the Trustee is directed to rebate to the Federal government pursuant to this Indenture and the Tax Regulatory Agreement, all amounts remaining in any Fund shall be paid to the Company upon the expiration or sooner termination of the term of the Loan Agreement as provided in Section 4.3(g) of the Loan Agreement.

Section 5.14. Non-presentment of Bonds. In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, and funds sufficient to pay any such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, together with interest to the date on which principal is due, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to pay such funds to the Person entitled thereto or if the Person is not known to the Trustee, to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond. Such amounts so held shall, pending payment to the Holder of such Bond, (y) be subject to any rebate requirement as set forth in the Tax Regulatory Agreement or this Indenture, and (z) shall be uninvested, or, if invested, invested or re-invested only in Government Obligations maturing within thirty (30) days. Funds remaining with the Trustee as above and unclaimed for the earlier of two (2) years or one month less than the applicable statutory escheat period shall be paid to the Company. After the payment of such unclaimed moneys to the Company, the Holder of such Bond shall thereafter look only to the Company for the payment thereof, and all obligations of the Trustee or such Paying Agent with respect to such moneys shall thereupon cease.

ARTICLE VI

REDEMPTION OF BONDS

Section 6.01. Privilege of Redemption and Redemption Price. Bonds or portions thereof subject to redemption prior to maturity shall be redeemable, upon mailed notice as provided in this Article, at the times, at the Redemption Prices and upon such terms in addition to and consistent with the terms contained in this Article as shall be specified in this Indenture and in said Bonds.

Section 6.02. Selection of Bonds to be Redeemed. In the event of redemption of less than all the Outstanding Bonds of the same Series and maturity, the particular Bonds or portions thereof to be redeemed shall be selected by the Trustee in such manner as the Trustee in its discretion may deem fair, except that (i) Bonds of a Series to be redeemed from Sinking Fund Installments shall be redeemed by lot, and (ii) to the extent practicable, the Trustee shall select Bonds of a Series for redemption such that no Bond of such Series shall be of a denomination of less than the Authorized Denomination for such Series of Bonds. In the event of redemption of less than all the Outstanding Bonds of the same Series stated to mature on different dates, the principal amount of such Series of Bonds to be redeemed shall be applied in inverse order of maturity of the Outstanding Series of Bonds to be redeemed and by lot within a maturity. The portion of Bonds of any Series to be redeemed in part shall be in the principal amount of the minimum Authorized Denomination thereof or some integral multiple thereof and, in selecting Bonds of a particular Series for redemption, the Trustee shall treat each such Bond as representing that number of Bonds of such Series which is obtained by dividing the principal amount of such registered Bond by the minimum Authorized Denomination thereof (referred to below as a "unit") then issuable rounded down to the integral multiple of such minimum Authorized Denomination. If it is determined that one or more, but not all, of the units of principal amount represented by any such Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Holder of such Bond shall forthwith surrender such Bond to the Trustee for (a) payment to such Holder of the Redemption Price of the unit or units of principal amount called for redemption and (b) delivery to such Holder of a new Bond or Bonds of such Series in the aggregate unpaid principal amount of the unredeemed balance of the principal amount of such Bond. New Bonds of the same Series and maturity representing the unredeemed balance of the principal amount of such Bond shall be issued to the registered Holder thereof, without charge therefor. If the Holder of any such Bond of a denomination greater than a unit shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the unit or units of principal amount called for redemption (and to that extent only).

Section 6.03. Notice of Redemption. When redemption of any Bonds is requested or required pursuant to this Indenture, the Trustee shall give notice of such redemption in the name of the Issuer, specifying the name of the Series, CUSIP number, Bond numbers, the date of original issue of such Series, the date of mailing of the notice of redemption, maturities, interest rates and principal amounts of the Bonds or portions thereof to be redeemed, the redemption date, the Redemption Price, and the place or places where amounts due upon such redemption will be payable (including the name, address and telephone number of a contact person at the Trustee) and specifying the principal amounts of the Bonds or portions thereof to be payable and, if less than all of the Bonds of any maturity are to be redeemed, the numbers of such Bonds or portions thereof to be so redeemed. Such notice shall further state that on such date there shall become due and payable upon each Bond or portion thereof to be redeemed the Redemption Price thereof together with interest accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable. Such notice may set forth any additional information relating to such redemption. The Trustee, in the name and on behalf of the Issuer, (i) shall mail a copy of such notice by first class mail, postage prepaid, not more than sixty (60) nor less than thirty (30) days prior to the date fixed for redemption, to the registered owners of any Bonds which are to be redeemed, at their last addresses, if any, appearing upon the registration books, but any defect in such notice shall not affect the validity of the proceedings for the redemption of such Series of Bonds with respect to which proper mailing was effected; and (ii) cause notice of such redemption to be sent to at least two (2) of the national information services that disseminate redemption notices. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. In the event of a postal strike, the Trustee shall give notice by other appropriate means selected by the Trustee in its discretion. If any Bond shall not be presented for payment of the Redemption Price within sixty (60) days of the redemption date, the Trustee shall mail a second notice of redemption to such Holder by first class mail, postage prepaid. Any amounts held by the Trustee due to non-presentment of Bonds for payments on or after any redemption date shall be retained by the Trustee for a period of at least one year after the final maturity date of such Bonds. Further, if any Holders of Bonds shall constitute registered depositories, the notice of redemption described in the first sentence of this Section 6.03 shall be mailed to such Holders at least two (2) days prior to the mailing of such notice to all Holders.

If notice of redemption shall have been given as aforesaid, the Bonds of such Series called for redemption shall become due and payable on the redemption date, provided, however, that with respect to any optional redemption of the Bonds of a Series, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds of such Series to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem the Bonds of such Series. In the event that such notice of optional redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. If a notice of optional redemption shall be unconditional, or if the conditions of a conditional notice of optional redemption shall have been satisfied, then upon presentation and surrender of the Bonds of such Series so called for redemption at the place or places of payment, such Series of Bonds shall be redeemed.

Under no circumstances shall the Trustee be required to expend any of its own funds for any purpose for which funds are to be disbursed under this Indenture.

So long as the Securities Depository is effecting book entry transfers of the Bonds, the Trustee shall provide the notices specified above only to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Bond (having been mailed notice from the Trustee, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

Section 6.04. Payment of Redeemed Bonds. ii) Notice having been given in the manner provided in Section 6.03, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption dates so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date. If, on the redemption date, moneys for the redemption of all the Bonds or portions thereof to be redeemed, together with interest to the redemption date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date, (i) interest on the Bonds or portions thereof so called for redemption shall cease to accrue and become payable, (ii) the Bonds or portions thereof so called for redemption shall cease to be entitled to any lien, benefit or security under this Indenture, and (iii) the Holders of the Bonds or portions thereof so called for redemption shall have no rights in respect thereof, except to receive payment of the Redemption Price together with interest accrued to the redemption date. If said moneys shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

(b) Payment of the Redemption Price plus interest accrued to the redemption date shall be made to or upon the order of the registered owner only upon presentation of such Bonds for cancellation and exchange as provided in Section 6.05; provided, however, that any Holder of at least \$1,000,000 in original aggregate principal amount of the Initial Bonds may, by written request to the Trustee no later than five (5) days prior to the date of redemption, direct that payments of Redemption Price and accrued interest to the date of redemption be made by wire transfer as soon as practicable after tender of the Bonds in Federal funds at such wire transfer address as the owner shall specify to the Trustee in such written request.

Section 6.05. Cancellation of Redeemed Bonds. iii) All Bonds redeemed in full under the provisions of this Article, shall forthwith be cancelled and returned to the Issuer and no Bonds shall be executed, authenticated or issued hereunder in exchange or substitution therefor, or for or in respect of any paid portion of a Bond.

(b) If there shall be drawn for redemption less than all of a Bond, as described in Section 6.02, the Issuer shall execute and the Trustee shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, a Bond or Bonds of like Series and maturity in any of the authorized denominations.

Section 6.06. No Partial Redemption After Default. Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing an Event of Default hereunder, there shall be no redemption of less than all of the Bonds Outstanding.

ARTICLE VII

PARTICULAR COVENANTS

Section 7.01. Payment of Principal and Interest. The Issuer covenants that it will from the sources herein contemplated promptly pay or cause to be paid the principal of, Sinking Fund Installments for, Purchase Price, and interest on the Bonds, and the Redemption Price, if any, together with interest accrued thereon to the date of redemption, at the place, on the dates and in the manner provided in this Indenture and in the Bonds according to the true intent and meaning thereof.

Section 7.02. Performance of Covenants; Authority. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto. The Issuer covenants that it is duly authorized under the Constitution and laws of the State, including particularly its Organizational Documents, to issue the Bonds authorized hereby and to execute this Indenture, to make the Loan to the Company pursuant to the Loan Agreement and the Promissory Note, to assign the Loan Agreement and the Promissory Note, and to pledge the loan payments, revenues and receipts hereby pledged in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the Holders thereof are and will be the valid and enforceable special limited revenue obligations of the Issuer according to the import thereof.

Section 7.03. Books and Records; Certificate as to Defaults. The Issuer and the Trustee each covenant and agree that, so long as any of the Bonds shall remain Outstanding, proper books of record and account will be kept showing complete and correct entries of all transactions relating to the Project and the Facility, and that the Holders of any of the Bonds shall have the right at all reasonable times to inspect all records, accounts and data relating thereto. In this regard, so long as the Loan Agreement is in full force and effect, records furnished by the Issuer and the Company to, or kept by, the Trustee in connection with its duties as such shall be deemed to be in compliance with the Issuer's obligations under this Section 7.03. Within thirty (30) days after receiving the certificate from the Company as provided in Section 7.24(b) of the Loan Agreement, the Trustee shall render to the Issuer a statement that moneys received by the Trustee pursuant to the Loan Agreement were applied by it to the payment of the principal or Redemption Price, if any, of, Purchase Price, Sinking Fund Installments for, and interest on the Bonds, at the place, on the dates and in the manner provided in this Indenture and that the Trustee has no knowledge of any defaults under this Indenture or the Loan Agreement or any other Security Document or specifying the particulars of such defaults which may exist.

Upon reasonable written request, the Trustee shall make available to the Company for its inspection during normal business hours, its records with respect to the Project and the Facility.

The Trustee agrees that, upon the written request of the Issuer or the Company, it will, not more than twice in each calendar year, provide a statement to the requesting party setting forth the principal amount of Bonds Outstanding as of the date of such statement.

Section 7.04. Loan Agreement. Reference is hereby made to the Loan Agreement for a detailed statement of the terms and conditions thereof and for a statement of the rights and obligations of the parties thereunder. All covenants and obligations of the Company under the Loan Agreement shall be enforceable either by the Issuer or by the Trustee, to whom, in its own name or in the name of the Issuer, is hereby granted the right, to the extent provided therefor in this Section 7.04 and subject to the provisions of Section 9.02, to enforce all rights of the Issuer and all obligations of the Company under the Loan Agreement, whether or not the Issuer is enforcing such rights and obligations. The Trustee shall take such action in respect of any matter as is provided to be taken by it in the Loan Agreement (including, without limitation, Sections 3.5, 5.3 and 7.9 thereof) upon compliance or noncompliance by the Company and the Issuer with the provisions of the Loan Agreement relating to the same.

Section 7.05. Creation of Liens; Indebtedness. It is the intention of the Issuer and the Trustee that the Mortgage is and will continue to be a mortgage lien upon the Company's leasehold interest under the Ground Lease in the Facility (subject only to Permitted Encumbrances). The Issuer shall not create or suffer to be created, or incur or issue any evidences of indebtedness secured by, any lien or charge upon or pledge of the Trust Estate, except the lien, charge and pledge created by this Indenture and the other Security Documents.

Section 7.06. Ownership; Instruments of Further Assurance. The Trustee on behalf of the Company, subject to Section 7.04 and upon the written direction of any Bondholder, shall defend the interest of the Company in the Facility and every part thereof for the benefit of the Holders of the Bonds, to the extent permitted by law, against the claims and demands of all Persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular the property described herein and in the remainder of the Trust Estate, subject to the liens, pledge and security interests of this Indenture and of the other Security Documents, and the loan payments, revenues and receipts pledged hereby to the payment of the principal or Redemption Price, if any, of, Sinking Fund Installments for, Purchase Price, and interest on the Bonds. Any and all property hereafter acquired which is of the kind or nature herein provided to be and become subject to the lien, pledge and security interest hereof (other than the Company's Property) and of the other Security Documents shall ipso facto, and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the lien, pledge and security interest of this Indenture and of the other Security Documents as fully and completely as though specifically described herein and therein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer heretofore made by this Section 7.06.

Section 7.07. Security Agreement; Recording and Filing. d) This Indenture constitutes a “security agreement” within the meaning of the New York State Uniform Commercial Code-Secured Transactions. The Issuer shall cause this Indenture and all Supplemental Indentures to be recorded (at the sole cost and expense of the Company) as a lien encumbering an interest in real property through delivery hereof and thereof to a title insurance company engaged by the Company for due recordation, in the appropriate offices of the Register of The City of New York, or in such other offices as may be at the time provided by law as the proper place for the recordation thereof. In addition, the security interest of the Trustee, as created by this Indenture, in the rights and other intangible interests described herein, shall be perfected by the filing of a financing statement at the direction of the Issuer in the office of the Secretary of State of the State in the City of Albany, New York, which financing statement shall be in accordance with the New York State Uniform Commercial Code-Secured Transactions. Subsequent to the foregoing recordation and filings, this Indenture shall be re-recorded and re-indexed, and financing and continuation statements shall be filed and re-filed, by the Trustee whenever in the Opinion of Counsel to the Company (which opinion shall be reasonably acceptable to and addressed to the Trustee) such action is necessary to preserve the lien and security interest hereof. Any such re-recordings, re-indexings, filings or re-filings shall be prepared by the Company and delivered to the Trustee (if electronic filing is not elected by the Issuer) on a timely basis accompanied by any fees or requisite charges and the Opinion of Counsel referred to above. The Trustee will thereupon effect any such filings and re-filings of financing and continuation statements in said office of the Secretary of State, and promptly notify the Company of any such filings.

(b) The Issuer and the Trustee acknowledge that, as of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a “public-financed transaction” is effective for a period of thirty (30) years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least twenty (20) years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

(c) The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Initial Bonds, and because the Initial Bonds are municipal securities with a term that is at least twenty (20) years in duration, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statements in order to preserve the liens and security interests that they create for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

Subsequent to the foregoing recordation and filings, if in the Opinion of Counsel to the Company (described hereinbelow), to preserve (after the thirtieth (30th) anniversary of the Closing Date) the lien and security interest of this Indenture, it is necessary to re-record and/or re-index documents, re-file financing statements and/or file continuation statements and/or take any other actions (individually or collectively, the “**Continuation Action(s)**”), then, the Company in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Trustee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Trustee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Trustee written certification (upon which the Trustee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause “(i)” and the others in the manner described in clause “(ii)”; and (B) deliver or cause to be delivered to the Issuer and the Trustee the Opinion of Counsel to the Company as described below. The Trustee may conclusively rely upon (y) when applicable, the certification referred to in clause “(A)(ii),” and (z) in all instances, the Opinion of Counsel to the Company. In the event the Company chooses to have the Trustee perform all or some of the Continuation Actions, as provided in clause “(A)(i)” hereinabove, the Trustee shall reasonably promptly perform such Continuation Actions at the Company’s sole expense. The Company shall perform the obligations described hereinabove in clauses “(A)” and “(B)” no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause “(i)”) on which a Continuation Action is to be taken to preserve the lien and security interest of this Indenture.

The Opinion of Counsel to the Company shall be addressed to the Company, the Issuer and the Trustee. Counsel shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year period thereafter through the term of the Initial Bonds, and/or (ii) the date of any required Continuation Action not covered by clause “(i),” in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Company, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Trustee with instruments and papers prepared by the Company, or (ii) the Company through electronic filing, or (iii) the Trustee as to some Continuation Actions, and the Company as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Company, the SubCompany, the Issuer and the Trustee then requisite to the maintenance of the perfection of the security interest of the Trustee in and to all property and interests which by the terms of this Indenture are to be subjected to the lien and security interest of this Indenture.

(d) Any filings with respect to Uniform Commercial Code financing statements may be made electronically, and the Issuer shall have the right to designate a company (which shall be reasonably acceptable to the Trustee) to facilitate the filing of Uniform Commercial Code financing statements.

(e) The Trustee acknowledges and agrees (on behalf of itself and the Bondholders) that neither the Issuer, nor any of its directors, members, officers, employees, servants, agents, persons under its control or supervision, or attorneys (including Nationally Recognized Bond Counsel to the Issuer), shall have any responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section, or the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

(f) All costs (including reasonable attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Company.

Section 7.08. **Issuer Tax Covenant.** The Issuer covenants that it shall not take any action within its control, nor refrain from taking any action reasonably requested by the Company or the Trustee, that would cause the interest on the Bonds to become includable in gross income for Federal income tax purposes; provided, however, the breach of this covenant shall not result in any pecuniary liability of the Issuer and the only remedy to which the Issuer shall be subject shall be specific performance.

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES OF BONDHOLDERS

Section 8.01. **Events of Default; Acceleration of Due Date.** i) Each of the following events is hereby defined as and shall constitute an "Event of Default":

(1) Failure in the payment of the interest on any Bond when the same shall become due and payable;

(2) Failure in the payment of the principal or redemption premium, if any, of, or Sinking Fund Installment for, any Bonds, when the same shall become due and payable, whether at the stated maturity thereof or upon proceedings for redemption thereof or otherwise, or interest accrued thereon to the date of redemption after notice of redemption therefor or otherwise;

(3) Failure to duly and punctually pay the Purchase Price of any Initial Bond tendered or deemed tendered for purchase pursuant to Section 2.03;

(4) Failure of the Issuer to observe or perform any covenant, condition or agreement in the Bonds or hereunder on its part to be performed (except as set forth in Section 8.01(a)(1), (2) or (3) and (A) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Issuer and the Company specifying the nature of same from the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding, or (B) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Issuer or the Company fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice; or

(5) The occurrence of an "Event of Default" under the Loan Agreement or any other Security Document.

(b) Upon the happening and continuance of any Event of Default, unless the principal of all the Bonds shall have already become due and payable, either the Trustee (by notice in writing to the Issuer and the Company) or the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding (by notice in writing to the Issuer, the Company and the Trustee) may declare the principal or Redemption Price, if any, of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything in this Indenture or in any of the Bonds contained to the contrary notwithstanding.

(c) If there shall occur an Event of Default under Section 8.1(d) or (e) of the Loan Agreement, the unpaid principal of all the Bonds (and all principal installments of loan payments under the Loan Agreement) and the interest accrued thereon shall be due and payable immediately without the necessity of any declaration or other action by the Trustee or any other Person.

(d) The right of the Trustee or of the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding to make any such declaration as aforesaid, however, is subject to the condition that if, at any time before such declaration, all overdue installments of principal of and interest on all of the Bonds which shall have matured by their terms and the unpaid Redemption Price of the Bonds or principal portions thereof to be redeemed has been paid by or for the account of the Issuer, and all other Events of Default have been otherwise remedied, and the reasonable and proper charges, expenses and liabilities of the Trustee, shall either be paid by or for the account of the Issuer or provision satisfactory to the Trustee shall be made for such payment and the Company's interest in the Facility shall not have been sold or relet or otherwise encumbered, and all defaults have been otherwise remedied as provided in this Article VIII, then and in every such case any such default and its consequences shall ipso facto be deemed to be annulled, but no such annulment shall extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

(e) Pursuant to the Loan Agreement, the Issuer has granted to the Company full authority for the account of the Issuer to perform any covenant or obligation the non-performance of which is alleged in any notice received by the Company to constitute a default hereunder, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts with power of substitution. The Trustee agrees to accept such performance by the Company as performance by the Issuer.

Section 8.02. Enforcement of Remedies. ii) Upon the occurrence and continuance of any Event of Default, then and in every case the Trustee may proceed, and upon the written request of the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding shall proceed, to protect and enforce its rights and the rights of the Bondholders under the Act, the Bonds, the Loan Agreement, this Indenture and under any other Security Document forthwith by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, whether for the specific performance of any covenant or agreement contained in this Indenture or in any other Security Document or in aid of the execution of any power granted in this Indenture or in any other Security Document or in the Act or for the enforcement of any legal or equitable rights or remedies as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights or to perform any of its duties under this Indenture or under any other Security Document. In addition to any rights or remedies available to the Trustee hereunder or elsewhere, upon the occurrence and continuance of an Event of Default the Trustee may take such action, without notice or demand, as it deems advisable.

(b) In the enforcement of any right or remedy under this Indenture, under any other Security Document or under the Act, the Trustee shall be entitled to sue for, enforce payment on and receive any or all amounts then or during any default becoming, and any time remaining, due from the Issuer, for principal, interest, Sinking Fund Installments, Purchase Price, Redemption Price, or otherwise, under any of the provisions of this Indenture, of any other Security Document or of the Bonds, and unpaid, with interest on overdue payments at the rate or rates of interest specified in the Bonds, together with any and all costs and expenses of collection and of all proceedings under this Indenture, under any such other Security Document and under the Bonds, without prejudice to any other right or remedy of the Trustee or of the Bondholders, and to recover and enforce judgment or decree against the Issuer, but solely as provided in this Indenture and in the Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect (but solely from the moneys in the Bond Fund and other moneys available therefor to the extent provided in this Indenture) in any manner provided by law, the moneys adjudged or decreed to be payable. The Trustee shall file proof of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Bondholders allowed in any judicial proceedings relative to the Company, the Parent or the Issuer or their creditors or property.

(c) Regardless of the occurrence of an Event of Default, the Trustee, if requested in writing by the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding, and furnished with reasonable security and indemnity, shall institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Indenture or under any other Security Document by any acts which may be unlawful or in violation of this Indenture or of such other Security Document or of any resolution authorizing any Bonds, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders; provided, that such request shall not be otherwise than in accordance with the provisions of law and of this Indenture and shall not be unduly prejudicial to the interests of the Holders of the Bonds not making such request.

Section 8.03. Application of Revenues and Other Moneys After Default.

iii) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article or under any other Security Document shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, be deposited in the Bond Fund and all moneys so deposited and available for payment of the Bonds shall be applied, subject to Section 9.04, as follows:

(A) Unless the principal of all of the Bonds shall have become or have been declared due and payable,

First -To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

Second -To the payment to the Persons entitled thereto of the unpaid principal or Redemption Price, if any, of any of the Bonds or principal installments which shall have become due (other than Bonds or principal installments called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds, at the rate or rates expressed thereon, from the respective dates upon which they become due and, if the amount available shall not be sufficient to pay in full Bonds or principal installments due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(B) If the principal of all the Bonds shall have become or have been declared due and payable, to the payment to the Bondholders of the principal and interest (at the rate or rates expressed in the Bonds) then due and unpaid upon the Bonds and if applicable to the Redemption Price of the Bonds without preference or priority of principal over interest or of interest over principal, Sinking Fund Installments, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

(C) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article VIII, then, subject to the provisions of Section 8.03(a)(B) which shall be applicable in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of Section 8.03(a)(A).

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue; provided, however, that if the principal or Redemption Price of the Bonds Outstanding, together with accrued interest thereon, shall have been declared to be due and payable pursuant to Section 8.01, such date of declaration shall be the date from which interest shall cease to accrue. The Trustee shall give such written notice to all Bondholders as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 8.04. Actions by Trustee. All rights of actions under this Indenture, under any other Security Document or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall, subject to the provisions of Section 8.03, be for the equal benefit of the Holders of the Outstanding Bonds.< /font>

Section 8.05. Majority Holders Control Proceedings. Anything in this Indenture to the contrary notwithstanding, the Majority Holders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 8.06. Individual Bondholder Action Restricted. iv) No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provisions of this Indenture or of any other Security Document or the execution of any trust under this Indenture or for any remedy under this Indenture or under any other Security Document, unless such Holder shall have previously given to the Trustee written notice of the occurrence of an Event of Default as provided in this Article, and the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, and shall have offered it reasonable opportunity either to exercise the powers granted in this Indenture or in such other Security Document or by the Act or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by his, its or their action to affect, disturb or prejudice the pledge created by this Indenture, or to enforce any right under this Indenture except in the manner herein provided; and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner provided in this Indenture and, subject to the provisions of Section 8.03, be for the equal benefit of all Holders of the Outstanding Bonds.

(b) Nothing in this Indenture, in any other Security Document or in the Bonds contained shall affect or impair the right of any Bondholder to payment of the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on each of the Bonds to the respective Holders thereof at the time, place, from the source and in the manner herein and in said Bonds expressed.

Section 8.07. Effect of Discontinuance of Proceedings. In case any proceedings taken by the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Company, the Issuer, the Trustee and the Bondholders shall be restored, respectively, to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Trustee shall continue as in effect prior to the commencement of such proceedings.

Section 8.08. Remedies Not Exclusive. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given under this Indenture or now or hereafter existing at law or in equity or by statute.

Section 8.09. Delay or Omission. No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power arising upon any default shall impair any right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Trustee and the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Bondholders.

Section 8.10. Notice of Default. The Trustee shall promptly mail to the Issuer, to registered Holders of Bonds and to the Company by first class mail, postage prepaid, written notice of the occurrence of any Event of Default. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail any notice required by this Section.

Section 8.11. Waivers of Default. The Trustee shall waive any default hereunder and its consequences and rescind any declaration of acceleration only upon the written request of the Majority Holders; provided, however, that there shall not be waived without the consent of the Holders of all the Bonds Outstanding (a) any default in the payment of the principal of any Outstanding Bonds at the date specified therein or (b) any default in the payment when due of the interest on any such Bonds, unless, prior to such waiver, all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds on overdue installments of interest in respect of which such default shall have occurred, and all arrears of payment of principal when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case the Company, the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

ARTICLE IX

TRUSTEE, BOND REGISTRAR, PAYING AGENTS, TENDER AGENT
AND REMARKETING AGENT

Section 9.01. Appointment and Acceptance of Duties of Trustee. The entity identified as the Trustee on the cover page hereof is hereby appointed as Trustee. The Trustee shall signify its acceptance of the duties and obligations of the Trustee hereunder and under each Security Document by executing this Indenture and agrees to perform said trusts as a corporate trustee ordinarily would under a corporate mortgage subject to the express terms and conditions herein. All provisions of this Article IX shall be construed as extending to and including all the rights, duties and obligations imposed upon the Trustee under the Loan Agreement and under any other Security Document to which it shall be a party as fully for all intents and purposes as if this Article IX were contained in the Loan Agreement and each such other Security Document.

Section 9.02. Indemnity of Trustee. The Trustee shall be under no obligation to institute any suit, or to take any remedial or legal action under this Indenture or under or pursuant to any other Security Document or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers or fulfillment of any extraordinary duties under this Indenture, or under any other Security Document, until it shall be indemnified to its satisfaction against any and all reasonable compensation for services, costs and expenses, outlays, and counsel fees and other disbursements, and against all liability not due to its willful misconduct or gross negligence.

Section 9.03. Responsibilities of Trustee. v) The Trustee shall have no responsibility in respect of the validity or sufficiency of this Indenture or of any other Security Document or the security provided hereunder or thereunder or the due execution of this Indenture by the Issuer, or the due execution of any other Security Document by any party (other than the Trustee) thereto, or in respect of the title or the value of the Facility, or in respect of the validity of the Bonds authenticated and delivered by the Trustee in accordance with this Indenture or to see to the recording or filing of this Indenture or any other document or instrument whatsoever except as otherwise provided in Section 7.07. The recitals, statements and representations contained in this Indenture and in the Bonds shall be taken and be construed as made by and on the part of the Issuer and not by the Trustee, and the Trustee does not assume any responsibility for the correctness of the same; provided, however, that the Trustee shall be responsible for its representation contained in its certificate on the Bonds and for its responsibility as to filing, re-filing, recording and re-recording as contained in Section 7.07.

(b) The Trustee shall not be liable or responsible because of the failure of the Issuer to perform any act required of it by this Indenture or by any other Security Document or because of the loss of any moneys arising through the insolvency or the act or default or omission of any depository other than itself in which such moneys shall have been deposited under this Indenture or the Tax Regulatory Agreement. The Trustee shall not be responsible for the application of any of the proceeds of the Bonds or any other moneys deposited with it and paid out, invested, withdrawn or transferred in accordance with this Indenture or the Tax Regulatory Agreement or for any loss resulting from any such investment. The Trustee shall not be liable in connection with the performance of its duties under the Loan Agreement, under this Indenture or under any other Security Document except for its own willful misconduct or gross negligence. The immunities and exemptions from liability of the Trustee shall extend to its directors, officers, employees, agents and servants and persons under the Trustee's control or supervision.

(c) The Trustee, prior to the occurrence of an Event of Default and after curing of all Events of Default which may have occurred, if any, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise as a prudent man would exercise under the circumstances in the conduct of his own affairs. The Trustee shall not be charged with knowledge of the occurrence of an Event of Default unless, (i) the Trustee has not received any certificate, financial statement, insurance notice or other document regularly required to be delivered to the Trustee under the Loan Agreement or any other Security Document, (ii) the Trustee has not received payment of any amount required to be remitted to the Trustee under the Loan Agreement or any other Security Document, (iii) a Responsible Officer of the Trustee has actual knowledge thereof, or (iv) the Trustee has received written notice thereof from the Company, the Issuer or any Bondholder. The Trustee shall not be charged with the knowledge of a Determination of Taxability unless the Trustee has received written notice thereof from the Internal Revenue Service, the Company, the Issuer or any Bondholder or former Bondholder.

(d) The Trustee shall not be liable or responsible for the failure of the Company to effect or maintain insurance on the Facility as provided in the Ground Lease, the Mortgage, the Loan Agreement or the Bond Guaranty Agreement nor shall it be responsible for any loss by reason of want or insufficiency in insurance or by reason of the failure of any insurer in which the insurance is carried to pay the full amount of any loss against which it may have insured the Issuer, the Company, the Trustee or any other Person.

(e) The Trustee shall execute and cause to be filed those continuation statements, any additional financing statements and all other instruments required by it by Section 7.07 at the expense of the Company.

(f) The Trustee shall on the same date as it shall render the statement required of it by Section 7.03, make annual reports to the Issuer and the Company of all moneys received and expended during the preceding year by it under this Indenture and of any Event of Default known to it under the Loan Agreement or this Indenture or under any other Security Document.

(g) With respect to the Tax Regulatory Agreement, the Trustee shall not be required to make any payment of a Rebate Amount or any transfer of funds or take any other action required to be taken thereunder except upon the receipt of a written certificate of direction of an Authorized Representative of the Company delivered to the Trustee in accordance with the terms of the Tax Regulatory Agreement. Notwithstanding any provision of the Tax Regulatory Agreement or any other Security Document, nothing in the Tax Regulatory Agreement, either expressed or implied, shall be deemed to impose upon the Trustee any responsibility for the legal sufficiency of the Tax Regulatory Agreement to effect compliance with the Code nor any duty to independently review or verify any information or calculation furnished to the Trustee by the Company.

Section 9.04. Compensation of Trustee, Bond Registrar, Paying Agents, Tender Agent and Remarketing Agent. The Trustee, the Bond Registrar, the Paying Agents, the Tender Agent and the Remarketing Agent shall be entitled to receive and collect from the Company as provided in the Loan Agreement payment or reimbursement for reasonable fees for services rendered hereunder and under each other Security Document and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee, the Bond Registrar, the Paying Agents, the Tender Agent or the Remarketing Agent in connection therewith. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first right of payment prior to payment on account of the principal of or interest on any Bonds, upon the revenues (but not including any amounts held by the Trustee under Section 5.12, 6.04 or Article X) for the foregoing advances, fees, costs and expenses incurred.

Section 9.05. Evidence on Which Trustee May Act. vi) In case at any time it shall be necessary or desirable for the Trustee to make any investigation respecting any fact preparatory to taking or not taking any action, or doing or not doing anything, as such Trustee, and in any case in which this Indenture provides for permitting or taking any action, it may rely upon any certificate required or permitted to be filed with it under the provisions of this Indenture, and any such certificate shall be evidence of such fact to protect it in any action that it may or may not take, or in respect of anything it may or may not do, in good faith, by reason of the supposed existence of such fact.

(b) The Trustee may conclusively rely and shall be fully protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Indenture, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or person, or to have been prepared and furnished pursuant to any of the provisions of this Indenture, or, at the sole cost and expense of the Company, and when determined necessary in the reasonable discretion of the Trustee, upon the written opinion of any attorney (who may be an attorney for the Issuer or an employee of the Company or the Parent), engineer, appraiser, architect or accountant believed by the Trustee to be qualified in relation to the subject matter.

Section 9.06. Trustee, Paying Agents, Tender Agent and Remarketing Agent May Deal in Bonds. Any national banking association, bank or trust company acting as a Trustee, Paying Agent, Tender Agent or Remarketing Agent, and its respective directors, officers, employees or agents, may in good faith buy, sell, own, hold and deal in any of the Bonds, and may join in any action which any Bondholder may be entitled to take with like effect as if such association, bank or trust company were not such Trustee, Paying Agent, Tender Agent or Remarketing Agent.

Section 9.07. Resignation or Removal of Trustee. The Trustee may resign and thereby become discharged from the trusts created under this Indenture for any reason by giving written notice by first class mail, postage prepaid, to the Issuer, to the Company and to the Holders of all Bonds not less than sixty (60) days before such resignation is to take effect, but such resignation shall not take effect until the appointment and acceptance thereof of a successor Trustee pursuant to Section 9.08.

The Trustee may be removed at any time by an instrument or concurrent instruments in writing filed with the Trustee and signed by the Issuer or the Majority Holders or their attorneys-in-fact duly authorized. Such removal shall become effective either upon the appointment and acceptance of such appointment by a successor Trustee or at the date specified in the instrument of removal. The Trustee shall promptly give notice of such filing to the Issuer and the Company. No removal shall take effect until the appointment and acceptance thereof of a successor Trustee pursuant to Section 9.08.

If the Trustee shall resign or shall be removed, such Trustee must transfer and assign to the successor Trustee, not later than the date of this acceptance by the successor Trustee of its appointment as such, or thirty (30) days from the date specified in the instrument of removal or resignation, if any, whichever shall last occur, (i) all amounts (including all investments thereof) held in any Fund or Account under this Indenture, together with a full accounting thereof, (ii) all records, files, correspondence, registration books, Bond inventory, all information relating to this Indenture and to Bond payment status (i.e., outstanding principal balances, principal payment and interest payment schedules, Sinking Fund Installment schedules, pending notices of redemption, payments made and to whom, delinquent payments, default or delinquency notices, deficiencies in any Fund or Account balance, etc.) and all such other information (in whatever form) relating to all Funds and Accounts in the possession of the Trustee being removed or resigning, and (iii) all Security Documents and other documents or agreements, including, without limitation, all Uniform Commercial Code Financing Statements, all insurance policies or certificates, letters of credit or other instruments provided to the Trustee being removed or resigning (clauses (i), (ii) and (iii), together with the Trust Estate, being collectively referred to as the "Trust Corpus").

Section 9.08. Successor Trustee. vii) If at any time the Trustee shall be dissolved or otherwise become incapable of acting or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator thereof, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason or if the Trustee shall resign, the Company shall cooperate with the Issuer and the Issuer shall appoint a successor Trustee and shall use its best efforts to obtain acceptance of such trust by the successor Trustee within sixty (60) days from such vacancy or notice of resignation. Within twenty (20) days after such appointment and acceptance, the Issuer shall notify in writing the Company and the Holders of all Bonds.

(b) In the event of any such vacancy or resignation and if a successor Trustee shall not have been appointed within sixty (60) days of such vacancy or notice of resignation, the Majority Holders, by an instrument or concurrent instruments in writing, signed by such Bondholders or their attorneys-in-fact thereunto duly authorized and filed with the Issuer, may appoint a successor Trustee which shall, immediately upon its acceptance of such trusts, and without further act, supersede the predecessor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section 9.08, within ninety (90) days of such vacancy or notice of resignation, the Holder of any Bond then Outstanding, the Issuer or any retiring Trustee or the Company may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

(c) Any Trustee appointed under this Section shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States authorized to exercise corporate trust powers under the laws of the State and authorized by law and its charter to perform all the duties imposed upon it by this Indenture and each other Security Document. At the time of its appointment, any successor Trustee shall (x) have a capital stock and surplus aggregating not less than \$100,000,000 and (y) have an investment grade rating of at least "Baa3" or "P-3".

(d) Any predecessor Trustee shall transfer to any successor Trustee appointed under this Section as a result of a vacancy in the position the Trust Corpus by a date not later than thirty (30) days from the date of the acceptance by the successor Trustee of its appointment as such. Where no vacancy in the position of the Trustee has occurred, the transfer of the Trust Corpus shall take effect in accordance with the provisions of Section 9.07.

(e) Every successor Trustee shall execute, acknowledge and deliver to its predecessor, and also to the Issuer, an instrument in writing accepting such appointment, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers and trusts, and subject to all the duties and obligations, of its predecessor, with like effect as if originally named as such Trustee; but such predecessor shall, nevertheless, on the written request of its successor or of the Issuer, and upon payment of the compensation, expenses, charges and other disbursements of such predecessor which are due and payable pursuant to Section 9.04, execute and deliver an instrument transferring to such successor Trustee all the estate, properties, rights, immunities, powers and trusts of such predecessor and the Trust Corpus; and every predecessor Trustee shall deliver all property and moneys, together with a full accounting thereof, held by it under this Indenture to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such Trustee the estate, properties, rights, immunities, powers and trusts vested or intended to be vested in the predecessor Trustee, any such instrument in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Any successor Trustee shall promptly notify the Issuer and the Paying Agent of its appointment as Trustee.

(f) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States and shall be authorized by law and its charter to perform all the duties imposed upon it by this Indenture and each other Security Document shall be the successor to such Trustee without the execution or filing of any paper or the performance of any further act.

Section 9.09. Paying Agents. e) The Trustee is hereby appointed as Paying Agent for the Bonds. The Issuer may also from time to time appoint one or more other Paying Agents in the manner and subject to the conditions set forth in Section 9.09(b) for the appointment of a successor Paying Agent. Each Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to the Issuer, and in the case of all Paying Agents other than the Trustee, to the Trustee a written acceptance thereof. The principal offices of the Paying Agents are designated as the respective offices or agencies of the Issuer for the payment of the principal or Redemption Price, if any, of, Sinking Fund Installments for, and interest on the Bonds. Each Paying Agent shall not be liable in connection with the performance of its duties hereunder except for its own willful misconduct or gross negligence.

(b) Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days prior written notice to the Issuer and the Trustee. Any Paying Agent may be removed at any time by an instrument filed with such Paying Agent and the Trustee and signed by the Issuer. Any successor Paying Agent shall be appointed by the Issuer, with the approval of the Trustee, and shall be a commercial bank or trust company duly organized under the laws of any state of the United States or a national banking association, having a capital stock and surplus aggregating at least \$40,000,000, having an investment grade rating of at least "Baa3" or "P-3", and willing and able to accept the office on reasonable and customary terms and authorized by law and its charter to perform all the duties imposed upon it by this Indenture.

(c) In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.

Section 9.10. Appointment of Co-Trustee. i) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or under any other Security Document, and in particular in case of the enforcement of any on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional institution as a separate trustee or co-trustee. The following provisions of this Section are adapted to these ends.

(b) In the event that the Trustee appoints an additional institution as a separate trustee or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate trustee or co-trustee but only to the extent necessary to enable such separate trustee or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate trustee or co-trustee shall run to and be enforceable by either of them. Such co-trustee may be removed by the Trustee at any time, with or without cause.

(c) Should any instrument in writing from the Issuer be required by the separate trustee or co-trustee so appointed or removed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

(d) No trustee shall be liable for the acts or omissions of any other trustee hereunder.

Section 9.11. Tender Agent - Appointment, Acceptance and Successors.

(a) The Issuer hereby appoints The Bank of New York Mellon, New York, New York, as Tender Agent. The Tender Agent shall designate to the Trustee, if the Tender Agent is not also the Trustee, its principal office, and signify its acceptance of the duties and obligations imposed on it hereunder by a written instrument of acceptance delivered to the other Notice Parties. One or more additional Tender Agents may be appointed by the Issuer to the extent necessary to effectuate the rights of the Bondholders to tender Initial Bonds for purchase pursuant to Section 2.03.

(b) The Tender Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days written notice to the other Notice Parties, except that such resignation shall not take effect until the appointment of a successor Tender Agent hereunder, and the acceptance of such appointment by the successor Tender Agent. The Tender Agent may be removed at any time by the Issuer by a written instrument filed with the other Notice Parties, but such removal shall not take effect until the appointment and acceptance of such appointment by the successor Tender Agent. Upon the resignation or removal of the Tender Agent, the Tender Agent shall pay over, deliver and assign any moneys and Bonds held by it in such capacity to its successor.

(c) If the position of Tender Agent shall become vacant for any reason, or if any bankruptcy, insolvency or similar proceeding shall be commenced by or against the Tender Agent, the Issuer shall appoint a successor Tender Agent to fill the vacancy. A written acceptance of office shall be filed by the successor Tender Agent in the manner set forth in Section 9.11(a). Any successor Tender Agent shall be a national banking association, bank or trust Institution, in each case duly organized under the laws of the United States of America or any state or territory thereof, having a combined capital stock, surplus and undivided profits of at least \$100,000,000, having an investment grade rating of at least "Baa3" or "P-3", and authorized by law to perform all of the duties imposed on it by this Indenture. If the position of Tender Agent shall become vacant, the Company shall cooperate with the Issuer, and the Issuer shall appoint a successor Tender Agent and shall use its best efforts to obtain acceptance of such office by the successor Tender Agent within sixty (60) days from such vacancy. Within twenty (20) days after such appointment and acceptance, the Issuer shall notify in writing the Holders of all Bonds then Outstanding and the other Notice Parties.

(d) In the event of any such vacancy and if a successor Tender Agent shall not have been appointed within sixty (60) days of such vacancy, the Majority Holders, by an instrument or concurrent instruments in writing, signed by such Bondholders or their attorneys-in-fact thereunto duly authorized and filed with the Issuer, may appoint a successor Tender Agent that shall, immediately upon its acceptance of such office, and without further act, supersede the predecessor Tender Agent. If no appointment of a successor Tender Agent shall have been made pursuant to the foregoing provisions of this Section 9.11, within 120 days of such vacancy, the Holder of any Bond then Outstanding, the Issuer, the Trustee or the Company may apply to any court of competent jurisdiction to appoint a successor Tender Agent. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Tender Agent.

(e) Every successor Tender Agent shall execute, acknowledge and deliver to its predecessor, and also to the Issuer, an instrument in writing accepting such appointment, and thereupon such successor Tender Agent, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers and trusts, and subject to all the duties and obligations, of its predecessor, with like effect as if originally named as such Tender Agent; but such predecessor shall, nevertheless, on the written request of its successor or of the Issuer, execute and deliver an instrument transferring to such successor Tender Agent all the estate, properties, rights, immunities, powers and trusts of such predecessor; and every predecessor Tender Agent shall deliver all property and moneys held by it under this Indenture, together with a full accounting thereof, to its successor. Should any instrument in writing from the Issuer be required by any successor Tender Agent for more fully and certainly vesting in such Tender Agent the estate, properties, rights, immunities, powers and trusts vested or intended to be vested in the predecessor Tender Agent, any such instrument in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Any successor Tender Agent shall promptly notify the other Notice Parties of its appointment as Tender Agent.

(f) Any Entity into which the Tender Agent may be merged or converted or with which it may be consolidated or any Entity resulting from any merger, conversion or consolidation to which it shall be a party or any Entity to which the Tender Agent may sell or transfer all or substantially all of its business, provided such Entity shall be a national banking association, a bank or trust company duly organized under the laws of the United States of America or any state or territory of the United States and shall be authorized by law and its charter to perform all the duties imposed upon it by this Indenture and each other Security Document shall be the successor to such Tender Agent without the execution or filing of any paper or the performance of any further act.

Section 9.12. Tender Agent - General Responsibilities. f) The Tender Agent shall perform the duties and obligations set forth in this Indenture, and in particular shall:

(1) hold all Initial Bonds delivered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Bondholders that have so delivered such Initial Bonds, until moneys representing the Purchase Price of such Initial Bonds shall have been delivered to or for the account of or to the order of such Bondholders, provided the Tender Agent may deliver any of such Initial Bonds to the Remarketing Agent to be held as provided in Section 9.15;

(2) hold all moneys (other than moneys delivered to it by the Company for the purchase of Initial Bonds) delivered to it hereunder (without investment thereof) for the purchase of Initial Bonds as agent and bailee of, and in escrow for the benefit of, the Person that shall have so delivered such moneys, until the Initial Bonds purchased with such moneys shall have been delivered to or for the account of such Person;

(3) hold all moneys delivered to it hereunder by or on behalf of the Company for the purchase of Initial Bonds as agent and bailee of, and in escrow for the benefit of, Bondholders that shall deliver Initial Bonds to it for purchase (without investment thereof), until the Initial Bonds purchased with such moneys shall have been delivered to or for the account of the Company; except that if the Initial Bonds shall at any time become due and payable, the Tender Agent shall cause such moneys to be deposited with the Trustee for deposit in the Bond Fund on the date upon which the Initial Bonds become due and payable;

(4) keep such books and records as shall be consistent with prudent industry practice, and make such books and records available for inspection by the other Notice Parties;

(5) deliver any notices required by this Indenture to be delivered by the Tender Agent; and

(6) perform all other duties of the Tender Agent under this Indenture.

(b) In performing its duties and obligations hereunder, the Tender Agent shall use the same degree of care and skill as a prudent person would exercise under the same circumstances in the conduct of his own affairs. The Tender Agent, its officers, directors, employees and agents shall not be liable in connection with the performance of its duties hereunder except for its own willful misconduct, gross negligence or unlawful conduct.

(c) The Tender Agent may deal in Initial Bonds and with the Company to the same extent and with the same effect as provided in Section 9.06.

(d) The Tender Agent hereby waives any rights to, or Liens on, any funds or obligations held by or owing to it pursuant to this Indenture. The Tender Agent shall be reimbursed and compensated for its fees and expenses for acting under and pursuant to this Indenture only from payments to be made by the Company pursuant to Section 7.3 of the Loan Agreement.

Section 9.13. Remarketing Agent - Appointment, Acceptance and Successors. g) The Issuer hereby appoints Roosevelt & Cross Incorporated, New York, New York, as Remarketing Agent. The Remarketing Agent shall designate to the Trustee its principal office, and signify its acceptance of the duties and obligations imposed on it hereunder by a written instrument of acceptance delivered to the Notice Parties.

(b) Except as otherwise provided in the Remarketing Agreement (in which case the provisions of the Remarketing Agreement shall govern and shall supersede the provisions of this paragraph), the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days written notice to the other Notice Parties, except that such resignation shall not take effect until the appointment and acceptance of a successor Remarketing Agent hereunder; and (ii) the Remarketing Agent may be removed at any time by the Company by a written notice filed with the other Notice Parties, except that no such removal shall be effective until the appointment of a successor Remarketing Agent hereunder and the acceptance of such appointment by the successor Remarketing Agent. Upon the resignation or removal of the Remarketing Agent, the Remarketing Agent shall pay over, deliver and assign any moneys and Initial Bonds held by it in such capacity to its successor.

(c) If the position of Remarketing Agent shall become vacant for any reason, or if any bankruptcy, insolvency or similar proceeding shall be commenced by or against the Remarketing Agent, the Issuer shall appoint a successor Remarketing Agent to fill the vacancy. A written acceptance of office shall be filed by the successor Remarketing Agent in the manner set forth in Section 9.13(a). Any successor Remarketing Agent shall be a corporation or other legal entity organized and doing business under the laws of the United States of America or of any state thereof, authorized under such laws to perform all duties imposed upon the Remarketing Agent by this Indenture, and having a principal office or agency located in the City, shall have a capitalization of at least \$25,000,000, shall be acceptable to the Company, and shall be either (x) a member of the Financial Industry Regulatory Authority and registered as a Municipal Securities Dealer under the Securities Exchange Act of 1934, as amended, or (y) a national banking association, commercial bank or trust company. So long as the Initial Bonds are held in the book entry system, the Remarketing Agent must be a Participant in the book entry system with respect to the Initial Bonds.

(d) In the event of any such vacancy and if a successor Remarketing Agent shall not have been appointed by the Issuer within sixty (60) days of such vacancy, the Company may appoint a successor Remarketing Agent, which shall, immediately upon its acceptance of such office, and without further act, supersede the predecessor Remarketing Agent. If no appointment of a successor Remarketing Agent shall have been made pursuant to the foregoing provisions of this Section 9.13, within 120 days of such vacancy, the Issuer, the Holder of any Initial Bond then Outstanding or the Trustee may apply to any court of competent jurisdiction to appoint a successor Remarketing Agent. Such court may the reupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Remarketing Agent.

(e) If the Remarketing Agent shall resign, be removed, or be dissolved, or if the property or affairs of the Remarketing Agent shall be taken under control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Company shall not have appointed a successor as Remarketing Agent, the Tender Agent shall ipso facto be deemed to be such Remarketing Agent for all purposes of this Indenture until the appointment by the Issuer of a successor Remarketing Agent; provided, however, that the Tender Agent, in its capacity as Remarketing Agent, shall not be required to sell Initial Bonds or determine the interest rate on the Initial Bonds hereunder if the Tender Agent should be prohibited by law from conducting such activities. The Company will notify each Rating Agency then rating the Initial Bonds, if any, of any successor Remarketing Agent or co-Remarketing Agent.

(f) Every successor Remarketing Agent shall execute, acknowledge and deliver to its predecessor, and also to the Issuer, the Trustee and the Company, an instrument in writing accepting such appointment, and thereupon such successor Remarketing Agent, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities and powers, and subject to all the duties and obligations, of its predecessor, with like effect as if originally named as such Remarketing Agent; but such predecessor shall, nevertheless, on the written request of its successor or of the Issuer, the Trustee or the Company, execute and deliver an instrument transferring to such successor Remarketing Agent all the estate, properties, rights, immunities and powers of such predecessor; and every predecessor Remarketing Agent shall deliver all property, Initial Bonds, notices and moneys held by it under this Indenture, together with a full accounting thereof, to its successor. Should any instrument in writing from the Issuer or the Trustee be required by any successor Remarketing Agent for more fully and certainly vesting in such Remarketing Agent the estate, properties, rights, immunities and powers vested or intended to be vested in the predecessor Remarketing Agent, any such instrument in writing shall, on request, be executed, acknowledged and delivered by the Issuer or the Trustee. Any successor Remarketing Agent shall promptly notify the other Notice Parties of its appointment as Remarketing Agent.

(g) Any Entity into which the Remarketing Agent may be merged or converted or with which it may be consolidated or any Entity resulting from any merger, conversion or consolidation to which it shall be a party or any Entity to which the Remarketing Agent may sell or transfer all or substantially all of its securities business, provided such Entity shall otherwise qualify under Section 9.13(c), shall be the successor to such Remarketing Agent without the execution or filing of any paper or the performance of any further act.

Section 9.14. Remarketing Agent - General Responsibilities. h) The Remarketing Agent shall perform the duties and obligations set forth in this Indenture, subject to the provisions of the Remarketing Agreement, and in particular shall:

(1) hold any Initial Bonds delivered to it hereunder by the Tender Agent in trust for the benefit of the respective Holders of the Initial Bonds that shall have delivered or shall be deemed to have delivered such Initial Bonds to the Tender Agent, as the case may be, until moneys representing the Purchase Price of such Initial Bonds shall have been delivered to or for the account of or to the order of such Holders of the Initial Bonds or deposited with the Trustee, as the case may be, and to redeliver such Initial Bonds to the Tender Agent upon its request;

(2) solicit purchases of Initial Bonds from investors able to purchase municipal bonds, effectuate and process such purchases, bill and receive payment for Initial Bonds purchased, and perform related functions in connection with the remarketing of Initial Bonds hereunder;

(3) on each Purchase Date promptly transfer all moneys delivered to it hereunder for the purchase of Initial Bonds as agent and bailee of, and in escrow for the benefit of, the Person that shall have so delivered such moneys until the Initial Bonds purchased with such moneys shall have been delivered to or for the account of such Person, provided that such moneys shall be delivered to the Tender Agent for deposit in the Remarketing Account of the Purchase Fund;

(4) keep such books and records as shall be consistent with prudent industry practice and will document its action taken hereunder, and make such books and records available for inspection by the Notice Parties;

(5) comply at all times in all material respects with all applicable state and federal securities laws and other statutes, rules and regulations applicable to the offering and sale of the Initial Bonds;

(6) promptly determine the Adjustable Fixed Interest Rate on the Initial Bonds, and remarket the Initial Bonds, as provided in Section 2.03;

(7) use its best efforts to find purchasers for the Initial Bonds tendered or deemed tendered for purchase, any such sale to be made at the Purchase Price in accordance with the terms of this Indenture;

(8) deliver to the Tender Agent all Initial Bonds held by it in accordance with the terms of this Indenture and the Remarketing Agreement;

(9) deliver any notices by this Indenture to be delivered by the Remarketing Agent; and

(10) perform all other duties of the Remarketing Agent under this Indenture and the Remarketing Agreement.

(b) In performing its duties and obligations hereunder, the Remarketing Agent shall act in a manner consistent with prudent industry practice. The Remarketing Agent shall not be liable in connection with the performance of its duties hereunder except for its own willful misconduct, gross negligence or unlawful conduct.

(c) The Remarketing Agent may deal in Initial Bonds and with the Company to the same extent and with the same effect as provided in Section 9.06.

(d) The Remarketing Agent hereby waives any right to, or Lien on, any funds or obligations held by or owing to it pursuant to this Indenture. The Remarketing Agent shall be reimbursed and compensated for its fees and expenses for acting under and pursuant to this Indenture only from payments to be made by the Company pursuant to Section 7.3 of the Loan Agreement and the Remarketing Agreement.

Section 9.15. Cooperation Among Certain of the Notice Parties.

(a) The Trustee, the Remarketing Agent, the Bond Registrar and the Tender Agent shall each cooperate to cause the necessary arrangements to be made and to be thereafter continued whereby funds from the sources specified herein and in the Loan Agreement will be made available for the purchase of Initial Bonds presented at the designated corporate trust office of the Tender Agent, and to otherwise enable the Tender Agent to carry out its duties hereunder.

(b) The Tender Agent, the Trustee, the Remarketing Agent and the Bond Registrar shall cooperate to the extent necessary to permit the timely receipt by the Bond Registrar of tendered Initial Bonds and preparation, execution, issuance, authentication and delivery by the Bond Registrar of replacement Initial Bonds in connection with the tender and remarketing of Initial Bonds hereunder.

(c) The Tender Agent, the Remarketing Agent and the Bond Registrar shall each cooperate to cause the necessary arrangements to be made and thereafter continued whereby Initial Bonds prepared, executed, authenticated and issued hereunder shall be made available to the Remarketing Agent to the extent necessary for delivery pursuant to Section 9.14, and to otherwise enable the Remarketing Agent to carry out its duties hereunder.

DISCHARGE OF INDENTURE; DEFEASANCE

Section 10.01. Defeasance. i) If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, interest and all other amounts due or to become due thereon or in respect thereof, at the times and in the manner stipulated therein and in this Indenture, and all fees and expenses and other amounts due and payable under this Indenture and the Loan Agreement, and any other amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or this Indenture, shall be paid in full, then the pledge of any loan payments, revenues or receipts from or in connection with the Security Documents or the Facility under this Indenture and the estate and rights hereby granted, and all covenants, agreements and other obligations of the Issuer to the Bondholders hereunder shall thereupon cease, terminate and become void and be discharged and satisfied and the Bonds shall thereupon cease to be entitled to any lien, benefit or security hereunder, except as to moneys or securities held by the Trustee or the Paying Agents as provided below in this subsection. At the time of such cessation, termination, discharge and satisfaction, (1) the Trustee shall cancel and discharge the lien of this Indenture and of the Mortgage and execute and deliver to the Company all such instruments as may be appropriate to satisfy such liens and to evidence such discharge and satisfaction, and (2) the Trustee and the Paying Agents shall pay over or deliver to the Company or on its order all moneys or securities held by them pursuant to this Indenture which are not required (i) for the payment of the principal or Redemption Price, if applicable, Sinking Fund Installments for, or interest on Bonds not theretofore surrendered for such payment or redemption, (ii) for the payment of all such other amounts due or to become due under the Security Documents, or (iii) for the payment of any amounts the Trustee has been directed to pay to the Federal government under the Tax Regulatory Agreement or this Indenture.

(b) Bonds or interest installments for the payment or redemption of which moneys (or Defeasance Obligations which shall not be subject to call or redemption or prepayment prior to maturity and the full and timely payment of the principal of and interest on which when due, together with the moneys, if any, set aside at the same time, will provide funds sufficient for such payment or redemption) shall then be set aside and held in trust by the Trustee or Paying Agents, whether at or prior to the maturity or the redemption date of such Bonds, shall be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section, if (i) in case any such Bonds are to be redeemed prior to the maturity thereof, all action necessary to redeem such Bonds shall have been taken and notice of such redemption shall have been duly given or provision satisfactory under the requirements of this Indenture to the Trustee shall have been made for the giving of such notice, and (ii) if the maturity or redemption date of any such Bond shall not then have arrived, (y) provision shall have been made by deposit with the Trustee or other methods satisfactory to the Trustee for the payment to the Holders of any such Bonds of the full amount to which they would be entitled by way of principal or Redemption Price, Sinking Fund Installments, and interest and all other amounts then due under the Security Documents to the date of such maturity or redemption, and (z) provision satisfactory to the Trustee shall have been made for the mailing of a notice to the Holders of such Bonds that such moneys are so available for such payment on such maturity or redemption date.

Section 10.02. Defeasance Opinion and Verification. Prior to any defeasance becoming effective as provided in Section 10.01(b), there shall have been delivered to the Issuer and to the Trustee (A) an opinion of Nationally Recognized Bond Counsel to the effect that interest on any Bonds being discharged by such defeasance will not become subject to federal income taxation by reason of such defeasance, and (B) a verification from an independent certified public accountant or firm of independent certified public accountants (in each case reasonably satisfactory to the Issuer and the Trustee) to the effect that the moneys and/or Defeasance Obligations are sufficient, without reinvestment, to pay the principal of, Sinking Fund Installments for, interest on, and redemption premium, if any, of the Bonds to be defeased.

Section 10.03. No Limitation of Rights of Holders. No provision of this Article X, including any defeasance of Bonds, shall limit the rights of the Holder of any Bonds under Section 3.06, 3.07 or 3.09 until such Bonds shall have been paid in full.

ARTICLE XI

AMENDMENTS OF INDENTURE

Article. **Section 11.01. Limitation on Modifications.** This Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this

Section 11.02. Supplemental Indentures Without Bondholders' Consent.

ii) The Issuer and the Trustee may, from time to time and at any time, enter into Supplemental Indentures without the consent of the Bondholders for any of the following purposes:

(1) To cure any formal defect, omission or ambiguity in this Indenture or in any description of property subject to the lien hereof, if such action is not materially adverse to the interests of the Bondholders.

(2) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as theretofore in effect.

(3) To add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect.

(4) To add to the limitations and restrictions in this Indenture other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect.

(5) To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Indenture, of the properties of the Facility, or revenues or other income from or in connection with the Facility or of any other moneys, securities or funds, or to subject to the lien or pledge of this Indenture additional revenues, properties or collateral.

(6) To modify or amend such provisions of this Indenture as shall, in the opinion of Nationally Recognized Bond Counsel, be necessary to assure that the interest on the Bonds not be includable in gross income for Federal income tax purposes.

(7) To effect any other change herein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Bondholders.

(8) To modify, amend or supplement this Indenture or any Supplemental Indenture in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so determine, to add to this Indenture or any Supplemental Indenture such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.

(9) To modify, amend or supplement any of the times, dates or other mechanical procedures for the setting of the Adjustable Fixed Interest Rate or the tender and remarketing of the Initial Bonds as set forth in Section 2.03, provided that such change is not to the material prejudice of the Bondholders.

(10) To evidence the appointment of a new Remarketing Agent or Tender Agent, and in connection therewith to change any times of day specified herein by which any action must be taken.

(11) To alter the manner in which the Remarketing Agent may, in the reasonable exercise of its judgment, act pursuant to Section 2.03 to increase the likelihood of achieving the lowest net interest cost during the term of the Initial Bonds, but only if the Institution provides to the Trustee and the Issuer a Favorable Opinion of Bond Counsel.

(12) To effect any modification, amendment or supplement to this Indenture to be made effective on a date after an Adjustment Date.

(b) Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to this Section, there shall have been filed with the Trustee an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms.

Section 11.03. Supplemental Indentures With Bondholders' Consent. iii) Subject to the terms and provisions contained in this Article, the Majority Holders shall have the right from time to time, to consent to and approve the entering into by the Issuer and the Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein. Nothing herein contained shall permit, or be construed as permitting, (i) a change in the times, amounts or currency of payment of the principal of, Sinking Fund Installments for, Purchase Price, redemption premium, if any, or interest (except upon an Interest Rate Change) on any Outstanding Bonds, a change in the terms of redemption (except as provided in Section 2.04(a)) or maturity of the principal of or the interest on any Outstanding Bonds, or a reduction in the principal amount of or the Redemption Price of any Outstanding Bond or the rate of interest thereon, or any extension of the time of payment thereof, a change in the method of determining the rate of interest on any Bond (except as provided in Section 2.03), or a change in the terms of the purchase thereof by the Tender Agent, without the consent of the Holder of such Bond, (ii) the creation of a lien upon or pledge of the Trust Estate other than the liens or pledge created by this Indenture and the other Security Documents, except as provided in this Indenture with respect to Additional Bonds, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Indenture, or (v) a modification, amendment or deletion with respect to any of the terms set forth in this Section 11.03(a), without, in the case of items (ii) through and including (v) of this Section 11.03(a), the written consent of one hundred percent (100%) of the Holders of the Outstanding Bonds.

(b) If at any time the Issuer shall determine to enter into any Supplemental Indenture for any of the purposes of this Section, it shall cause notice of the proposed Supplemental Indenture to be mailed, postage prepaid, to all Bondholders. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture, and shall state that a copy thereof is on file at the offices of the Trustee for inspection by all Bondholders.

(c) Within one year after the date of such notice, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice only if there shall have first been filed with the Trustee (i) the written consents of the Majority Holders or the Holders of not less than 100%, as the case may be, in aggregate principal amount of the Bonds then Outstanding and (ii) an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms. Each valid consent shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given. A certificate or certificates by the Trustee that it has examined such proof and that such proof is sufficient in accordance with this Indenture shall be conclusive that the consents have been given by the Holders of the Bonds described in such certificate or certificates. Any such consent shall be binding upon the Holder of the Bonds giving such consent and upon any subsequent Holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Holder of such Bonds giving such consent or a subsequent Holder thereof by filing such revocation with the Trustee prior to the execution of such Supplemental Indenture.

(d) If the Holders of not less than the percentage of Bonds required by this Section shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to the execution of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

(e) Upon the execution of any Supplemental Indenture pursuant to the provisions of this Section, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under this Indenture, subject in all respects to such modifications and amendments.

Section 11.04.

Supplemental Indenture Part of this Indenture. Any Supplemental Indenture executed in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplemental Indenture as to any provisions authorized to be contained therein shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes. The Trustee shall execute any Supplemental Indenture entered into in accordance with the provisions of Section 11.02 or 11.03.

AMENDMENTS OF RELATED SECURITY DOCUMENTS

Section 12.01. Rights of Company. Anything herein to the contrary notwithstanding, any Supplemental Indenture entered into pursuant to Article XI which affects any obligations, rights, powers and authority of the Company under the Loan Agreement or requires a revision of the Loan Agreement shall not become effective unless and until the Company shall have given its written consent to such Supplemental Indenture signed by an Authorized Representative of the Company.

Section 12.02. Amendments of Related Security Documents Not Requiring Consent of Bondholders. The Issuer and the Trustee may, without the consent of or notice to the Bondholders, consent (if required) to any amendment, change or modification of any of the Related Security Documents for any of the following purposes: (i) to cure any ambiguity, inconsistency, formal defect or omission therein; (ii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred; (iii) to subject thereto additional revenues, properties or collateral; (iv) to evidence the succession of a successor Trustee or to evidence the appointment of a separate or co-Trustee or the succession of a successor separate or co-Trustee; (v) to make any change required in connection with a permitted amendment to a Related Security Document or a permitted Supplemental Indenture; and (vi) to make any other change that, in the judgment of the Trustee (which, in exercising such judgment, may conclusively rely, and shall be protected in relying, in good faith, upon an Opinion of Counsel or an opinion or report of engineers, accountants or other experts) does not materially adversely affect the Bondholders. The Trustee shall have no liability to any Bondholder or any other Person for any action taken by it in good faith pursuant to this Section. Before the Issuer or the Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Bonds to cease to be excluded from gross income for federal income tax purposes under the Code.

Section 12.03. Amendments of Related Security Documents Requiring Consent of Bondholders. Except as provided in Section 12.02, the Issuer and the Trustee shall not consent to any amendment, change or modification of any of the Related Security Documents, without mailing of notice and the written approval or consent of the Majority Holders given and procured as in Section 11.03 set forth; provided, however, there shall be no amendment, change or modification to (i) the obligation of the Company to make loan payments with respect to the Bonds under the Loan Agreement or the Promissory Note, (ii) the obligation of the Guarantors to guarantee payment of the Bonds pursuant to the Bond Guaranty Agreement, or (iii) the Tax Regulatory Agreement without the delivery of an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change, modification, reduction or postponement will not cause the interest on any Series of Bonds to become includable in gross income for Federal income tax purposes. If at any time the Company shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change or modification to be mailed in the same manner as is provided in Article XI with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by all Bondholders. The Trustee may, but shall not be obligated to, enter into any such amendment, change or modification to a Related Security Document which affects the Trustee's own rights, duties or immunities under such Related Security Document or otherwise. Before the Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Bonds to cease to be excluded from gross income for federal income tax purposes under the Code.

ARTICLE XIII

MISCELLANEOUS

Section 13.01. Evidence of Signature of Bondholders and Ownership of Bonds. iv) Any request, consent, revocation of consent, approval, objection or other instrument which this Indenture may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by any Bondholder in person or by his duly authorized attorney appointed in writing. Proof of the execution of any such instrument, or of an instrument appointing any such attorney, shall be sufficient for any purpose of this Indenture (except as otherwise therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable: the fact and date of the execution by any Bondholder or his attorney of such instruments may be proved by a guarantee of the signature thereon by a member of the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15, or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. For the purposes of the transfer or exchange of any Bond, the fact and date of the execution of the Bondholder or his attorney of the instrument of transfer shall be proved by a guarantee of the signature thereon by a member of the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guarantee, certificate or affidavit shall also constitute sufficient proof of his authority.

(b) The ownership of Bonds and the amount, numbers and other identification shall be proved by the registry books.

(c) Except as otherwise provided in Section 11.03 with respect to revocation of a consent, any request or consent by the owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Issuer or the Trustee or any Paying Agent in accordance therewith.

Section 13.02. Notices. Any notice, demand, direction, certificate, Opinion of Counsel, request, instrument or other communication authorized or required by this Indenture to be given to or filed with the Issuer, the Company or the Trustee shall be sufficient if sent (i) by return receipt requested or registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

(1) if to the Issuer, to
New York City Capital Resource Corporation
110 William Street
New York, New York 10038
Attention: General Counsel (with a copy to the

Executive Director of the Issuer at the
same address)

(2) if to the Company, to
Albee Retail Development LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: General Counsel

with a copy to

Washington Square Partners
675 Third Avenue, 25th Floor
New York, New York 10017
Attention: Paul Travis

and

Akerman Senterfitt LLP
335 Madison Avenue, 26th Floor
New York, New York 10017
Attention: Steven Polivy, Esq., and

(3) if to the Trustee, to
The Bank of New York Mellon
101 Barclay Street, Floor 7W
New York, New York 10286
Attention: Corporate Trust Administration

The Issuer, the Company and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 13.03. Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Issuer, the Company, the Trustee, the Tender Agent, the Remarketing Agent, the Bond Registrar, the Paying Agents and the Holders of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation thereof. All covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Company, the Trustee, the Tender Agent, the Remarketing Agent, the Bond Registrar, the Paying Agents and the Holders of the Bonds.

Section 13.04. Partial Invalidity. If any one or more of the provisions of this Indenture or of the Bonds shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof or of the Bonds, but this Indenture and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 13.05. Effective Date; Counterparts. The date of this Indenture shall be for reference purposes only and shall not be construed to imply that this Indenture was executed on the date first above written. This Indenture was delivered on the Closing Date. This Indenture shall become effective upon its delivery on the Closing Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.06. Laws Governing Indenture. This Indenture shall be governed by, and construed and enforced in accordance with, the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

Section 13.07. No Pecuniary Liability of Agency or Members; No Debt of the State or the City. Every agreement, covenant and obligation of the Issuer under this Indenture is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall not create a debt of the State or the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor but shall be payable by the Issuer solely from the loan payments, revenues and receipts derived from or in connection with the Facility pledged to the payment thereof in the manner and to the extent in this Indenture specified and nothing in the Bonds, in the Loan Agreement, in the Mortgage, in this Indenture or in any other Security Document shall be considered as pledging any other funds or assets of the Issuer. The Issuer shall not be required under this Indenture or the Loan Agreement or any other Security Document to expend any of its funds other than (i) the proceeds of the Bonds, (ii) the loan payments, revenues and receipts, rental income and other moneys held or derived from or in connection with the Facility and pledged to the payment of the Bonds, (iii) any income or gains therefrom, and (iv) the Net Proceeds with respect to the Facility. No provision, covenant or agreement contained in this Indenture or in the Bonds or any obligations herein or therein imposed upon the Issuer or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit.

All covenants, stipulations, promises, agreements and obligations of the Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, employee or agent of the Issuer in his individual capacity, and no recourse shall be had for the payment of the principal or Redemption Price, if any, of, Purchase Price, Sinking Fund Installments for, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. Neither the Bonds, the interest thereon, the Sinking Fund Installments therefor, nor the Redemption Price thereof shall ever constitute a debt of the State or of the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor.

Section 13.08. Priority of Indenture Over Liens. This Indenture and the Mortgage are given in order to secure funds to pay for the Project and by reason thereof, it is intended that this Indenture and the Mortgage shall be superior to any laborers', mechanics' or materialmen's liens which may be placed upon the Facility subsequent to the recordation thereof. In compliance with Section 13 of the Lien Law, the Issuer will receive the advances secured by this Indenture and the Mortgage 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 improvements and that the Issuer will apply the same first to the payment of the costs of improvements before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the New York City Capital Resource Corporation, New York, New York, has caused these presents to be executed in its name and behalf by its Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and, to evidence its acceptance of the trust hereby created, the Trustee has caused these presents to be signed in its name and behalf by an authorized representative and its corporate seal to be hereunto affixed, all as of the day and year first above written.

NEW YORK CITY CAPITAL RESOURCE CORPORATION

By: /s/ Kyle Kimball
Kyle Kimball
Executive Director

THE BANK OF NEW YORK MELLON,
as Trustee

By: /s/ Gaspare Mulé
Gaspare Mulé
Vice President

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the 29th day of June, of the year two thousand and ten, before me, the undersigned, personally appeared Kyle Kimball, known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

/s/ Carol M. Hyde

Notary Public

Carol M. Hyde
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 20, 2011

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the 30 day of June, in the year two thousand and ten, before me, the undersigned, personally appeared Gaspare Mulé, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

/s/ Kara A. Lobdell

Notary Public

Kara A. Lobdell
Notary Public, State of New York
No. 02LO6031220
Qualified in New York County
Commission Expires Sept. 27, 2013

APPENDICES

DESCRIPTION OF THE LAND

(Block 149, Lot 103)

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:

BEGINNING at the corner formed by the intersection of the northerly side of Dekalb Avenue with the easterly side of Gold Street;

RUNNING THENCE easterly, along the easterly side of Gold Street, 114 feet to a point;

RUNNING THENCE easterly, at right angles to the easterly side of Gold Street, 129.12 feet to the northwesterly side of Fleet Street

RUNNING THENCE southwesterly, along the northwesterly side of Fleet Street, 132.02 feet to the corner formed by the intersection of the northwesterly side of Fleet Street, with the northerly side of Dekalb Avenue;

RUNNING THENCE westerly, along the northerly side of Dekalb Avenue, 63.76 feet to the point or place of BEGINNING.

END OF SCHEDULE A

FACILITY PERSONALTY

NONE

FORM OF FULLY REGISTERED INITIAL BOND

THIS BOND SHALL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE STATE OF NEW YORK OR OF THE CITY OF NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR THE CITY OF NEW YORK SHALL BE LIABLE HEREON, NOR SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OF THE NEW YORK CITY CAPITAL RESOURCE CORPORATION OTHER THAN THOSE PLEDGED THEREFOR

NEW YORK CITY CAPITAL RESOURCE CORPORATION
RECOVERY ZONE FACILITY REVENUE BONDS
(ALBEE RETAIL DEVELOPMENT LLC PROJECT), SERIES 2010

Bond Date:
Final Maturity Date:
Registered Owner: Cede & Co.
Principal Amount: \$ _____
Initial Adjustable Fixed Interest Rate: 7.25%
Bond Number: R-
CUSIP: 649437AH3

Promise to Pay. New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York (herein called the "Issuer"), for value received, hereby promises to pay as hereinafter provided, solely from the loan payments, revenues and receipts derived from or in connection with the Facility hereinafter referred to as provided in the Indenture of Trust hereinafter referred to, to the Registered Holder identified above or registered assigns, upon presentation and surrender hereof, on the Final Maturity Date set forth above, the Principal Amount set forth above, and in like manner to pay interest at the applicable Adjust able Fixed Interest Rate on the unpaid principal balance hereof from the Bond Date hereof until the Issuer's obligation with respect to the payment of such Principal Amount shall be discharged. Interest shall be payable at the Adjustable Fixed Interest Rate on the first day of February, May, August and November (or if such day is not a Business Day, the immediately succeeding Business Day) commencing on August 1, 2010 and terminating on the Final Maturity Date, unless this bond is sooner redeemed or paid or otherwise discharged. Such interest shall be computed on the basis of a 360-day year of twelve 30-day months. In no event shall the interest rate payable hereon exceed (the "Maximum Interest Rate") the lesser of (i) twelve percent (12%) per annum or (ii) the maximum permitted by, or enforceable under, applicable law.

This bond shall bear interest from the Bond Date indicated above, if authenticated prior to the first Interest Payment Date. If authenticated on or after the first Interest Payment Date, in exchange for or upon the registration of transfer of Bonds (as defined below), this bond shall bear interest from and including the Interest Payment Date next preceding the date of the authentication hereof, unless the date of such authentication shall be an Interest Payment Date to which interest hereon has been paid in full or duly provided for, in which case, this bond shall bear interest from and including such Interest Payment Date.

If there shall occur an Event of Default (other than by reason of a failure to redeem the Bonds in whole if there shall have occurred a Determination of Taxability), the rate of interest on the Bonds shall be fifteen percent (15%) per annum commencing with the date of the occurrence of the Event of Default and any additional interest thereby due with respect to a period of time for which interest has already been paid shall be payable on the Interest Payment Date next following the Event of Default. Any former Bondholder who was a Bondholder commencing on or after the date of the occurrence of the Event of Default, but who subsequent to such date sold or otherwise disposed of its Bonds or whose Bonds were redeemed or matured, shall be entitled to receive from the Company under the Loan Agreement (as such terms are hereinafter defined) the following, in an amount allocable to such period during which it held the Bonds subsequent to the Event of Default and the date upon which the Bonds were sold, or otherwise disposed of, or redeemed or matured: the difference between the rate of interest borne by the Bonds prior to the Event of Default and the rate borne by the Bonds on and subsequent to such date.

If there shall occur a Determination of Taxability, the rate of interest on the Bonds shall be thirteen per centum (13%) per annum commencing with the date of the Event of Taxability and any additional interest thereby due with respect to a period of time for which interest has already been paid shall be payable on the Interest Payment Date next following the Determination of Taxability. Any former Bondholder who was a Bondholder commencing on or after the date of the occurrence of an Event of Taxability, but who subsequent to such date sold or otherwise disposed of its Bonds or whose Bonds were redeemed or matured, shall be entitled to receive from the Company under the Loan Agreement the following, in an amount allocable to such period during which it held the Bonds subsequent to the Event of Taxability and the date upon which the Bonds were sold, or otherwise disposed of, or redeemed or matured: the difference between the rate of interest borne by the Bonds prior to the Event of Taxability and the rate borne by the Bonds on and subsequent to such date.

Method of Currency. The principal of, Sinking Fund Installments for, Redemption Price, if applicable, Purchase Price and interest on the Bonds shall be payable in any coin or currency of the United States of America that on the respective dates of payment thereof is legal tender for the payment of public and private debts.

Payments. The principal of, Sinking Fund Installments for, and the Redemption Price, if applicable, on all Bonds shall be payable by check or draft at maturity or upon earlier redemption to the Persons in whose names such Bonds are registered on the bond registration books maintained by the Trustee as Bond Registrar at the maturity or redemption date thereof, upon the presentation and surrender of such Bonds at the designated corporate trust office of The Bank of New York Mellon in New York, New York, as trustee and paying agent (the "Paying Agent"), or at the corporate trust office of any successor Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid by the Trustee to the registered owner of such Bond as shown on the bond registration books of the Trustee as Bond Registrar at the close of business on the Regular Record Date for such interest, (1) by check or draft mailed to such registered owner at his address as it appears on the bond registration books or at such other address as is furnished to the Trustee in writing by such owner, or (2) if such Bonds are held by a Securities Depository or, at the written request addressed to the Trustee by any registered owner of Bonds in the aggregate principal amount of at least \$1,000,000 that all such payments be made by wire transfer, by electronic transfer in immediately available funds to the bank for credit to the ABA routing number and account number filed with the Trustee no later than five (5) Business Days before an Interest Payment Date, but no later than a Regular Record Date for any interest payment.

Interest on any Bond that is due and payable but not paid on the date due ("Defaulted Interest") shall cease to be payable to the owner of such Bond on the relevant Regular Record Date and shall be payable to the owner in whose name such Bond is registered at the close of business on a special record date (the "Special Record Date") for the payment of such Defaulted Interest, which Special Record Date shall be fixed as provided in the Indenture.

Authorization and Purpose. This bond is one of an authorized issue of bonds designated as "New York City Capital Resource Corporation Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010 (hereinafter called the "Bonds") issued in the aggregate principal amount of \$20,000,000. The Bonds are being issued under and pursuant to and in full compliance with the Constitution and laws of the State of New York, particularly the Not-for-Profit Corporation Law of the State of New York, and a resolution adopted by the members of the Issuer on February 9, 2010, as amended on April 13, 2010, authorizing the issuance of the Bonds and under and pursuant to an Indenture of Trust, dated as of July 1, 2010 (as the same may be amended or supplemented, the "Indenture"), made and entered into by and between the Issuer and The Bank of New York Mellon, as trustee (said bank and any successor thereto under the Indenture being referred to herein as the "Trustee"), for the purpose of financing a portion of the cost of the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility (the "Facility") to be leased to retail tenants (the "Project"). The site for the Facility, including the improvements to be constructed thereon, is subject to a certain Severance Lease (Site 1A), dated June 30, 2010 (as the same may be amended or supplemented, the "Ground Lease"), between The City of New York, as landlord, and Albee Development, LLC, a Delaware limited liability company ("Albee Development"), as assigned by Albee Development to, and assumed by, Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Company"), as tenant. In order to finance a portion of the costs of the Project, the Issuer has made a loan to the Company of the proceeds of the Bonds in the original amount pursuant to a certain Loan Agreement, dated as of July 1, 2010, between the Issuer and the Company (as the same may be amended or supplemented, the "Loan Agreement"), and the Company has executed a certain Promissory Note dated the date of original issuance of the Bonds in favor of the Issuer and the Trustee (as the same may be amended or supplemented, the "Promissory Note") to evidence the Company's obligation under the Loan Agreement to repay such loan. Each of the Loan Agreement and the Promissory Note requires the payment by the Company of loan payments sufficient to provide for the payment of the principal or Redemption Price, if any, of, Sinking Fund Installments for, Purchase Price, and interest on the Bonds as the same become due. Copies of the Indenture, the Loan Agreement, the Promissory Note, the Pledge and Security Agreement hereinafter referred to, the Mortgage hereinafter referred to, the Project Completion Guaranty Agreement hereinafter referred to and the Bond Guaranty Agreement hereinafter referred to are on file at the designated corporate trust office of the Trustee in New York, New York, and reference is made to such documents for the provisions relating, among other things, to the terms and security of the Bonds, the charging and collection of loan payments, the custody and application of the proceeds of the Bonds, the rights and remedies of the holders of the Bonds, and the rights, duties and obligations of the Issuer, the Company, the Parent as hereinafter referred to and the Trustee.

Pledge and Security. Pursuant to the Indenture, the Issuer has assigned to the Trustee all of its right, title and interest in and to the Promissory Note and substantially all of its right, title and interest in and to the Loan Agreement, including all rights to receive loan payments sufficient to pay the principal or Redemption Price, if any, of, Sinking Fund Installments for, Purchase Price, and interest and all other amounts due on the Bonds as the same become due, to be made by the Company pursuant to the Loan Agreement and the Promissory Note. The Bonds are further secured by a first lien in Facility Revenues and the remainder of the Pledged Collateral pursuant to a certain Pledge and Security Agreement, dated as of July 1, 2010, from the Company to the Trustee (as the same may be amended or supplemented, the "Pledge and Security Agreement"). Further, the completion of the Project has been guaranteed by the Company and by Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Parent", and, together with the Company, being collectively, the "Guarantors"), pursuant to a Project Completion Guaranty Agreement, dated as of July 1, 2010, from the Guarantors to the Trustee (as the same may be amended or supplemented, the "Project Completion Guaranty Agreement"). The Bonds are also secured by mortgage liens on and security interests in the Company's leasehold interest under the Ground Lease in the Facility, and an assignment of Facility leases and rents, pursuant to a Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), a Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and a Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan), each dated as of July 1, 2010, and each from the Company to the Trustee (as each of the same may hereafter be amended or supplemented, collectively the "Mortgage"). The payment of the principal of, redemption premium, if any, Sinking Fund Installments for, Purchase Price, and the interest on the Bonds, and the payments, obligations, covenants and agreements of the Company under the Loan Agreement and under the Promissory Note, have been guaranteed by the Guarantors pursuant to a Bond Guaranty Agreement, dated as of July 1, 2010, from the Guarantors to the Trustee (as the same may hereafter be amended or supplemented, the "Bond Guaranty Agreement").

The Bonds are special limited revenue obligations of the Issuer and shall never constitute a debt of the State of New York or of The City of New York, and neither the State of New York nor The City of New York shall be liable thereon, nor shall the Bonds be payable out of any funds of the Issuer other than those pledged therefor.

Reference is hereby made to the Indenture for the definition of any capitalized word or term used but not defined herein and for a description of the property pledged, assigned and otherwise available for the payment of the Bonds, the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer, the Trustee and the holders of the Bonds, and the terms upon which the Bonds are issued and secured.

Additional Bonds. As provided in the Indenture, upon satisfying certain conditions including obtaining certain prescribed Bondholder consents, a Series of Additional Bonds may be issued from time to time in one or more series for the purpose of financing the cost of completing the Project, providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, providing extensions, additions or improvements to the Facility, or refunding outstanding Bonds (to the extent that such Bonds shall be subject to earlier redemption). All bonds issued and to be issued under the Indenture are and will be equally secured by the pledge and covenants made therein, except as may otherwise be expressly provided in the Indenture.

Initial Adjustable Fixed Interest Rate. For the Initial Adjustable Fixed Interest Rate Term, the Bonds shall bear interest at seven and one-quarter percent (7¼%) per annum. The interest rate payable on the Bonds shall be adjusted on each Adjustment Date in accordance with the provisions of the Indenture and the Bonds.

Subsequent Adjustable Fixed Interest Rate Terms. Each Adjustable Fixed Interest Rate Term (other than the Initial Adjustable Fixed Interest Rate Term) shall commence on the Adjustment Date immediately following the end of the preceding Adjustable Fixed Interest Rate Term and will continue to but excluding the next succeeding Adjustment Date. For each Adjustable Fixed Interest Rate Term after the Initial Adjustable Fixed Interest Rate Term, the Adjustable Fixed Interest Rate Term shall be a period determined at the direction of the Company which is equal to one (1) whole year or any integral multiple of whole years, but in no event shall any such Adjustable Fixed Interest Rate Term extend beyond the Final Maturity Date of the Initial Bonds. □ 0; The Business Day immediately following the last day of each Adjustable Fixed Interest Rate Term as determined pursuant to the Indenture shall be the Adjustment Date. The Bonds are subject to mandatory purchase on each Adjustment Date.

Except as provided in the paragraph below, the interest rate applicable to the Bonds on and after each Adjustment Date shall be the interest rate determined by the Remarketing Agent on the Determination Date immediately preceding such Adjustment Date. The Adjustable Fixed Interest Rate applicable to the Bonds shall be the lower of (i) the lowest rate which, in the best professional judgment of the Remarketing Agent (having due regard to the prevailing market conditions), would be necessary to enable the Bonds to be sold at par on the Adjustment Date, provided that the Adjustable Fixed Interest Rate shall not exceed the Maximum Rate, or (ii) The Bond Buyer Revenue Bond Index (as published in The Bond Buyer or any successor publication thereto) for the most recent period for which such information is available as of the date the Adjustable Fixed Interest Rate is established, plus two hundred fifty (250) basis points. In the event that certain conditions to an Interest Rate Change required under the Indenture shall not be met, the interest rate on the Bonds then in effect shall remain in effect as the Adjustable Fixed Interest Rate for the next succeeding Adjustable Fixed Interest Rate Term, and the term of the next Adjustable Fixed Interest Rate Term shall be the shorter of (i) the same period as the immediately preceding Adjustable Fixed Interest Rate Term, or (ii) the period until the Final Maturity Date of the Bonds.

If the Remarketing Agent is unable to remarket all of the Bonds at the Adjustable Fixed Interest Rate determined by the Remarketing Agent as provided in the Indenture, the Remarketing Agent may at any time prior to the Adjustment Date increase the Adjustable Fixed Interest Rate to that rate of interest which, as of the date of determination, is the lowest rate which, in the best professional judgment of the Remarketing Agent (having due regard to the prevailing market conditions), would be necessary to enable the Bonds to be sold at par on the Adjustment Date; provided, however, that such re-determined Adjustable Fixed Interest Rate shall not exceed the Maximum Interest Rate.

Inability to Determine Adjustable Fixed Interest Rate. If, for any reason, the Adjustable Fixed Interest Rate for the Bonds is not or cannot be determined by the Remarketing Agent in the manner specified in the Indenture, the Adjustable Fixed Interest Rate will be equal to the closing yield, plus two hundred fifty (250) basis points, for Treasury Bills, Notes or Bonds, as applicable, of the maturity closest to, without exceeding, the term of the Adjustable Fixed Interest Rate Term determined in accordance with the Indenture, as such yield is published in the table captioned "U.S. Securities Prices" in the edition of The Bond Buyer (or if The Bond Buyer or such table is no longer published, any other published similar rate as is determined by the Trustee in its sole discretion to be appropriate) published on the day on which such Adjustable Fixed Interest Rate is determined, or if such yield or other similar rate is not published on that day, the day of the most recent publication of such yield or other similar rate.

Conclusiveness of Adjustable Fixed Interest Rate Determination. The determination in accordance with the Indenture of the Adjustable Fixed Interest Rate to be borne by the Bonds shall, in the absence of manifest error, be conclusive and binding on the holders of the Bonds.

Mandatory Tender of Bonds on each Purchase Date. On each Purchase Date, the Bonds shall be subject to mandatory tender for purchase by the Tender Agent at the Purchase Price.

IN THE EVENT OF A FAILURE BY HOLDERS OF BONDS TO TENDER BONDS FOR PURCHASE ON A PURCHASE DATE AS PROVIDED ABOVE, SAID HOLDERS OF BONDS SHALL NOT BE ENTITLED TO ANY PAYMENT (INCLUDING ANY INTEREST TO ACCRUE SUBSEQUENT TO THE PURCHASE DATE) OTHER THAN THE PURCHASE PRICE FOR SUCH UNTENDERED BONDS, AND THE HOLDERS OF ANY UNTENDERED BONDS SHALL NO LONGER BE ENTITLED TO THE BENEFITS OF THE INDENTURE, EXCEPT FOR THE PURPOSE OF PAYMENT OF THE PURCHASE PRICE THEREOF, AND SHALL BE DEEMED PURCHASED, CANCELLED AND NO LONGER OUTSTANDING UNDER THE INDENTURE.

Maximum Rate. In no event shall the Adjustable Fixed Interest Rate (notwithstanding any other provision of this bond) exceed the Maximum Interest Rate.

General Interest Rate Limitation. Anything herein or in the Indenture to the contrary notwithstanding, the obligations of the Issuer hereunder and under the Indenture shall be subject to the limitation that payments of interest or other amounts hereon shall not be required to the extent that receipt of any such payment by a holder of this bond would be contrary to the provisions of law applicable to such holder of this bond which would limit the maximum rate of interest which may be charged or collected by such holder of this bond.

Redemption of Bonds. (A) General Optional Redemption. (1) During the Initial Adjustable Fixed Interest Rate Term, the Bonds shall be subject to redemption, on or after May 1, 2012, in whole at any time or in part on any Interest Payment Date (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$100,000) at the option of the Issuer (which option shall be exercised only upon the giving of notice by the Company of its intention to prepay loan payments due under the Loan Agreement), at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Bonds to be redeemed, plus accrued interest to the date of redemption.

(ii) During any Adjustable Fixed Interest Rate Term (other than the Initial Adjustable Fixed Interest Rate Term), the Bonds shall be subject to redemption, in whole at any time or in part on any Interest Payment Date (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$100,000) at the option of the Issuer (which option shall be exercised only upon the giving of notice by the Company of its intention to prepay loan payments due under the Loan Agreement), at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Initial Bonds to be redeemed, plus accrued interest to the date of redemption, commencing on or after that date (the "First Optional Redemption Date") as determined below:

(A) if there shall be ten (10) or less years in such Adjustable Fixed Interest Rate Term, the First Optional Redemption Date shall be the second (2nd) anniversary of the date of commencement of such Adjustable Fixed Interest Rate Term, and

(B) if there shall be more than ten (10) years in such Adjustable Fixed Interest Rate Term, the First Optional Redemption Date shall be the fifth (5th) anniversary of the date of commencement of such Adjustable Fixed Interest Rate Term.

(b) Extraordinary Redemption. The Bonds are also subject to redemption prior to maturity, at the option of the Issuer exercised at the direction of the Company (which option shall be exercised only upon the giving of notice by the Company of its intention to prepay loan payments due under the Loan Agreement), as a whole on any date, upon notice or waiver of notice as provided in the Indenture, at a Redemption Price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the date of redemption, if one or more of the following events shall have occurred:

(i) The Facility shall have been damaged or destroyed to such extent that, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee, (A) the Facility cannot be reasonably restored within a period of one year from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Company is thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of one year from the date of such damage or destruction, or (C) the restoration cost of the Facility would exceed the total amount of all insurance proceeds, including any deductible amount, in respect of such damage or destruction; or

(ii) Title to, or the temporary use of, all or substantially all of the Facility shall have been taken or condemned by a competent authority which taking or condemnation results, or is likely to result, in the Company being thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of one year from the date of such taking or condemnation, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee; or

(iii) As a result of changes in the Constitution of the United States of America or of the State or of legislative or executive action of the State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court after the contest thereof by the Company, the Loan Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein or unreasonable burdens or excessive liabilities are imposed upon the Company by reason of the operation of the Facility.

If the Bonds are to be redeemed in whole as a result of the occurrence of any of the events described above, the Company shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Company stating that, as a result of the occurrence of the event giving rise to such redemption, the Company has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes.

(c) Mandatory Sinking Fund Installment Redemption. The Bonds shall be subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the date of redemption, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in the Indenture:

Sinking Fund Installment Payment Date	Sinking Fund Installment
May 1, 2015	\$115,000
November 1, 2015	120,000
May 1, 2016	125,000
November 1, 2016	125,000
May 1, 2017	130,000
November 1, 2017	135,000
May 1, 2018	140,000
November 1, 2018	145,000
May 1, 2019	150,000

Sinking Fund Installment Payment Date	Sinking Fund Installment
November 1, 2019	155,000
May 1, 2020	165,000
November 1, 2020	\$170,000
May 1, 2021	175,000
November 1, 2021	180,000
May 1, 2022	190,000
November 1, 2022	195,000
May 1, 2023	200,000
November 1, 2023	210,000
May 1, 2024	215,000
November 1, 2024	225,000
May 1, 2025	235,000
November 1, 2025	240,000
May 1, 2026	250,000
November 1, 2026	260,000
May 1, 2027	270,000
November 1, 2027	280,000
May 1, 2028	290,000
November 1, 2028	300,000
May 1, 2029	310,000
November 1, 2029	320,000
May 1, 2030	335,000
November 1, 2030	345,000
May 1, 2031	355,000
November 1, 2031	370,000
May 1, 2032	385,000
November 1, 2032	400,000
May 1, 2033	410,000
November 1, 2033	425,000
May 1, 2034	440,000
November 1, 2034	460,000
May 1, 2035	475,000
November 1, 2035	490,000
May 1, 2036	510,000
November 1, 2036	530,000
May 1, 2037	545,000
November 1, 2037	565,000
May 1, 2038	590,000
November 1, 2038	610,000
May 1, 2039	630,000
November 1, 2039	655,000
May 1, 2040	680,000
November 1, 2040	700,000
May 1, 2041	730,000
November 1, 2041	755,000
May 1, 2042	780,000
November 1, 2042 (final maturity)	810,000

- (d) Mandatory Redemption from Excess Proceeds and Certain Other Amounts. The Bonds shall be redeemed at any time in whole or in part by lot prior to maturity in the event and to the extent
- (i) excess Bond proceeds shall remain after the completion of the Project,

- (ii) excess title insurance or property insurance proceeds or condemnation awards shall remain after the application thereof pursuant to the Loan Agreement and this Indenture, or
- (iii) excess proceeds shall remain after the release or substitution of fixtures or other portions of the Facility,

in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Bonds to be redeemed, together with interest accrued thereon to the date of redemption.

(e) Mandatory Redemption Upon Failure to Operate the Facility for Approved Project Operations, Material Violation of Material Legal Requirements, False Representation or Failure to Maintain Liability Insurance. The Bonds are also subject to mandatory redemption prior to maturity, at the option of the Issuer, as a whole only, in the event (i) the Issuer shall determine that (w) the Company is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations, (x) the Company, any Principal of the Company or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Company has committed a material violation of a material Legal Requirement, (y) any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, or (ii) the Company shall fail to obtain or maintain the public liability insurance with respect to the Facility required under the Loan Agreement, and, in the case of clause (i) or (ii) above, the Company shall fail to cure any such default or failure within the applicable time periods set forth in the Loan Agreement following the receipt by the Company of written notice of such default or failure from the Issuer and a demand by the Issuer on the Company to cure the same. Any such redemption shall be made upon notice or waiver of notice to the Bondholders as provided in this Indenture, at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Bonds, together with interest accrued thereon to the date of redemption.

(f) Mandatory Taxability Redemption. Upon the occurrence of a Determination of Taxability, the Bonds shall be redeemed prior to maturity on any date within one hundred twenty (120) days following such Determination of Taxability, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest at the annual rate of thirteen percent (13%) from the occurrence of the Event of Taxability to the date of redemption. The Bonds shall be redeemed in whole unless redemption of a portion of the Bonds Outstanding would have the result that interest payable on the Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of a Bond (other than a Holder who is a "substantial user" of the Facility or a "related person", within the meaning of the Code). In such event, the Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

(g) Purchase in Lieu of Optional Redemption. In lieu of calling Bonds for optional redemption, Bonds shall be subject to mandatory tender for purchase at the direction of the Issuer, upon the direction of the Company, in whole or in part (and, if in part, in such manner as determined by the Company) on any date, at a Purchase Price equal to the applicable Redemption Price for any optional redemption of such Bonds as provided above, plus accrued interest to the purchase date. Purchases in lieu of an optional redemption shall be permitted, with the consent of the Issuer, upon the delivery to the Issuer and the Trustee of (i) an opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee substantially to the effect that (A) such purchases in lieu of optional redemption comply with the provisions of the Indenture and (B) neither such purchases in lieu of an optional redemption nor any transaction directly related thereto will adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation, and (ii) such other opinions, certificates or documentation as the Issuer may require.

Redemption Procedures. If any of the Bonds are to be called for redemption, the Indenture requires a copy of the redemption notice to be mailed at least thirty (30) days prior to such redemption date to the registered owner of each Bond to be redeemed at the address shown on the registration books. All Bonds so called for redemption will cease to bear interest after the date fixed for redemption if funds for their redemption are on deposit at the place of payment at that time. If notice of redemption shall have been given as aforesaid, the Bonds called for redemption shall become due and payable on the redemption date, provided, however, that with respect to any optional redemption of the Bonds as provided in this bond, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, redemption premium, if any, and interest on such Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem such Bonds. In the event that such notice of optional redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. If a notice of optional redemption shall be unconditional, or if the conditions of a conditional notice of optional redemption shall have been satisfied, then upon presentation and surrender of Bonds so called for redemption at the place or places of payment, such Bonds shall be redeemed.

Remarketing Agent; Tender Agent. The initial Remarketing Agent under the Indenture is Roosevelt & Cross Incorporated, New York, New York. The initial Tender Agent under the Indenture is The Bank of New York Mellon, New York, New York. The Remarketing Agent and the Tender Agent may be changed at any time in accordance with the Indenture.

Amendment of Indenture. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the holders of the Bonds at any time by the Issuer with the consent of the holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding thereunder. Any such consent shall be conclusive and binding upon each such holder and upon all future holders of each Bond and of any such Bond issued upon the transfer thereof, whether or not notation of such consent is made thereon.

Denominations. The Bonds are issuable in the form of fully registered bonds in the denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof.

Exchange of Bonds. The holder of this bond may surrender the same, at the designated corporate trust office of the Trustee, in exchange for an equal aggregate principal amount of Bonds of any of the Authorized Denominations of the same maturity and maturities and interest rate as this bond or the Bonds so surrendered, subject to the conditions and upon payment of the charges provided in the Indenture. However, the Trustee will not be required to (i) transfer or exchange any Bonds during the period between a Record Date and the following Interest Payment Date or during the period of fifteen (15) days next preceding any day for the selection of Bonds to be redeemed, (ii) transfer or exchange any Bonds selected, called or being called for red emption in whole or in part, or (iii) register any transfer of or exchange any Bond which is subject to mandatory purchase.

Transfer of Bonds. This bond is transferable, as provided in the Indenture, only upon the books of the Issuer kept for that purpose at the designated corporate trust office of the Trustee by the registered owner hereof in person, or by his duly authorized attorney-in-fact, upon surrender of this bond (together with a written instrument of transfer in the form appearing on this bond duly executed by the registered owner or his duly authorized attorney-in-fact with a guaranty of the signature thereon by a member of the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15, and thereupon a new fully registered Bond in the same aggregate principal amount and maturity and interest rate shall be issued to the transferee in exchange therefor as provided in the Indenture and upon payment of the charges therein prescribed. The Issuer, the Bond Registrar, the Trustee and any Paying Agent may deem and treat the Person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or Redemption Price hereof, the Sinking Fund Installments therefor, and interest due hereon and for all other purposes whatsoever, and all payments made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer, the Company, the Bond Registrar, the Trustee, the Tender Agent, the Remarketing Agent nor any Paying Agent shall be affected by any notice to the contrary.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Issuer or the Trustee may make a charge sufficient to reimburse it for any expenses and any tax, fee or other governmental charge required to be paid in connection therewith; any such expenses shall be paid by the Company but any such tax, fee or other governmental charge shall be paid by the Holder requesting such transfer or exchange.

Book Entry System. The Bonds are being issued by means of a book entry system with no physical distribution of bond certificates to be made except as provided in the Indenture. One Bond certificate with respect to each date on which the Bonds are stated to mature, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody or in the custody of its agent. The book entry system will evidence positions held in the Bonds by the Securities Depository's Participants, beneficial ownership of the Bonds in Authorized Denominations being evidenced in the records of such Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Participants pursuant to rules and procedures established by the Securities Depository and its Participants. The Issuer and the Trustee will recognize the Securities Depository nominee, while the registered owner of this bond, as the owner of this bond for all purposes, including (i) payments of principal of, Sinking Fund Installments for, if any, Purchase Price, redemption premium, if any, and interest on, this bond, (ii) notices, and (iii) voting. Transfer of principal, Sinking Fund Installments, Purchase Price, interest and any redemption premium payments to Participants of the Securities Depository, and transfer of principal, Sinking Fund Installments, Purchase Price, interest and any redemption premium payments to Beneficial Owners of the Bonds by Participants of the Securities Depository will be the responsibility of such Participants and other nominees of such Beneficial Owners. The Issuer and the Trustee will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its Participants or persons acting through such Participants. While the Securities Depository nominee is the owner of this bond, notwithstanding the provision hereinabove contained, payments of principal of, Sinking Fund Installments, if any, Purchase Price, redemption premium, if any, and interest on this bond shall be made in accordance with existing arrangements among the Issuer, the Trustee and the Securities Depository.

Acceleration of Bonds. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds and Additional Bonds issued under the Indenture and then Outstanding may be declared and may become due and payable before the stated maturities thereof, together with accrued interest thereon.

Limitation on Bondholder Enforcement Rights. The holder of this bond shall have no right to enforce the provisions of the Indenture, to institute action to enforce the provisions and covenants thereof or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture.

Special Obligation of the Issuer. This bond and the issue of which it forms a part are special limited revenue obligations of the Issuer, payable by the Issuer solely out of the loan payments, revenues or other receipts, funds or moneys of the Issuer pledged under the Indenture and from any amounts otherwise available under the Indenture for the payment of the Bonds.

Estoppel Clause. It is hereby certified, recited and declared that all conditions, acts and things required by law and the Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this bond, exist, have happened and have been performed, and that the issuance of this bond and the issue of which it forms a part are within every debt and other limit prescribed by the laws of the State of New York.

No Personal Liability. Neither the members, directors, officers or agents of the Issuer nor any person executing this bond shall be liable personally or be subject to any personal liability or accountability by reason of the issuance hereof.

Authentication by Trustee. This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the New York City Capital Resource Corporation has caused this bond to be executed in its name by the manual or facsimile signature of its Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and its official seal or a facsimile thereof to be hereunto impressed or imprinted hereon and attested by the manual or facsimile signature of its Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, all as of the Bond Date indicated above.

**NEW YORK CITY CAPITAL
RESOURCE CORPORATION**

By: _____
Executive Director

(SEAL)

ATTEST:

Assistant Secretary

(FORM OF CERTIFICATE OF AUTHENTICATION)

CERTIFICATE OF AUTHENTICATION

This bond is one of the Bonds of the issue described in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON,
as Trustee

By: _____
Authorized Signatory

Date of Authentication: _____

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

(Please print or typewrite name, address and taxpayer identification number of transferee)

the within bond and does hereby irrevocably constitute and appoint _____ Attorney to transfer such bond on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever.

**SIGNATURE GUARANTEED
MEDALLION GUARANTEED**

Authorized Signature

(Signature Guarantee Program Name)

[Signature Guarantee by (must be by a member of the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15)]

[END OF FORM OF INITIAL BOND]

Form of Requisition from the Construction Account of the Project Fund

REQUISITION NO.

TO: The Bank of New York Mellon,
as Trustee

FROM: Albee Retail Development LLC

Ladies and Gentlemen:

You are requested to draw from the Construction Account of the Project Fund, established by Section 5.01 of the Indenture of Trust, dated as of July 1, 2010 (the "Indenture"), between the New York City Capital Resource Corporation (the "Issuer") and yourself, a check or checks in the amounts, payable to the order of those persons and for the purpose of paying those costs set forth on Schedule A attached hereto. All capitalized terms used in this Requisition not otherwise defined herein shall have the meanings given such terms by the Indenture or by the Loan Agreement referred to in the Indenture.

I hereby certify that

- (i) I am an Authorized Representative of Albee Retail Development LLC (the "Company");
- (ii) the number of this Requisition is ____;
- (iii) the items of cost set forth on Schedule A attached hereto are correct and proper under Section 5.02 of the Indenture and under Section 3.2 of the Loan Agreement and each such item has been properly paid or incurred as an item of Project Cost;
- (iv) none of the items for which this Requisition is made has formed the basis for any disbursement heretofore made from the Project Fund;
- (v) the payees and amounts stated in Schedule A attached hereto are true and correct and each item of cost so stated is due and owing;
- (vi) each such item stated in Schedule A attached hereto is a proper charge against the Project Fund;
- (vii) each such item in Schedule A attached hereto represents the value of work actually furnished, or labor or services actually rendered and no item relates to materials, that are not incorporated into the improvement or deposits toward same;
- (viii) each item of cost set forth in Schedule A attached hereto is consistent in all material respects with the Tax Regulatory Agreement;

(ix) if the payment herein requested is a reimbursement to the Company for costs or expenses of the Company incurred by reason of work performed or supervised by officers or employees of the Company or any Affiliate, such officers or employees were specifically employed for such purpose and the amount to be paid does not exceed the actual cost thereof to the Company and such costs or expenses will be treated by the Company on its books as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis;

(x) no portion of the proceeds of the Bonds will be applied to reimburse the Company for Project Costs paid more than sixty (60) days prior to February 9, 2010, the date the Issuer adopted its authorizing resolution for the Project, except for amounts which do not exceed twenty percent (20%) of the Project Costs financed with the proceeds of the Bonds which were applied to finance certain preliminary expenses with respect to the Project. Preliminary expenses, for purposes of this exception, include architectural, engineering, surveying, soil testing and similar costs incurred prior to the commencement of construction or rehabilitation of the Project, but do not include land acquisition, site preparation and similar costs incident to the commencement of construction or rehabilitation of the Project. No portion of the proceeds of the Bonds will be applied to reimburse the Company for a cost (other than preliminary expenditures) paid more than eighteen (18) months prior to the date of this requisition or the date the Facility to which the cost relates was placed in service, whichever is later. In no event shall the proceeds of the Bonds be applied to reimburse the Company for a Project Cost paid more than three (3) years prior to the date of issuance of the Bonds, unless such cost is attributable to a preliminary expenditure, as described above;

(xi) no Determination of Taxability has occurred, and no Event of Default exists and is continuing under the Indenture or the Loan Agreement or any other Security Document nor any condition, event or act which, with notice or lapse of time or both, would constitute such an Event of Default;

(xii) I have no knowledge of any vendor's lien, mechanic's lien or security interest which should be satisfied or discharged before the payment herein requested is made or which will not be discharged by such payment or, to the extent that any such costs shall be the subject of a bona fide dispute, for which such costs have not been appropriately bonded or for which a surety or security has not been posted which is at least equal to the amount of such costs;

(xiii) each item which payment under this requisition is to be made when added to all other payments previously made from the Project Fund, will not result in less than 95% of the proceeds of the Bonds (exclusive of costs of issuance of the Bonds or any reasonably required reserve) (including any earnings thereon) being used for the acquisition, construction, reconstruction or improvement of land or property that is subject to the allowance for depreciation provided in section 167 of the Code;

(xiv) such item of cost for which payment is herein requested is chargeable to the capital account of the Facility for Federal income tax purposes, or would be so chargeable either with an election by the Company or but for the election of the Company to deduct the amount of such item;

(xv) none of the items being requisitioned constitute "profit" to any Entity affiliated with, or related to, the Company; and

(xvi) the representations and warranties made by the Company in the Security Documents are correct on and as of the date of such disbursement as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

Attached to this Requisition is a schedule of or a copy of bills, invoices or other documents evidencing and supporting this Requisition.

Dated: _____

ALBEE RETAIL DEVELOPMENT LLC

By: _____
Authorized Representative

SCHEDULE A TO REQUISITION NO. _____

Amount

Payee (with address)

Purpose

Receipt is hereby acknowledged of a payment in the amount of \$_____ in connection with the submission of the attached Requisition.

ALBEE RETAIL DEVELOPMENT LLC

By: _____

Date: _____

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**MORTGAGE AND SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS
(ACQUISITION LOAN)**

From

ALBEE RETAIL DEVELOPMENT LLC,
a Delaware limited liability company having its principal office
at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605,

To

THE BANK OF NEW YORK MELLON,
a New York banking corporation having a corporate trust office
at 101 Barclay Street, Floor 7W, New York, New York 10286,
as Trustee and Mortgagee,
Dated as of July 1, 2010

\$20,000,000
New York City Capital Resource Corporation
Recovery Zone Facility Revenue Bonds
(Albee Retail Development LLC Project), Series 2010

Affecting that property described in the appendices to this
Mortgage and Security Agreement and Assignment of Leases and
Rents (Acquisition Loan), in the County of Kings, City of New
York, State of New York

Record and Return to:
Hawkins Delafield & Wood LLP
1 Chase Manhattan Plaza
New York, New York 10005
Attention: Arthur M. Cohen, Esq.

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EXHIBITS

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**MORTGAGE AND SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS (ACQUISITION LOAN)**

This **MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (ACQUISITION LOAN)** made and entered into as of the date set forth on the cover page hereof (this "**Mortgage**") from **ALBEE RETAIL DEVELOPMENT LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "**Debtor**"), as mortgagor, having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, to **THE BANK OF NEW YORK MELLON**, a New York banking corporation together with any successor trustee (the "**Trustee**" or the "**Mortgagee**") at the time serving as such under the Indenture referred to below, as mortgagee, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286 (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Indenture, in the Loan Agreement or in the Pledge and Security Agreement, each as referred to below):

WITNESSETH :

WHEREAS, the Debtor has entered into negotiations with the New York City Capital Resource Corporation, a local development corporation created pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended (the "**Issuer**"), for the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility (the "**Facility**") to be leased to retail commercial tenants, generally known by the street address of 1 DeKalb Avenue, Brooklyn, New York, and as further described in **Exhibit A** attached hereto — "DESCRIPTION OF THE LAND"; and

WHEREAS, the site of the Facility, including the improvements to be constructed thereon, will be subject to the Ground Lease; and

WHEREAS, pursuant to the Loan Agreement, the Issuer has made a Loan of the proceeds of the Bonds, in the original principal amount of the Bonds, to the Debtor, and the Debtor has executed the Promissory Note in favor of the Issuer and the Mortgagee to evidence the Debtor's obligation under the Loan Agreement to repay the Loan; and

WHEREAS, the Debtor intends to enter into various Facility Leases with Facility Tenants at the Facility; and

WHEREAS, pursuant to the Bond Resolution and the Indenture, the Issuer has authorized the issuance of its Bonds to provide funds for a portion of the costs of the Project, and to provide funds to pay a portion of the costs and expenses of the issuance of the Bonds; and

WHEREAS, concurrently with the execution hereof, (i) in order to further secure the Bonds, the Debtor and Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "**Parent**", and, together with the Debtor, the "**Guarantors**") will guarantee the payment of the principal of, Purchase Price, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds, and the payments, obligations, covenants and agreements of the Debtor under the Loan Agreement and under the Promissory Note, pursuant to the Bond Guaranty Agreement, (ii) the completion of the Project will be guaranteed by the Guarantors pursuant to the Project Completion Guaranty Agreement in favor of the Trustee, and (iii) the Debtor will grant a first lien in Facility Revenues and the remainder of the Pledged Collateral pursuant to the Pledge and Security Agreement in favor of the Trustee; and

WHEREAS, in order to induce the Issuer to issue the Bonds, and the initial owners to purchase the Bonds, the Debtor is entering into this Mortgage, the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan);

NOW, THEREFORE, in consideration of the premises and of the purchase and acceptance of the Bonds by the initial owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure

- (i) the payment of the Secured Principal Amount of the Bonds and the indebtedness represented thereby, the Purchase Price, if applicable, and the redemption premium, if any, and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied in the Bonds, and
- (ii) the payment, performance and observance of all obligations of the Debtor and the Parent under the Security Documents including this Mortgage, and

whether now arising or hereafter arising, direct or indirect, absolute or contingent, joint or several, due or to become due, liquidated or unliquidated, secured or unsecured, original, renewed or extended, whether arising directly or acquired from others (all such indebtedness and obligations described in clauses (i) and (ii) above being collectively referred to herein as the "**Obligations**"), provided, however, that the maximum principal amount secured hereby shall not exceed the Secured Principal Amount, the Debtor does hereby grant, bargain, sell, convey, transfer, mortgage, grant a security interest in, pledge and assign to the Trustee, as Mortgagee, and its assigns forever, the following (the "**Mortgaged Property**"):

GRANTING CLAUSES

I

The Ground Lease, including all rights, guarantees, amendments, supplements, modifications, renewals, substitutions and extensions relating to the Ground Lease and any right of continued possession of the Facility as might result by reason of a rejection of the Ground Lease thereunder, and all other right, title and interest of the Debtor in and the Facility together with the tenements, hereditaments, servitudes, appurtenances, estate, rights, privileges, liberties, appurtenances, licenses, royalties, mineral, oil and gas rights, water, water rights, reversions, remainders and immunities thereunto in which the Debtor shall have an interest, including all the right, title and interest of the Debtor in and to all streets, ways, alleys, roads, waters, water courses, water rights, waterways, passages, sewer rights and public places adjoining the Facility and all easements and rights-of-way, public or private, and gores of land, now or hereafter used in connection therewith, together with all land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Facility to the center line thereof, now or hereafter used in connection with the Facility.

II

Any right of continued possession and occupancy, by agreement or otherwise, in and to the Facility, including all right, title and interest in any such agreement.

III

Any and all rights under Section 365(h) of the Federal Bankruptcy Code, or any similar rights under any other law, including but not limited to any right to use or possession of the Facility.

IV

All trade fixtures, equipment, machinery, apparatus, appliances, fittings, chattels and articles of personal property of every kind and nature, and all building equipment, materials and supplies of any nature whatsoever, now or hereafter attached to, or used or usable in connection with any present or future operation or occupancy of the Facility and in which the Debtor has or shall have an interest and all renewals and replacements thereof and additions and accessions thereto, including without limitation all partitions, elevators, lifts, steam and hot water boilers, heating and air conditioning equipment, lighting and power plants, engines, motors, compressors, ducts, coal, oil and gas burning apparatus, pipes, pumps, plumbing, radiators, sinks, bath tubs, water closets, refrigerators, gas and electrical fixtures, communications apparatus, stoves, ranges, shades, screens, awnings, vacuum cleaning system, and sprinkler system or other fire prevention or extinguishing apparatus and materials, all of which shall be deemed to be, remain and form a part of the Mortgaged Property and are covered by the Lien of this Mortgage; excluding, however, from the Lien of this Mortgage, the Company's Property (as defined in Section 3.4(c) of the Loan Agreement), any property released from the Facility pursuant to Section 3.5 of the Loan Agreement, and any personal property owned by any Facility Tenant.

V

All right, title and interest of the Debtor in all Construction Contracts, payment bonds, performance bonds, surety bonds, Warranties, guarantees, maintenance, repair or replacement agreements and other contractual obligations of any contractor, subcontractor, surety, guarantor, manufacturer, dealer, laborer, supplier or materialman made with respect to the Facility or any part thereof.

VI

All the right, in the name and on behalf of the Debtor, to appear in and defend any action or proceeding brought with respect to the Facility and to commence any action or proceeding to protect the interest of the Mortgagee in the Facility.

VII

Any and all air rights, development rights, zoning rights or other similar rights or interests which benefit or are appurtenant to the Facility and any proceeds arising therefrom.

VIII

All agreements (other than any Security Document) and/or contracts now or hereafter entered into by the Debtor for the Project Work or any part thereof, and all permits, licenses, bonds, plans and specifications relative to the Project.

IX

All insurance proceeds, awards, payments and other compensation payments, including interest thereon, and the right to receive the same, which are heretofore or hereafter made with respect to the Facility as a result of or in lieu of any taking by eminent domain (including any transfer made in lieu of the exercise of said right), the alteration of the grade of any street, or any other damage or injury to or decrease in the value of the Facility or the occurrence of any Loss Event (as defined in, and subject to, Section 5.1 of the Loan Agreement), to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Mortgagee, and of the reasonable attorneys' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment, subject to the terms of the Indenture, the Loan Agreement and the Ground Lease, as to the application of all such amounts so received.

X

All right, title and interest of the Debtor in and to (a) any and all present and future leases of space in any Improvements; (b) the Facility Leases; (c) any and all present and future subleases of space in any Improvements; (d) all rents, issues and profits payable under any such leases and subleases including all Facility Revenues; and (e) any contracts for the sale of all or any portion of the Facility or any Improvements or portions thereof, on or to be erected upon the Facility ("sale contracts"). Nothing in this paragraph is intended to constitute the consent of the Mortgagee to any such leases, subleases or sale contracts, other than as expressly provided herein or in the Loan Agreement.

XI

All right, title and interest of the Debtor in all proceeds of any unearned premiums on any property insurance policies concerning the Facility, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damages to any portion of the Facility, subject, however, to the terms of the Indenture, the Loan Agreement and the Ground Lease.

XII

All right, title and interest of the Debtor in all Funds, Accounts and Subaccounts established under the Indenture.

XIII

All the right, in the name and on behalf of the Debtor, to appear in and defend any action or proceeding brought with respect to any of the Mortgaged Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Mortgaged Property.

XIV

Any and all further estate, right, title, interest, property, claim and demand whatsoever of the Debtor in and to any of the above.

XV

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims.

XVI

Any and all other property of every kind and nature from time to time which was heretofore or hereafter is by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder, by the Debtor or by any other Person with or without the consent of the Debtor, to the Mortgagee which is hereby authorized to receive any and all such property at any time and at all times to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned or agreed or intended so to be, to the Mortgagee and its successors and to them and their assigns forever;

THIS MORTGAGE secures the payment, performance and observance of the Obligations and shall continue in full force and effect until the Obligations shall be paid and satisfied in full or otherwise provided for in accordance with their respective terms.

Notwithstanding anything contained herein to the contrary, the maximum amount of Obligations secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is the Secured Principal Amount plus interest thereon, plus all amounts expended by the Mortgagee after default by the Debtor which constitute payment of (i) taxes, charges or assessments which may be imposed by law upon the Mortgaged Property; (ii) premiums on insurance policies covering the Mortgaged Property; (iii) expenses incurred in protecting or upholding the lien of this Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage; (iv) expenses incurred in protecting the collateral encumbered by this Mortgage; or (v) any amount, cost or charge to which the Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority.

DEBTOR represents, warrants, covenants and agrees with the Mortgagee as set forth below:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1. Certain Definitions. The following terms shall have the respective meanings in this Mortgage, except as the context otherwise requires:

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

Authorized Representative shall mean:

(i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties; and

(ii) in the case of the Debtor, a person named in **Exhibit B** — “Authorized Representative”, to the Loan Agreement, or any other officer or employee of the Debtor who is authorized to perform specific duties under the Loan Agreement or under any other Project Document and of whom another Authorized Representative of the Debtor has given written notice to the Issuer and the Mortgagee;

provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of the Loan Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Bond Guaranty Agreement shall mean the Bond Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Bond Resolution shall mean the resolution of the Issuer adopted on February 9, 2010, as amended on April 13, 2010, authorizing the Project and the issuance of the Bonds.

Bonds shall mean the Issuer’s \$20,000,000 Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010, authorized, issued, executed, authenticated and delivered under the Indenture.

Building Loan Agreement shall mean the Building Loan Agreement, dated as of even date herewith, among the Issuer, the Debtor and the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Business Day shall have the meaning assigned to that term in the Indenture.

City shall mean The City of New York, New York.

Closing Date shall mean July 1, 2010, the date of the initial issuance and delivery of the Bonds.

Commencement Date shall have the meaning assigned to that term in the Loan Agreement.

Company's Property shall have the meaning specified in Section 3.4(c) of the Loan Agreement.

Debtor shall mean Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Debtor under Section 7.8 or 7.9 of the Loan Agreement.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Facility shall mean, collectively, the Land and the Improvements.

Facility Address shall mean 1 DeKalb Avenue, Brooklyn, New York.

Facility Leases shall mean, collectively, all leases or other occupancy or use agreements, other than the Ground Lease, entered into with any Person for the use, possession or occupancy of the Facility or any portion thereof.

Facility Revenues shall mean all revenues, income, fees, receipts, charges, income and other money received in any period by or on behalf of the Debtor, derived from the leasing or operation of the Facility, including proceeds derived from insurance (including environmental insurance) and/or condemnation proceeds with respect to the Facility and Business Interruption Insurance and Extra Expense Insurance, in each case whether existing as of the Closing Date or hereafter coming into existence.

Facility Tenants shall mean all Persons as shall use, possess or occupy all or any portion of the Facility pursuant to a Facility Lease.

GAAP shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Company, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Ground Lease shall mean that certain Severance Lease (Site 1A), dated June 30, 2010, between the City, as landlord, and Albee Development, LLC, a Delaware limited liability company (“Albee Development”), as assigned on July 1, 2010 by Albee Development to, and assumed by, the Debtor, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith.

Guarantors shall mean, collectively, the Debtor and the Parent, and their respective successors and assigns.

Holders shall have the meaning assigned to that term in the Indenture.

Improvements shall mean:

- (i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date and erected or situated on the Land;
- (ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land throughout the term of the Loan Agreement (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2 of the Loan Agreement); and
- (iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

Indenture shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Independent Engineer shall mean a Person (not an employee of any of the Issuer, the Debtor, the Parent or any Affiliate of any thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Debtor, and approved in writing by the Trustee (which approval shall not be unreasonably withheld and shall be at the written direction of the Majority Holders).

Issuer shall mean New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

Land shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn (County of Kings), Block 149 and Lot 103, generally known by the street address 1 DeKalb Avenue, Brooklyn, New York, all as more particularly described in Exhibit A - “Description of the Land”, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 7.9(c) of the Loan Agreement.

Legal Requirements shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Debtor or any Facility Tenant, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Loan Agreement shall mean the Loan Agreement, dated as of even date herewith, between the Issuer and the Debtor, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Majority Holders shall have the meaning assigned to that term in the Indenture.

Mortgage shall mean this Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) from the Debtor to the Mortgagee, and includes any and all amendments hereof and supplements hereto made in accordance herewith and with the Indenture.

Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) shall mean the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan), dated as of even date herewith, from the Debtor to the Mortgagee, and includes any and all amendments thereof and supplements thereto hereafter made in accordance therewith and with the Indenture.

Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) shall mean the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan), dated as of even date herewith, from the Debtor to the Mortgagee, and includes any and all amendments thereof and supplements thereto hereafter made in accordance therewith and with the Indenture.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

Opinion of Counsel shall mean a written opinion of counsel for the Debtor, the Parent or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Outstanding shall have the meaning assigned to that term in the Indenture.

Parent shall mean Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Parent under Section 3.6 of the Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement.

Permitted Encumbrances shall have the meaning assigned to that term in the Indenture.

Person shall mean an individual or any Entity.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, dated as of even date herewith, from the Debtor to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project shall mean the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility to be leased to retail commercial tenants.

Project Completion Guaranty Agreement shall mean the Project Completion Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project Documents shall mean, collectively, the Ground Lease, the Issuer Indemnification Agreement, the Remarketing Agreement, the Bond Placement Agreement, the Facility Leases and the Security Documents.

Promissory Note shall mean, with respect to the Bonds, that certain Promissory Note in substantially the form of Exhibit G to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

Purchase Price shall mean an amount equal to the principal amount of any Bond purchased on any Purchase Date, plus accrued interest to the Purchase Date (unless the Purchase Date is an Interest Payment Date, in which case the Purchase Price shall not include accrued interest, which shall be paid in the normal course).

Secured Principal Amount shall mean \$1,685,597.43.

Security Documents shall mean, collectively, the Loan Agreement, the Promissory Note, the Pledge and Security Agreement, the Indenture, the Bond Guaranty Agreement, the Project Completion Guaranty Agreement, the Tax Regulatory Agreement, the Building Loan Agreement, this Mortgage, the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan).

State shall mean the State of New York.

Supplemental Indenture shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with Article XI of the Indenture.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Debtor to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean The Bank of New York Mellon, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Trust Estate shall mean all property, interest, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

Section 1.2. Construction. In this Mortgage, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Mortgage, refer to this Mortgage, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Mortgage, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Mortgage, nor shall they affect its meaning, construction or effect.

(e) Unless the content indicates otherwise, references to designated "Exhibits," "Articles," "Sections," "Subsections," "clauses" and other subdivisions are to the designated Exhibits, Articles, Sections, Subsections, clauses and other subdivisions of or to this Mortgage.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of Debtor. The Debtor hereby represents and warrants that:

(a) The Debtor is a limited liability company duly organized under the laws of the State of Delaware, is validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing under the laws of the State, is not in violation of any provision of its Organizational Documents, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Mortgage and each other Project Document to which it is or shall be a party.

(b) The execution, delivery and performance of this Mortgage and each other Project Document to which the Debtor is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Organizational Documents of the Debtor, or any indenture, agreement or other instrument to which the Debtor is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) There is no action or proceeding pending or, to the best of the Debtor's knowledge, after diligent inquiry, threatened by or against the Debtor by or before any court or administrative agency that would adversely affect the ability of the Debtor to perform its obligations under this Mortgage or any other Project Document to which it is or shall be a party. Such knowledge is based upon the knowledge of Robert Masters, a Senior Vice President of the Parent, and a person employed by the Parent with actual knowledge of the Project and of the matters set forth in this paragraph.< /div>

(d) The Debtor has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Debtor as of the Closing Date in connection with the execution and delivery of this Mortgage and each other Project Document to which the Debtor is a party or in connection with the performance of the obligations of the Debtor hereunder and under each of the Project Documents.

(e) This Mortgage and the other Project Documents to which the Debtor is a party (x) have been duly authorized by all necessary action on the part of the Debtor, (y) have been duly executed and delivered by the Debtor, and (z) constitute the legal, valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with their respective terms, subject to limitations on enforceability resulting from bankruptcy, insolvency and principles of equity.

(f) The assumption by the Debtor of its obligations hereunder will result in a direct financial benefit to the Debtor.

(g) The Debtor has power to enter into and perform this Mortgage, to create, pledge and grant the mortgage, pledge, assignment and security interest in the Mortgaged Property as provided in this Mortgage, and to own its property and assets.

(h) The Debtor is vested with a good and marketable leasehold interest in the Facility pursuant to the Ground Lease, subject to no mortgage, lien, charge, pledge, assignment, security interest, conditional sale agreement or encumbrance of any kind whatsoever, other than Permitted Encumbrances.

(i) The Debtor is, as of the Closing Date, and after giving effect to all instruments evidencing or securing the Obligations will be, in a solvent condition.

(j) The execution and delivery of this Mortgage does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code as so constituted or under any other applicable law.

(k) No bankruptcy or insolvency proceedings are pending or contemplated by or, to the best knowledge of the Debtor, against, the Debtor.

(l) The Debtor is duly authorized to mortgage and grant a security interest in the Mortgaged Property, and this Mortgage is a first lien upon the Mortgaged Property, subject only to Permitted Encumbrances.

(m) The Ground Lease is a valid and subsisting lease of the property therein described and purported to be demised and is in full force and effect in accordance with its terms, and has not been amended or modified in any respect.

(n) No default has occurred and is continuing under the Ground Lease and no event has occurred or is occurring which, with the passage of time or the giving of notice or both, would constitute an event of default under the Ground Lease.

(o) Neither the Ground Lease nor the Debtor's interest in any of the Facility Leases or Facility Revenues is subject to any Liens or encumbrances other than in favor of the Mortgagee or as set forth in the mortgagee title insurance policy insuring the Lien of this Mortgage, a copy of which has been furnished to the Mortgagee.

(p) The Debtor is the owner of the leasehold estate created by the Ground Lease and has the right and authority under the Ground Lease to execute this Mortgage as provided herein.

(q) No Facility Leases are in effect as of the Closing Date.

ARTICLE III

GENERAL AGREEMENTS OF DEBTOR

Section 3.1. Payment, Performance, Observance and Compliance. The Debtor agrees to pay, perform, observe and comply with such of the Obligations to which it shall be subject (including this Mortgage) upon the terms and provisions required of the Debtor therein.

Section 3.2. Acknowledgment of Amount Due. The Debtor shall, upon request, furnish to the Mortgagee, in person within five (5) days, or, by mail within ten (10) days, a written statement duly acknowledged of the amount due under this Mortgage and whether any offsets or defenses exist against the Obligations.

Section 3.3. Security Agreement. This Mortgage is and shall be deemed to be a security agreement under the New York State Uniform Commercial Code with respect to the Mortgaged Property, and the Mortgagee shall have all the rights of a secured party thereunder with respect to that part of the Mortgaged Property that constitutes personal property subject thereto (sometimes referred to herein as the "Secured Property"). Upon request by the Mortgagee, the Debtor shall execute and deliver to the Mortgagee any security agreement, financing or continuation statement or other document the Mortgagee reasonably deems necessary to protect or perfect its lien on the Mortgaged Property. If the Debtor shall default under this Mortgage, the Mortgagee, in addition to any other rights and remedies that 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 New York State Uniform Commercial Code, including the right to take possession of the Secured Property or any part thereof or indicia thereof, and to take such other measures as the Mortgagee may deem necessary for the care, protection and preservation of the Secured Property. Upon request or demand of the Mortgagee, the Debtor shall assemble the Secured Property and make it available to the Mortgagee at a convenient place acceptable to the Mortgagee. The Debtor shall pay to the Mortgagee on demand all expenses, including reasonable legal expenses and attorneys' fees and expenses, incurred or paid by the Mortgagee in protecting its interest in the Secured Property and in enforcing its rights hereunder with respect to the Secured Property. Any notice of sale, other disposition, or other intended action by the Mortgagee with respect to the Secured Property sent to the Debtor in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, other disposition, or other intended action set forth or specified in the notice shall conclusively be deemed to be commercially reasonable within the meaning of the New York State Uniform Commercial Code unless objected to in writing by the Debtor within five (5) days after receipt by the Debtor of the notice. The proceeds of any sale or other disposition of the Secured Property, or any part thereof, shall be applied to the payment of the Obligations as provided in Section 6.17.

Section 3.4. Ownership; Instruments of Further Assurance. The Mortgagee on behalf of the Debtor shall defend the interest of the Debtor to the Mortgaged Property and every part thereof and the Debtor agrees to warrant and defend such interest against the claims and demands of all Persons whomsoever. The Debtor covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto and such further acts, instruments and transfers as the Mortgagee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Mortgagee all and singular the property herein described and subject to the lien and security interest of this Mortgage and those revenues pledged hereby and by the Indenture to the payment of the Obligations. Any and all property hereafter acquired (other than the Company's Property) which is of the kind or nature herein provided to be and become subject to the lien and security interest hereof shall ipso facto, and without any further conveyance, assignment or act on the part of the Debtor or the Mortgagee, become and be subject to the lien and security interest of this Mortgage as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Debtor heretofore made by this Section 3.4.

Section 3.5. Creation of Liens; Indebtedness; Sale of Facility. The Debtor represents and covenants that this Mortgage is and will be a first mortgage Lien upon the Mortgaged Property. The Lien of the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) is subject and subordinate to the Ground Lease and the Liens of this Mortgage and of the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan). The Debtor shall not (x) create or suffer to be created any Lien upon or pledge of the Mortgaged Property or any part thereof except the Lien created by this Mortgage and Permitted Encumbrances, and except as expressly permitted under the Indenture, (y) incur any Indebtedness or issue any evidences of Indebtedness, other than the Obligations, and except as expressly permitted under the Indenture, secured by a Lien on the Mortgaged Property, or (z) sell, convey, transfer, lease, mortgage or encumber the Mortgaged Property or any part thereof except as specifically permitted under the Loan Agreement, the Indenture, this Mortgage and Permitted Encumbrances, so long as any of the Obligations are Outstanding.

Section 3.6. Release of Property. Reference is made to the provisions of the Loan Agreement, including, without limitation, Sections 3.5 and 7.9 thereof, whereby the Debtor may withdraw from the Facility any fixtures or any right-of-way, easement, permit or license or unimproved portion thereof, all upon compliance with the terms and conditions of the Loan Agreement and the Ground Lease. At the request of the Debtor, the Mortgagee shall release from the lien and security interest of this Mortgage, the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan), and from under the Loan Agreement such portion of the property of the Facility so withdrawn upon compliance with the applicable provisions of the Loan Agreement and shall confirm any such release.

Section 3.7. Recording and Filing. a) The Debtor shall cause this Mortgage and all supplements hereto to be recorded (at the sole cost and expense of the Debtor) as a mortgage of an interest in real property in the appropriate offices of the Register of The City of New York or in such other offices as may be at the time provided by law as the proper place for the recordation thereof. In addition, the security interest of the Mortgagee, as created by this Mortgage, in the personal property and fixtures and the rights and other intangible interests herein described, shall be perfected by the filing of financing statements at the direction of the Debtor in the offices of the Secretary of State of the State in the City of Albany, New York, and in the offices of such Register of The City of New York, which financing statements shall be in accordance with the New York State Uniform Commercial Code - Secured Transactions. All mortgage recording taxes, if any, and filing and recording charges and fees shall be payable by the Debtor.

(b) The Debtor and the Mortgagee acknowledge that, as of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a “public-financed transaction” is effective for a period of thirty (30) years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least twenty (20) years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

(c) The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Bonds, and because the Bonds are municipal securities with a term that is at least twenty (20) years in duration, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statements in order to preserve the liens and security interests that they create for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

Subsequent to the foregoing recordation and filings, if in the Opinion of Counsel to the Debtor (described hereinbelow), to preserve (after the thirtieth (30th) anniversary of the Closing Date) the lien and security interest of this Mortgage, it is necessary to re-record and/or re-index documents, re-file financing statements and/or file continuation statements and/or take any other actions (individually or collectively, the “**Continuation Action(s)**”), then, the Debtor in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Mortgagee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Mortgagee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Mortgagee written certification (upon which the Mortgagee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause “(i)” and the others in the manner described in clause “(ii)”; and (B) deliver or cause to be delivered to the Mortgagee the Opinion of Counsel to the Debtor as described below. The Mortgagee may conclusively rely upon (y) when applicable, the certification referred to in clause “(A)(ii),” and (z) in all instances, the Opinion of Counsel to the Debtor. In the event the Debtor chooses to have the Mortgagee perform all or some of the Continuation Actions, as provided in clause “(A)(i)” hereinabove, the Mortgagee shall reasonably promptly perform such Continuation Actions at the Debtor’s sole expense. The Debtor shall perform the obligations described hereinabove in clauses “(A)” and “(B)” no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause “(i)”) on which a Continuation Action is to be taken to preserve the lien and security interest of this Mortgage.

The Opinion of Counsel to the Debtor shall be addressed to the Debtor and the Mortgagee. Counsel shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year period thereafter through the term of the Bonds, and/or (ii) the date of any required Continuation Action not covered by clause "(i)," in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Debtor, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Mortgagee with instruments and papers prepared by the Debtor, or (ii) the Debtor through electronic filing, or (iii) the Mortgagee as to some Continuation Actions, and the Debtor as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Debtor and the Mortgagee then requisite to the maintenance of the perfection of the security interest of the Mortgagee in and to all property and interests which by the terms of this Mortgage are to be subjected to the lien and security interest of this Mortgage.

(d) Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Debtor (which shall be reasonably acceptable to the Mortgagee) shall have the right to designate a company to facilitate the filing of the Uniform Commercial Code financing statements.

(e) All costs (including reasonable attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Debtor.

(f) The Debtor agrees to perform all other acts (including the payment of all fees and expenses) necessary in order to enable the Mortgagee to comply with this Section, and with Section 7.07 of the Indenture, including but not limited to, providing prompt notice to the Mortgagee of any change in either of the name or address of the Debtor. The Debtor agrees that the Mortgagee, if permitted by applicable law, may provide for the re-recording of the Indenture or any other Security Document or the filing or re-filing of continuation statements without the cooperation of the Debtor as necessary at the Debtor's sole cost and expense.

Section 3.8. After-Acquired Property. Except as provided in Section 3.4(c) of the Loan Agreement, all right, title and interest of the Debtor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property (other than trade fixtures), or any part thereof, hereafter acquired, constructed, assembled or placed by or at the direction of the Debtor on or in the Facility (other than trade fixtures), and all conversions and proceeds of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of the Debtor, shall become subject to the security and lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Debtor and specifically described in the Granting Clauses hereof; but at any and all times the Debtor, on demand, will execute, acknowledge, deliver to the Mortgagee and the Debtor will cause to be recorded or filed as provided in Section 3.8, any and all such further assurances and mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purposes of expressly and specifically subjecting the same to the security and lien of this Mortgage.

Section 3.9. The Ground Lease. i) The Debtor will promptly pay or cause to be paid all rents, additional rents and other charges as and when the same become due, and diligently perform and observe all terms, covenants and conditions required to be paid, performed and observed by the Debtor as lessee under the Ground Lease, within the period provided in the Ground Lease (provided, however, that the aforesaid covenant of the Debtor shall be deemed to require that all such rents, additional rents and other charges be paid, and all such terms, covenants and conditions be performed and observed, no later than five (5) Business Days in the case of a performance covenant (and no later than three (3) Business Days in the case of a payment obligation) prior to the date that the failure to make such payment or perform and observe such terms, covenants and conditions, would constitute a default under the Ground Lease), and will do all things necessary to preserve and keep unimpaired its rights under the Ground Lease. The Debtor will furnish the Mortgagee, upon demand, proof of payment of all items which are required to be paid by the Debtor pursuant to the Ground Lease and proof of payment of which is required to be given to the lessor under the Ground Lease. To the extent that the Ground Lease shall grant to the Debtor, as lessee thereunder, the privilege to postpone or defer the payment of any sum required to be paid thereunder, the failure of the Debtor to pay the same shall not constitute a default hereunder if and so long as the Debtor shall faithfully comply with all of the conditions and other requirements of the Ground Lease with respect to the exercise of such privilege. The Debtor shall not waive any of its rights under the Ground Lease, or refrain from exercising any right or remedy accorded to it under the Ground Lease on account of any default by the lessor thereunder, or release the lessor from any liability or condone or excuse any improper actions of the lessor thereunder without first obtaining the written consent of the Mortgagee.

(b) No release or forbearance of any of the Debtor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release the Debtor from any of its obligations under this Mortgage, including its obligation with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease to be kept, performed and complied with by the tenant therein.

(c) The Debtor shall not make any election or give any consent or approval (other than the exercise of a renewal right or extension right or other right conferring a benefit on the Debtor, provided that any such action has no adverse effect or consequence to the Issuer, the Mortgagee or the Bondholders or the security for the Bonds) for which a right to do so is conferred upon the Debtor as tenant under the Ground Lease without the prior written consent of the Mortgagee if such election, consent or approval would impair the rights of the Mortgagee or the security for the Obligations. In case of any Event of Default under this Mortgage, all such rights, together with the right of termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, all of which have been assigned for collateral purposes to the Mortgagee, shall vest in and be exercisable solely by the Mortgagee.

(d) Not more than three hundred sixty (360) and less than two hundred seventy (270) days before the right of the Debtor to exercise any option or right to renew or extend the term of the Ground Lease shall expire, the Debtor shall give the Mortgagee written notice specifying the date, term and manner for which such option or renewal is to be exercised. Within ten (10) days of written demand by the Mortgagee, the Debtor shall exercise any such option or renewal which is necessary to extend the term of the Ground Lease beyond the term of this Mortgage or to comply with any Legal Requirement affecting the Debtor, the Issuer or the Mortgagee, or which is necessary, in the reasonable judgment of the Mortgagee, to preserve the value of the Mortgaged Property intended to be afforded by this Mortgage. The Debtor shall promptly provide evidence of such exercise of such option or right to the reasonable satisfaction of the Mortgagee. In the event that the Debtor fails to so exercise any such option or right or upon the occurrence of an Event of Default, the Debtor hereby agrees and grants to the Mortgagee all right and authority to exercise such option in the name of the Debtor or in its own name. Nothing contained herein shall affect or limit any rights of the Mortgagee under the Ground Lease.

(e) In the event the Debtor shall violate any of the covenants specified in Section 3.9(a) above, then the Mortgagee shall have the right (but shall not be obligated) to take any action as the Mortgagee may deem reasonably necessary or desirable to prevent or cure any default of the Debtor under the Ground Lease or any default of the lessor thereunder, it being agreed that upon receipt by the Mortgagee from the lessor under the Ground Lease of any notice of default, the Mortgagee shall be entitled to rely thereon and take any of the aforesaid action even though the Debtor denies or questions the existence of any such default, and shall have the immediate right to enter all or any portion of the Facility at such times and in such manner as the Mortgagee deems reasonably appropriate in order to prevent or to cure any such default, or any condition which with notice and/or lapse of time would constitute an Event of Default under the Ground Lease.

(f) In the event the Debtor shall violate any of the covenants specified in Section 3.9(a) hereof, then, for the purpose of preventing or curing any default by the Debtor under the Ground Lease, the Mortgagee may (but shall be under no obligation to) do any act or execute any document in the name of the Debtor or as its attorney-in-fact, as well as in the name of the Mortgagee, without waiving or releasing the Debtor from any of its obligations hereunder. The Debtor hereby irrevocably appoints the Mortgagee its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which in the opinion of the Mortgagee may be reasonably necessary or desirable to prevent or cure any default under the Ground Lease or to preserve any rights of the Debtor in, to or under the Ground Lease, or any Facility Lease, or to preserve any rights of the Debtor whatsoever in respect of any part of the Facility, subject, however, to the provisions of the Ground Lease and Section 5.1.

(g) The Debtor shall, from time to time, use commercially reasonable good faith efforts to obtain from the landlord under the Ground Lease such certificates of estoppel with respect to compliance by the Debtor with the terms of the Ground Lease as may be reasonably requested from time to time by the Mortgagee (but not more often than once in any calendar year except upon reasonable cause). The curing by the Mortgagee of any default by the Debtor under the Ground Lease shall not remove or waive, as between the Debtor and the Mortgagee, any default which may have occurred hereunder by virtue of the default by the Debtor under the Ground Lease, and all sums expended by the Mortgagee (upon ten (10) days prior written notice by the Mortgagee to the Debtor of its intention to expend such sums, except if in the reasonable judgment of the Mortgagee an emergency condition exists) in order to cure any such default and costs and expenses incurred by the Mortgagee in connection with the curing of such default shall be paid by the Debtor to the Mortgagee upon demand with interest therein at the annual rate of eighteen percent (18%) per annum from the date of advancement until paid, and any such indebtedness shall be deemed to be secured by this Mortgage.

(h) The Debtor shall not, without the prior consent of the Mortgagee, surrender the leasehold estate created by the Ground Lease or terminate or cancel the Ground Lease, and the Debtor hereby assigns to the Mortgagee, as further security for the payment of the Obligations and for the performance and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of the Debtor, as tenant under the Ground Lease, to surrender the leasehold estate created by the Ground Lease or to terminate or cancel the Ground Lease, and any such surrender of the leasehold estate created by the Ground Lease or termination or cancellation of the Ground Lease without the prior consent of the Mortgagee shall be void and of no force and effect.

(i) The Debtor shall notify the Mortgagee promptly of (i) the occurrence of any default by the lessor under the Ground Lease or the occurrence of any event which, with the passage of time or giving of notice, or both, would constitute a default by the lessor under the Ground Lease, (ii) the receipt by the Debtor of any notice (written or oral) from the lessor under the Ground Lease noting or claiming the occurrence of any default by the Debtor under the Ground Lease or the occurrence of any event which, with the passage of time or giving of notice, or both, would constitute a default by the Debtor under the Ground Lease, and deliver to the Mortgagee a true copy of such notice, or (iii) any request made by either party to the Ground Lease for arbitration proceedings pursuant to the Ground Lease and of the institution or commencement of arbitration proceedings thereunder. The Debtor shall permit the Mortgagee to participate in any arbitration proceedings in association with the Debtor, and if at the time any such arbitration proceedings shall be initiated, an Event of Default shall exist and be continuing, the Mortgagee is hereby granted the right to designate and appoint any arbitrators to be appointed by the Debtor under the Ground Lease. If any action or proceeding shall be instituted to evict the Debtor or to recover possession of the Facility or any portion thereof or for any other purpose affecting the Ground Lease or this Mortgage, the Debtor shall, immediately upon service thereof on or to the Debtor, deliver to the Mortgagee a true and complete copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

(j) The Debtor shall not unreasonably withhold its consent to any proposed modifications of the Ground Lease which the lessor thereunder agrees to make at the request of the Mortgagee necessary for the improving, maintaining or preserving the Mortgagee's security in the Ground Lease.

(k) The Debtor shall not sell or assign the Ground Lease or any of its rights thereunder or the leasehold estate created thereby or sublease all or any portion of the Facility except in accordance with the Loan Agreement.

(l) The Debtor will promptly perform and observe all the terms, covenants and conditions required to be performed and observed by the Debtor as sublessor under the Facility Leases, within the periods provided in the Facility Leases prior to the date that the failure to make such payment or perform and observe such terms, covenants and conditions, would constitute a default under the respective Facility Leases, and will do all things necessary to preserve and keep unimpaired its rights under the Facility Leases. The Debtor shall not waive any of its rights under the Facility Leases, or refrain from exercising any right or remedy accorded to it as sublessor thereunder on account of an event of default under any Facility Lease, or release any Facility Tenant from liability or condone or excuse any improper act of any Facility Tenant under any Facility Lease, in any case if such action or failure to take action were not effected (in the Debtor's reasonable judgment) in good faith in a commercially reasonable manner. The Debtor shall not voluntarily terminate a Facility Lease or accept a surrender of any Facility Lease or suffer or permit any termination or surrender of any Facility Lease, in each case prior to the scheduled expiration thereof, except (x) with the prior written consent of the Mortgagee which consent must be given if the Mortgagee is so directed by the Majority Holders (if not so directed, such consent not to be unreasonably withheld or delayed), (y) if the termination or surrender of such Facility Lease will not have a material adverse effect upon Facility Revenues, or (z) if the Debtor's actions with respect to such Facility Tenant and Facility Lease are taken (in the Debtor's reasonable judgment) in a good faith commercially reasonable manner.

(m) The Debtor will not (i) modify, amend or supplement any Facility Lease if such modification, amendment or supplement would have a material adverse effect on Facility Revenues (except if such material adverse effect on Facility Revenues is only of a short-term consequence and is not reasonably likely to have a long-term material adverse effect on Facility Revenues), or (ii) require any Facility Tenant to subordinate any Facility Lease to the Lien of any mortgage on the Facility other than Permitted Encumbrances. The Debtor shall deliver to the Mortgagee, promptly following the execution thereof, a copy of each executed amendment, modification or supplement to a Facility Lease, accompanied by a certificate of an Authorized Representative of the Debtor to the effect that such amendment, modification or supplement was entered into in good faith by the Debtor and was commercially reasonable.

(n) Each Facility Lease entered into by the Debtor must provide that the Facility Lease is subordinate to the Lien of this Mortgage and any extensions, replacements or modifications hereof.

(o) The Mortgagee is hereby granted the right to participate in any dispute with the lessor under the Ground Lease, and the Debtor shall not settle with the lessor under the Ground Lease any insurance or condemnation claim or adjustment in an amount in excess of \$500,000 without the consent of the Mortgagee.

(p) If there shall be filed by or against the Debtor a petition under the United States Bankruptcy Code, Title 11 of the United States Code (the "Bankruptcy Code"), then the Lien of this Mortgage shall attach to all of the Debtor's rights and remedies at any time arising under or pursuant to the Bankruptcy Code, including, but not limited to, §365 thereof. Upon the filing of any petition by or against the Debtor under the Bankruptcy Code, the Debtor shall immediately provide copies of all pleadings and notices related thereto to the Mortgagee. The Debtor unconditionally assigns to the Mortgagee all of the Debtor's rights to remain in possession of the Mortgaged Property following the filing of any bankruptcy petition by or against the Debtor, and acknowledges that the Mortgagee may file any pleading in furtherance thereof. This assignment constitutes a present, irrevocable, and unconditional assignment of the foregoing claims, rights, and remedies of the Debtor, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Furthermore, the Debtor hereby irrevocably constitutes and appoints the Mortgagee as the Debtor's attorney in fact for the purpose of filing any pleading in the court in which the initial petition was filed or any court to which the action thereon may be removed, transferred, or assigned (the "Bankruptcy Court") that the Mortgagee determines in its sole discretion to protect the Mortgagee's interests in and to the Mortgaged Property, including but not limited to a motion to extend any applicable time period for the filing of any motion related to the assumption of the Ground Lease.

(q) The Debtor shall not, without the prior written consent of the Mortgagee, file any motion or other pleading to reject or otherwise elect to treat the Ground Lease as terminated under §365 of the Bankruptcy Code. Any such motion, pleading, or election made without such prior written consent shall be void ab initio, and this Mortgage may be pled in bar thereof. If the Debtor does file such a motion to reject the Ground Lease under §365 of the Bankruptcy Code, the Debtor hereby acknowledges and agrees that, unless the Mortgagee consents in writing to such rejection, the Debtor may not reject the Ground Lease unless the Debtor proves, by a preponderance of the evidence, that the Debtor was "insolvent," within the meaning of §101 of the Bankruptcy Code, on the petition filing date. If the Debtor, as tenant under the Ground Lease and as debtor under the Bankruptcy Code, shall desire to reject the Ground Lease pursuant to §365 of the Bankruptcy Code, the Debtor shall give the Mortgagee not less than thirty (30) days' prior written notice of the date on which the Debtor intends to file a motion in or otherwise apply to the Bankruptcy Court for authority to reject the Ground Lease. In such event, the Mortgagee shall have the right, but not the obligation, to serve upon the Debtor within such thirty (30) day period a notice stating that the Mortgagee demands that the Debtor assume the Ground Lease and assign the Ground Lease to the Mortgagee or the Mortgagee's designee pursuant to §365 of the Bankruptcy Code. If the Mortgagee shall serve upon the Debtor the notice described in the preceding sentence, the Debtor shall not seek to reject the Ground Lease and shall comply with the demand provided for in the preceding sentence.

(r) If the Debtor shall desire to assume the Ground Lease, then the Debtor shall give the Mortgagee not less than ten (10) days' prior written notice of the date on which the Debtor intends to file a motion in, or otherwise apply to, the Bankruptcy Court for authority to assume the Ground Lease. The Debtor shall inform the Mortgagee as a part of such notice whether or not the Debtor intends to assign the Ground Lease following assumption thereof. The Mortgagee shall have the right, but not the obligation, to serve upon the Debtor within such ten (10) day period a notice stating that the Mortgagee demands that the Debtor assume the Ground Lease and assign the Ground Lease to the Mortgagee or the Mortgagee's designee pursuant to §365 of the Bankruptcy Code, and such election by the Mortgagee shall be binding upon the Debtor. Should the Debtor file a motion to assume the Ground Lease, the Mortgagee shall have the sole right to determine what terms and conditions will provide the Mortgagee with "adequate assurance of future performance," within the meaning of §365 of the Bankruptcy Code.

(s) If there shall be filed by or against the landlord or any fee owner of the Mortgaged Property a petition under the Bankruptcy Code, the Debtor shall, after obtaining knowledge thereof, promptly notify the Mortgagee thereof in writing. The Debtor shall promptly deliver to the Mortgagee, following receipt, complete and correct copies of any and all notices, motions, summonses, pleadings, claim forms, applications, and other documents received by the Debtor in connection with any such petition and any proceedings relating thereto. In the event of such a bankruptcy filing, the Mortgagee shall have the option, exercisable upon notice from the Mortgagee to the Debtor, to conduct and control any such litigation with counsel chosen by the Mortgagee. If an Event of Default shall exist and be continuing, or if the Mortgagee shall reasonably determine that such actions are necessary to preserve the security of this Mortgage, the Mortgagee may proceed in its own name or in the name of the Debtor in connection with any such litigation, and the Debtor agrees to execute any and all powers, authorizations, consents, or other documents required by the Mortgagee in connection therewith. The Debtor shall not commence any action, suit, proceeding, or case, or file any application or make any motion, seeking to terminate the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of the Mortgagee. The Debtor hereby unconditionally assigns, transfers, and sets over to the Mortgagee all of the Debtor's claims and rights to the payment of damages or any claim arising from any rejection of the Ground Lease by the landlord or any other fee owner of the Mortgaged Property, or the payment of any amount or claim associated with the Ground Lease in any proceeding under the Bankruptcy Code. If an Event of Default shall exist and be continuing, or if the Mortgagee shall reasonably determine that such actions are necessary to preserve the security of this Mortgage, the Mortgagee shall have the right to proceed in its own name and/or in the name of the Debtor in respect of any claim, suit, action, or proceeding relating to the assumption or rejection of the Ground Lease by the landlord, including, without limitation, the right to file and prosecute, to the exclusion and in the name of the Debtor, any proofs of claim, complaints, motions, applications, notices, and other documents, or to defend against any objection thereto, in any case in respect to the landlord or any fee owner of the Mortgaged Property. This assignment constitutes a present, irrevocable, and unconditional assignment of the foregoing claims, rights, and remedies, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Any amounts received by the Mortgagee as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of the Mortgagee (including, without limitation, attorneys' and paralegals' fees and expenses) incurred in connection with the exercise of any of its rights or remedies under this Section. The Debtor shall promptly make, execute, acknowledge, and deliver, in form and substance satisfactory to the Mortgagee, a UCC Financing Statement (Form UCC 1), and all such additional instruments, agreements and other documents, as may at any time hereafter be required by the Mortgagee to effectuate and carry out the assignment made pursuant to this Section.

(t) If the Debtor shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by the landlord or any fee owner of the Mortgaged Property of any of its obligations under the Ground Lease after the rejection by the landlord or any fee owner of the Mortgaged Property under the Bankruptcy Code, the Debtor shall, prior to effecting such offset, notify the Mortgagee of its intent to do so, setting forth the amounts proposed to be so offset and the basis therefor. The Mortgagee shall have the right to object to all or any part of such offset that, in the reasonable judgment of the Mortgagee, would constitute a breach of the Ground Lease, and in the event of such objection, the Debtor shall not effect any offset of the amounts so objected to by the Mortgagee. Neither the failure of the Mortgagee to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by the Mortgagee. The Debtor shall pay and protect the Mortgagee, and indemnify and save the Mortgagee harmless from and against, any and all claims, demands, actions, suits, proceedings, damages, losses, costs, and expenses of every nature whatsoever (including without limitation, attorneys' and paralegals' fees and expenses) arising from or relating to any offset by the Debtor against the rent reserved in the Ground Lease.

(u) This Mortgage and the rights of the Mortgagee hereunder shall in all respects be subject and subordinate to the terms, covenants, conditions and provisions set forth in the Ground Lease.

Section 3.10. No Merger of Estates. So long as any portion of the Obligations shall remain unpaid, unless the Mortgagee shall otherwise consent, the interest of the lessor under the Ground Lease in the Facility and the leasehold estate of the Debtor created in the Facility 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 the Debtor, or in any other Person by purchase, operation of law or otherwise. If the Mortgagee shall acquire the interest of the lessor under the Ground Lease in the Facility and the leasehold estate created in the Facility pursuant to the provisions of the Ground Lease, by foreclosure of this Mortgage or otherwise, such estates shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until the Mortgagee shall elect to merge such estates. Nothing herein contained shall be construed as authorizing the sale by the Debtor of its leasehold estates under the Ground Lease without the prior written consent of the Mortgagee.

Section 3.11. Additional Taxes or Charges. If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on this Mortgage, the Debtor will pay such tax, with interest and penalties thereon, if any. 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 this Mortgage or any of the other Security Documents, the Debtor agrees to pay for the same, with interest and penalties thereon, if any. Nothing contained in this Section 3.11 shall obligate the Debtor to indemnify for any income tax liability arising by reason of this Mortgage.

Section 3.12. Notice of Event of Default. The Debtor shall immediately notify the Mortgagee in writing of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Security Document. Any notice required to be given pursuant to this Section shall be signed by the Debtor and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken to cure a default, the notice should plainly state this fact.

Section 3.13. Debtor's Acquisition of Fee Estate. Subject to the provisions of Section 3.10, in the event that the Debtor, so long as any portion of the Obligations remains unpaid, shall be the owner and holder of the fee title to any leasehold portion of the Mortgaged Property, the lien of this Mortgage shall be spread to cover the Debtor's fee title to such Mortgaged Property and said fee title shall be deemed to be included in the Mortgaged Property without any further action. The Debtor agrees, at its sole cost and expense, including without limitation reasonable attorneys' fees of the Mortgagee, to (i) execute any and all documents or instruments necessary to subject its fee title to the Mortgaged Property to the lien of this Mortgage; and (ii) provide a title insurance endorsement which shall insure that the lien of this Mortgage is a first lien on the Debtor's fee title to the Mortgaged Property.

Section 3.14. Leasehold Condominium. In the event the Debtor shall subject the premises leased under the Ground Lease to a condominium regime of ownership pursuant to the provisions of Article 9-B of the New York Real Property Law, the Ground Lease and the Loan Agreement, the lien of this Mortgage shall automatically extend to the condominium declaration and by-laws effecting such condominium regime, and to each condominium unit created thereunder.

ARTICLE IV

ASSIGNMENT OF LEASES AND RENTS

Section 4.1. Assignment of Leases and Rents. ii) The Debtor hereby assigns to the Mortgagee all of the right, title and interest of Debtor in any and all Facility Leases (including all related rights, guarantees, amendments, supplements, modifications, renewals and extensions relating thereto) together with (i) all Facility Revenues, including all rents, income, profits, issues, avail, insurance proceeds, condemnation awards, funds deposited by any Facility Tenant to pay costs of construction, restoration or repair, and any other awards and settlements arising from such Facility Leases, and all other payments by the Facility Tenants to or owing to Debtor under any such Facility Leases (all such amounts payable by a Facility Tenant under a Facility Lease, being, collectively, the "Facility Lease Payments"), (ii) the rights to sue for, collect and receive such Facility Lease Payments, (iii) all amendments, supplements, modifications, renewals and extensions thereof now existing or hereafter made, (iv) the right to amend, supplement, modify, waive, extend, renew or cancel such Facility Leases, (v) any and all guarantees of any Facility Tenant's obligations under any such Facility Lease, (vi) the rights of the Debtor to collect, receive, hold and apply all bonds and security in all of said such Facility Leases provided to be furnished to the Debtor thereunder, (vii) the rights of the Debtor to enforce any and all of the agreements, terms, covenants and conditions in all of such Facility Leases and to give notices, consents, releases and waivers thereunder, (viii) the right to make all waivers and agreements, (ix) the right to give all notices, consents, releases and other instruments, (x) the right to give all notices of default and to take all action upon the happening of a default under any Facility Lease, including the commencement, conduct and consummation of proceedings as shall be permitted under any provision of any Facility Lease, or by law or in equity, (xi) the right to receive all notices sent to the Debtor, as lessor under any Facility Lease, and (xii) the right to do any and all other things whatsoever which the Debtor or any lessor is or may be entitled to do under any Facility Lease, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations.

(b) This assignment and grant shall continue in effect until the Obligations are paid. The Mortgagee hereby waives the right to enter upon and to take possession of the Facility for the purpose of collecting said rents, issues and profits, and the Debtor shall be entitled to collect and receive said rents, issues and profits and to apply same in payment of the amounts becoming due on the Obligations, operating expenses related to the Facility and other expenses (capital or otherwise) consistent with the purposes of the Debtor until the occurrence of an Event of Default hereunder. Upon the occurrence of an Event of Default hereunder, the Debtor will pay monthly in advance to the Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Facility or of such part thereof as may be in the possession of the Debtor, and upon default in any such payment will vacate and surrender the possession of the Facility to the Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

(c) As long as no default or Event of Default shall exist under the Indenture or under any other Security Document including this assignment, Mortgagee shall permit Debtor

(i) to sue for Facility Lease Payments, and

(ii) to take any action stated in clauses (iii) through (xii) of the paragraph above,

provided, however, that Debtor shall only act in good faith and in a commercially reasonable manner.

(d) The Debtor will not, without the written consent of the Mortgagee, receive or collect rent from any tenant of the Facility or any part thereof for a period of more than one month in advance.

(e) Upon the occurrence and during the continuance of an Event of Default, if the Debtor shall not have commenced to cure any default of the Debtor under any of the Facility Leases, nor shall have continued its efforts to effect such cure with good faith and due diligence, the Mortgagee shall have the right, but shall not have the obligation, at the Debtor's expense, to cure any default by the Debtor under any of the Facility Leases upon at least ten (10) days' prior written notice to the Debtor, provided, however, that lesser notice shall be required in the event of any emergency situation which, in the Mortgagee's judgment, may have a material adverse effect on the receipt of the Facility Lease Payments.

(f) The Mortgagee shall not in any way be responsible for any failure to do any or all of the things for which the rights, interests, power and/or authority are herein granted; and the Mortgagee shall not be responsible for or liable under any of the agreements undertaken or obligations imposed upon the lessor under any Facility Lease or other agreements with respect to the Facility, except for its gross negligence or willful misconduct.

(g) The Mortgagee's failure to do any of the things or exercise any of the rights, interests, powers and/or authorities granted hereunder shall not be construed as a waiver of any of the rights, interests, powers or authorities assigned and granted to the Mortgagee under this Mortgage.

(h) The parties agree that this Mortgage is an actual assignment effective immediately, and that without demand each Facility Tenant or other person liable under or in respect of any Facility Lease shall, and is hereby authorized and directed to, pay to or upon the Mortgagee's order, and without any inquiry of any nature, and upon the declaration by the Mortgagee of an Event of Default hereunder, all Facility Lease Payments then or thereafter accruing under said Facility Leases or any other instrument or agreement, oral or written, granting rights to, and creating an obligation to pay, Facility Lease Payments in connection with the Facility.

(i) All Facility Tenants or occupants of any part of the Facility are hereby authorized to recognize the claims and demands of the Mortgagee upon assertion of an Event of Default, without investigation as to the reason for any action taken by the Mortgagee or the validity or the amount or Obligations owing to the Mortgagee or the application to be made by the Mortgagee, of any amounts to be paid to the Mortgagee. The Mortgagee's sole signature shall be sufficient for the exercise of any right under this Mortgage, and the Mortgagee's sole receipt given for any sums received shall be a full discharge and release therefor to any such Facility Tenant or occupant of the Facility. Checks for all or any part of the rental collected under this Mortgage shall be made to the exclusive order of the Mortgagee, and, upon written request by the Debtor, the Mortgagee shall fully account to the Debtor as to all such payments received hereunder.

(j) To the extent that the Mortgagee shall exercise the judgment of a reasonable man under like circumstances, the Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any Facility Lease, nor shall this Mortgage operate to place upon the Mortgagee any responsibility for the control, operation, management, or repair of the Facility or the carrying out of any of the terms and conditions of any Facility Lease, nor shall this Mortgage operate to make the Mortgagee liable for any waste committed on the Facility by a Facility Tenant under any Facility Lease or any other Person, or for any dangerous or defective condition of the Facility, or for any negligence in the management, upkeep, repair or control of the Facility, resulting in loss, injury or death to any tenant, licensee, employee, invitee or stranger or any property thereof.

(k) The Debtor shall, and does hereby agree to, indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under any of the Facility Leases or under or by reason of this Mortgage and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Facility Leases, except to the extent of the gross negligence or willful misconduct of the Mortgagee. Should the Mortgagee incur any such liability, loss or damage under any of the Facility Leases or under or by reason of this Mortgage, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and the Debtor shall reimburse the Mortgagee therefor immediately upon demand.

(l) The Mortgagee shall not be liable (except to the extent of its gross negligence or willful misconduct) for any loss sustained by the Debtor resulting from the Mortgagee's failure to let the Facility or any portion thereof after the occurrence of an Event of Default or from any other act or omission of the Mortgagee either in collecting the Facility Lease Payments or, if the Mortgagee shall have taken possession of all or any portion of the Facility, in managing all or any portion of the Facility after any such Event of Default (except that the Mortgagee must exercise the judgment of a reasonable man under like circumstances). The Mortgagee shall not be obligated to perform or discharge, nor does the Mortgagee hereby undertake to perform or discharge, any obligation, duty or liability of the Debtor under any Facility Lease or under or by reason of this Mortgage, and the Debtor shall, and does hereby agree to, indemnify the Mortgagee for, and to hold the Mortgagee harmless from, any and all liability, loss or damage which may or might be incurred under any Facility Lease or under or by reason of this Mortgage and from any and all claims and demands whatsoever which may be asserted against the Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Facility Lease (collectively, the "Claims"), except to the extent such Claims are a direct result of the Mortgagee's gross negligence or willful misconduct. Should the Mortgagee incur any such liability under any Facility Lease or under or by reason of this Mortgage or in defense of any such claims or demands, the Debtor shall reimburse the Mortgagee therefor, including, without limitation, its costs, expenses and reasonable attorneys' fees and expenses, within five (5) Business Days after demand, and upon the failure of the Debtor to do so, the Mortgagee may, at its option, exercise its remedies under the Indenture or under any other Security Document. It is further understood that this Mortgage shall not operate to place responsibility for the control, care, management or repair of all or any portion of the Facility upon the Mortgagee, nor for the carrying out of any of the terms and conditions of any Facility Lease, nor shall it operate to make the Mortgagee responsible or liable for any waste committed on the Facility by any Facility Tenant or any other Person, or for any dangerous or defective condition affecting any portion of the Facility, or for any negligence in the management, upkeep, repair or control of the Facility resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger or any other Person.

(m) The Debtor agrees that it will, at the written request therefor by the Mortgagee, deliver to the Mortgagee an executed counterpart of each (or a certified photocopy thereof) and every Facility Lease then affecting all or any part of the Facility.

(n) Upon the occurrence of an Event of Default hereunder, upon or at any time after default in the payment of any of the Obligations, and after the delivery of any notice and/or the expiration of any period of grace, if any, with respect to any such default provided for in the Security Documents, the Mortgagee may, at the Mortgagee's option, without notice, either in the Mortgagee's person or by agent and with or without bringing any action or proceeding, or by any receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Facility and each and every part thereof, and in connection therewith, the Mortgagee may make, cancel, enforce and modify Facility Leases; fix or modify rents; repair, maintain and improve the Facility; employ contractors, subcontractors and workmen in and about the Facility; obtain and evict tenants; in its own name, sue for or otherwise collect or reserve any and all Facility Lease Payments, including those past due and unpaid; employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of the Mortgagee's rights hereunder and pay the reasonable fees and expenses thereof; and otherwise do and perform any and all acts which the Mortgagee may deem necessary and appropriate in and about the Facility for the protection thereof and of the Mortgagee's rights hereunder or under the other Security Documents, and any and all amounts reasonably expended by the Mortgagee in connection with the foregoing shall constitute so much additional indebtedness secured hereby. The Mortgagee shall apply any moneys collected by the Mortgagee, as aforesaid, less costs and expenses incurred, as aforesaid, upon any Obligations secured hereby in accordance with the provisions of Section 8.03 of the Indenture. The entering upon and taking possession of the Facility, the collection of Facility Lease Payments, the exercise of any rights hereinabove specified, and the application of collections, as aforesaid, shall not cure, waiver, modify or otherwise affect any default hereunder or under the other Security Documents.

Section 4.2. No Cancellation or Modification of Facility Leases. Except as expressly permitted in the Loan Agreement, the Debtor shall not, without the prior written consent of the Mortgagee, make, or suffer to be made, any leases, or cancel or modify any leases or accept prepayments of installments of rent for a period of more than one month in advance or further assign the whole or any part of the rents without the prior written consent of the Mortgagee. § 60; No lease or contract covering all or any part of the Mortgaged Property shall be valid or effective without the prior written approval of the Mortgagee. The Mortgagee shall have all of the rights against lessees of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York. In respect of any lease, the Debtor will (i) fulfill or perform each and every provision thereof on its part to be fulfilled or performed; (ii) promptly send copies of all notices of default which either shall send or receive thereunder to the Mortgagee; and (iii) enforce, short of termination thereof, the performance or observance of the provisions thereof. Nothing contained in this Mortgage shall be deemed to impose on the Mortgagee any of the obligations of the lessor under the leases.

Section 4.3. Required Facility Lease Provisions. All Facility Leases must provide that (i) the Facility Tenant shall pay to the Mortgagee upon an Event of Default hereunder all sums due under the Facility Lease upon notice to the Facility Tenant from the Mortgagee, (ii) any Facility Tenant shall, at the Mortgagee's option, furnish the Mortgagee with an estoppel and attornment letter as to its Facility Lease in form and substance reasonably acceptable to the Mortgagee, and (iii) the Facility Lease is expressly subordinated to the Ground Lease, this Mortgage (including any extensions, replacements or modifications hereof) and the other Security Documents.

Section 4.4. Debtor Not to Waive Rents. The Debtor will not waive, release, reduce, discount or otherwise discharge or assign to any Person other than the Mortgagee the Facility Lease Payments, rents, issues and profits of the Facility. In addition, the Debtor will observe and comply with all of its respective obligations as lessor under each Facility Lease, will promptly notify the Mortgagee if it receives any default notice thereunder and forward a copy of the default notice to the Mortgagee, and enforce any default thereunder by the Facility Tenant.

Section 4.5. Debtor to Furnish Rent Rolls. The Debtor will furnish to the Mortgagee, within fifteen (15) Business Days after mailing to the Debtor of a written request therefor, a detailed statement in writing, duly sworn, and covering the period of time specified in such request, showing all income derived from the operation of the Facility and all disbursements made in connection therewith, and containing a list of the names of all tenants of the Facility specified in such request, showing all income derived from the operation of the Facility and occupants other than those claiming possession through such tenants, the portion or portions of the Facility occupied by such tenant and occupant, the rents and other charges payable under the terms of their leases or other agreements, and the periods covered by such leases or other agreements.

Section 4.6. Mortgagee Right to Cure Default. If Debtor shall not have commenced to cure any default of the Debtor under any of the Facility Leases, nor shall have continued its efforts to effect such cure with good faith and due diligence, the Mortgagee shall have the right, but shall not have the obligation, at the Debtor's expense, to cure any default by the Debtor under any of the Facility Leases upon at least ten (10) days prior written notice to the Debtor, provided, however, that lesser notice shall be required in the event of any emergency situation which in the Mortgagee's judgment may have any adverse effect on the receipt of the Facility Lease Payments.

ARTICLE V

PROVISIONS REQUIRED UNDER GROUND LEASE

Section 5.1. Article 9 of the Ground Lease. In accordance with Article 9 of the Ground Lease, iii) this Mortgage is executed upon the condition that no purchaser at any foreclosure sale shall acquire any right, title or interest in or to 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, shall, in the instrument transferring to such purchaser or to such assignee the interest of Tenant (as defined in the Ground Lease) under the Ground Lease, assumes and agrees to perform all of the terms, covenants and conditions of the Ground Lease thereafter to be observed or performed on the part of Tenant, and moreover, that no further or additional mortgage or assignment of the Ground Lease shall be made except in accordance with the provisions contained in Article 9 of the Ground Lease, and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged by such purchaser or such assignee and in recordable form, is delivered to Landlord (as defined in the Ground Lease) under the Ground Lease immediately after the consummation of such sale, or, in any event, prior to taking possession of the premises demised thereby; and (b) the Mortgagee waives all right and option to retain and apply the proceeds of any insurance payable by reason of any special endorsement covering the cost of Demolition (as defined in the Ground Lease) toward payment of the sum secured by this Mortgage to the extent such proceeds are required for the demolition of the mortgaged premises in accordance with the provisions of the Ground Lease.

ARTICLE VI

REMEDIES; EVENTS OF DEFAULT

Section 6.1. Protective Action. The Mortgagee (at the direction of the Majority Holders) may take such action as the Mortgagee deems reasonably appropriate upon ten (10) days prior written notice to the Debtor (except that no such prior notice shall be required if in the reasonable judgment of the Mortgagee an emergency condition shall exist that threatens to do severe damage to or destruction of the Facility) to protect the Mortgaged Property or the status or priority of the lien of this Mortgage thereon including, but not limited to, entry upon the Facility to protect it from deterioration or damage, or to cause the Mortgaged Property to be put in compliance with any governmental, insurance rating or contract requirements; dispossession of the Debtor if necessary to remedy an emergency condition; payments of amounts due on liens having priority over this Mortgage if such lien constitutes a default pursuant to this Mortgage; curing any default by the Debtor under any of the Security Documents including this Mortgage; payment of any tax or charge for purposes of assuring the priority or enforceability of this Mortgage if failure to pay such tax by the Debtor is a default pursuant to this Mortgage; obtaining insurance on the Mortgaged Property; or commencement or defense of any legal action or proceeding to assert or protect the validity or priority of the lien of this Mortgage. The Debtor agrees to reimburse the Mortgagee for all expenses in taking any such action, on demand, with interest at a rate being the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under the applicable usury law, and the amount thereof shall be secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the Obligations heretofore stated.

Section 6.2. Benefit of Section 254 of the Real Property Law. Nothing herein contained shall be construed as depriving the Mortgagee of any right or advantage available under Section 254 of the Real Property Law of the State of New York, but all covenants herein differing therefrom shall be construed as conferring additional and not substitute rights and advantages.

Section 6.3. Sole Discretion of the Mortgagee. Wherever pursuant to this Mortgage, the Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to the Mortgagee, the decision of the Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of the Mortgagee and shall be final and conclusive. Notwithstanding the foregoing, if, pursuant to the terms of the Indenture or this Mortgage, a stated percentage of Holders of the Outstanding Bonds has the right to direct the Mortgagee in the exercise of any such right, such direction shall be final and conclusive, provided that such direction shall not be arbitrary or capricious.

Section 6.4. Recovery of Sums Required To Be Paid. The Mortgagee shall have the right (at the written direction of the Majority Holders) from time to time to take action to recover any sum or sums which constitutes a part of the Obligations as the same becomes due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other act ion, for a default or defaults by the Debtor existing at the time such earlier action was commenced.

Section 6.5. Events of Default. Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) Failure of the Debtor to pay any amount that has become due and payable hereunder, and continuance of such failure for a period of two (2) Business Days after written notice has been given to the Debtor specifying the nature of such default by the Mortgagee;

(b) Failure of the Debtor to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 5.6(a) above) and (1) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Debtor specifying the nature of such failure by the Mortgagee, or (2) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Debtor fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure;

(c) The Debtor or the Parent shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(d) A proceeding or case shall be commenced, without the application or consent of the Debtor or the Parent in any court of competent jurisdiction, seeking (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Debtor or the Parent or of all or any substantial part of their respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Debtor or the Parent shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); the terms “dissolution” or “liquidation” of the Debtor or the Parent as used above shall not be construed to prohibit any action otherwise permitted under the Security Documents;

(e) Any representation or warranty made by the Debtor (i) in the application and related materials submitted to the Issuer for approval of the Project or the transactions contemplated by this Mortgage, (ii) herein, (iii) in any other Project Document, or (iv) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall, in any case, prove to be false, misleading or incorrect in any material respect as of the date made;

(f) The Debtor shall be in default under any other mortgage covering any part of the Mortgaged Property and proceedings shall have been commenced to foreclose such mortgage, whether it be superior or inferior to the lien of this Mortgage; or

(g) An "Event of Default" under any Security Document shall occur and be continuing.

Section 6.6. Remedies Following an Event of Default. Upon the occurrence of an Event of Default hereunder, the Mortgagee may, in addition to any other rights or remedies available to it hereunder or elsewhere, take such action, without notice or demand, as it deems advisable, as directed by the Majority Holders, to protect and enforce its rights against the Debtor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee, as directed by the Majority Holders, may determine, in its sole discretion, subject, however, to the Ground Lease, without impairing or otherwise affecting the other rights and remedies of the Mortgagee:

(a) enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys, and dispossess the Debtor and its agents and servants therefrom, and thereupon the Mortgagee, as directed by the Majority Holders, may:

- (1) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct business thereat and therewith;
- (2) complete any construction, renovation, rebuilding or repairing of the Mortgaged Property in such manner and form as the Mortgagee deems advisable;
- (3) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property;
- (4) exercise all rights and powers of the Debtor with respect to the Mortgaged Property, in the name of the Debtor, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof; and
- (5) apply the receipts from the Mortgaged Property to the payment of the Obligations in accordance with Section 8.03 of the Indenture;

(b) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Obligations then due and payable, subject to the continuing security and lien of this Mortgage for the balance of the Obligations not then due;

(c) institute proceedings to foreclose the lien of this Mortgage against all or, from time to time, against any part of the Mortgaged Property and to have the same sold under the judgment or decree of a court of competent jurisdiction to the highest bidder, at public or private sale, subject to statutory and other legal requirements, if any, including all right, title and interest, claim and demand therein and thereto and all right of redemption thereof;

(d) sell, assign or transfer the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Debtor therein and right of redemption thereof, pursuant to power of sale or otherwise, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law (provided that ten (10) days notice of sale of the Mortgaged Property shall be deemed reasonable notice) for such price and form of consideration as the Mortgagee may determine or as may be required by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein;

(f) apply for the appointment of or appoint a trustee, receiver, liquidator or conservator of the Mortgaged Property, without regard for the adequacy of the security for the Obligations and without regard for the solvency of any Person liable for the payment of the Obligations whether or not in connection with an action to foreclose this Mortgage;

(g) take possession of the Mortgaged Property (which shall, to the extent practicable, be assembled and made available to the Mortgagee by the Debtor at such place in New York City or elsewhere as may be required by the Mortgagee) and otherwise exercise any and all of the rights of secured parties under the New York State Uniform Commercial Code-Secured Transactions;

(h) without prejudice to its right to bring an action for foreclosure of this Mortgage, sell the Mortgaged Property, or any part thereof, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted and pursuant to the procedures provided by applicable law, including, without limitation, Article 14 of the Real Property Actions and Proceedings Law of the State of New York and any amendments or substitute statutes in regard thereto, at one or more sales as a single parcel or in parcels, and at such time and place and upon such terms and after such notice thereof as may be required or permitted by law; or

(i) pursue such other remedies as the Mortgagee may have under applicable law.

Further, the Debtor, if there shall occur an Event of Default, shall pay monthly in advance to the Mortgagee, or to any receiver appointed at the request of the Mortgagee to collect the rents, revenues, issues, income and profits of the Mortgaged Property, the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or of such part thereof as may be in the possession of the Debtor. Upon default in the payment thereof, the Debtor shall vacate and surrender possession of the Mortgaged Property to the Mortgagee or such receiver, and upon a failure so to do may be evicted by summary proceedings.

If an Event of Default shall happen and be subsisting, in case there shall be pending proceedings for the bankruptcy or for the reorganization of the Debtor under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Debtor or in the case of any other similar judicial proceedings relative to the Debtor, or to the credits or property of the Debtor, the Mortgagee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Mortgage, irrespective of whether the principal of the Obligations or any amount hereunder shall then be due and payable as therein or herein expressed or by declaration or otherwise, and irrespective of whether the Mortgagee shall have made any demand pursuant to the provisions of this Section 6.6 or of Section 8.01 of the Indenture, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Mortgagee allowed in such judicial proceedings relative to the Debtor, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of their charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Mortgagee, and to pay to the Mortgagee any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it up to the date of such distribution.

Section 6.7. Appointment of a Receiver. Upon the occurrence of an Event of Default, the Mortgagee shall be entitled to the appointment of a receiver. The right to have a receiver appointed shall be a matter of strict right and without regard to the value or adequacy of the security and such receiver may enter upon and take possession of the Mortgaged Property, collect the rents, issues and profits therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers as a receiver may have under the laws of the State of New York. The expenses, including, without limitation, receiver's fees, counsel fees and expenses, costs and agent's commissions and compensation incurred pursuant to the powers herein granted shall be added to the principal portion of the Obligations and secured hereby.

Section 6.8. Foreclosure. In a case of a foreclosure sale or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety in one parcel (or as one integrated unit) or separate parcels (or one or more of the interests comprising the Mortgaged Property separately from the others) in such manner or order as the Mortgagee in its sole and absolute discretion may elect. If the Mortgagee so elects it may sell the remainder of the property except for the land, buildings and improvements, at one or more separate sales in the manner provided by the Uniform Commercial Code of the State of New York. One or more exercises of the powers herein granted shall neither extinguish nor exhaust such powers, until the entire property is sold or the Obligations secured hereby are paid in full or otherwise provided for in accordance with their terms.

Section 6.9. Non-Impairment. No provision of this Mortgage: (a) is or shall be deemed to be a release or impairment of any of the Obligations including this Mortgage, (b) shall preclude the Mortgagee, upon the occurrence of an Event of Default hereunder, from foreclosing this Mortgage or from enforcing its rights hereunder or under any other instrument governing or securing the Obligations, (c) shall preclude or bar the Mortgagee upon foreclosure from obtaining a deficiency judgment against the Debtor, against any subsequent owner of the Mortgaged Property who assumes the Obligations on a non-recourse basis, or against any other Person liable for the payment and performance of the Obligations, (d) shall require the Mortgagee to accept a part of the Mortgaged Property (as distinguished from its entirety) as payment of the debt secured hereby, or (e) shall compel the Mortgagee to accept or allow any apportionment of the debt secured hereby to or among any separate parts of the Mortgaged Property.

Section 6.10. No Remedy Exclusive. No remedy conferred upon or reserved to the Mortgagee hereunder is or shall be deemed to be exclusive of any other available remedy or remedies. Each such remedy shall be distinct, separate and cumulative, shall not be deemed to be inconsistent with or in exclusion of any other available remedy, may be exercised in the discretion of the Mortgagee at any time, in any manner, and in any order, and shall be in addition to and separate and distinct from every other remedy given the Mortgagee under this Mortgage or any other Security Document or now or hereafter existing in favor of the Mortgagee at law or in equity or by statute. Without limiting the generality of the foregoing, the Mortgagee shall have the right to exercise any available remedy to recover any amount due and payable hereunder without regard to whether any other amount is due and payable, and without prejudice to the Mortgagee to exercise any available remedy for other Events of Default existing at the time the earlier action was commenced.

Section 6.11. Delay To Not Constitute Waiver. Any delay, omission or failure by the Mortgagee to insist upon the strict performance by the Debtor of any of the covenants, conditions and agreements herein set forth to be exercised by it or to exercise any right or remedy available to it upon the occurrence of an Event of Default hereunder shall not impair any such right or remedy or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, by injunction or other appropriate legal or equitable remedy, strict compliance by the Debtor with all of the covenants, conditions and agreements herein to be exercised by it, or of the right to exercise any such rights or remedies if such default by the Debtor be continued or repeated. Any failure of the Mortgagee to exercise the option to accelerate the maturity of Obligations secured hereby, or any forbearance by the Mortgagee before or after any exercise of any such option, or any forbearance to exercise any other remedy of the Mortgagee, or any withdrawal or abandonment of the Mortgagee of any of its rights in any one circumstance shall not be construed as a waiver of any option, power, remedy or right of the Mortgagee hereunder. The rights and remedies of the Mortgagee expressed and contained in this Mortgage are cumulative and none of them shall be deemed to be exclusive of any other or of any right or remedy the Mortgagee may now or hereafter have in law or in equity. The election of any one or more remedies shall not be deemed to be an election of remedies under any statute, rule, regulation or case law. The covenants of this Mortgage shall run with the Mortgaged Property and other properties and the estates hereby mortgaged and bind the Debtor and its assigns, legal representatives and successors and shall inure to the benefit of the Mortgagee, its successors and assigns.

Section 6.12. Effect of Discontinuance of Proceedings. In case any proceedings taken by the Mortgagee on account of any Event of Default hereunder shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every such case, the Debtor, the Mortgagee and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Mortgagee shall continue as in effect prior to the commencement of such proceedings.

Section 6.13. Marshalling. The Debtor waives and releases any right to have the Mortgaged Property marshalled.

Section 6.14. Actions and Proceedings. The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding which the Mortgagee, in its discretion, determines to be brought to protect its interest in the Mortgaged Property. The Mortgagee shall further have the right, from time to time, to sue for any sums required to be paid under the terms of this Mortgage or any other mortgage to which this Mortgage is expressly subordinate, as the same become due, without regard to whether or not the principal sums secured or any other sums secured by this Mortgage shall be due and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure or any other action for a default or defaults by the Debtor existing at the time such earlier action was commenced.

Section 6.15. Attorneys' Fees and Other Costs. The Debtor agrees to bear all costs, fees and expenses including court costs and reasonable expenses (including reasonable attorneys' fees and disbursements) for legal services of or incidental to the enforcement of any provisions hereof (whether incurred during the continuance of an Event of Default or by the Mortgagee or any Holders of the Bonds), or enforcement, compromise or settlement of any of the collateral pledged hereunder, and for the curing thereof, or defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise, and will pay to the Mortgagee any such expenses incurred, and such expenses shall be deemed part of the Obligations secured by this Mortgage and shall be collectible in like manner as the Obligations secured by this Mortgage, and until so paid shall bear interest at a rate being the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under the applicable usury law. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently.

Section 6.16. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Mortgage should be breached by the Debtor and thereafter waived by the Mortgagee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the Mortgagee. No course of dealing between the Debtor and/or any other Person or any delay or omission on the part of the Mortgagee in exercising any rights hereunder shall operate as a waiver.

Section 6.17. Application of Proceeds. All proceeds derived through the exercise of any remedies or the commencement of any proceedings under this Mortgage shall be applied in accordance with Section 8.03 of the Indenture.

Section 6.18. Waiver of Moratorium. The Debtor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, or the exemption from execution from sale of any or all of the property, now or any time hereafter enacted or enforced, nor claim, take or insist upon the benefit of any law now or hereafter enacted or enforced providing for the valuation or appraisal of the Mortgaged Property or any part thereof prior to any sale or sales thereof which may be made pursuant to any provisions herein or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted or enforced to redeem the property so sold or any part thereof. The Debtor, to the extent permitted by law, hereby expressly waives the benefit or advantage of any such law or laws and covenants not to delay or impede the execution of any power herein granted or delegated to the Mortgagee.

Section 6.19. Waiver of Notice. The Debtor shall not be entitled to any notices of any nature whatsoever from the Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by the Mortgagee to the Debtor, and the Debtor hereby expressly waives the right to receive any notice from the Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of such notice.

ARTICLE VII

LIMITATIONS ON LIABILITY

Section 7.1. No Liability of Debtor's Members, Managers, Officers, Directors, Employees and Agents. It is agreed that, other than the Parent, the members, managers, directors, officers, employees and agents of the Debtor shall have no personal liability hereunder. All covenants, stipulations, promises, agreements and obligations of the Debtor contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Debtor and, other than the Parent, not of any member, manager, director, officer, employee or agent of the Debtor in his individual capacity, and no recourse shall be had hereunder for the payment of the principal of any debt or interest thereon or any of the Obligations or for any claim based thereon or hereunder against any member, manager, director, officer, employee or agent of the Debtor, other than the Parent, or any natural person executing this Mortgage.

Section 7.2. Usury Laws. This Mortgage and all other Security Documents are subject to the express condition that at no time shall the Debtor be obligated or required to pay interest on the principal balance due under the Obligations at a rate which could subject the holder of the Obligations to either civil or criminal liability as a result of being in excess of the maximum interest rate which the Debtor, is permitted by law to contract or agree to pay. If by the terms of this Mortgage or any of the other Security Documents, the Debtor is at any time required or obligated to pay interest on the principal balance due under the Obligations at a rate in excess of such maximum rate, the rate of interest under the Obligations shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Applicability of Section 13 of the Lien Law. This Mortgage is given in order to secure funds to pay for the Project and by reason thereof, it is intended that this Mortgage shall be superior to any laborers', mechanics' or materialmen's liens which may be placed upon the Mortgaged Property subsequent to the recordation hereof. The Debtor shall, therefore, in compliance with Section 13 of the New York Lien Law, 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 the Improvements and shall apply the same first to the payment of the cost of the Improvements before using any part of the total of the same for any other purpose.

Section 8.2. No Merger. It is the intention of this Mortgage that if the Mortgagee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, or any interest therein or lien thereon under any other mortgage or instrument, then, and until the Obligations have been paid in full or otherwise discharged or satisfied in accordance with their terms, the interest of the Mortgagee hereunder and the security interest created by this Mortgage shall not merge or become merged in or with the estate and interest of the Mortgagee as the holder and owner of title to all or any portion of the Mortgaged Property, or in or with the interest of the Mortgagee under or the lien of such other mortgage or instrument, and that, until such payment, discharge or satisfaction, the estate of the Mortgagee in the Mortgaged Property and the security interest created by this Mortgage and the interest of the Mortgagee hereunder shall continue in full force and effect to the same extent as if the Mortgagee had not acquired title to all or any portion of the Mortgaged Property or any other interest therein or lien thereon. If, however, the Mortgagee shall consent to such merger or if such merger shall nevertheless occur without its consent, then this Mortgage shall attach to, and cover and be a conveyance of the fee title or any other estate, title or interest in the Mortgaged Property acquired by the Debtor, and the same shall be considered as granted, released, assigned, transferred, pledged, conveyed and set over to the Mortgagee and this Mortgage spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, conveyed, set over and spread, provided, however, the Debtor shall pay any and all transfer, recording or other taxes in connection therewith.

Section 8.3. This Mortgage Constitutes A Commercial Transaction. THE DEBTOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ITS RIGHTS TO NOTICE AND HEARING AS ALLOWED UNDER ANY STATE OR FEDERAL LAW OR OTHER RIGHT WITH RESPECT TO ANY PREJUDGMENT REMEDY OR OTHER RIGHT WHICH THE MORTGAGEE MAY DESIRE TO USE. FURTHER, THE DEBTOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISEMENT, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.

Section 8.4. Consents. Wherever in this Mortgage the prior consent of the Mortgagee is required, the consent of the Mortgagee given as to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. Any such consents shall be in writing.

Section 8.5. Service of Process. The Debtor represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Debtor under this Mortgage shall be satisfied and met. If for any reason the Debtor should cease to be so subject to service of process in the State, the Debtor hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing General Counsel, at Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Debtor as a result of any of its obligations under this Mortgage. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Debtor hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Debtor as a result of any of its obligations under this Mortgage; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Debtor's obligations hereunder.

For such time as any of the obligations, covenants and agreements of the Debtor under this Mortgage remain unsatisfied, the Debtor's agent(s) designated in this Section 8.5 shall accept and acknowledge on the Debtor's behalf each service of process in any such suit, action or proceeding brought in any such court. The Debtor agrees and consents that each such service of process upon such agents and written notice of such service to the Debtor in the manner set forth in Section 8.6 shall be taken and held to be valid personal service upon the Debtor whether or not the Debtor shall then be doing, or at any time shall have done, business within the State and that each such service of process shall be of the same force and validity as if service were made upon the Debtor according to the laws governing the validity and requirements of such service in the State, and waive all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Debtor or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Debtor.

Section 8.6. Notices. All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including bank wire, teletype or similar writing) and shall be given to such party or other Person, addressed to it, at its address or teletype number set forth below or such other address or teletype number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

Party
Debtor

Address
Albee Retail Development LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: General Counsel

with a copy to:

Washington Square Partners
675 Third Avenue, 25th Floor
New York, New York 10017
Attention: Paul Travis

and

Akerman Senterfitt LLP
335 Madison Avenue
Suite 2600
New York, New York 10017
Attention: Steven P. Polivy, Esq.

Mortgagee

The Bank of New York Mellon
101 Barclay Street, Floor 7W
New York, New York 10286
Attn: Corporate Trust Administration

Any party hereunder may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 8.7. Consent to Jurisdiction. The Debtor irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Mortgage or any other Security Document, the Facility, the Project, the Debtor's leasehold, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Debtor commences any action against the Mortgagee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Debtor shall, upon request from the Mortgagee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Debtor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 8.8. Mortgage for Benefit of Debtor and Mortgagee. The covenants and agreements contained in this Mortgage (including all indemnities set forth herein) shall run with the land and bind the Debtor, and its heirs, executors, administrators, legal representatives, successors and assigns and each Person constituting the Debtor, and all subsequent owners, encumbrances and tenants of the Mortgaged Property, or any part thereof, and shall inure to the benefit of the Mortgagee, its respective successors and assigns, and all subsequent beneficial owners of this Mortgage, and survive the foreclosure of this Mortgage.

Section 8.9. Authorization. The execution of this Mortgage has been duly authorized by the appropriate Governing Body of the Debtor.

Section 8.10. Amendments and Modifications. This Mortgage shall be amended, modified or supplemented only by a written agreement executed by the Debtor and the Mortgagee and, in any event, only in accordance with the Indenture.

Section 8.11. Applicable Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 8.12. Date of Mortgage for Reference Purposes Only. The date of this Mortgage shall be for reference purposes only and shall not be construed to imply that this Mortgage was executed on the date first above written. This Mortgage was executed and delivered on the Closing Date.

Section 8.13. Incorporation of Certain Indenture Provisions. All provisions of Article IX of the Indenture shall be construed as extending to and including all of the rights, duties and obligations imposed upon the Trustee under this Mortgage as fully and for all purposes as if said Article IX were contained in this Mortgage.

Section 8.14. Entire Agreement; Counterparts. This Mortgage constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof (other than any Project Documents) and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 8.15. Severability. If any one or more of the provisions of this Mortgage shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions of this Mortgage, but this Mortgage shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.16. Waiver of Jury Trial. The Debtor hereby expressly waives, to the extent permitted by law, the right to assert a counterclaim in any action or proceeding brought against it by the Mortgagee, and waives, to the extent permitted by law, all rights to a trial by jury on any cause of action or proceeding brought by any party hereto against the other or in any counterclaim asserted by the Mortgagee against the Debtor, or in any matters whatsoever arising out of or in any way connected with this Mortgage or the Obligations, the Debtor's obligations hereunder, the Facility, the Mortgaged Property, the Project, the Debtor's leasehold, use or occupancy of the Facility and/or any claim for injury or damages.

Section 8.17. Property Not Covered. This Mortgage does not cover property principally improved or to be improved by one or more structures containing in the aggregate not more than six individual residential dwelling units, each having its own separate cooking facilities.

Section 8.18. Assignment of Mortgage Upon Refinancing of the Bonds. Upon written request of the Debtor in connection with a refinancing in whole of the Bonds, the Mortgagee shall assign this Mortgage, without recourse, warranty or representation whatsoever, to the refinancing lender upon (i) termination of the Loan Agreement pursuant to Article IX thereof, (ii) discharge of the Indenture, (iii) payment of all costs and expenses (including, without limitation, reasonable in-house and outside attorney's fees) incurred in connection with the assignment of this Mortgage, and (iv) the delivery by the Debtor to the Mortgagee of an affidavit pursuant to Section 275 of the New York Real Property Law and such other documents and instruments as the Mortgagee may reasonably request.

IN WITNESS WHEREOF, the Debtor has duly executed this Mortgage as of the date first above written.

ALBEE RETAIL DEVELOPMENT LLC

By: /s/ Robert Masters

Robert Masters

Senior Vice President

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK) ss.:

On the 30 day of June, in the year two thousand ten, before me, the undersigned, personally appeared Robert Masters, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

/s/ Kara A. Lobdell

Notary Public

Kara A. Lobdell
Notary Public, State of New York
No. 02 LO6031220
Qualified in New York County
Commission Expires Sept. 27, 2013



DESCRIPTION OF THE LAND

(Block 149, Lot 103)

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:

BEGINNING at the corner formed by the intersection of the northerly side of Dekalb Avenue with the easterly side of Gold Street;

RUNNING THENCE easterly, along the easterly side of Gold Street, 114 feet to a point;

RUNNING THENCE easterly, at right angles to the easterly side of Gold Street, 129.12 feet to the northwesterly side of Fleet Street;

RUNNING THENCE southwesterly, along the northwesterly side of Fleet Street, 132.02 feet to the corner formed by the intersection of the northwesterly side of Fleet Street, with the northerly side of Dekalb Avenue;

RUNNING THENCE westerly, along the northerly side of Dekalb Avenue, 63.76 feet to the point or place of BEGINNING.

**MORTGAGE AND SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS
(BUILDING LOAN)**

From

ALBEE RETAIL DEVELOPMENT LLC,
a Delaware limited liability company having its principal office
at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605,

To

THE BANK OF NEW YORK MELLON,
a New York banking corporation having a corporate trust office
at 101 Barclay Street, Floor 7W, New York, New York 10286,
as Trustee and Mortgagee,

Dated as of July 1, 2010

\$20,000,000
New York City Capital Resource Corporation
Recovery Zone Facility Revenue Bonds
(Albee Retail Development LLC Project), Series 2010

Affecting that property described in the appendices to this
Mortgage and Security Agreement and Assignment of Leases and
Rents (Building Loan), in the County of Kings, City of New York,
State of New York

Record and Return to:
Hawkins Delafield & Wood LLP
1 Chase Manhattan Plaza
New York, New York 10005
Attention: Arthur M. Cohen, Esq.

**MORTGAGE AND SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS (BUILDING LOAN)**

This **MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (BUILDING LOAN)** made and entered into as of the date set forth on the cover page hereof (this "**Mortgage**") from **ALBEE RETAIL DEVELOPMENT LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "**Debtor**"), as mortgagor, having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, to **THE BANK OF NEW YORK MELLON**, a New York banking corporation together with any successor trustee (the "**Trustee**" or the "**Mortgagee**") at the time serving as such under the Indenture referred to below, as mortgagee, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286 (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Indenture, in the Loan Agreement or in the Pledge and Security Agreement, each as referred to below):

WITNESSETH:

WHEREAS, the Debtor has entered into negotiations with the New York City Capital Resource Corporation, a local development corporation created pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended (the "**Issuer**"), for the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility (the "**Facility**") to be leased to retail commercial tenants, generally known by the street address of 1 DeKalb Avenue, Brooklyn, New York, and as further described in Exhibit A attached hereto — "DESCRIPTION OF THE LAND"; and

WHEREAS, the site of the Facility, including the improvements to be constructed thereon, will be subject to the Ground Lease; and

WHEREAS, pursuant to the Loan Agreement, the Issuer has made a Loan of the proceeds of the Bonds, in the original principal amount of the Bonds, to the Debtor, and the Debtor has executed the Promissory Note in favor of the Issuer and the Mortgagee to evidence the Debtor's obligation under the Loan Agreement to repay the Loan; and

WHEREAS, the Debtor intends to enter into various Facility Leases with Facility Tenants at the Facility; and

WHEREAS, pursuant to the Bond Resolution and the Indenture, the Issuer has authorized the issuance of its Bonds to provide funds for a portion of the costs of the Project, and to provide funds to pay a portion of the costs and expenses of the issuance of the Bonds; and

WHEREAS, concurrently with the execution hereof, (i) in order to further secure the Bonds, the Debtor and Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "**Parent**", and, together with the Debtor, the "**Guarantors**") will guarantee the payment of the principal of, Purchase Price, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds, and the payments, obligations, covenants and agreements of the Debtor under the Loan Agreement and under the Promissory Note, pursuant to the Bond Guaranty Agreement, (ii) the completion of the Project will be guaranteed by the Guarantors pursuant to the Project Completion Guaranty Agreement in favor of the Trustee, and (iii) the Debtor will grant a first lien in Facility Revenues and the remainder of the Pledged Collateral pursuant to the Pledge and Security Agreement in favor of the Trustee; and

WHEREAS, in order to induce the Issuer to issue the Bonds, and the initial owners to purchase the Bonds, the Debtor is entering into this Mortgage, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan);

NOW, THEREFORE, in consideration of the premises and of the purchase and acceptance of the Bonds by the initial owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure

(i) the payment of the Secured Principal Amount of the Bonds and the indebtedness represented thereby, the Purchase Price, if applicable, and the redemption premium, if any, and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied in the Bonds, and

(ii) the payment, performance and observance of all obligations of the Debtor and the Parent under the Security Documents including this Mortgage, and

whether now arising or hereafter arising, direct or indirect, absolute or contingent, joint or several, due or to become due, liquidated or unliquidated, secured or unsecured, original, renewed or extended, whether arising directly or acquired from others (all such indebtedness and obligations described in clauses (i) and (ii) above being collectively referred to herein as the "**Obligations**"), provided, however, that the maximum principal amount secured hereby shall not exceed the Secured Principal Amount, the Debtor does hereby grant, bargain, sell, convey, transfer, mortgage, grant a security interest in, pledge and assign to the Trustee, as Mortgagee, and its assigns forever, the following (the "**Mortgaged Property**"), subject to the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), dated as of the date hereof, from the Debtor to the Mortgagee:

GRANTING CLAUSES

I

The Ground Lease, including all rights, guarantees, amendments, supplements, modifications, renewals, substitutions and extensions relating to the Ground Lease and any right of continued possession of the Facility as might result by reason of a rejection of the Ground Lease thereunder, and all other right, title and interest of the Debtor in and the Facility together with the tenements, hereditaments, servitudes, appurtenances, estate, rights, privileges, liberties, appurtenances, licenses, royalties, mineral, oil and gas rights, water, water rights, reversions, remainders and immunities thereunto in which the Debtor shall have an interest, including all the right, title and interest of the Debtor in and to all streets, ways, alleys, roads, waters, water courses, water rights, waterways, passages, sewer rights and public places adjoining the Facility and all easements and rights-of-way, public or private, and gores of land, now or hereafter used in connection therewith, together with all land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Facility to the center line thereof, now or hereafter used in connection with the Facility.

II

Any right of continued possession and occupancy, by agreement or otherwise, in and to the Facility, including all right, title and interest in any such agreement.

III

Any and all rights under Section 365(h) of the Federal Bankruptcy Code, or any similar rights under any other law, including but not limited to any right to use or possession of the Facility.

IV

All trade fixtures, equipment, machinery, apparatus, appliances, fittings, chattels and articles of personal property of every kind and nature, and all building equipment, materials and supplies of any nature whatsoever, now or hereafter attached to, or used or usable in connection with any present or future operation or occupancy of the Facility and in which the Debtor has or shall have an interest and all renewals and replacements thereof and additions and accessions thereto, including without limitation all partitions, elevators, lifts, steam and hot water boilers, heating and air conditioning equipment, lighting and power plants, engines, motors, compressors, ducts, coal, oil and gas burning apparatus, pipes, pumps, plumbing, radiators, sinks, bath tubs, water closets, refrigerators, gas and electrical fixtures, communications apparatus, stoves, ranges, shades, screens, awnings, vacuum cleaning system, and sprinkler system or other fire prevention or extinguishing apparatus and materials, all of which shall be deemed to be, remain and form a part of the Mortgaged Property and are covered by the Lien of this Mortgage; excluding, however, from the Lien of this Mortgage, the Company's Property (as defined in Section 3.4(c) of the Loan Agreement), any property released from the Facility pursuant to Section 3.5 of the Loan Agreement, and any personal property owned by any Facility Tenant.

V

All right, title and interest of the Debtor in all Construction Contracts, payment bonds, performance bonds, surety bonds, Warranties, guarantees, maintenance, repair or replacement agreements and other contractual obligations of any contractor, subcontractor, surety, guarantor, manufacturer, dealer, laborer, supplier or materialman made with respect to the Facility or any part thereof.

VI

All the right, in the name and on behalf of the Debtor, to appear in and defend any action or proceeding brought with respect to the Facility and to commence any action or proceeding to protect the interest of the Mortgagee in the Facility.

VII

Any and all air rights, development rights, zoning rights or other similar rights or interests which benefit or are appurtenant to the Facility and any proceeds arising therefrom.

VIII

All agreements (other than any Security Document) and/or contracts now or hereafter entered into by the Debtor for the Project Work or any part thereof, and all permits, licenses, bonds, plans and specifications relative to the Project.

IX

All insurance proceeds, awards, payments and other compensation payments, including interest thereon, and the right to receive the same, which are heretofore or hereafter made with respect to the Facility as a result of or in lieu of any taking by eminent domain (including any transfer made in lieu of the exercise of said right), the alteration of the grade of any street, or any other damage or injury to or decrease in the value of the Facility or the occurrence of any Loss Event (as defined in, and subject to, Section 5.1 of the Loan Agreement), to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Mortgagee, and of the reasonable attorneys' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment, subject to the terms of the Indenture, the Loan Agreement and the Ground Lease, as to the application of all such amounts so received.

X

All right, title and interest of the Debtor in and to (a) any and all present and future leases of space in any Improvements; (b) the Facility Leases; (c) any and all present and future subleases of space in any Improvements; (d) all rents, issues and profits payable under any such leases and subleases including all Facility Revenues; and (e) any contracts for the sale of all or any portion of the Facility or any Improvements or portions thereof, on or to be erected upon the Facility ("sale contracts"). Nothing in this paragraph is intended to constitute the consent of the Mortgagee to any such leases, subleases or sale contracts, other than as expressly provided herein or in the Loan Agreement.

XI

All right, title and interest of the Debtor in all proceeds of any unearned premiums on any property insurance policies concerning the Facility, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damages to any portion of the Facility, subject, however, to the terms of the Indenture, the Loan Agreement and the Ground Lease.

XII

All right, title and interest of the Debtor in all Funds, Accounts and Subaccounts established under the Indenture.

XIII

All the right, in the name and on behalf of the Debtor, to appear in and defend any action or proceeding brought with respect to any of the Mortgaged Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Mortgaged Property.

XIV

Any and all further estate, right, title, interest, property, claim and demand whatsoever of the Debtor in and to any of the above.

XV

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims.

XVI

Any and all other property of every kind and nature from time to time which was heretofore or hereafter is by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder, by the Debtor or by any other Person with or without the consent of the Debtor, to the Mortgagee which is hereby authorized to receive any and all such property at any time and at all times to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned or agreed or intended so to be, to the Mortgagee and its successors and to them and their assigns forever;

THIS MORTGAGE secures the payment, performance and observance of the Obligations and shall continue in full force and effect until the Obligations shall be paid and satisfied in full or otherwise provided for in accordance with their respective terms.

THIS IS A BUILDING LOAN MORTGAGE, the proceeds of which are advanced and to be advanced pursuant to the terms of a Building Loan Agreement dated as of even date herewith by and among the Debtor, the Issuer and the Mortgagee.

Notwithstanding anything contained herein to the contrary, the maximum amount of Obligations secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is the Secured Principal Amount plus interest thereon, plus all amounts expended by the Mortgagee after default by the Debtor which constitute payment of (i) taxes, charges or assessments which may be imposed by law upon the Mortgaged Property; (ii) premiums on insurance policies covering the Mortgaged Property; (iii) expenses incurred in protecting or upholding the lien of this Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage; (iv) expenses incurred in protecting the collateral encumbered by this Mortgage; or (v) any amount, cost or charge to which the Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority.

DEBTOR represents, warrants, covenants and agrees with the Mortgagee as set forth below:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1. Certain Definitions. The following terms shall have the respective meanings in this Mortgage, except as the context otherwise requires:

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

Authorized Representative shall mean:

(i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties; and

(ii) in the case of the Debtor, a person named in Exhibit B — “Authorized Representative”, to the Loan Agreement, or any other officer or employee of the Debtor who is authorized to perform specific duties under the Loan Agreement or under any other Project Document and of whom another Authorized Representative of the Debtor has given written notice to the Issuer and the Mortgagee;

provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of the Loan Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Bond Guaranty Agreement shall mean the Bond Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Bond Resolution shall mean the resolution of the Issuer adopted on February 9, 2010, as amended on April 13, 2010, authorizing the Project and the issuance of the Bonds.

Bonds shall mean the Issuer’s \$20,000,000 Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010, authorized, issued, executed, authenticated and delivered under the Indenture.

Building Loan Agreement shall mean the Building Loan Agreement, dated as of even date herewith, among the Issuer, the Debtor and the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Business Day shall have the meaning assigned to that term in the Indenture.

City shall mean The City of New York, New York.

Closing Date shall mean July 1, 2010, the date of the initial issuance and delivery of the Bonds.

Commencement Date shall have the meaning assigned to that term in the Loan Agreement.

Company's Property shall have the meaning specified in Section 3.4(c) of the Loan Agreement.

Debtor shall mean Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Debtor under Section 7.8 or 7.9 of the Loan Agreement.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Facility shall mean, collectively, the Land and the Improvements.

Facility Address shall mean 1 DeKalb Avenue, Brooklyn, New York.

Facility Leases shall mean, collectively, all leases or other occupancy or use agreements, other than the Ground Lease, entered into with any Person for the use, possession or occupancy of the Facility or any portion thereof.

Facility Revenues shall mean all revenues, income, fees, receipts, charges, income and other money received in any period by or on behalf of the Debtor, derived from the leasing or operation of the Facility, including proceeds derived from insurance (including environmental insurance) and/or condemnation proceeds with respect to the Facility and Business Interruption Insurance and Extra Expense Insurance, in each case whether existing as of the Closing Date or hereafter coming into existence.

Facility Tenants shall mean all Persons as shall use, possess or occupy all or any portion of the Facility pursuant to a Facility Lease.

GAAP shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Company, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Ground Lease shall mean that certain Severance Lease (Site 1A), dated June 30, 2010, between the City, as landlord, and Albee Development, LLC, a Delaware limited liability company (“Albee Development”), as assigned on July 1, 2010 by Albee Development to, and assumed by, the Debtor, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith.

Guarantors shall mean, collectively, the Debtor and the Parent, and their respective successors and assigns.

Holders shall have the meaning assigned to that term in the Indenture.

Improvements shall mean:

- (i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date and erected or situated on the Land;
- (ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land throughout the term of the Loan Agreement (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2 of the Loan Agreement); and
- (iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

Indenture shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Independent Engineer shall mean a Person (not an employee of any of the Issuer, the Debtor, the Parent or any Affiliate of any thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Debtor, and approved in writing by the Trustee (which approval shall not be unreasonably withheld and shall be at the written direction of the Majority Holders).

Issuer shall mean New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

Land shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn (County of Kings), Block 149 and Lot 103, generally known by the street address 1 DeKalb Avenue, Brooklyn, New York, all as more particularly described in Exhibit A - “Description of the Land”, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 7.9(c) of the Loan Agreement.

Legal Requirements shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Debtor or any Facility Tenant, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Loan Agreement shall mean the Loan Agreement, dated as of even date herewith, between the Issuer and the Debtor, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Majority Holders shall have the meaning assigned to that term in the Indenture.

Mortgage shall mean this Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) from the Debtor to the Mortgagee, and includes any and all amendments hereof and supplements hereto made in accordance herewith and with the Indenture.

Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) shall mean the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), dated as of even date herewith, from the Debtor to the Mortgagee, and includes any and all amendments thereof and supplements thereto hereafter made in accordance therewith and with the Indenture.

Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) shall mean the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan), dated as of even date herewith, from the Debtor to the Mortgagee, and includes any and all amendments thereof and supplements thereto hereafter made in accordance therewith and with the Indenture.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

Opinion of Counsel shall mean a written opinion of counsel for the Debtor, the Parent or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Outstanding shall have the meaning assigned to that term in the Indenture.

Parent shall mean Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Parent under Section 3.6 of the Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement.

Permitted Encumbrances shall have the meaning assigned to that term in the Indenture.

Person shall mean an individual or any Entity.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, dated as of even date herewith, from the Debtor to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project shall mean the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility to be leased to retail commercial tenants.

Project Completion Guaranty Agreement shall mean the Project Completion Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project Documents shall mean, collectively, the Ground Lease, the Issuer Indemnification Agreement, the Remarketing Agreement, the Bond Placement Agreement, the Facility Leases and the Security Documents.

Promissory Note shall mean, with respect to the Bonds, that certain Promissory Note in substantially the form of Exhibit G to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

Purchase Price shall mean an amount equal to the principal amount of any Bond purchased on any Purchase Date, plus accrued interest to the Purchase Date (unless the Purchase Date is an Interest Payment Date, in which case the Purchase Price shall not include accrued interest, which shall be paid in the normal course).

Secured Principal Amount shall mean \$15,857,458.57.

Security Documents shall mean, collectively, the Loan Agreement, the Promissory Note, the Pledge and Security Agreement, the Indenture, the Bond Guaranty Agreement, the Project Completion Guaranty Agreement, the Tax Regulatory Agreement, the Building Loan Agreement, this Mortgage, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan).

State shall mean the State of New York.

Supplemental Indenture shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with Article XI of the Indenture.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Debtor to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean The Bank of New York Mellon, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Trust Estate shall mean all property, interest, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

Section 1.2. Construction. In this Mortgage, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Mortgage, refer to this Mortgage, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Mortgage, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Mortgage, nor shall they affect its meaning, construction or effect.

(e) Unless the content indicates otherwise, references to designated "Exhibits," "Articles," "Sections," "Subsections," "clauses" and other subdivisions are to the designated Exhibits, Articles, Sections, Subsections, clauses and other subdivisions of or to this Mortgage.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. **Representations and Warranties of Debtor.** The Debtor hereby represents and warrants that:

(a) The Debtor is a limited liability company duly organized under the laws of the State of Delaware, is validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing under the laws of the State, is not in violation of any provision of its Organizational Documents, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Mortgage and each other Project Document to which it is or shall be a party.

(b) The execution, delivery and performance of this Mortgage and each other Project Document to which the Debtor is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Organizational Documents of the Debtor, or any indenture, agreement or other instrument to which the Debtor is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) There is no action or proceeding pending or, to the best of the Debtor's knowledge, after diligent inquiry, threatened by or against the Debtor by or before any court or administrative agency that would adversely affect the ability of the Debtor to perform its obligations under this Mortgage or any other Project Document to which it is or shall be a party. Such knowledge is based upon the knowledge of Robert Masters, a Senior Vice President of the Parent, and the person employed by the Parent with actual knowledge of the Project and of the matters set forth in this paragraph.

(d) The Debtor has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Debtor as of the Closing Date in connection with the execution and delivery of this Mortgage and each other Project Document to which the Debtor is a party or in connection with the performance of the obligations of the Debtor hereunder and under each of the Project Documents.

(e) This Mortgage and the other Project Documents to which the Debtor is a party (x) have been duly authorized by all necessary action on the part of the Debtor, (y) have been duly executed and delivered by the Debtor, and (z) constitute the legal, valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with their respective terms, subject to limitations on enforceability resulting from bankruptcy, insolvency and principles of equity.

- (f) The assumption by the Debtor of its obligations hereunder will result in a direct financial benefit to the Debtor.
- (g) The Debtor has power to enter into and perform this Mortgage, to create, pledge and grant the mortgage, pledge, assignment and security interest in the Mortgaged Property as provided in this Mortgage, and to own its property and assets.
- (h) The Debtor is vested with a good and marketable leasehold interest in the Facility pursuant to the Ground Lease, subject to no mortgage, lien, charge, pledge, assignment, security interest, conditional sale agreement or encumbrance of any kind whatsoever, other than Permitted Encumbrances.
- (i) The Debtor is, as of the Closing Date, and after giving effect to all instruments evidencing or securing the Obligations will be, in a solvent condition.
- (j) The execution and delivery of this Mortgage does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code as so constituted or under any other applicable law.
- (k) No bankruptcy or insolvency proceedings are pending or contemplated by or, to the best knowledge of the Debtor, against, the Debtor.
- (l) The Debtor is duly authorized to mortgage and grant a security interest in the Mortgaged Property, and this Mortgage is a second lien upon the Mortgaged Property, subject only to Permitted Encumbrances.
- (m) The Ground Lease is a valid and subsisting lease of the property therein described and purported to be demised and is in full force and effect in accordance with its terms, and has not been amended or modified in any respect.
- (n) No default has occurred and is continuing under the Ground Lease and no event has occurred or is occurring which, with the passage of time or the giving of notice or both, would constitute an event of default under the Ground Lease.
- (o) Neither the Ground Lease nor the Debtor's interest in any of the Facility Leases or Facility Revenues is subject to any Liens or encumbrances other than in favor of the Mortgagee or as set forth in the mortgagee title insurance policy insuring the Lien of this Mortgage, a copy of which has been furnished to the Mortgagee.
- (p) The Debtor is the owner of the leasehold estate created by the Ground Lease and has the right and authority under the Ground Lease to execute this Mortgage as provided herein.
- (q) No Facility Leases are in effect as of the Closing Date.

ARTICLE III

GENERAL AGREEMENTS OF DEBTOR

Section 3.1. Payment, Performance, Observance and Compliance. The Debtor agrees to pay, perform, observe and comply with such of the Obligations to which it shall be subject (including this Mortgage) upon the terms and provisions required of the Debtor therein.

Section 3.2. Acknowledgment of Amount Due. The Debtor shall, upon request, furnish to the Mortgagee, in person within five (5) days, or, by mail within ten (10) days, a written statement duly acknowledged of the amount due under this Mortgage and whether any offsets or defenses exist against the Obligations.

Section 3.3. Security Agreement. This Mortgage is and shall be deemed to be a security agreement under the New York State Uniform Commercial Code with respect to the Mortgaged Property, and the Mortgagee shall have all the rights of a secured party thereunder with respect to that part of the Mortgaged Property that constitutes personal property subject thereto (sometimes referred to herein as the "**Secured Property**"). Upon request by the Mortgagee, the Debtor shall execute and deliver to the Mortgagee any security agreement, financing or continuation statement or other document the Mortgagee reasonably deems necessary to protect or perfect its lien on the Mortgaged Property. If the Debtor shall default under this Mortgage, the Mortgagee, in addition to any other rights and remedies that 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 New York State Uniform Commercial Code, including the right to take possession of the Secured Property or any part thereof or indicia thereof, and to take such other measures as the Mortgagee may deem necessary for the care, protection and preservation of the Secured Property. Upon request or demand of the Mortgagee, the Debtor shall assemble the Secured Property and make it available to the Mortgagee at a convenient place acceptable to the Mortgagee. The Debtor shall pay to the Mortgagee on demand all expenses, including reasonable legal expenses and attorneys' fees and expenses, incurred or paid by the Mortgagee in protecting its interest in the Secured Property and in enforcing its rights hereunder with respect to the Secured Property. Any notice of sale, other disposition, or other intended action by the Mortgagee with respect to the Secured Property sent to the Debtor in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, other disposition, or other intended action set forth or specified in the notice shall conclusively be deemed to be commercially reasonable within the meaning of the New York State Uniform Commercial Code unless objected to in writing by the Debtor within five (5) days after receipt by the Debtor of the notice. The proceeds of any sale or other disposition of the Secured Property, or any part thereof, shall be applied to the payment of the Obligations as provided in Section 6.17.

Section 3.4. Ownership; Instruments of Further Assurance. The Mortgagee on behalf of the Debtor shall defend the interest of the Debtor to the Mortgaged Property and every part thereof and the Debtor agrees to warrant and defend such interest against the claims and demands of all Persons whomsoever. The Debtor covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto and such further acts, instruments and transfers as the Mortgagee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Mortgagee all and singular the property herein described and subject to the lien and security interest of this Mortgage and those revenues pledged hereby and by the Indenture to the payment of the Obligations. Any and all property hereafter acquired (other than the Company's Property) which is of the kind or nature herein provided to be and become subject to the lien and security interest hereof shall ipso facto, and without any further conveyance, assignment or act on the part of the Debtor or the Mortgagee, become and be subject to the lien and security interest of this Mortgage as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Debtor heretofore made by this Section 3.4.

Section 3.5. Creation of Liens; Indebtedness; Sale of Facility. The Debtor represents and covenants that this Mortgage is and will be a second mortgage Lien upon the Mortgaged Property, subordinate only to the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan). The Lien of the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) is subject and subordinate to the Ground Lease and the Liens of this Mortgage and of the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan). The Debtor shall not (x) create or suffer to be created any Lien upon or pledge of the Mortgaged Property or any part thereof except the Lien created by this Mortgage and Permitted Encumbrances, and except as expressly permitted under the Indenture, (y) incur any Indebtedness or issue any evidences of Indebtedness, other than the Obligations, and except as expressly permitted under the Indenture, secured by a Lien on the Mortgaged Property, or (z) sell, convey, transfer, lease, mortgage or encumber the Mortgaged Property or any part thereof except as specifically permitted under the Loan Agreement, the Indenture, this Mortgage and Permitted Encumbrances, so long as any of the Obligations are Outstanding.

Section 3.6. Release of Property. Reference is made to the provisions of the Loan Agreement, including, without limitation, Sections 3.5 and 7.9 thereof, whereby the Debtor may withdraw from the Facility any fixtures or any right-of-way, easement, permit or license or unimproved portion thereof, all upon compliance with the terms and conditions of the Loan Agreement and the Ground Lease. At the request of the Debtor, the Mortgagee shall release from the lien and security interest of this Mortgage, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan), and from under the Loan Agreement such portion of the property of the Facility so withdrawn upon compliance with the applicable provisions of the Loan Agreement and shall confirm any such release.

Section 3.7. Recording and Filing. a) The Debtor shall cause this Mortgage and all supplements hereto to be recorded (at the sole cost and expense of the Debtor) as a mortgage of an interest in real property in the appropriate offices of the Register of The City of New York or in such other offices as may be at the time provided by law as the proper place for the recordation thereof. In addition, the security interest of the Mortgagee, as created by this Mortgage, in the personal property and fixtures and the rights and other intangible interests herein described, shall be perfected by the filing of financing statements at the direction of the Debtor in the offices of the Secretary of State of the State in the City of Albany, New York, and in the offices of such Register of The City of New York, which financing statements shall be in accordance with the New York State Uniform Commercial Code - Secured Transactions. All mortgage recording taxes, if any, and filing and recording charges and fees shall be payable by the Debtor.

(b) The Debtor and the Mortgagee acknowledge that, as of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a “public-financed transaction” is effective for a period of thirty (30) years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least twenty (20) years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

(c) The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Bonds, and because the Bonds are municipal securities with a term that is at least twenty (20) years in duration, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statements in order to preserve the liens and security interests that they create for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

Subsequent to the foregoing recordation and filings, if in the Opinion of Counsel to the Debtor (described hereinbelow), to preserve (after the thirtieth (30th) anniversary of the Closing Date) the lien and security interest of this Mortgage, it is necessary to re-record and/or re-index documents, re-file financing statements and/or file continuation statements and/or take any other actions (individually or collectively, the “**Continuation Action(s)**”), then, the Debtor in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Mortgagee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Mortgagee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Mortgagee written certification (upon which the Mortgagee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause “(i)” and the others in the manner described in clause “(ii)”; and (B) deliver or cause to be delivered to the Mortgagee the Opinion of Counsel to the Debtor as described below. The Mortgagee may conclusively rely upon (y) when applicable, the certification referred to in clause “(A)(ii),” and (z) in all instances, the Opinion of Counsel to the Debtor. In the event the Debtor chooses to have the Mortgagee perform all or some of the Continuation Actions, as provided in clause “(A)(i)” hereinabove, the Mortgagee shall reasonably promptly perform such Continuation Actions at the Debtor’s sole expense. The Debtor shall perform the obligations described hereinabove in clauses “(A)” and “(B)” no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause “(i)”) on which a Continuation Action is to be taken to preserve the lien and security interest of this Mortgage.

The Opinion of Counsel to the Debtor shall be addressed to the Debtor and the Mortgagee. Counsel shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year period thereafter through the term of the Bonds, and/or (ii) the date of any required Continuation Action not covered by clause "(i)," in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Debtor, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Mortgagee with instruments and papers prepared by the Debtor, or (ii) the Debtor through electronic filing, or (iii) the Mortgagee as to some Continuation Actions, and the Debtor as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Debtor and the Mortgagee then requisite to the maintenance of the perfection of the security interest of the Mortgagee in and to all property and interests which by the terms of this Mortgage are to be subjected to the lien and security interest of this Mortgage.

(d) Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Debtor (which shall be reasonably acceptable to the Mortgagee) shall have the right to designate a company to facilitate the filing of the Uniform Commercial Code financing statements.

(e) All costs (including reasonable attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Debtor.

(f) The Debtor agrees to perform all other acts (including the payment of all fees and expenses) necessary in order to enable the Mortgagee to comply with this Section, and with Section 7.07 of the Indenture, including but not limited to, providing prompt notice to the Mortgagee of any change in either of the name or address of the Debtor. The Debtor agrees that the Mortgagee, if permitted by applicable law, may provide for the re-recording of the Indenture or any other Security Document or the filing or re-filing of continuation statements without the cooperation of the Debtor as necessary at the Debtor's sole cost and expense.

Section 3.8. After-Acquired Property. Except as provided in Section 3.4(c) of the Loan Agreement, all right, title and interest of the Debtor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property (other than trade fixtures), or any part thereof, hereafter acquired, constructed, assembled or placed by or at the direction of the Debtor on or in the Facility (other than trade fixtures), and all conversions and proceeds of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of the Debtor, shall become subject to the security and lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Debtor and specifically described in the Granting Clauses hereof; but at any and all times the Debtor, on demand, will execute, acknowledge, deliver to the Mortgagee and the Debtor will cause to be recorded or filed as provided in Section 3.8, any and all such further assurances and mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purposes of expressly and specifically subjecting the same to the security and lien of this Mortgage.

Section 3.9. The Ground Lease. i) The Debtor will promptly pay or cause to be paid all rents, additional rents and other charges as and when the same become due, and diligently perform and observe all terms, covenants and conditions required to be paid, performed and observed by the Debtor as lessee under the Ground Lease, within the period provided in the Ground Lease (provided, however, that the aforesaid covenant of the Debtor shall be deemed to require that all such rents, additional rents and other charges be paid, and all such terms, covenants and conditions be performed and observed, no later than five (5) Business Days in the case of a performance covenant (and no later than three (3) Business Days in the case of a payment obligation) prior to the date that the failure to make such payment or perform and observe such terms, covenants and conditions, would constitute a default under the Ground Lease), and will do all things necessary to preserve and keep unimpaired its rights under the Ground Lease. The Debtor will furnish the Mortgagee, upon demand, proof of payment of all items which are required to be paid by the Debtor pursuant to the Ground Lease and proof of payment of which is required to be given to the lessor under the Ground Lease. To the extent that the Ground Lease shall grant to the Debtor, as lessee thereunder, the privilege to postpone or defer the payment of any sum required to be paid thereunder, the failure of the Debtor to pay the same shall not constitute a default hereunder if and so long as the Debtor shall faithfully comply with all of the conditions and other requirements of the Ground Lease with respect to the exercise of such privilege. The Debtor shall not waive any of its rights under the Ground Lease, or refrain from exercising any right or remedy accorded to it under the Ground Lease on account of any default by the lessor thereunder, or release the lessor from any liability or condone or excuse any improper actions of the lessor thereunder without first obtaining the written consent of the Mortgagee.

(b) No release or forbearance of any of the Debtor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release the Debtor from any of its obligations under this Mortgage, including its obligation with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease to be kept, performed and complied with by the tenant therein.

(c) The Debtor shall not make any election or give any consent or approval (other than the exercise of a renewal right or extension right or other right conferring a benefit on the Debtor, provided that any such action has no adverse effect or consequence to the Issuer, the Mortgagee or the Bondholders or the security for the Bonds) for which a right to do so is conferred upon the Debtor as tenant under the Ground Lease without the prior written consent of the Mortgagee if such election, consent or approval would impair the rights of the Mortgagee or the security for the Obligations. In case of any Event of Default under this Mortgage, all such rights, together with the right of termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, all of which have been assigned for collateral purposes to the Mortgagee, shall vest in and be exercisable solely by the Mortgagee.

(d) Not more than three hundred sixty (360) and less than two hundred seventy (270) days before the right of the Debtor to exercise any option or right to renew or extend the term of the Ground Lease shall expire, the Debtor shall give the Mortgagee written notice specifying the date, term and manner for which such option or renewal is to be exercised. Within ten (10) days of written demand by the Mortgagee, the Debtor shall exercise any such option or renewal which is necessary to extend the term of the Ground Lease beyond the term of this Mortgage or to comply with any Legal Requirement affecting the Debtor, the Issuer or the Mortgagee, or which is necessary, in the reasonable judgment of the Mortgagee, to preserve the value of the Mortgaged Property intended to be afforded by this Mortgage. The Debtor shall promptly provide evidence of such exercise of such option or right to the reasonable satisfaction of the Mortgagee. In the event that the Debtor fails to so exercise any such option or right or upon the occurrence of an Event of Default, the Debtor hereby agrees and grants to the Mortgagee all right and authority to exercise such option in the name of the Debtor or in its own name. Nothing contained herein shall affect or limit any rights of the Mortgagee under the Ground Lease.

(e) In the event the Debtor shall violate any of the covenants specified in Section 3.9(a) above, then the Mortgagee shall have the right (but shall not be obligated) to take any action as the Mortgagee may deem reasonably necessary or desirable to prevent or cure any default of the Debtor under the Ground Lease or any default of the lessor thereunder, it being agreed that upon receipt by the Mortgagee from the lessor under the Ground Lease of any notice of default, the Mortgagee shall be entitled to rely thereon and take any of the aforesaid action even though the Debtor denies or questions the existence of any such default, and shall have the immediate right to enter all or any portion of the Facility at such times and in such manner as the Mortgagee deems reasonably appropriate in order to prevent or to cure any such default, or any condition which with notice and/or lapse of time would constitute an Event of Default under the Ground Lease.

(f) In the event the Debtor shall violate any of the covenants specified in Section 3.9(a) hereof, then, for the purpose of preventing or curing any default by the Debtor under the Ground Lease, the Mortgagee may (but shall be under no obligation to) do any act or execute any document in the name of the Debtor or as its attorney-in-fact, as well as in the name of the Mortgagee, without waiving or releasing the Debtor from any of its obligations hereunder. The Debtor hereby irrevocably appoints the Mortgagee its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which in the opinion of the Mortgagee may be reasonably necessary or desirable to prevent or cure any default under the Ground Lease or to preserve any rights of the Debtor in, to or under the Ground Lease or any Facility Lease, or to preserve any rights of the Debtor whatsoever in respect of any part of the Facility, subject, however, to the provisions of the Ground Lease and Section 5.1.

(g) The Debtor shall, from time to time, use commercially reasonable good faith efforts to obtain from the landlord under the Ground Lease such certificates of estoppel with respect to compliance by the Debtor with the terms of the Ground Lease as may be reasonably requested from time to time by the Mortgagee (but not more often than once in any calendar year except upon reasonable cause). The curing by the Mortgagee of any default by the Debtor under the Ground Lease shall not remove or waive, as between the Debtor and the Mortgagee, any default which may have occurred hereunder by virtue of the default by the Debtor under the Ground Lease, and all sums expended by the Mortgagee (upon ten (10) days prior written notice by the Mortgagee to the Debtor of its intention to expend such sums, except if in the reasonable judgment of the Mortgagee an emergency condition exists) in order to cure any such default and costs and expenses incurred by the Mortgagee in connection with the curing of such default shall be paid by the Debtor to the Mortgagee upon demand with interest therein at the annual rate of eighteen percent (18%) per annum from the date of advancement until paid, and any such indebtedness shall be deemed to be secured by this Mortgage.

(h) The Debtor shall not, without the prior consent of the Mortgagee, surrender the leasehold estate created by the Ground Lease or terminate or cancel the Ground Lease, and the Debtor hereby assigns to the Mortgagee, as further security for the payment of the Obligations and for the performance and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of the Debtor, as tenant under the Ground Lease, to surrender the leasehold estate created by the Ground Lease or to terminate or cancel the Ground Lease, and any such surrender of the leasehold estate created by the Ground Lease or termination or cancellation of the Ground Lease without the prior consent of the Mortgagee shall be void and of no force and effect.

(i) The Debtor shall notify the Mortgagee promptly of (i) the occurrence of any default by the lessor under the Ground Lease or the occurrence of any event which, with the passage of time or giving of notice, or both, would constitute a default by the lessor under the Ground Lease, (ii) the receipt by the Debtor of any notice (written or oral) from the lessor under the Ground Lease noting or claiming the occurrence of any default by the Debtor under the Ground Lease or the occurrence of any event which, with the passage of time or giving of notice, or both, would constitute a default by the Debtor under the Ground Lease, and deliver to the Mortgagee a true copy of such notice, or (iii) any request made by either party to the Ground Lease for arbitration proceedings pursuant to the Ground Lease and of the institution or commencement of arbitration proceedings thereunder. The Debtor shall permit the Mortgagee to participate in any arbitration proceedings in association with the Debtor, and if at the time any such arbitration proceedings shall be initiated, an Event of Default shall exist and be continuing, the Mortgagee is hereby granted the right to designate and appoint any arbitrators to be appointed by the Debtor under the Ground Lease. If any action or proceeding shall be instituted to evict the Debtor or to recover possession of the Facility or any portion thereof or for any other purpose affecting the Ground Lease or this Mortgage, the Debtor shall, immediately upon service thereof on or to the Debtor, deliver to the Mortgagee a true and complete copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, howe ver designated, served in any such action or proceeding.

(j) The Debtor shall not unreasonably withhold its consent to any proposed modifications of the Ground Lease which the lessor thereunder agrees to make at the request of the Mortgagee necessary for the improving, maintaining or preserving the Mortgagee's security in the Ground Lease.

(k) The Debtor shall not sell or assign the Ground Lease or any of its rights thereunder or the leasehold estate created thereby or sublease all or any portion of the Facility except in accordance with the Loan Agreement.

(l) The Debtor will promptly perform and observe all the terms, covenants and conditions required to be performed and observed by the Debtor as sublessor under the Facility Leases, within the periods provided in the Facility Leases prior to the date that the failure to make such payment or perform and observe such terms, covenants and conditions, would constitute a default under the respective Facility Leases), and will do all things necessary to preserve and keep unimpaired its rights under the Facility Leases. The Debtor shall not waive any of its rights under the Facility Leases, or refrain from exercising any right or remedy accorded to it as sublessor thereunder on account of an event of default under any Facility Lease, or release any Facility Tenant from liability or condone or excuse any improper act of any Facility Tenant under any Facility Lease, in any case if such action or failure to take action were not effected (in the Debtor's reasonable judgment) in good faith in a commercially reasonable manner. The Debtor shall not voluntarily terminate a Facility Lease or accept a surrender of any Facility Lease or suffer or permit any termination or surrender of any Facility Lease, in each case prior to the scheduled expiration thereof, except (x) with the prior written consent of the Mortgagee which consent must be given if the Mortgagee is so directed by the Majority Holders (if not so directed, such consent not to be unreasonably withheld or delayed), (y) if the termination or surrender of such Facility Lease will not have a material adverse effect upon Facility Revenues, or (z) if the Debtor's actions with respect to such Facility Tenant and Facility Lease are taken (in the Debtor's reasonable judgment) in a good faith commercially reasonable manner.

(m) The Debtor will not (i) modify, amend or supplement any Facility Lease if such modification, amendment or supplement would have a material adverse effect on Facility Revenues (except if such material adverse effect on Facility Revenues is only of a short-term consequence and is not reasonably likely to have a long-term material adverse effect on Facility Revenues), or (ii) require any Facility Tenant to subordinate any Facility Lease to the Lien of any mortgage on the Facility other than Permitted Encumbrances. The Debtor shall deliver to the Mortgagee, promptly following the execution thereof, a copy of each executed amendment, modification or supplement to a Facility Lease, accompanied by a certificate of an Authorized Representative of the Debtor to the effect that such amendment, modification or supplement was entered into in good faith by the Debtor and was commercially reasonable.

(n) Each Facility Lease entered into by the Debtor must provide that the Facility Lease is subordinate to the Lien of this Mortgage and any extensions, replacements or modifications hereof.

(o) The Mortgagee is hereby granted the right to participate in any dispute with the lessor under the Ground Lease, and the Debtor shall not settle with the lessor under the Ground Lease any insurance or condemnation claim or adjustment in an amount in excess of \$500,000 without the consent of the Mortgagee.

(p) If there shall be filed by or against the Debtor a petition under the United States Bankruptcy Code, Title 11 of the United States Code (the "Bankruptcy Code"), then the Lien of this Mortgage shall attach to all of the Debtor's rights and remedies at any time arising under or pursuant to the Bankruptcy Code, including, but not limited to, §365 thereof. Upon the filing of any petition by or against the Debtor under the Bankruptcy Code, the Debtor shall immediately provide copies of all pleadings and notices related thereto to the Mortgagee. The Debtor unconditionally assigns to the Mortgagee all of the Debtor's rights to remain in possession of the Mortgaged Property following the filing of any bankruptcy petition by or against the Debtor, and acknowledges that the Mortgagee may file any pleading in furtherance thereof. This assignment constitutes a present, irrevocable, and unconditional assignment of the foregoing claims, rights, and remedies of the Debtor, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Furthermore, the Debtor hereby irrevocably constitutes and appoints the Mortgagee as the Debtor's attorney in fact for the purpose of filing any pleading in the court in which the initial petition was filed or any court to which the action thereon may be removed, transferred, or assigned (the "Bankruptcy Court") that the Mortgagee determines in its sole discretion to protect the Mortgagee's interests in and to the Mortgaged Property, including but not limited to a motion to extend any applicable time period for the filing of any motion related to the assumption of the Ground Lease.

(q) The Debtor shall not, without the prior written consent of the Mortgagee, file any motion or other pleading to reject or otherwise elect to treat the Ground Lease as terminated under §365 of the Bankruptcy Code. Any such motion, pleading, or election made without such prior written consent shall be void ab initio, and this Mortgage may be pled in bar thereof. If the Debtor does file such a motion to reject the Ground Lease under §365 of the Bankruptcy Code, the Debtor hereby acknowledges and agrees that, unless the Mortgagee consents in writing to such rejection, the Debtor may not reject the Ground Lease unless the Debtor proves, by a preponderance of the evidence, that the Debtor was "insolvent," within the meaning of §101 of the Bankruptcy Code, on the petition filing date. If the Debtor, as tenant under the Ground Lease and as debtor under the Bankruptcy Code, shall desire to reject the Ground Lease pursuant to §365 of the Bankruptcy Code, the Debtor shall give the Mortgagee not less than thirty (30) days' prior written notice of the date on which the Debtor intends to file a motion in or otherwise apply to the Bankruptcy Court for authority to reject the Ground Lease. In such event, the Mortgagee shall have the right, but not the obligation, to serve upon the Debtor within such thirty (30) day period a notice stating that the Mortgagee demands that the Debtor assume the Ground Lease and assign the Ground Lease to the Mortgagee or the Mortgagee's designee pursuant to §365 of the Bankruptcy Code. If the Mortgagee shall serve upon the Debtor the notice described in the preceding sentence, the Debtor shall not seek to reject the Ground Lease and shall comply with the demand provided for in the preceding sentence.

(r) If the Debtor shall desire to assume the Ground Lease, then the Debtor shall give the Mortgagee not less than ten (10) days' prior written notice of the date on which the Debtor intends to file a motion in, or otherwise apply to, the Bankruptcy Court for authority to assume the Ground Lease. The Debtor shall inform the Mortgagee as a part of such notice whether or not the Debtor intends to assign the Ground Lease following assumption thereof. The Mortgagee shall have the right, but not the obligation, to serve upon the Debtor within such ten (10) day period a notice stating that the Mortgagee demands that the Debtor assume the Ground Lease and assign the Ground Lease to the Mortgagee or the Mortgagee's designee pursuant to §365 of the Bankruptcy Code, and such election by the Mortgagee shall be binding upon the Debtor. Should the Debtor file a motion to assume the Ground Lease, the Mortgagee shall have the sole right to determine what terms and conditions will provide the Mortgagee with "adequate assurance of future performance," within the meaning of §365 of the Bankruptcy Code.

(s) If there shall be filed by or against the landlord or any fee owner of the Mortgaged Property a petition under the Bankruptcy Code, the Debtor shall, after obtaining knowledge thereof, promptly notify the Mortgagee thereof in writing. The Debtor shall promptly deliver to the Mortgagee, following receipt, complete and correct copies of any and all notices, motions, summonses, pleadings, claim forms, applications, and other documents received by the Debtor in connection with any such petition and any proceedings relating thereto. In the event of such a bankruptcy filing, the Mortgagee shall have the option, exercisable upon notice from the Mortgagee to the Debtor, to conduct and control any such litigation with counsel chosen by the Mortgagee. If an Event of Default shall exist and be continuing, or if the Mortgagee shall reasonably determine that such actions are necessary to preserve the security of this Mortgage, the Mortgagee may proceed in its own name or in the name of the Debtor in connection with any such litigation, and the Debtor agrees to execute any and all powers, authorizations, consents, or other documents required by the Mortgagee in connection therewith. The Debtor shall not commence any action, suit, proceeding, or case, or file any application or make any motion, in seeking to terminate the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of the Mortgagee. The Debtor hereby unconditionally assigns, transfers, and sets over to the Mortgagee all of the Debtor's claims and rights to the payment of damages or any claim arising from any rejection of the Ground Lease by the landlord or any other fee owner of the Mortgaged Property, or the payment of any amount or claim associated with the Ground Lease in any proceeding under the Bankruptcy Code. If an Event of Default shall exist and be continuing, or if the Mortgagee shall reasonably determine that such actions are necessary to preserve the security of this Mortgage, the Mortgagee shall have the right to proceed in its own name and/or in the name of the Debtor in respect of any claim, suit, action, or proceeding relating to the assumption or rejection of the Ground Lease by the landlord, including, without limitation, the right to file and prosecute, to the exclusion and in the name of the Debtor, any proofs of claim, complaints, motions, applications, notices, and other documents, or to defend against any objection thereto, in any case in respect to the landlord or any fee owner of the Mortgaged Property. This assignment constitutes a present, irrevocable, and unconditional assignment of the foregoing claims, rights, and remedies, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Any amounts received by the Mortgagee as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of the Mortgagee (including, without limitation, attorneys' and paralegals' fees and expenses) incurred in connection with the exercise of any of its rights or remedies under this Section. The Debtor shall promptly make, execute, acknowledge, and deliver, in form and substance satisfactory to the Mortgagee, a UCC Financing Statement (Form UCC 1), and all such additional instruments, agreements and other documents, as may at any time hereafter be required by the Mortgagee to effectuate and carry out the assignment made pursuant to this Section.

(t) If the Debtor shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by the landlord or any fee owner of the Mortgaged Property of any of its obligations under the Ground Lease after the rejection by the landlord or any fee owner of the Mortgaged Property under the Bankruptcy Code, the Debtor shall, prior to effecting such offset, notify the Mortgagee of its intent to do so, setting forth the amounts proposed to be so offset and the basis therefor. The Mortgagee shall have the right to object to all or any part of such offset that, in the reasonable judgment of the Mortgagee, would constitute a breach of the Ground Lease, and in the event of such objection, the Debtor shall not effect any offset of the amounts so objected to by the Mortgagee. Neither the failure of the Mortgagee to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by the Mortgagee. The Debtor shall pay and protect the Mortgagee, and indemnify and save the Mortgagee harmless from and against, any and all claims, demands, actions, suits, proceedings, damages, losses, costs, and expenses of every nature whatsoever (including without limitation, attorneys' and paralegals' fees and expenses) arising from or relating to any offset by the Debtor against the rent reserved in the Ground Lease.

(u) This Mortgage and the rights of the Mortgagee hereunder shall in all respects be subject and subordinate to the terms, covenants, conditions and provisions set forth in the Ground Lease.

Section 3.10. No Merger of Estates. So long as any portion of the Obligations shall remain unpaid, unless the Mortgagee shall otherwise consent, the interest of the lessor under the Ground Lease in the Facility and the leasehold estate of the Debtor created in the Facility 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 the Debtor, or in any other Person by purchase, operation of law or otherwise. If the Mortgagee shall acquire the interest of the lessor under the Ground Lease in the Facility and the leasehold estate created in the Facility pursuant to the provisions of the Ground Lease, by foreclosure of this Mortgage or otherwise, such estates shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until the Mortgagee shall elect to merge such estates. Nothing herein contained shall be construed as authorizing the sale by the Debtor of its leasehold estates under the Ground Lease without the prior written consent of the Mortgagee.

Section 3.11. Additional Taxes or Charges. If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on this Mortgage, the Debtor will pay such tax, with interest and penalties thereon, if any. 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 this Mortgage or any of the other Security Documents, the Debtor agrees to pay for the same, with interest and penalties thereon, if any. Nothing contained in this Section 3.11 shall obligate the Debtor to indemnify for any income tax liability arising by reason of this Mortgage.

Section 3.12. Notice of Event of Default. The Debtor shall immediately notify the Mortgagee in writing of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Security Document. Any notice required to be given pursuant to this Section shall be signed by the Debtor and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken to cure a default, the notice should plainly state this fact.

Section 3.13. Debtor's Acquisition of Fee Estate. Subject to the provisions of Section 3.10, in the event that the Debtor, so long as any portion of the Obligations remains unpaid, shall be the owner and holder of the fee title to any leasehold portion of the Mortgaged Property, the lien of this Mortgage shall be spread to cover the Debtor's fee title to such Mortgaged Property and said fee title shall be deemed to be included in the Mortgaged Property without any further action. The Debtor agrees, at its sole cost and expense, including without limitation reasonable attorneys' fees of the Mortgagee, to (i) execute any and all documents or instruments necessary to subject its fee title to the Mortgaged Property to the lien of this Mortgage; and (ii) provide a title insurance endorsement which shall insure that the lien of this Mortgage is a second lien on the Debtor's fee title to the Mortgaged Property.

Section 3.14. Leasehold Condominium. In the event the Debtor shall subject the premises leased under the Ground Lease to a condominium regime of ownership pursuant to the provisions of Article 9-B of the New York Real Property Law, the Ground Lease and the Loan Agreement, the lien of this Mortgage shall automatically extend to the condominium declaration and by-laws effecting such condominium regime, and to each condominium unit created thereunder.

ARTICLE IV

ASSIGNMENT OF LEASES AND RENTS

Section 4.1. Assignment of Leases and Rents. ii) The Debtor hereby assigns to the Mortgagee all of the right, title and interest of Debtor in any and all Facility Leases (including all related rights, guarantees, amendments, supplements, modifications, renewals and extensions relating thereto) together with (i) all Facility Revenues, including all rents, income, profits, issues, avail, insurance proceeds, condemnation awards, funds deposited by any Facility Tenant to pay costs of construction, restoration or repair, and any other awards and settlements arising from such Facility Leases, and all other payments by the Facility Tenants to or owing to Debtor under any such Facility Leases (all such amounts payable by a Facility Tenant under a Facility Lease, being, collectively, the "Facility Lease Payments"), (ii) the rights to sue for, collect and receive such Facility Lease Payments, (iii) all amendments, supplements, modifications, renewals and extensions thereof now existing or hereafter made, (iv) the right to amend, supplement, modify, waive, extend, renew or cancel such Facility Leases, (v) any and all guarantees of any Facility Tenant's obligations under any such Facility Lease, (vi) the rights of the Debtor to collect, receive, hold and apply all bonds and security in all of said such Facility Leases provided to be furnished to the Debtor thereunder, (vii) the rights of the Debtor to enforce any and all of the agreements, terms, covenants and conditions in all of such Facility Leases and to give notices, consents, releases and waivers thereunder, (viii) the right to make all waivers and agreements, (ix) the right to give all notices, consents, releases and other instruments, (x) the right to give all notices of default and to take all action upon the happening of a default under any Facility Lease, including the commencement, conduct and consummation of proceedings as shall be permitted under any provision of any Facility Lease, or by law or in equity, (xi) the right to receive all notices sent to the Debtor, as lessor under any Facility Lease, and (xii) the right to do any and all other things whatsoever which the Debtor or any lessor is or may be entitled to do under any Facility Lease, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations.

(b) This assignment and grant shall continue in effect until the Obligations are paid. The Mortgagee hereby waives the right to enter upon and to take possession of the Facility for the purpose of collecting said rents, issues and profits, and the Debtor shall be entitled to collect and receive said rents, issues and profits and to apply same in payment of the amounts becoming due on the Obligations, operating expenses related to the Facility and other expenses (capital or otherwise) consistent with the purposes of the Debtor until the occurrence of an Event of Default hereunder. Upon the occurrence of an Event of Default hereunder, the Debtor will pay monthly in advance to the Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Facility or of such part thereof as may be in the possession of the Debtor, and upon default in any such payment will vacate and surrender the possession of the Facility to the Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

(c) As long as no default or Event of Default shall exist under the Indenture or under any other Security Document including this assignment, Mortgagee shall permit Debtor

(i) to sue for Facility Lease Payments, and

(ii) to take any action stated in clauses (iii) through (xii) of the paragraph above,

provided, however, that Debtor shall only act in good faith and in a commercially reasonable manner.

(d) The Debtor will not, without the written consent of the Mortgagee, receive or collect rent from any tenant of the Facility or any part thereof for a period of more than one month in advance.

(e) Upon the occurrence and during the continuance of an Event of Default, if the Debtor shall not have commenced to cure any default of the Debtor under any of the Facility Leases, nor shall have continued its efforts to effect such cure with good faith and due diligence, the Mortgagee shall have the right, but shall not have the obligation, at the Debtor's expense, to cure any default by the Debtor under any of the Facility Leases upon at least ten (10) days' prior written notice to the Debtor, provided, however, that lesser notice shall be required in the event of any emergency situation which, in the Mortgagee's judgment, may have a material adverse effect on the receipt of the Facility Lease Payments.

(f) The Mortgagee shall not in any way be responsible for any failure to do any or all of the things for which the rights, interests, power and/or authority are herein granted; and the Mortgagee shall not be responsible for or liable under any of the agreements undertaken or obligations imposed upon the lessor under any Facility Lease or other agreements with respect to the Facility, except for its gross negligence or willful misconduct.

(g) The Mortgagee's failure to do any of the things or exercise any of the rights, interests, powers and/or authorities granted hereunder shall not be construed as a waiver of any of the rights, interests, powers or authorities assigned and granted to the Mortgagee under this Mortgage.

(h) The parties agree that this Mortgage is an actual assignment effective immediately, and that without demand each Facility Tenant or other person liable under or in respect of any Facility Lease shall, and is hereby authorized and directed to, pay to or upon the Mortgagee's order, and without any inquiry of any nature, and upon the declaration by the Mortgagee of an Event of Default hereunder, all Facility Lease Payments then or thereafter accruing under said Facility Leases or any other instrument or agreement, oral or written, granting rights to, and creating an obligation to pay, Facility Lease Payments in connection with the Facility.

(i) All Facility Tenants or occupants of any part of the Facility are hereby authorized to recognize the claims and demands of the Mortgagee upon assertion of an Event of Default, without investigation as to the reason for any action taken by the Mortgagee or the validity or the amount or Obligations owing to the Mortgagee or the application to be made by the Mortgagee, of any amounts to be paid to the Mortgagee. The Mortgagee's sole signature shall be sufficient for the exercise of any right under this Mortgage, and the Mortgagee's sole receipt given for any sums received shall be a full discharge and release therefor to any such Facility Tenant or occupant of the Facility. &# 160;Checks for all or any part of the rental collected under this Mortgage shall be made to the exclusive order of the Mortgagee, and, upon written request by the Debtor, the Mortgagee shall fully account to the Debtor as to all such payments received hereunder.

(j) To the extent that the Mortgagee shall exercise the judgment of a reasonable man under like circumstances, the Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any Facility Lease, nor shall this Mortgage operate to place upon the Mortgagee any responsibility for the control, operation, management, or repair of the Facility or the carrying out of any of the terms and conditions of any Facility Lease, nor shall this Mortgage operate to make the Mortgagee liable for any waste committed on the Facility by a Facility Tenant under any Facility Lease or any other Person, or for any dangerous or defective condition of the Facility, or for any negligence in the management, upkeep, repair or control of the Facility, resulting in loss, injury or death to any tenant, licensee, employee, invitee or stranger or any property thereof.

(k) The Debtor shall, and does hereby agree to, indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under any of the Facility Leases or under or by reason of this Mortgage and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Facility Leases, except to the extent of the gross negligence or willful misconduct of the Mortgagee. Should the Mortgagee incur any such liability, loss or damage under any of the Facility Leases or under or by reason of this Mortgage, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and the Debtor shall reimburse the Mortgagee therefor immediately upon demand.

(l) The Mortgagee shall not be liable (except to the extent of its gross negligence or willful misconduct) for any loss sustained by the Debtor resulting from the Mortgagee's failure to let the Facility or any portion thereof after the occurrence of an Event of Default or from any other act or omission of the Mortgagee either in collecting the Facility Lease Payments or, if the Mortgagee shall have taken possession of all or any portion of the Facility, in managing all or any portion of the Facility after any such Event of Default (except that the Mortgagee must exercise the judgment of a reasonable man under like circumstances). The Mortgagee shall not be obligated to perform or discharge, nor does the Mortgagee hereby undertake to perform or discharge, any obligation, duty or liability of the Debtor under any Facility Lease or under or by reason of this Mortgage, and the Debtor shall, and does hereby agree to, indemnify the Mortgagee for, and to hold the Mortgagee harmless from, any and all liability, loss or damage which may or might be incurred under any Facility Lease or under or by reason of this Mortgage and from any and all claims and demands whatsoever which may be asserted against the Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Facility Lease (collectively, the "Claims"), except to the extent such Claims are a direct result of the Mortgagee's gross negligence or willful misconduct. Should the Mortgagee incur any such liability under any Facility Lease or under or by reason of this Mortgage or in defense of any such claims or demands, the Debtor shall reimburse the Mortgagee therefor, including, without limitation, its costs, expenses and reasonable attorneys' fees and expenses, within five (5) Business Days after demand, and upon the failure of the Debtor to do so, the Mortgagee may, at its option, exercise its remedies under the Indenture or under any other Security Document. It is further understood that this Mortgage shall not operate to place responsibility for the control, care, management or repair of all or any portion of the Facility upon the Mortgagee, nor for the carrying out of any of the terms and conditions of any Facility Lease, nor shall it operate to make the Mortgagee responsible or liable for any waste committed on the Facility by any Facility Tenant or any other Person, or for any dangerous or defective condition affecting any portion of the Facility, or for any negligence in the management, upkeep, repair or control of the Facility resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger or any other Person.

(m) The Debtor agrees that it will, at the written request therefor by the Mortgagee, deliver to the Mortgagee an executed counterpart of each (or a certified photocopy thereof) and every Facility Lease then affecting all or any part of the Facility.

(n) Upon the occurrence of an Event of Default hereunder, upon or at any time after default in the payment of any of the Obligations, and after the delivery of any notice and/or the expiration of any period of grace, if any, with respect to any such default provided for in the Security Documents, the Mortgagee may, at the Mortgagee's option, without notice, either in the Mortgagee's person or by agent and with or without bringing any action or proceeding, or by any receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Facility and each and every part thereof, and in connection therewith, the Mortgagee may make, cancel, enforce and modify Facility Lease s; fix or modify rents; repair, maintain and improve the Facility; employ contractors, subcontractors and workmen in and about the Facility; obtain and evict tenants; in its own name, sue for or otherwise collect or reserve any and all Facility Lease Payments, including those past due and unpaid; employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of the Mortgagee's rights hereunder and pay the reasonable fees and expenses thereof; and otherwise do and perform any and all acts which the Mortgagee may deem necessary and appropriate in and about the Facility for the protection thereof and of the Mortgagee's rights hereunder or under the other Security Documents, and any and all amounts reasonably expended by the Mortgagee in connection with the foregoing shall constitute so much additional indebtedness secured hereby. The Mortgagee shall apply any moneys collected by the Mortgagee, as aforesaid, less costs and expenses incurred, as aforesaid, upon any Obligations secured hereby in accordance with the provisions of Section 8.03 of the Indenture. The entering upon and taking possession of the Facility, the collection of Facility Lease Payments, the exercise of any rights hereinabove specified, and the application of collections, as aforesaid, shall not cure, waiver, modify or otherwise affect any default hereunder or under the other Security Documents.

Section 4.2. No Cancellation or Modification of Facility Leases. Except as expressly permitted in the Loan Agreement, the Debtor shall not, without the prior written consent of the Mortgagee, make, or suffer to be made, any leases, or cancel or modify any leases or accept prepayments of installments of rent for a period of more than one month in advance or further assign the whole or any part of the rents without the prior written consent of the Mortgagee. No lease or contract covering all or any part of the Mortgaged Property shall be valid or effective without the prior written approval of the Mortgagee. The Mortgagee shall have all of the rights against lessees of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York. In respect of any lease, the Debtor will (i) fulfill or perform each and every provision thereof on its part to be fulfilled or performed; (ii) promptly send copies of all notices of default which either shall send or receive thereunder to the Mortgagee; and (iii) enforce, short of termination thereof, the performance or observance of the provisions thereof. Nothing contained in this Mortgage shall be deemed to impose on the Mortgagee any of the obligations of the lessor under the leases.

Section 4.3. Required Facility Lease Provisions. All Facility Leases must provide that (i) the Facility Tenant shall pay to the Mortgagee upon an Event of Default hereunder all sums due under the Facility Lease upon notice to the Facility Tenant from the Mortgagee, (ii) any Facility Tenant shall, at the Mortgagee's option, furnish the Mortgagee with an estoppel and attornment letter as to its Facility Lease in form and substance reasonably acceptable to the Mortgagee, and (iii) the Facility Lease is expressly subordinated to the Ground Lease, this Mortgage (including any extensions, replacements or modifications hereof) and the other Security Documents.

Section 4.4. Debtor Not to Waive Rents. The Debtor will not waive, release, reduce, discount or otherwise discharge or assign to any Person other than the Mortgagee the Facility Lease Payments, rents, issues and profits of the Facility. In addition, the Debtor will observe and comply with all of its respective obligations as lessor under each Facility Lease, will promptly notify the Mortgagee if it receives any default notice thereunder and forward a copy of the default notice to the Mortgagee, and enforce any default thereunder by the Facility Tenant.

Section 4.5. Debtor to Furnish Rent Rolls. The Debtor will furnish to the Mortgagee, within fifteen (15) Business Days after mailing to the Debtor of a written request therefor, a detailed statement in writing, duly sworn, and covering the period of time specified in such request, showing all income derived from the operation of the Facility and all disbursements made in connection therewith, and containing a list of the names of all tenants of the Facility specified in such request, showing all income derived from the operation of the Facility and occupan ts other than those claiming possession through such tenants, the portion or portions of the Facility occupied by such tenant and occupant, the rents and other charges payable under the terms of their leases or other agreements, and the periods covered by such leases or other agreements.

Section 4.6. Mortgage Right to Cure Default. If Debtor shall not have commenced to cure any default of the Debtor under any of the Facility Leases, nor shall have continued its efforts to effect such cure with good faith and due diligence, the Mortgagee shall have the right, but shall not have the obligation, at the Debtor's expense, to cure any default by the Debtor under any of the Facility Leases upon at least ten (10) days prior written notice to the Debtor, provided, however, that lesser notice shall be required in the event of any emergency si tuation which in the Mortgagee's judgment may have any adverse effect on the receipt of the Facility Lease Payments.

ARTICLE V

PROVISIONS REQUIRED UNDER GROUND LEASE

Section 5.1. Article 9 of the Ground Lease. In accordance with Article 9 of the Ground Lease, iii) this Mortgage is executed upon the condition that no purchaser at any foreclosure sale shall acquire any right, title or interest in or to 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, shall, in the instrument transferring to such purchaser or to such assignee the interest of Tenant (as defined in the Ground Lease) under the Ground Lease, assumes and agrees to perform all of the terms, covenants and conditions of the Ground Lease thereafter to be observed or performed on the part of Tenant, and moreover, that no further or additional mortgage or assignment of the Ground Lease shall be made except in accordance with the provisions contained in Article 9 of the Ground Lease, and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged by such purchaser or such assignee and in recordable form, is delivered to Landlord (as defined in the Ground Lease) under the Ground Lease immediately after the consummation of such sale, or, in any event, prior to taking possession of the premises demised thereby; and (b) the Mortgagee waives all right and option to retain and apply the proceeds of any insurance payable by reason of any special endorsement covering the cost of Demolition (as defined in the Ground Lease) toward payment of the sum secured by this Mortgage to the extent such proceeds are required for the demolition of the mortgaged premises in accordance with the provisions of the Ground Lease.

ARTICLE VI

REMEDIES; EVENTS OF DEFAULT

Section 6.1. Protective Action. The Mortgagee (at the direction of the Majority Holders) may take such action as the Mortgagee deems reasonably appropriate upon ten (10) days prior written notice to the Debtor (except that no such prior notice shall be required if in the reasonable judgment of the Mortgagee an emergency condition shall exist that threatens to do severe damage to or destruction of the Facility) to protect the Mortgaged Property or the status or priority of the lien of this Mortgage thereon including, but not limited to, entry upon the Facility to protect it from deterioration or damage, or to cause the Mortgaged Property to be put in compliance with any governmental, insurance rating or contract requirements; dispossession of the Debtor if necessary to remedy an emergency condition; payments of amounts due on liens having priority over this Mortgage if such lien constitutes a default pursuant to this Mortgage; curing any default by the Debtor under any of the Security Documents including this Mortgage; payment of any tax or charge for purposes of assuring the priority or enforceability of this Mortgage if failure to pay such tax by the Debtor is a default pursuant to this Mortgage; obtaining insurance on the Mortgaged Property; or commencement or defense of any legal action or proceeding to assert or protect the validity or priority of the lien of this Mortgage. The Debtor agrees to reimburse the Mortgagee for all expenses in taking any such action, on demand, with interest at a rate being the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under the applicable usury law, and the amount thereof shall be secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the Obligations heretofore stated.

Section 6.2. Benefit of Section 254 of the Real Property Law. Nothing herein contained shall be construed as depriving the Mortgagee of any right or advantage available under Section 254 of the Real Property Law of the State of New York, but all covenants herein differing therefrom shall be construed as conferring additional and not substitute rights and advantages.

Section 6.3. Sole Discretion of the Mortgagee. Wherever pursuant to this Mortgage, the Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to the Mortgagee, the decision of the Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of the Mortgagee and shall be final and conclusive. Notwithstanding the foregoing, if, pursuant to the terms of the Indenture or this Mortgage, a stated percentage of Holders of the Outstanding Bonds has the right to direct the Mortgagee in the exercise of any such right, such direction shall be final and conclusive, provided that such direction shall not be arbitrary or capricious.

Section 6.4. Recovery of Sums Required To Be Paid. The Mortgagee shall have the right (at the written direction of the Majority Holders) from time to time to take action to recover any sum or sums which constitutes a part of the Obligations as the same becomes due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Debtor existing at the time such earlier action was commenced.

Section 6.5. Events of Default. Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) Failure of the Debtor to pay any amount that has become due and payable hereunder, and continuance of such failure for a period of two (2) Business Days after written notice has been given to the Debtor specifying the nature of such default by the Mortgagee;

(b) Failure of the Debtor to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 5.6(a) above) and (1) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Debtor specifying the nature of such failure by the Mortgagee, or (2) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Debtor fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure;

(c) The Debtor or the Parent shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(d) A proceeding or case shall be commenced, without the application or consent of the Debtor or the Parent in any court of competent jurisdiction, seeking (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Debtor or the Parent or of all or any substantial part of their respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Debtor or the Parent shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); the terms “dissolution” or “liquidation” of the Debtor or the Parent as used above shall not be construed to prohibit any action otherwise permitted under the Security Documents;

(e) Any representation or warranty made by the Debtor (i) in the application and related materials submitted to the Issuer for approval of the Project or the transactions contemplated by this Mortgage, (ii) herein, (iii) in any other Project Document, or (iv) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall, in any case, prove to be false, misleading or incorrect in any material respect as of the date made;

(f) The Debtor shall be in default under any other mortgage covering any part of the Mortgaged Property and proceedings shall have been commenced to foreclose such mortgage, whether it be superior or inferior to the lien of this Mortgage; or

(g) An "Event of Default" under any Security Document shall occur and be continuing.

Section 6.6. Remedies Following an Event of Default. Upon the occurrence of an Event of Default hereunder, the Mortgagee may, in addition to any other rights or remedies available to it hereunder or elsewhere, take such action, without notice or demand, as it deems advisable, as directed by the Majority Holders, to protect and enforce its rights against the Debtor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee, as directed by the Majority Holders, may determine, in its sole discretion, subject, however, to the Ground Lease, without impairing or otherwise affecting the other rights and remedies of the Mortgagee:

(a) enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys, and dispossess the Debtor and its agents and servants therefrom, and thereupon the Mortgagee, as directed by the Majority Holders, may:

- (1) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct business thereat and therewith;
- (2) complete any construction, renovation, rebuilding or repairing of the Mortgaged Property in such manner and form as the Mortgagee deems advisable;
- (3) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property;
- (4) exercise all rights and powers of the Debtor with respect to the Mortgaged Property, in the name of the Debtor, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof; and
- (5) apply the receipts from the Mortgaged Property to the payment of the Obligations in accordance with Section 8.03 of the Indenture;

(b) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Obligations then due and payable, subject to the continuing security and lien of this Mortgage for the balance of the Obligations not then due;

(c) institute proceedings to foreclose the lien of this Mortgage against all or, from time to time, against any part of the Mortgaged Property and to have the same sold under the judgment or decree of a court of competent jurisdiction to the highest bidder, at public or private sale, subject to statutory and other legal requirements, if any, including all right, title and interest, claim and demand therein and thereto and all right of redemption thereof;

(d) sell, assign or transfer the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Debtor therein and right of redemption thereof, pursuant to power of sale or otherwise, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law (provided that ten (10) days notice of sale of the Mortgaged Property shall be deemed reasonable notice) for such price and form of consideration as the Mortgagee may determine or as may be required by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein;

(f) apply for the appointment of or appoint a trustee, receiver, liquidator or conservator of the Mortgaged Property, without regard for the adequacy of the security for the Obligations and without regard for the solvency of any Person liable for the payment of the Obligations whether or not in connection with an action to foreclose this Mortgage;

(g) take possession of the Mortgaged Property (which shall, to the extent practicable, be assembled and made available to the Mortgagee by the Debtor at such place in New York City or elsewhere as may be required by the Mortgagee) and otherwise exercise any and all of the rights of secured parties under the New York State Uniform Commercial Code-Secured Transactions;

(h) without prejudice to its right to bring an action for foreclosure of this Mortgage, sell the Mortgaged Property, or any part thereof, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted and pursuant to the procedures provided by applicable law, including, without limitation, Article 14 of the Real Property Actions and Proceedings Law of the State of New York and any amendments or substitute statutes in regard thereto, at one or more sales as a single parcel or in parcels, and at such time and place and upon such terms and after such notice thereof as may be required or permitted by law; or

(i) pursue such other remedies as the Mortgagee may have under applicable law.

Further, the Debtor, if there shall occur an Event of Default, shall pay monthly in advance to the Mortgagee, or to any receiver appointed at the request of the Mortgagee to collect the rents, revenues, issues, income and profits of the Mortgaged Property, the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or of such part thereof as may be in the possession of the Debtor. Upon default in the payment thereof, the Debtor shall vacate and surrender possession of the Mortgaged Property to the Mortgagee or such receiver, and upon a failure so to do may be evicted by summary proceedings.

If an Event of Default shall happen and be subsisting, in case there shall be pending proceedings for the bankruptcy or for the reorganization of the Debtor under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Debtor or in the case of any other similar judicial proceedings relative to the Debtor, or to the credits or property of the Debtor, the Mortgagee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Mortgage, irrespective of whether the principal of the Obligations or any amount hereunder shall then be due and payable as therein or herein expressed or by declaration or otherwise, and irrespective of whether the Mortgagee shall have made any demand pursuant to the provisions of this Section 6.6 or of Section 8.01 of the Indenture, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Mortgagee allowed in such judicial proceedings relative to the Debtor, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of their charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Mortgagee, and to pay to the Mortgagee any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it up to the date of such distribution.

Section 6.7. Appointment of a Receiver. Upon the occurrence of an Event of Default, the Mortgagee shall be entitled to the appointment of a receiver. The right to have a receiver appointed shall be a matter of strict right and without regard to the value or adequacy of the security and such receiver may enter upon and take possession of the Mortgaged Property, collect the rents, issues and profits therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers as a receiver may have under the laws of the State of New York. The expenses, including, without limitation, receiver's fees, counsel fees and expenses, costs and agent's commissions and compensation incurred pursuant to the powers herein granted shall be added to the principal portion of the Obligations and secured hereby.

Section 6.8. Foreclosure. In a case of a foreclosure sale or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety in one parcel (or as one integrated unit) or separate parcels (or one or more of the interests comprising the Mortgaged Property separately from the others) in such manner or order as the Mortgagee in its sole and absolute discretion may elect. If the Mortgagee so elects it may sell the remainder of the property except for the land, buildings and improvements, at one or more separate sales in the manner provided by the Uniform Commercial Code of the State of New York. One or more exercises of the powers herein granted shall neither extinguish nor exhaust such powers, until the entire property is sold or the Obligations secured hereby are paid in full or otherwise provided for in accordance with their terms.

Section 6.9. Non-Impairment. No provision of this Mortgage: (a) is or shall be deemed to be a release or impairment of any of the Obligations including this Mortgage, (b) shall preclude the Mortgagee, upon the occurrence of an Event of Default hereunder, from foreclosing this Mortgage or from enforcing its rights hereunder or under any other instrument governing or securing the Obligations, (c) shall preclude or bar the Mortgagee upon foreclosure from obtaining a deficiency judgment against the Debtor, against any subsequent owner of the Mortgaged Property who assumes the Obligations on a non-recourse basis, or against any other Person liable for the payment and performance of the Obligations, (d) shall require the Mortgagee to accept a part of the Mortgaged Property (as distinguished from its entirety) as payment of the debt secured hereby, or (e) shall compel the Mortgagee to accept or allow any apportionment of the debt secured hereby to or among any separate parts of the Mortgaged Property.

Section 6.10. No Remedy Exclusive. No remedy conferred upon or reserved to the Mortgagee hereunder is or shall be deemed to be exclusive of any other available remedy or remedies. Each such remedy shall be distinct, separate and cumulative, shall not be deemed to be inconsistent with or in exclusion of any other available remedy, may be exercised in the discretion of the Mortgagee at any time, in any manner, and in any order, and shall be in addition to and separate and distinct from every other remedy given the Mortgagee under this Mortgage or any other Security Document or now or hereafter existing in favor of the Mortgagee at law or in equity or by statute. Without limiting the generality of the foregoing, the Mortgagee shall have the right to exercise any available remedy to recover any amount due and payable hereunder without regard to whether any other amount is due and payable, and without prejudice to the Mortgagee to exercise any available remedy for other Events of Default existing at the time the earlier action was commenced.

Section 6.11. Delay To Not Constitute Waiver. Any delay, omission or failure by the Mortgagee to insist upon the strict performance by the Debtor of any of the covenants, conditions and agreements herein set forth to be exercised by it or to exercise any right or remedy available to it upon the occurrence of an Event of Default hereunder shall not impair any such right or remedy or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, by injunction or other appropriate legal or equitable remedy, strict compliance by the Debtor with all of the covenants, conditions and agreements herein to be exercised by it, or of the right to exercise any such rights or remedies if such default by the Debtor be continued or repeated. Any failure of the Mortgagee to exercise the option to accelerate the maturity of Obligations secured hereby, or any forbearance by the Mortgagee before or after any exercise of any such option, or any forbearance to exercise any other remedy of the Mortgagee, or any withdrawal or abandonment of the Mortgagee of any of its rights in any one circumstance shall not be construed as a waiver of any option, power, remedy or right of the Mortgagee hereunder. The rights and remedies of the Mortgagee expressed and contained in this Mortgage are cumulative and none of them shall be deemed to be exclusive of any other or of any right or remedy the Mortgagee may now or hereafter have in law or in equity. The election of any one or more remedies shall not be deemed to be an election of remedies under any statute, rule, regulation or case law. The covenants of this Mortgage shall run with the Mortgaged Property and other properties and the estates hereby mortgaged and bind the Debtor and its assigns, legal representatives and successors and shall inure to the benefit of the Mortgagee, its successors and assigns.

Section 6.12. Effect of Discontinuance of Proceedings. In case any proceedings taken by the Mortgagee on account of any Event of Default hereunder shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every such case, the Debtor, the Mortgagee and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Mortgagee shall continue as in effect prior to the commencement of such proceedings.

Section 6.13. Marshalling. The Debtor waives and releases any right to have the Mortgaged Property marshalled.

Section 6.14. Actions and Proceedings. The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding which the Mortgagee, in its discretion, determines to be brought to protect its interest in the Mortgaged Property. The Mortgagee shall further have the right, from time to time, to sue for any sums required to be paid under the terms of this Mortgage or any other mortgage to which this Mortgage is expressly subordinate, as the same become due, without regard to whether or not the principal sums secured or any other sums secured by this Mortgage shall be due and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure or any other action for a default or defaults by the Debtor existing at the time such earlier action was commenced.

Section 6.15. Attorneys' Fees and Other Costs. The Debtor agrees to bear all costs, fees and expenses including court costs and reasonable expenses (including reasonable attorneys' fees and disbursements) for legal services of or incidental to the enforcement of any provisions hereof (whether incurred during the continuance of an Event of Default or by the Mortgagee or any Holders of the Bonds), or enforcement, compromise or settlement of any of the collateral pledged hereunder, and for the curing thereof, or defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise, and will pay to the Mortgagee any such expenses incurred, and such expenses shall be deemed part of the Obligations secured by this Mortgage and shall be collectible in like manner as the Obligations secured by this Mortgage, and until so paid shall bear interest at a rate being the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under the applicable usury law. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently.

Section 6.16. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Mortgage should be breached by the Debtor and thereafter waived by the Mortgagee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the Mortgagee. No course of dealing between the Debtor and/or any other Person or any delay or omission on the part of the Mortgagee in exercising any rights hereunder shall operate as a waiver.

Section 6.17. Application of Proceeds. All proceeds derived through the exercise of any remedies or the commencement of any proceedings under this Mortgage shall be applied in accordance with Section 8.03 of the Indenture.

Section 6.18. Waiver of Moratorium. The Debtor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, or the exemption from execution from sale of any or all of the property, now or any time hereafter enacted or enforced, nor claim, take or insist upon the benefit of any law now or hereafter enacted or enforced providing for the valuation or appraisal of the Mortgaged Property or any part thereof prior to any sale or sales thereof which may be made pursuant to any provisions herein or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted or enforced to redeem the property so sold or any part thereof. The Debtor, to the extent permitted by law, hereby expressly waives the benefit or advantage of any such law or laws and covenants not to delay or impede the execution of any power herein granted or delegated to the Mortgagee.

Section 6.19. Waiver of Notice. The Debtor shall not be entitled to any notices of any nature whatsoever from the Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by the Mortgagee to the Debtor, and the Debtor hereby expressly waives the right to receive any notice from the Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of such notice.

ARTICLE VII

LIMITATIONS ON LIABILITY

Section 7.1. No Liability of Debtor's Members, Managers, Officers, Directors, Employees and Agents. It is agreed that, other than the Parent, the members, managers, directors, officers, employees and agents of the Debtor shall have no personal liability hereunder. All covenants, stipulations, promises, agreements and obligations of the Debtor contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Debtor and, other than the Parent, not of any member, manager, director, officer, employee or agent of the Debtor in his individual capacity, and no recourse shall be had hereunder for the payment of the principal of any debt or interest thereon or any of the Obligations or for any claim based thereon or hereunder against any member, manager, director, officer, employee or agent of the Debtor, other than the Parent, or any natural person executing this Mortgage.

Section 7.2. Usury Laws. This Mortgage and all other Security Documents are subject to the express condition that at no time shall the Debtor be obligated or required to pay interest on the principal balance due under the Obligations at a rate which could subject the holder of the Obligations to either civil or criminal liability as a result of being in excess of the maximum interest rate which the Debtor, is permitted by law to contract or agree to pay. If by the terms of this Mortgage or any of the other Security Documents, the Debtor is at any time required or obligated to pay interest on the principal balance due under the Obligations at a rate in excess of such maximum rate, the rate of interest under the Obligations shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Applicability of Section 13 of the Lien Law. This Mortgage is given in order to secure funds to pay for the Project and by reason thereof, it is intended that this Mortgage shall be superior to any laborers', mechanics' or materialmen's liens which may be placed upon the Mortgaged Property subsequent to the recordation hereof. The Debtor shall, therefore, in compliance with Section 13 of the New York Lien Law, 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 the Improvements and shall apply the same first to the payment of the cost of the Improvements before using any part of the total of the same for any other purpose.

Section 8.2. No Merger. It is the intention of this Mortgage that if the Mortgagee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, or any interest therein or lien thereon under any other mortgage or instrument, then, and until the Obligations have been paid in full or otherwise discharged or satisfied in accordance with their terms, the interest of the Mortgagee hereunder and the security interest created by this Mortgage shall not merge or become merged in or with the estate and interest of the Mortgagee as the holder and owner of title to all or any portion of the Mortgaged Property, or in or with the interest of the Mortgagee under or the lien of such other mortgage or instrument, and that, until such payment, discharge or satisfaction, the estate of the Mortgagee in the Mortgaged Property and the security interest created by this Mortgage and the interest of the Mortgagee hereunder shall continue in full force and effect to the same extent as if the Mortgagee had not acquired title to all or any portion of the Mortgaged Property or any other interest therein or lien thereon. If, however, the Mortgagee shall consent to such merger or if such merger shall nevertheless occur without its consent, then this Mortgage shall attach to, and cover and be a conveyance of the fee title or any other estate, title or interest in the Mortgaged Property acquired by the Debtor, and the same shall be considered as granted, released, assigned, transferred, pledged, conveyed and set over to the Mortgagee and this Mortgage spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, conveyed, set over and spread, provided, however, the Debtor shall pay any and all transfer, recording or other taxes in connection therewith.

Section 8.3. This Mortgage Constitutes A Commercial Transaction. THE DEBTOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ITS RIGHTS TO NOTICE AND HEARING AS ALLOWED UNDER ANY STATE OR FEDERAL LAW OR OTHER RIGHT WITH RESPECT TO ANY PREJUDGMENT REMEDY OR OTHER RIGHT WHICH THE MORTGAGEE MAY DESIRE TO USE. FURTHER, THE DEBTOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, AP PRAISEMENT, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.

Section 8.4. Consents. Wherever in this Mortgage the prior consent of the Mortgagee is required, the consent of the Mortgagee given as to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. Any such consents shall be in writing.

Section 8.5. Service of Process. The Debtor represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Debtor under this Mortgage shall be satisfied and met. If for any reason the Debtor should cease to be so subject to service of process in the State, the Debtor hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing General Counsel, at Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Debtor as a result of any of its obligations under this Mortgage. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Debtor hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Debtor as a result of any of its obligations under this Mortgage; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Debtor's obligations hereunder.

For such time as any of the obligations, covenants and agreements of the Debtor under this Mortgage remain unsatisfied, the Debtor's agent(s) designated in this Section 8.5 shall accept and acknowledge on the Debtor's behalf each service of process in any such suit, action or proceeding brought in any such court. The Debtor agrees and consents that each such service of process upon such agents and written notice of such service to the Debtor in the manner set forth in Section 8.6 shall be taken and held to be valid personal service upon the Debtor whether or not the Debtor shall then be doing, or at any time shall have done, business within the State and that each such service of process shall be of the same force and validity as if service were made upon the Debtor according to the laws governing the validity and requirements of such service in the State, and waive all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Debtor or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Debtor.

Section 8.6. Notices. All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including bank wire, teletype or similar writing) and shall be given to such party or other Person, addressed to it, at its address or teletype number set forth below or such other address or teletype number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

<u>Party</u>	<u>Address</u>
Debtor	Albee Retail Development LLC c/o Acadia Realty Trust 1311 Mamaroneck Avenue, Suite 260 White Plains, New York 10605 Attention: General Counsel
with a copy to:	Washington Square Partners 675 Third Avenue, 25 th Floor New York, New York 10017 Attention: Paul Travis
	and
	Akerman Senterfitt LLP 335 Madison Avenue Suite 2600 New York, New York 10017 Attention: Steven P. Polivy, Esq.
Mortgagee	The Bank of New York Mellon 101 Barclay Street, Floor 7W New York, New York 10286 Attn: Corporate Trust Administration

Any party hereunder may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 8.7. Consent to Jurisdiction. The Debtor irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Mortgage or any other Security Document, the Facility, the Project, the Debtor's leasehold, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Debtor commences any action against the Mortgagee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Debtor shall, upon request from the Mortgagee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Debtor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 8.8. Mortgage for Benefit of Debtor and Mortgagee. The covenants and agreements contained in this Mortgage (including all indemnities set forth herein) shall run with the land and bind the Debtor, and its heirs, executors, administrators, legal representatives, successors and assigns and each Person constituting the Debtor, and all subsequent owners, encumbrances and tenants of the Mortgaged Property, or any part thereof, and shall inure to the benefit of the Mortgagee, its respective successors and assigns, and all subsequent beneficial owners of this Mortgage, and survive the foreclosure of this Mortgage.

Section 8.9. Authorization. The execution of this Mortgage has been duly authorized by the appropriate Governing Body of the Debtor.

Section 8.10. Amendments and Modifications. This Mortgage shall be amended, modified or supplemented only by a written agreement executed by the Debtor and the Mortgagee and, in any event, only in accordance with the Indenture.

Section 8.11. Applicable Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 8.12. Date of Mortgage for Reference Purposes Only. The date of this Mortgage shall be for reference purposes only and shall not be construed to imply that this Mortgage was executed on the date first above written. This Mortgage was executed and delivered on the Closing Date.

Section 8.13. Incorporation of Certain Indenture Provisions. All provisions of Article IX of the Indenture shall be construed as extending to and including all of the rights, duties and obligations imposed upon the Trustee under this Mortgage as fully and for all purposes as if said Article IX were contained in this Mortgage.

Section 8.14. Entire Agreement; Counterparts. This Mortgage constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof (other than any Project Documents) and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 8.15. Severability. If any one or more of the provisions of this Mortgage shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions of this Mortgage, but this Mortgage shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.16. Waiver of Jury Trial. The Debtor hereby expressly waives, to the extent permitted by law, the right to assert a counterclaim in any action or proceeding brought against it by the Mortgagee, and waives, to the extent permitted by law, all rights to a trial by jury on any cause of action or proceeding brought by any party hereto against the other or in any counterclaim asserted by the Mortgagee against the Debtor, or in any matters whatsoever arising out of or in any way connected with this Mortgage or the Obligations, the Debtor's obligations hereunder, the Facility, the Mortgaged Property, the Project, the Debtor's leasehold, use or occupancy of the Facility and/or any claim for injury or damages.

Section 8.17. Property Not Covered. This Mortgage does not cover property principally improved or to be improved by one or more structures containing in the aggregate not more than six individual residential dwelling units, each having its own separate cooking facilities.

Section 8.18. Mortgage Subject to Other Mortgages. This Mortgage is and shall be subject to the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan).

Section 8.19. Assignment of Mortgage Upon Refinancing of the Bonds. Upon written request of the Debtor in connection with a refinancing in whole of the Bonds, the Mortgagee shall assign this Mortgage, without recourse, warranty or representation whatsoever, to the refinancing lender upon (i) termination of the Loan Agreement pursuant to Article IX thereof, (ii) discharge of the Indenture, (iii) payment of all costs and expenses (including, without limitation, reasonable in-house and outside attorney's fees) incurred in connection with the assignment of this Mortgage, and (iv) the delivery by the Debtor to the Mortgagee of an affidavit pursuant to Section 275 of the New York Real Property Law and such other documents and instruments as the Mortgagee may reasonably request.

IN WITNESS WHEREOF, the Debtor has duly executed this Mortgage as of the date first above written.

ALBEE RETAIL DEVELOPMENT LLC

By: /s/ Robert Masters

Robert Masters

Senior Vice President

STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

On the 30 day of June, in the year two thousand ten, before me, the undersigned, personally appeared Robert Masters, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

/s/ Kara Lobdell
Notary Public

DESCRIPTION OF LAND

(Block 149, Lot 103)

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:

BEGINNING at the corner formed by the intersection of the northerly side of Dekalb Avenue with the easterly side of Gold Street;

RUNNING THENCE easterly, along the easterly side of Gold Street, 114 feet to a point;

RUNNING THENCE easterly, at right angles to the easterly side of Gold Street, 129.12 feet to the northwesterly side of Fleet Street;

RUNNING THENCE southwesterly, along the northwesterly side of Fleet Street, 132.02 feet to the corner formed by the intersection of the northwesterly side of Fleet Street, with the northerly side of Dekalb Avenue;

RUNNING THENCE westerly, along the northerly side of Dekalb Avenue, 63.76 feet to the point or place of BEGINNING.

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EXHIBITS

EXHIBIT A — Description of Land

**MORTGAGE AND SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS
(INDIRECT LOAN)**

From

ALBEE RETAIL DEVELOPMENT LLC,
a Delaware limited liability company having its principal office
at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605,

To

THE BANK OF NEW YORK MELLON,
a New York banking corporation having a corporate trust office
at 101 Barclay Street, Floor 7W, New York, New York 10286,
as Trustee and Mortgagee,

Dated as of July 1, 2010

\$20,000,000
New York City Capital Resource Corporation
Recovery Zone Facility Revenue Bonds
(Albee Retail Development LLC Project), Series 2010

Affecting that property described in the appendices to this
Mortgage and Security Agreement and Assignment of Leases and
Rents (Indirect Loan), in the County of Kings, City of New York,
State of New York

Record and Return to:
Hawkins Delafield & Wood LLP
1 Chase Manhattan Plaza
New York, New York 10005
Attention: Arthur M. Cohen, Esq.

**MORTGAGE AND SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS (INDIRECT LOAN)**

This **MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (INDIRECT LOAN)** made and entered into as of the date set forth on the cover page hereof (this "**Mortgage**") from **ALBEE RETAIL DEVELOPMENT LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "**Debtor**"), as mortgagor, having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, to **THE BANK OF NEW YORK MELLON**, a New York banking corporation together with any successor trustee (the "**Trustee**" or the "**Mortgagee**") at the time serving as such under the Indenture referred to below, as mortgagee, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286 (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Indenture, in the Loan Agreement or in the Pledge and Security Agreement, each as referred to below):

WITNESSETH :

WHEREAS, the Debtor has entered into negotiations with the New York City Capital Resource Corporation, a local development corporation created pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended (the "**Issuer**"), for the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility (the "**Facility**") to be leased to retail commercial tenants, generally known by the street address of 1 DeKalb Avenue, Brooklyn, New York, and as further described in Exhibit A attached hereto — "DESCRIPTION OF THE LAND"; and

WHEREAS, the site of the Facility, including the improvements to be constructed thereon, will be subject to the Ground Lease; and

WHEREAS, pursuant to the Loan Agreement, the Issuer has made a Loan of the proceeds of the Bonds, in the original principal amount of the Bonds, to the Debtor, and the Debtor has executed the Promissory Note in favor of the Issuer and the Mortgagee to evidence the Debtor's obligation under the Loan Agreement to repay the Loan; and

WHEREAS, the Debtor intends to enter into various Facility Leases with Facility Tenants at the Facility; and

WHEREAS, pursuant to the Bond Resolution and the Indenture, the Issuer has authorized the issuance of its Bonds to provide funds for a portion of the costs of the Project, and to provide funds to pay a portion of the costs and expenses of the issuance of the Bonds; and

WHEREAS, concurrently with the execution hereof, (i) in order to further secure the Bonds, the Debtor and Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "**Parent**", and, together with the Debtor, the "**Guarantors**") will guarantee the payment of the principal of, Purchase Price, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds, and the payments, obligations, covenants and agreements of the Debtor under the Loan Agreement and under the Promissory Note, pursuant to the Bond Guaranty Agreement, (ii) the completion of the Project will be guaranteed by the Guarantors pursuant to the Project Completion Guaranty Agreement in favor of the Trustee, and (iii) the Debtor will grant a first lien in Facility Revenues and the remainder of the Pledged Collateral pursuant to the Pledge and Security Agreement in favor of the Trustee; and

WHEREAS, in order to induce the Issuer to issue the Bonds, and the initial owners to purchase the Bonds, the Debtor is entering into this Mortgage, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan);

NOW, THEREFORE, in consideration of the premises and of the purchase and acceptance of the Bonds by the initial owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure

(i) the payment of the Secured Principal Amount of the Bonds and the indebtedness represented thereby, the Purchase Price, if applicable, and the redemption premium, if any, and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied in the Bonds, and

(ii) the payment, performance and observance of all obligations of the Debtor and the Parent under the Security Documents including this Mortgage, and

whether now arising or hereafter arising, direct or indirect, absolute or contingent, joint or several, due or to become due, liquidated or unliquidated, secured or unsecured, original, renewed or extended, whether arising directly or acquired from others (all such indebtedness and obligations described in clauses (i) and (ii) above being collectively referred to herein as the "**Obligations**"), provided, however, that the maximum principal amount secured hereby shall not exceed the Secured Principal Amount, the Debtor does hereby grant, bargain, sell, convey, transfer, mortgage, grant a security interest in, pledge and assign to the Trustee, as Mortgagee, and its assigns forever, the following (the "**Mortgaged Property**"), subject to the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), dated as of the date hereof, from the Debtor to the Mortgagee, and to the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan), dated as of the date hereof, from the Debtor to the Mortgagee:

GRANTING CLAUSES

I

The Ground Lease, including all rights, guarantees, amendments, supplements, modifications, renewals, substitutions and extensions relating to the Ground Lease and any right of continued possession of the Facility as might result by reason of a rejection of the Ground Lease thereunder, and all other right, title and interest of the Debtor in and the Facility together with the tenements, hereditaments, servitudes, appurtenances, estate, rights, privileges, liberties, appurtenances, licenses, royalties, mineral, oil and gas rights, water, water rights, reversions, remainders and immunities thereunto in which the Debtor shall have an interest, including all the right, title and interest of the Debtor in and to all streets, ways, alleys, roads, waters, water courses, water rights, waterways, passages, sewer rights and public places adjoining the Facility and all easements and rights-of-way, public or private, and gores of land, now or hereafter used in connection therewith, together with all land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Facility to the center line thereof, now or hereafter used in connection with the Facility.

II

Any right of continued possession and occupancy, by agreement or otherwise, in and to the Facility, including all right, title and interest in any such agreement.

III

Any and all rights under Section 365(h) of the Federal Bankruptcy Code, or any similar rights under any other law, including but not limited to any right to use or possession of the Facility.

IV

All trade fixtures, equipment, machinery, apparatus, appliances, fittings, chattels and articles of personal property of every kind and nature, and all building equipment, materials and supplies of any nature whatsoever, now or hereafter attached to, or used or usable in connection with any present or future operation or occupancy of the Facility and in which the Debtor has or shall have an interest and all renewals and replacements thereof and additions and accessions thereto, including without limitation all partitions, elevators, lifts, steam and hot water boilers, heating and air conditioning equipment, lighting and power plants, engines, motors, compressors, ducts, coal, oil and gas burning apparatus, pipes, pumps, plumbing, radiators, sinks, bath tubs, water closets, refrigerators, gas and electrical fixtures, communications apparatus, stoves, ranges, shades, screens, awnings, vacuum cleaning system, and sprinkler system or other fire prevention or extinguishing apparatus and materials, all of which shall be deemed to be, remain and form a part of the Mortgaged Property and are covered by the Lien of this Mortgage; excluding, however, from the Lien of this Mortgage, the Company's Property (as defined in Section 3.4(c) of the Loan Agreement), any property released from the Facility pursuant to Section 3.5 of the Loan Agreement, and any personal property owned by any Facility Tenant.

V

All right, title and interest of the Debtor in all Construction Contracts, payment bonds, performance bonds, surety bonds, Warranties, guarantees, maintenance, repair or replacement agreements and other contractual obligations of any contractor, subcontractor, surety, guarantor, manufacturer, dealer, laborer, supplier or materialman made with respect to the Facility or any part thereof.

VI

All the right, in the name and on behalf of the Debtor, to appear in and defend any action or proceeding brought with respect to the Facility and to commence any action or proceeding to protect the interest of the Mortgagee in the Facility.

VII

Any and all air rights, development rights, zoning rights or other similar rights or interests which benefit or are appurtenant to the Facility and any proceeds arising therefrom.

VIII

All agreements (other than any Security Document) and/or contracts now or hereafter entered into by the Debtor for the Project Work or any part thereof, and all permits, licenses, bonds, plans and specifications relative to the Project.

IX

All insurance proceeds, awards, payments and other compensation payments, including interest thereon, and the right to receive the same, which are heretofore or hereafter made with respect to the Facility as a result of or in lieu of any taking by eminent domain (including any transfer made in lieu of the exercise of said right), the alteration of the grade of any street, or any other damage or injury to or decrease in the value of the Facility or the occurrence of any Loss Event (as defined in, and subject to, Section 5.1 of the Loan Agreement), to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Mortgagee, and of the reasonable attorneys' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment, s ubject to the terms of the Indenture, the Loan Agreement and the Ground Lease, as to the application of all such amounts so received.

X

All right, title and interest of the Debtor in and to (a) any and all present and future leases of space in any Improvements; (b) the Facility Leases; (c) any and all present and future subleases of space in any Improvements; (d) all rents, issues and profits payable under any such leases and subleases including all Facility Revenues; and (e) any contracts for the sale of all or any portion of the Facility or any Improvements or portions thereof, on or to be erected upon the Facility ("**sale contracts**"). Nothing in this paragraph is intended to constitute the consent of the Mortgagee to any such leases, subleases or sale contracts, other than as expressly provided herein or in the Loan Agreement.

XI

All right, title and interest of the Debtor in all proceeds of any unearned premiums on any property insurance policies concerning the Facility, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damages to any portion of the Facility, subject, however, to the terms of the Indenture, the Loan Agreement and the Ground Lease.

XII

All right, title and interest of the Debtor in all Funds, Accounts and Subaccounts established under the Indenture.

XIII

All the right, in the name and on behalf of the Debtor, to appear in and defend any action or proceeding brought with respect to any of the Mortgaged Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Mortgaged Property.

XIV

Any and all further estate, right, title, interest, property, claim and demand whatsoever of the Debtor in and to any of the above.

XV

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims.

XVI

Any and all other property of every kind and nature from time to time which was heretofore or hereafter is by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder, by the Debtor or by any other Person with or without the consent of the Debtor, to the Mortgagee which is hereby authorized to receive any and all such property at any time and at all times to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned or agreed or intended so to be, to the Mortgagee and its successors and to them and their assigns forever;

THIS MORTGAGE secures the payment, performance and observance of the Obligations and shall continue in full force and effect until the Obligations shall be paid and satisfied in full or otherwise provided for in accordance with their respective terms.

Notwithstanding anything contained herein to the contrary, the maximum amount of Obligations secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is the Secured Principal Amount plus interest thereon, plus all amounts expended by the Mortgagee after default by the Debtor which constitute payment of (i) taxes, charges or assessments which may be imposed by law upon the Mortgaged Property; (ii) premiums on insurance policies covering the Mortgaged Property; (iii) expenses incurred in protecting or upholding the lien of this Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage; (iv) expenses incurred in protecting the collateral encumbered by this Mortgage; or (v) any amount, cost or charge to which the Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority.

DEBTOR represents, warrants, covenants and agrees with the Mortgagee as set forth below:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1. Certain Definitions. The following terms shall have the respective meanings in this Mortgage, except as the context otherwise requires:

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

Authorized Representative shall mean:

(i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties; and

(ii) in the case of the Debtor, a person named in Exhibit B — “Authorized Representative”, to the Loan Agreement, or any other officer or employee of the Debtor who is authorized to perform specific duties under the Loan Agreement or under any other Project Document and of whom another Authorized Representative of the Debtor has given written notice to the Issuer and the Mortgagee;

provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of the Loan Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Bond Guaranty Agreement shall mean the Bond Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Bond Resolution shall mean the resolution of the Issuer adopted on February 9, 2010, as amended on April 13, 2010, authorizing the Project and the issuance of the Bonds.

Bonds shall mean the Issuer’s \$20,000,000 Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010, authorized, issued, executed, authenticated and delivered under the Indenture.

Building Loan Agreement shall mean the Building Loan Agreement, dated as of even date herewith, among the Issuer, the Debtor and the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Business Day shall have the meaning assigned to that term in the Indenture.

City shall mean The City of New York, New York.

Closing Date shall mean July 1, 2010, the date of the initial issuance and delivery of the Bonds.

Commencement Date shall have the meaning assigned to that term in the Loan Agreement.

Company's Property shall have the meaning specified in Section 3.4(c) of the Loan Agreement.

Debtor shall mean Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Debtor under Section 7.8 or 7.9 of the Loan Agreement.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Facility shall mean, collectively, the Land and the Improvements.

Facility Address shall mean 1 DeKalb Avenue, Brooklyn, New York.

Facility Leases shall mean, collectively, all leases or other occupancy or use agreements, other than the Ground Lease, entered into with any Person for the use, possession or occupancy of the Facility or any portion thereof.

Facility Revenues shall mean all revenues, income, fees, receipts, charges, income and other money received in any period by or on behalf of the Debtor, derived from the leasing or operation of the Facility, including proceeds derived from insurance (including environmental insurance) and/or condemnation proceeds with respect to the Facility and Business Interruption Insurance and Extra Expense Insurance, in each case whether existing as of the Closing Date or hereafter coming into existence.

Facility Tenants shall mean all Persons as shall use, possess or occupy all or any portion of the Facility pursuant to a Facility Lease.

GAAP shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Company, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Ground Lease shall mean that certain Severance Lease (Site 1A), dated June 17, 2010, between the City, as landlord, and Albee Development, LLC, a Delaware limited liability company (“Albee Development”), as assigned on July 1, 2010 by Albee Development to, and assumed by, the Debtor, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith.

Guarantors shall mean, collectively, the Debtor and the Parent, and their respective successors and assigns.

Holders shall have the meaning assigned to that term in the Indenture.

Improvements shall mean:

- (i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date and erected or situated on the Land;
- (ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land throughout the term of the Loan Agreement (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2 of the Loan Agreement); and
- (iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

Indenture shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Independent Engineer shall mean a Person (not an employee of any of the Issuer, the Debtor, the Parent or any Affiliate of any thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Debtor, and approved in writing by the Trustee (which approval shall not be unreasonably withheld and shall be at the written direction of the Majority Holders).

Issuer shall mean New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

Land shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn (County of Kings), Block 149 and Lot 103, generally known by the street address 1 DeKalb Avenue, Brooklyn, New York, all as more particularly described in Exhibit A - “Description of the Land”, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 7.9(c) of the Loan Agreement.

Legal Requirements shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Debtor or any Facility Tenant, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Loan Agreement shall mean the Loan Agreement, dated as of even date herewith, between the Issuer and the Debtor, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Majority Holders shall have the meaning assigned to that term in the Indenture.

Mortgage shall mean this Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) from the Debtor to the Mortgagee, and includes any and all amendments hereof and supplements hereto made in accordance herewith and with the Indenture.

Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) shall mean the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), dated as of even date herewith, from the Debtor to the Mortgagee, and includes any and all amendments thereof and supplements thereto hereafter made in accordance therewith and with the Indenture.

Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) shall mean the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan), dated as of even date herewith, from the Debtor to the Mortgagee, and includes any and all amendments thereof and supplements thereto hereafter made in accordance therewith and with the Indenture.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

Opinion of Counsel shall mean a written opinion of counsel for the Debtor, the Parent or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Outstanding shall have the meaning assigned to that term in the Indenture.

Parent shall mean Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Parent under Section 3.6 of the Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement.

Permitted Encumbrances shall have the meaning assigned to that term in the Indenture.

Person shall mean an individual or any Entity.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, dated as of even date herewith, from the Debtor to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project shall mean the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility to be leased to retail commercial tenants.

Project Completion Guaranty Agreement shall mean the Project Completion Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project Documents shall mean, collectively, the Ground Lease, the Issuer Indemnification Agreement, the Remarketing Agreement, the Bond Placement Agreement, the Facility Leases and the Security Documents.

Promissory Note shall mean, with respect to the Bonds, that certain Promissory Note in substantially the form of Exhibit G to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

Purchase Price shall mean an amount equal to the principal amount of any Bond purchased on any Purchase Date, plus accrued interest to the Purchase Date (unless the Purchase Date is an Interest Payment Date, in which case the Purchase Price shall not include accrued interest, which shall be paid in the normal course).

Secured Principal Amount shall mean \$2,456,944.00.

Security Documents shall mean, collectively, the Loan Agreement, the Promissory Note, the Pledge and Security Agreement, the Indenture, the Bond Guaranty Agreement, the Project Completion Guaranty Agreement, the Tax Regulatory Agreement, the Building Loan Agreement, this Mortgage, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan).

State shall mean the State of New York.

Supplemental Indenture shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with Article XI of the Indenture.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Debtor to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean The Bank of New York Mellon, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Trust Estate shall mean all property, interest, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

Section 1.2. Construction. In this Mortgage, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Mortgage, refer to this Mortgage, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Mortgage, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Mortgage, nor shall they affect its meaning, construction or effect.

(e) Unless the content indicates otherwise, references to designated "Exhibits," "Articles," "Sections," "Subsections," "clauses" and other subdivisions are to the designated Exhibits, Articles, Sections, Subsections, clauses and other subdivisions of or to this Mortgage.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. **Representations and Warranties of Debtor.** The Debtor hereby represents and warrants that:

- (a) The Debtor is a limited liability company duly organized under the laws of the State of Delaware, is validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing under the laws of the State, is not in violation of any provision of its Organizational Documents, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Mortgage and each other Project Document to which it is or shall be a party.
- (b) The execution, delivery and performance of this Mortgage and each other Project Document to which the Debtor is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Organizational Documents of the Debtor, or any indenture, agreement or other instrument to which the Debtor is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.
- (c) There is no action or proceeding pending or, to the best of the Debtor's knowledge, after diligent inquiry, threatened by or against the Debtor by or before any court or administrative agency that would adversely affect the ability of the Debtor to perform its obligations under this Mortgage or any other Project Document to which it is or shall be a party. Such knowledge is based upon the knowledge of Robert Masters, a Senior Vice President of the Parent, and a person employed by the Parent with actual knowledge of the Project and of the matters set forth in this paragraph.
- (d) The Debtor has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Debtor as of the Closing Date in connection with the execution and delivery of this Mortgage and each other Project Document to which the Debtor is a party or in connection with the performance of the obligations of the Debtor hereunder and under each of the Project Documents.
- (e) This Mortgage and the other Project Documents to which the Debtor is a party (x) have been duly authorized by all necessary action on the part of the Debtor, (y) have been duly executed and delivered by the Debtor, and (z) constitute the legal, valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with their respective terms, subject to limitations on enforceability resulting from bankruptcy, insolvency and principles of equity.

(f) The assumption by the Debtor of its obligations hereunder will result in a direct financial benefit to the Debtor.

(g) The Debtor has power to enter into and perform this Mortgage, to create, pledge and grant the mortgage, pledge, assignment and security interest in the Mortgaged Property as provided in this Mortgage, and to own its property and assets.

(h) The Debtor is vested with a good and marketable leasehold interest in the Facility pursuant to the Ground Lease, subject to no mortgage, lien, charge, pledge, assignment, security interest, conditional sale agreement or encumbrance of any kind whatsoever, other than Permitted Encumbrances.

(i) The Debtor is, as of the Closing Date, and after giving effect to all instruments evidencing or securing the Obligations will be, in a solvent condition.

(j) The execution and delivery of this Mortgage does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code as so constituted or under any other applicable law.

(k) No bankruptcy or insolvency proceedings are pending or contemplated by or, to the best knowledge of the Debtor, against, the Debtor.

(l) The Debtor is duly authorized to mortgage and grant a security interest in the Mortgaged Property, and this Mortgage is a third lien upon the Mortgaged Property, subject only to Permitted Encumbrances.

(m) The Ground Lease is a valid and subsisting lease of the property therein described and purported to be demised and is in full force and effect in accordance with its terms, and has not been amended or modified in any respect.

(n) No default has occurred and is continuing under the Ground Lease and no event has occurred or is occurring which, with the passage of time or the giving of notice or both, would constitute an event of default under the Ground Lease.

(o) Neither the Ground Lease nor the Debtor's interest in any of the Facility Leases or Facility Revenues is subject to any Liens or encumbrances other than in favor of the Mortgagee or as set forth in the mortgagee title insurance policy insuring the Lien of this Mortgage, a copy of which has been furnished to the Mortgagee.

(p) The Debtor is the owner of the leasehold estate created by the Ground Lease and has the right and authority under the Ground Lease to execute this Mortgage as provided herein.

(q) No Facility Leases are in effect as of the Closing Date.

ARTICLE III

GENERAL AGREEMENTS OF DEBTOR

Section 3.1. Payment, Performance, Observance and Compliance. The Debtor agrees to pay, perform, observe and comply with such of the Obligations to which it shall be subject (including this Mortgage) upon the terms and provisions required of the Debtor therein.

Section 3.2. Acknowledgment of Amount Due. The Debtor shall, upon request, furnish to the Mortgagee, in person within five (5) days, or, by mail within ten (10) days, a written statement duly acknowledged of the amount due under this Mortgage and whether any offsets or defenses exist against the Obligations.

Section 3.3. Security Agreement. This Mortgage is and shall be deemed to be a security agreement under the New York State Uniform Commercial Code with respect to the Mortgaged Property, and the Mortgagee shall have all the rights of a secured party thereunder with respect to that part of the Mortgaged Property that constitutes personal property subject thereto (sometimes referred to herein as the "**Secured Property**"). Upon request by the Mortgagee, the Debtor shall execute and deliver to the Mortgagee any security agreement, financing or continuation statement or other document the Mortgagee reasonably deems necessary to protect or perfect its lien on the Mortgaged Property. If the Debtor shall default under this Mortgage, the Mortgagee, in addition to any other rights and remedies that 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 New York State Uniform Commercial Code, including the right to take possession of the Secured Property or any part thereof or indicia thereof, and to take such other measures as the Mortgagee may deem necessary for the care, protection and preservation of the Secured Property. Upon request or demand of the Mortgagee, the Debtor shall assemble the Secured Property and make it available to the Mortgagee at a convenient place acceptable to the Mortgagee. The Debtor shall pay to the Mortgagee on demand all expenses, including reasonable legal expenses and attorneys' fees and expenses, incurred or paid by the Mortgagee in protecting its interest in the Secured Property and in enforcing its rights hereunder with respect to the Secured Property. Any notice of sale, other disposition, or other intended action by the Mortgagee with respect to the Secured Property sent to the Debtor in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, other disposition, or other intended action set forth or specified in the notice shall conclusively be deemed to be commercially reasonable within the meaning of the New York State Uniform Commercial Code unless objected to in writing by the Debtor within five (5) days after receipt by the Debtor of the notice. The proceeds of any sale or other disposition of the Secured Property, or any part thereof, shall be applied to the payment of the Obligations as provided in Section 6.17.

Section 3.4. Ownership; Instruments of Further Assurance. The Mortgagee on behalf of the Debtor shall defend the interest of the Debtor to the Mortgaged Property and every part thereof and the Debtor agrees to warrant and defend such interest against the claims and demands of all Persons whomsoever. The Debtor covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto and such further acts, instruments and transfers as the Mortgagee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Mortgagee all and singular the property herein described and subject to the lien and security interest of this Mortgage and those revenues pledged hereby and by the Indenture to the payment of the Obligations. Any and all property hereafter acquired (other than the Company's Property) which is of the kind or nature herein provided to be and become subject to the lien and security interest hereof shall ipso facto, and without any further conveyance, assignment or act on the part of the Debtor or the Mortgagee, become and be subject to the lien and security interest of this Mortgage as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Debtor heretofore made by this Section 3.4.

Section 3.5. Creation of Liens; Indebtedness; Sale of Facility. The Debtor represents and covenants that this Mortgage is and will be a third mortgage Lien upon the Mortgaged Property, subordinate only to the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan). The Lien of this Mortgage is subject and subordinate to the Ground Lease and the Liens of the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) and of the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan). The Debtor shall not (x) create or suffer to be created any Lien upon or pledge of the Mortgaged Property or any part thereof except the Lien created by this Mortgage and Permitted Encumbrances, and except as expressly permitted under the Indenture, (y) incur any Indebtedness or issue any evidences of Indebtedness, other than the Obligations, and except as expressly permitted under the Indenture, secured by a Lien on the Mortgaged Property, or (z) sell, convey, transfer, lease, mortgage or encumber the Mortgaged Property or any part thereof except as specifically permitted under the Loan Agreement, the Indenture, this Mortgage and Permitted Encumbrances, so long as any of the Obligations are Outstanding.

Section 3.6. Release of Property. Reference is made to the provisions of the Loan Agreement, including, without limitation, Sections 3.5 and 7.9 thereof, whereby the Debtor may withdraw from the Facility any fixtures or any right-of-way, easement, permit or license or unimproved portion thereof, all upon compliance with the terms and conditions of the Loan Agreement and the Ground Lease. At the request of the Debtor, the Mortgagee shall release from the lien and security interest of this Mortgage, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan), and from under the Loan Agreement such portion of the property of the Facility so withdrawn upon compliance with the applicable provisions of the Loan Agreement and shall confirm any such release.

Section 3.7. Recording and Filing. a) The Debtor shall cause this Mortgage and all supplements hereto to be recorded (at the sole cost and expense of the Debtor) as a mortgage of an interest in real property in the appropriate offices of the Register of The City of New York or in such other offices as may be at the time provided by law as the proper place for the recordation thereof. In addition, the security interest of the Mortgagee, as created by this Mortgage, in the personal property and fixtures and the rights and other intangible interests herein described, shall be perfected by the filing of financing statements at the direction of the Debtor in the offices of the Secretary of State of the State in the City of Albany, New York, and in the offices of such Register of The City of New York, which financing statements shall be in accordance with the New York State Uniform Commercial Code - Secured Transactions. All mortgage recording taxes, if any, and filing and recording charges and fees shall be payable by the Debtor.

(b) The Debtor and the Mortgagee acknowledge that, as of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a “public-financed transaction” is effective for a period of thirty (30) years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least twenty (20) years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

(c) The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Bonds, and because the Bonds are municipal securities with a term that is at least twenty (20) years in duration, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statements in order to preserve the liens and security interests that they create for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

Subsequent to the foregoing recordation and filings, if in the Opinion of Counsel to the Debtor (described hereinbelow), to preserve (after the thirtieth (30th) anniversary of the Closing Date) the lien and security interest of this Mortgage, it is necessary to re-record and/or re-index documents, re-file financing statements and/or file continuation statements and/or take any other actions (individually or collectively, the “**Continuation Action(s)**”), then, the Debtor in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Mortgagee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Mortgagee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Mortgagee written certification (upon which the Mortgagee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause “(i)” and the others in the manner described in clause “(ii)”; and (B) deliver or cause to be delivered to the Mortgagee the Opinion of Counsel to the Debtor as described below. The Mortgagee may conclusively rely upon (y) when applicable, the certification referred to in clause “(A)(ii),” and (z) in all instances, the Opinion of Counsel to the Debtor. In the event the Debtor chooses to have the Mortgagee perform all or some of the Continuation Actions, as provided in clause “(A)(i)” hereinabove, the Mortgagee shall reasonably promptly perform such Continuation Actions at the Debtor’s sole expense. The Debtor shall perform the obligations described hereinabove in clauses “(A)” and “(B)” no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause “(i)”) on which a Continuation Action is to be taken to preserve the lien and security interest of this Mortgage.

The Opinion of Counsel to the Debtor shall be addressed to the Debtor and the Mortgagee. Counsel shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year period thereafter through the term of the Bonds, and/or (ii) the date of any required Continuation Action not covered by clause "(i)," in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Debtor, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Mortgagee with instruments and papers prepared by the Debtor, or (ii) the Debtor through electronic filing, or (iii) the Mortgagee as to some Continuation Actions, and the Debtor as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Debtor and the Mortgagee then requisite to the maintenance of the perfection of the security interest of the Mortgagee in and to all property and interests which by the terms of this Mortgage are to be subjected to the lien and security interest of this Mortgage.

(d) Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Debtor (which shall be reasonably acceptable to the Mortgagee) shall have the right to designate a company to facilitate the filing of the Uniform Commercial Code financing statements.

(e) All costs (including reasonable attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Debtor.

(f) The Debtor agrees to perform all other acts (including the payment of all fees and expenses) necessary in order to enable the Mortgagee to comply with this Section, and with Section 7.07 of the Indenture, including but not limited to, providing prompt notice to the Mortgagee of any change in either of the name or address of the Debtor. The Debtor agrees that the Mortgagee, if permitted by applicable law, may provide for the re-recording of the Indenture or any other Security Document or the filing or re-filing of continuation statements without the cooperation of the Debtor as necessary at the Debtor's sole cost and expense.

Section 3.8. After-Acquired Property. Except as provided in Section 3.4(c) of the Loan Agreement, all right, title and interest of the Debtor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property (other than trade fixtures), or any part thereof, hereafter acquired, constructed, assembled or placed by or at the direction of the Debtor on or in the Facility (other than trade fixtures), and all conversions and proceeds of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of the Debtor, shall become subject to the security and lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Debtor and specifically described in the Granting Clauses hereof; but at any and all times the Debtor, on demand, will execute, acknowledge, deliver to the Mortgagee and the Debtor will cause to be recorded or filed as provided in Section 3.8, any and all such further assurances and mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purposes of expressly and specifically subjecting the same to the security and lien of this Mortgage.

Section 3.9. The Ground Lease. i) The Debtor will promptly pay or cause to be paid all rents, additional rents and other charges as and when the same become due, and diligently perform and observe all terms, covenants and conditions required to be paid, performed and observed by the Debtor as lessee under the Ground Lease, within the period provided in the Ground Lease (provided, however, that the aforesaid covenant of the Debtor shall be deemed to require that all such rents, additional rents and other charges be paid, and all such terms, covenants and conditions be performed and observed, no later than five (5) Business Days in the case of a performance covenant (and no later than three (3) Business Days in the case of a payment obligation) prior to the date that the failure to make such payment or perform and observe such terms, covenants and conditions, would constitute a default under the Ground Lease), and will do all things necessary to preserve and keep unimpaired its rights under the Ground Lease. The Debtor will furnish the Mortgagee, upon demand, proof of payment of all items which are required to be paid by the Debtor pursuant to the Ground Lease and proof of payment of which is required to be given to the lessor under the Ground Lease. To the extent that the Ground Lease shall grant to the Debtor, as lessee thereunder, the privilege to postpone or defer the payment of any sum required to be paid thereunder, the failure of the Debtor to pay the same shall not constitute a default hereunder if and so long as the Debtor shall faithfully comply with all of the conditions and other requirements of the Ground Lease with respect to the exercise of such privilege. The Debtor shall not waive any of its rights under the Ground Lease, or refrain from exercising any right or remedy accorded to it under the Ground Lease on account of any default by the lessor thereunder, or release the lessor from any liability or condone or excuse any improper actions of the lessor thereunder without first obtaining the written consent of the Mortgagee.

(b) No release or forbearance of any of the Debtor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release the Debtor from any of its obligations under this Mortgage, including its obligation with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease to be kept, performed and complied with by the tenant therein.

(c) The Debtor shall not make any election or give any consent or approval (other than the exercise of a renewal right or extension right or other right conferring a benefit on the Debtor, provided that any such action has no adverse effect or consequence to the Issuer, the Mortgagee or the Bondholders or the security for the Bonds) for which a right to do so is conferred upon the Debtor as tenant under the Ground Lease without the prior written consent of the Mortgagee if such election, consent or approval would impair the rights of the Mortgagee or the security for the Obligations. In case of any Event of Default under this Mortgage, all such rights, together with the right of termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, all of which have been assigned for collateral purposes to the Mortgagee, shall vest in and be exercisable solely by the Mortgagee.

(d) Not more than three hundred sixty (360) and less than two hundred seventy (270) days before the right of the Debtor to exercise any option or right to renew or extend the term of the Ground Lease shall expire, the Debtor shall give the Mortgagee written notice specifying the date, term and manner for which such option or renewal is to be exercised. Within ten (10) days of written demand by the Mortgagee, the Debtor shall exercise any such option or renewal which is necessary to extend the term of the Ground Lease beyond the term of this Mortgage or to comply with any Legal Requirement affecting the Debtor, the Issuer or the Mortgagee, or which is necessary, in the reasonable judgment of the Mortgagee, to preserve the value of the Mortgaged Property intended to be afforded by this Mortgage. The Debtor shall promptly provide evidence of such exercise of such option or right to the reasonable satisfaction of the Mortgagee. In the event that the Debtor fails to so exercise any such option or right or upon the occurrence of an Event of Default, the Debtor hereby agrees and grants to the Mortgagee all right and authority to exercise such option in the name of the Debtor or in its own name. Nothing contained herein shall affect or limit any rights of the Mortgagee under the Ground Lease.

(e) In the event the Debtor shall violate any of the covenants specified in Section 3.9(a) above, then the Mortgagee shall have the right (but shall not be obligated) to take any action as the Mortgagee may deem reasonably necessary or desirable to prevent or cure any default of the Debtor under the Ground Lease or any default of the lessor thereunder, it being agreed that upon receipt by the Mortgagee from the lessor under the Ground Lease of any notice of default, the Mortgagee shall be entitled to rely thereon and take any of the aforesaid action even though the Debtor denies or questions the existence of any such default, and shall have the immediate right to enter all or any portion of the Facility at such times and in such manner as the Mortgagee deems reasonably appropriate in order to prevent or to cure any such default, or any condition which with notice and/or lapse of time would constitute an Event of Default under the Ground Lease.

(f) In the event the Debtor shall violate any of the covenants specified in Section 3.9(a) hereof, then, for the purpose of preventing or curing any default by the Debtor under the Ground Lease, the Mortgagee may (but shall be under no obligation to) do any act or execute any document in the name of the Debtor or as its attorney-in-fact, as well as in the name of the Mortgagee, without waiving or releasing the Debtor from any of its obligations hereunder. The Debtor hereby irrevocably appoints the Mortgagee its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which in the opinion of the Mortgagee may be reasonably necessary or desirable to prevent or cure any default under the Ground Lease or to preserve any rights of the Debtor in, to or under the Ground Lease or any Facility Lease, or to preserve any rights of the Debtor whatsoever in respect of any part of the Facility, subject, however, to the provisions of the Ground Lease and Section 5.1.

(g) The Debtor shall, from time to time, use commercially reasonable good faith efforts to obtain from the landlord under the Ground Lease such certificates of estoppel with respect to compliance by the Debtor with the terms of the Ground Lease as may be reasonably requested from time to time by the Mortgagee (but not more often than once in any calendar year except upon reasonable cause). The curing by the Mortgagee of any default by the Debtor under the Ground Lease shall not remove or waive, as between the Debtor and the Mortgagee, any default which may have occurred hereunder by virtue of the default by the Debtor under the Ground Lease, and all sums expended by the Mortgagee (upon ten (10) days prior written notice by the Mortgagee to the Debtor of its intention to expend such sums, except if in the reasonable judgment of the Mortgagee an emergency condition exists) in order to cure any such default and costs and expenses incurred by the Mortgagee in connection with the curing of such default shall be paid by the Debtor to the Mortgagee upon demand with interest therein at the annual rate of eighteen percent (18%) per annum from the date of advancement until paid, and any such indebtedness shall be deemed to be secured by this Mortgage.

(h) The Debtor shall not, without the prior consent of the Mortgagee, surrender the leasehold estate created by the Ground Lease or terminate or cancel the Ground Lease, and the Debtor hereby assigns to the Mortgagee, as further security for the payment of the Obligations and for the performance and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of the Debtor, as tenant under the Ground Lease, to surrender the leasehold estate created by the Ground Lease or to terminate or cancel the Ground Lease, and any such surrender of the leasehold estate created by the Ground Lease or termination or cancellation of the Ground Lease without the prior consent of the Mortgagee shall be void and of no force and effect.

(i) The Debtor shall notify the Mortgagee promptly of (i) the occurrence of any default by the lessor under the Ground Lease or the occurrence of any event which, with the passage of time or giving of notice, or both, would constitute a default by the lessor under the Ground Lease, (ii) the receipt by the Debtor of any notice (written or oral) from the lessor under the Ground Lease noting or claiming the occurrence of any default by the Debtor under the Ground Lease or the occurrence of any event which, with the passage of time or giving of notice, or both, would constitute a default by the Debtor under the Ground Lease, and deliver to the Mortgagee a true copy of such notice, or (iii) any request made by either party to the Ground Lease for arbitration proceedings pursuant to the Ground Lease and of the institution or commencement of arbitration proceedings thereunder. The Debtor shall permit the Mortgagee to participate in any arbitration proceedings in association with the Debtor, and if at the time any such arbitration proceedings shall be initiated, an Event of Default shall exist and be continuing, the Mortgagee is hereby granted the right to designate and appoint any arbitrators to be appointed by the Debtor under the Ground Lease. If any action or proceeding shall be instituted to evict the Debtor or to recover possession of the Facility or any portion thereof or for any other purpose affecting the Ground Lease or this Mortgage, the Debtor shall, immediately upon service thereof on or to the Debtor, deliver to the Mortgagee a true and complete copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, howe ver designated, served in any such action or proceeding.

(j) The Debtor shall not unreasonably withhold its consent to any proposed modifications of the Ground Lease which the lessor thereunder agrees to make at the request of the Mortgagee necessary for the improving, maintaining or preserving the Mortgagee's security in the Ground Lease.

(k) The Debtor shall not sell or assign the Ground Lease or any of its rights thereunder or the leasehold estate created thereby or sublease all or any portion of the Facility except in accordance with the Loan Agreement.

(l) The Debtor will promptly perform and observe all the terms, covenants and conditions required to be performed and observed by the Debtor as sublessor under the Facility Leases, within the periods provided in the Facility Leases prior to the date that the failure to make such payment or perform and observe such terms, covenants and conditions, would constitute a default under the respective Facility Leases), and will do all things necessary to preserve and keep unimpaired its rights under the Facility Leases. The Debtor shall not waive any of its rights under the Facility Leases, or refrain from exercising any right or remedy accorded to it as sublessor thereunder on account of an event of default under any Facility Lease, or release any Facility Tenant from liability or condone or excuse any improper act of any Facility Tenant under any Facility Lease, in any case if such action or failure to take action were not effected (in the Debtor's reasonable judgment) in good faith in a commercially reasonable manner. The Debtor shall not voluntarily terminate a Facility Lease or accept a surrender of any Facility Lease or suffer or permit any termination or surrender of any Facility Lease, in each case prior to the scheduled expiration thereof, except (x) with the prior written consent of the Mortgagee which consent must be given if the Mortgagee is so directed by the Majority Holders (if not so directed, such consent not to be unreasonably withheld or delayed), (y) if the termination or surrender of such Facility Lease will not have a material adverse effect upon Facility Revenues, or (z) if the Debtor's actions with respect to such Facility Tenant and Facility Lease are taken (in the Debtor's reasonable judgment) in a good faith commercially reasonable manner.

(m) The Debtor will not (i) modify, amend or supplement any Facility Lease if such modification, amendment or supplement would have a material adverse effect on Facility Revenues (except if such material adverse effect on Facility Revenues is only of a short-term consequence and is not reasonably likely to have a long-term material adverse effect on Facility Revenues), or (ii) require any Facility Tenant to subordinate any Facility Lease to the Lien of any mortgage on the Facility other than Permitted Encumbrances. The Debtor shall deliver to the Mortgagee, promptly following the execution thereof, a copy of each executed amendment, modification or supplement to a Facility Lease, accompanied by a certificate of an Authorized Representative of the Debtor to the effect that such amendment, modification or supplement was entered into in good faith by the Debtor and was commercially reasonable.

(n) Each Facility Lease entered into by the Debtor must provide that the Facility Lease is subordinate to the Lien of this Mortgage and any extensions, replacements or modifications hereof.

(o) The Mortgagee is hereby granted the right to participate in any dispute with the lessor under the Ground Lease, and the Debtor shall not settle with the lessor under the Ground Lease any insurance or condemnation claim or adjustment in an amount in excess of \$500,000 without the consent of the Mortgagee.

(p) If there shall be filed by or against the Debtor a petition under the United States Bankruptcy Code, Title 11 of the United States Code (the "Bankruptcy Code"), then the Lien of this Mortgage shall attach to all of the Debtor's rights and remedies at any time arising under or pursuant to the Bankruptcy Code, including, but not limited to, §365 thereof. Upon the filing of any petition by or against the Debtor under the Bankruptcy Code, the Debtor shall immediately provide copies of all pleadings and notices related thereto to the Mortgagee. The Debtor unconditionally assigns to the Mortgagee all of the Debtor's rights to remain in possession of the Mortgaged Property following the filing of any bankruptcy petition by or against the Debtor, and acknowledges that the Mortgagee may file any pleading in furtherance thereof. This assignment constitutes a present, irrevocable, and unconditional assignment of the foregoing claims, rights, and remedies of the Debtor, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Furthermore, the Debtor hereby irrevocably constitutes and appoints the Mortgagee as the Debtor's attorney in fact for the purpose of filing any pleading in the court in which the initial petition was filed or any court to which the action thereon may be removed, transferred, or assigned (the "Bankruptcy Court") that the Mortgagee determines in its sole discretion to protect the Mortgagee's interests in and to the Mortgaged Property, including but not limited to a motion to extend any applicable time period for the filing of any motion related to the assumption of the Ground Lease.

(q) The Debtor shall not, without the prior written consent of the Mortgagee, file any motion or other pleading to reject or otherwise elect to treat the Ground Lease as terminated under §365 of the Bankruptcy Code. Any such motion, pleading, or election made without such prior written consent shall be void ab initio, and this Mortgage may be pled in bar thereof. If the Debtor does file such a motion to reject the Ground Lease under §365 of the Bankruptcy Code, the Debtor hereby acknowledges and agrees that, unless the Mortgagee consents in writing to such rejection, the Debtor may not reject the Ground Lease unless the Debtor proves, by a preponderance of the evidence, that the Debtor was "insolvent," within the meaning of §101 of the Bankruptcy Code, on the petition filing date. If the Debtor, as tenant under the Ground Lease and as debtor under the Bankruptcy Code, shall desire to reject the Ground Lease pursuant to §365 of the Bankruptcy Code, the Debtor shall give the Mortgagee not less than thirty (30) days' prior written notice of the date on which the Debtor intends to file a motion in or otherwise apply to the Bankruptcy Court for authority to reject the Ground Lease. In such event, the Mortgagee shall have the right, but not the obligation, to serve upon the Debtor within such thirty (30) day period a notice stating that the Mortgagee demands that the Debtor assume the Ground Lease and assign the Ground Lease to the Mortgagee or the Mortgagee's designee pursuant to §365 of the Bankruptcy Code. If the Mortgagee shall serve upon the Debtor the notice described in the preceding sentence, the Debtor shall not seek to reject the Ground Lease and shall comply with the demand provided for in the preceding sentence.

(r) If the Debtor shall desire to assume the Ground Lease, then the Debtor shall give the Mortgagee not less than ten (10) days' prior written notice of the date on which the Debtor intends to file a motion in, or otherwise apply to, the Bankruptcy Court for authority to assume the Ground Lease. The Debtor shall inform the Mortgagee as a part of such notice whether or not the Debtor intends to assign the Ground Lease following assumption thereof. The Mortgagee shall have the right, but not the obligation, to serve upon the Debtor within such ten (10) day period a notice stating that the Mortgagee demands that the Debtor assume the Ground Lease and assign the Ground Lease to the Mortgagee or the Mortgagee's designee pursuant to §365 of the Bankruptcy Code, and such election by the Mortgagee shall be binding upon the Debtor. Should the Debtor file a motion to assume the Ground Lease, the Mortgagee shall have the sole right to determine what terms and conditions will provide the Mortgagee with "adequate assurance of future performance," within the meaning of §365 of the Bankruptcy Code.

(s) If there shall be filed by or against the landlord or any fee owner of the Mortgaged Property a petition under the Bankruptcy Code, the Debtor shall, after obtaining knowledge thereof, promptly notify the Mortgagee thereof in writing. The Debtor shall promptly deliver to the Mortgagee, following receipt, complete and correct copies of any and all notices, motions, summonses, pleadings, claim forms, applications, and other documents received by the Debtor in connection with any such petition and any proceedings relating thereto. In the event of such a bankruptcy filing, the Mortgagee shall have the option, exercisable upon notice from the Mortgagee to the Debtor, to conduct and control any such litigation with counsel chosen by the Mortgagee. If an Event of Default shall exist and be continuing, or if the Mortgagee shall reasonably determine that such actions are necessary to preserve the security of this Mortgage, the Mortgagee may proceed in its own name or in the name of the Debtor in connection with any such litigation, and the Debtor agrees to execute any and all powers, authorizations, consents, or other documents required by the Mortgagee in connection therewith. The Debtor shall not commence any action, suit, proceeding, or case, or file any application or make any motion, seeking to terminate the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of the Mortgagee. The Debtor hereby unconditionally assigns, transfers, and sets over to the Mortgagee all of the Debtor's claims and rights to the payment of damages or any claim arising from any rejection of the Ground Lease by the landlord or any other fee owner of the Mortgaged Property, or the payment of any amount or claim associated with the Ground Lease in any proceeding under the Bankruptcy Code. If an Event of Default shall exist and be continuing, or if the Mortgagee shall reasonably determine that such actions are necessary to preserve the security of this Mortgage, the Mortgagee shall have the right to proceed in its own name and/or in the name of the Debtor in respect of any claim, suit, action, or proceeding relating to the assumption or rejection of the Ground Lease by the landlord, including, without limitation, the right to file and prosecute, to the exclusion and in the name of the Debtor, any proofs of claim, complaints, motions, applications, notices, and other documents, or to defend against any objection thereto, in any case in respect to the landlord or any fee owner of the Mortgaged Property. This assignment constitutes a present, irrevocable, and unconditional assignment of the foregoing claims, rights, and remedies, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Any amounts received by the Mortgagee as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of the Mortgagee (including, without limitation, attorneys' and paralegals' fees and expenses) incurred in connection with the exercise of any of its rights or remedies under this Section. The Debtor shall promptly make, execute, acknowledge, and deliver, in form and substance satisfactory to the Mortgagee, a UCC Financing Statement (Form UCC 1), and all such additional instruments, agreements and other documents, as may at any time hereafter be required by the Mortgagee to effectuate and carry out the assignment made pursuant to this Section.

(t) If the Debtor shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by the landlord or any fee owner of the Mortgaged Property of any of its obligations under the Ground Lease after the rejection by the landlord or any fee owner of the Mortgaged Property under the Bankruptcy Code, the Debtor shall, prior to effecting such offset, notify the Mortgagee of its intent to do so, setting forth the amounts proposed to be so offset and the basis therefor. The Mortgagee shall have the right to object to all or any part of such offset that, in the reasonable judgment of the Mortgagee, would constitute a breach of the Ground Lease, and in the event of such objection, the Debtor shall not effect any offset of the amounts so objected to by the Mortgagee. Neither the failure of the Mortgagee to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by the Mortgagee. The Debtor shall pay and protect the Mortgagee, and indemnify and save the Mortgagee harmless from and against, any and all claims, demands, actions, suits, proceedings, damages, losses, costs, and expenses of every nature whatsoever (including without limitation, attorneys' and paralegals' fees and expenses) arising from or relating to any offset by the Debtor against the rent reserved in the Ground Lease.

(u) This Mortgage and the rights of the Mortgagee hereunder shall in all respects be subject and subordinate to the terms, covenants, conditions and provisions set forth in the Ground Lease.

Section 3.10. No Merger of Estates. So long as any portion of the Obligations shall remain unpaid, unless the Mortgagee shall otherwise consent, the interest of the lessor under the Ground Lease in the Facility and the leasehold estate of the Debtor created in the Facility 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 the Debtor, or in any other Person by purchase, operation of law or otherwise. If the Mortgagee shall acquire the interest of the lessor under the Ground Lease in the Facility and the leasehold estate created in the Facility pursuant to the provisions of the Ground Lease, by foreclosure of this Mortgage or otherwise, such estates shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until the Mortgagee shall elect to merge such estates. Nothing herein contained shall be construed as authorizing the sale by the Debtor of its leasehold estates under the Ground Lease without the prior written consent of the Mortgagee.

Section 3.11. Additional Taxes or Charges. If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on this Mortgage, the Debtor will pay such tax, with interest and penalties thereon, if any. 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 this Mortgage or any of the other Security Documents, the Debtor agrees to pay for the same, with interest and penalties thereon, if any. Nothing contained in this Section 3.11 shall obligate the Debtor to indemnify for any income tax liability arising by reason of this Mortgage.

Section 3.12. Notice of Event of Default. The Debtor shall immediately notify the Mortgagee in writing of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Security Document. Any notice required to be given pursuant to this Section shall be signed by the Debtor and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken to cure a default, the notice should plainly state this fact.

Section 3.13. Debtor's Acquisition of Fee Estate. Subject to the provisions of Section 3.10, in the event that the Debtor, so long as any portion of the Obligations remains unpaid, shall be the owner and holder of the fee title to any leasehold portion of the Mortgaged Property, the lien of this Mortgage shall be spread to cover the Debtor's fee title to such Mortgaged Property and said fee title shall be deemed to be included in the Mortgaged Property without any further action. The Debtor agrees, at its sole cost and expense, including without limitation reasonable attorneys' fees of the Mortgagee, to (i) execute any and all documents or instruments necessary to subject its fee title to the Mortgaged Property to the lien of this Mortgage; and (ii) provide a title insurance endorsement which shall insure that the lien of this Mortgage is a third lien on the Debtor's fee title to the Mortgaged Property.

Section 3.14. Leasehold Condominium. In the event the Debtor shall subject the premises leased under the Ground Lease to a condominium regime of ownership pursuant to the provisions of Article 9-B of the New York Real Property Law, the Ground Lease and the Loan Agreement, the lien of this Mortgage shall automatically extend to the condominium declaration and by-laws effecting such condominium regime, and to each condominium unit created thereunder.

ARTICLE IV

ASSIGNMENT OF LEASES AND RENTS

Section 4.1. Assignment of Leases and Rents. ii) The Debtor hereby assigns to the Mortgagee all of the right, title and interest of Debtor in any and all Facility Leases (including all related rights, guarantees, amendments, supplements, modifications, renewals and extensions relating thereto) together with (i) all Facility Revenues, including all rents, income, profits, issues, avail, insurance proceeds, condemnation awards, funds deposited by any Facility Tenant to pay costs of construction, restoration or repair, and any other awards and settlements arising from such Facility Leases, and all other payments by the Facility Tenants to or owing to Debtor under any such Facility Leases (all such amounts payable by a Facility Tenant under a Facility Lease, being, collectively, the "Facility Lease Payments"), (ii) the rights to sue for, collect and receive such Facility Lease Payments, (iii) all amendments, supplements, modifications, renewals and extensions thereof now existing or hereafter made, (iv) the right to amend, supplement, modify, waive, extend, renew or cancel such Facility Leases, (v) any and all guarantees of any Facility Tenant's obligations under any such Facility Lease, (vi) the rights of the Debtor to collect, receive, hold and apply all bonds and security in all of said such Facility Leases provided to be furnished to the Debtor thereunder, (vii) the rights of the Debtor to enforce any and all of the agreements, terms, covenants and conditions in all of such Facility Leases and to give notices, consents, releases and waivers thereunder, (viii) the right to make all waivers and agreements, (ix) the right to give all notices, consents, releases and other instruments, (x) the right to give all notices of default and to take all action upon the happening of a default under any Facility Lease, including the commencement, conduct and consummation of proceedings as shall be permitted under any provision of any Facility Lease, or by law or in equity, (xi) the right to receive all notices sent to the Debtor, as lessor under any Facility Lease, and (xii) the right to do any and all other things whatsoever which the Debtor or any lessor is or may be entitled to do under any Facility Lease, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations.

(b) This assignment and grant shall continue in effect until the Obligations are paid. The Mortgagee hereby waives the right to enter upon and to take possession of the Facility for the purpose of collecting said rents, issues and profits, and the Debtor shall be entitled to collect and receive said rents, issues and profits and to apply same in payment of the amounts becoming due on the Obligations, operating expenses related to the Facility and other expenses (capital or otherwise) consistent with the purposes of the Debtor until the occurrence of an Event of Default hereunder. Upon the occurrence of an Event of Default hereunder, the Debtor will pay monthly in advance to the Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Facility or of such part thereof as may be in the possession of the Debtor, and upon default in any such payment will vacate and surrender the possession of the Facility to the Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

(c) As long as no default or Event of Default shall exist under the Indenture or under any other Security Document including this assignment, Mortgagee shall permit Debtor

(i) to sue for Facility Lease Payments, and

(ii) to take any action stated in clauses (iii) through (xii) of the paragraph above,

provided, however, that Debtor shall only act in good faith and in a commercially reasonable manner.

(d) The Debtor will not, without the written consent of the Mortgagee, receive or collect rent from any tenant of the Facility or any part thereof for a period of more than one month in advance.

(e) Upon the occurrence and during the continuance of an Event of Default, if the Debtor shall not have commenced to cure any default of the Debtor under any of the Facility Leases, nor shall have continued its efforts to effect such cure with good faith and due diligence, the Mortgagee shall have the right, but shall not have the obligation, at the Debtor's expense, to cure any default by the Debtor under any of the Facility Leases upon at least ten (10) days' prior written notice to the Debtor, provided, however, that lesser notice shall be required in the event of any emergency situation which, in the Mortgagee's judgment, may have a material adverse effect on the receipt of the Facility Lease Payments.

(f) The Mortgagee shall not in any way be responsible for any failure to do any or all of the things for which the rights, interests, power and/or authority are herein granted; and the Mortgagee shall not be responsible for or liable under any of the agreements undertaken or obligations imposed upon the lessor under any Facility Lease or other agreements with respect to the Facility, except for its gross negligence or willful misconduct.

(g) The Mortgagee's failure to do any of the things or exercise any of the rights, interests, powers and/or authorities granted hereunder shall not be construed as a waiver of any of the rights, interests, powers or authorities assigned and granted to the Mortgagee under this Mortgage.

(h) The parties agree that this Mortgage is an actual assignment effective immediately, and that without demand each Facility Tenant or other person liable under or in respect of any Facility Lease shall, and is hereby authorized and directed to, pay to or upon the Mortgagee's order, and without any inquiry of any nature, and upon the declaration by the Mortgagee of an Event of Default hereunder, all Facility Lease Payments then or thereafter accruing under said Facility Leases or any other instrument or agreement, oral or written, granting rights to, and creating an obligation to pay, Facility Lease Payments in connection with the Facility.

(i) All Facility Tenants or occupants of any part of the Facility are hereby authorized to recognize the claims and demands of the Mortgagee upon assertion of an Event of Default, without investigation as to the reason for any action taken by the Mortgagee or the validity or the amount or Obligations owing to the Mortgagee or the application to be made by the Mortgagee, of any amounts to be paid to the Mortgagee. The Mortgagee's sole signature shall be sufficient for the exercise of any right under this Mortgage, and the Mortgagee's sole receipt given for any sums received shall be a full discharge and release therefor to any such Facility Tenant or occupant of the Facility. &# 160;Checks for all or any part of the rental collected under this Mortgage shall be made to the exclusive order of the Mortgagee, and, upon written request by the Debtor, the Mortgagee shall fully account to the Debtor as to all such payments received hereunder.

(j) To the extent that the Mortgagee shall exercise the judgment of a reasonable man under like circumstances, the Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any Facility Lease, nor shall this Mortgage operate to place upon the Mortgagee any responsibility for the control, operation, management, or repair of the Facility or the carrying out of any of the terms and conditions of any Facility Lease, nor shall this Mortgage operate to make the Mortgagee liable for any waste committed on the Facility by a Facility Tenant under any Facility Lease or any other Person, or for any dangerous or defective condition of the Facility, or for any negligence in the management, upkeep, repair or control of the Facility, resulting in loss, injury or death to any tenant, licensee, employee, invitee or stranger or any property thereof.

(k) The Debtor shall, and does hereby agree to, indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under any of the Facility Leases or under or by reason of this Mortgage and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Facility Leases, except to the extent of the gross negligence or willful misconduct of the Mortgagee. Should the Mortgagee incur any such liability, loss or damage under any of the Facility Leases or under or by reason of this Mortgage, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and the Debtor shall reimburse the Mortgagee therefor immediately upon demand.

(l) The Mortgagee shall not be liable (except to the extent of its gross negligence or willful misconduct) for any loss sustained by the Debtor resulting from the Mortgagee's failure to let the Facility or any portion thereof after the occurrence of an Event of Default or from any other act or omission of the Mortgagee either in collecting the Facility Lease Payments or, if the Mortgagee shall have taken possession of all or any portion of the Facility, in managing all or any portion of the Facility after any such Event of Default (except that the Mortgagee must exercise the judgment of a reasonable man under like circumstances). The Mortgagee shall not be obligated to perform or discharge, nor does the Mortgagee hereby undertake to perform or discharge, any obligation, duty or liability of the Debtor under any Facility Lease or under or by reason of this Mortgage, and the Debtor shall, and does hereby agree to, indemnify the Mortgagee for, and to hold the Mortgagee harmless from, any and all liability, loss or damage which may or might be incurred under any Facility Lease or under or by reason of this Mortgage and from any and all claims and demands whatsoever which may be asserted against the Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Facility Lease (collectively, the "Claims"), except to the extent such Claims are a direct result of the Mortgagee's gross negligence or willful misconduct. Should the Mortgagee incur any such liability under any Facility Lease or under or by reason of this Mortgage or in defense of any such claims or demands, the Debtor shall reimburse the Mortgagee therefor, including, without limitation, its costs, expenses and reasonable attorneys' fees and expenses, within five (5) Business Days after demand, and upon the failure of the Debtor to do so, the Mortgagee may, at its option, exercise its remedies under the Indenture or under any other Security Document. It is further understood that this Mortgage shall not operate to place responsibility for the control, care, management or repair of all or any portion of the Facility upon the Mortgagee, nor for the carrying out of any of the terms and conditions of any Facility Lease, nor shall it operate to make the Mortgagee responsible or liable for any waste committed on the Facility by any Facility Tenant or any other Person, or for any dangerous or defective condition affecting any portion of the Facility, or for any negligence in the management, upkeep, repair or control of the Facility resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger or any other Person.

(m) The Debtor agrees that it will, at the written request therefor by the Mortgagee, deliver to the Mortgagee an executed counterpart of each (or a certified photocopy thereof) and every Facility Lease then affecting all or any part of the Facility.

(n) Upon the occurrence of an Event of Default hereunder, upon or at any time after default in the payment of any of the Obligations, and after the delivery of any notice and/or the expiration of any period of grace, if any, with respect to any such default provided for in the Security Documents, the Mortgagee may, at the Mortgagee's option, without notice, either in the Mortgagee's person or by agent and with or without bringing any action or proceeding, or by any receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Facility and each and every part thereof, and in connection therewith, the Mortgagee may make, cancel, enforce and modify Facility Lease s; fix or modify rents; repair, maintain and improve the Facility; employ contractors, subcontractors and workmen in and about the Facility; obtain and evict tenants; in its own name, sue for or otherwise collect or reserve any and all Facility Lease Payments, including those past due and unpaid; employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of the Mortgagee's rights hereunder and pay the reasonable fees and expenses thereof; and otherwise do and perform any and all acts which the Mortgagee may deem necessary and appropriate in and about the Facility for the protection thereof and of the Mortgagee's rights hereunder or under the other Security Documents, and any and all amounts reasonably expended by the Mortgagee in connection with the foregoing shall constitute so much additional indebtedness secured hereby. The Mortgagee shall apply any moneys collected by the Mortgagee, as aforesaid, less costs and expenses incurred, as aforesaid, upon any Obligations secured hereby in accordance with the provisions of Section 8.03 of the Indenture. The entering upon and taking possession of the Facility, the collection of Facility Lease Payments, the exercise of any rights hereinabove specified, and the application of collections, as aforesaid, shall not cure, waiver, modify or otherwise affect any default hereunder or under the other Security Documents.

Section 4.2. No Cancellation or Modification of Facility Leases. Except as expressly permitted in the Loan Agreement, the Debtor shall not, without the prior written consent of the Mortgagee, make, or suffer to be made, any leases, or cancel or modify any leases or accept prepayments of installments of rent for a period of more than one month in advance or further assign the whole or any part of the rents without the prior written consent of the Mortgagee. No lease or contract covering all or any part of the Mortgaged Property shall be valid or effective without the prior written approval of the Mortgagee. The Mortgagee shall have all of the rights against lessees of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York. In respect of any lease, the Debtor will (i) fulfill or perform each and every provision thereof on its part to be fulfilled or performed; (ii) promptly send copies of all notices of default which either shall send or receive thereunder to the Mortgagee; and (iii) enforce, short of termination thereof, the performance or observance of the provisions thereof. Nothing contained in this Mortgage shall be deemed to impose on the Mortgagee any of the obligations of the lessor under the leases.

Section 4.3. Required Facility Lease Provisions. All Facility Leases must provide that (i) the Facility Tenant shall pay to the Mortgagee upon an Event of Default hereunder all sums due under the Facility Lease upon notice to the Facility Tenant from the Mortgagee, (ii) any Facility Tenant shall, at the Mortgagee's option, furnish the Mortgagee with an estoppel and attornment letter as to its Facility Lease in form and substance reasonably acceptable to the Mortgagee, and (iii) the Facility Lease is expressly subordinated to the Ground Lease, this Mortgage (including any extensions, replacements or modifications hereof) and the other Security Documents.

Section 4.4. Debtor Not to Waive Rents. The Debtor will not waive, release, reduce, discount or otherwise discharge or assign to any Person other than the Mortgagee the Facility Lease Payments, rents, issues and profits of the Facility. In addition, the Debtor will observe and comply with all of its respective obligations as lessor under each Facility Lease, will promptly notify the Mortgagee if it receives any default notice thereunder and forward a copy of the default notice to the Mortgagee, and enforce any default thereunder by the Facility Tenant.

Section 4.5. Debtor to Furnish Rent Rolls. The Debtor will furnish to the Mortgagee, within fifteen (15) Business Days after mailing to the Debtor of a written request therefor, a detailed statement in writing, duly sworn, and covering the period of time specified in such request, showing all income derived from the operation of the Facility and all disbursements made in connection therewith, and containing a list of the names of all tenants of the Facility specified in such request, showing all income derived from the operation of the Facility and occupants other than those claiming possession through such tenants, the portion or portions of the Facility occupied by such tenant and occupant, the rents and other charges payable under the terms of their leases or other agreements, and the periods covered by such leases or other agreements.

Section 4.6. Mortgagee Right to Cure Default. If Debtor shall not have commenced to cure any default of the Debtor under any of the Facility Leases, nor shall have continued its efforts to effect such cure with good faith and due diligence, the Mortgagee shall have the right, but shall not have the obligation, at the Debtor's expense, to cure any default by the Debtor under any of the Facility Leases upon at least ten (10) days prior written notice to the Debtor, provided, however, that lesser notice shall be required in the event of any emergency situation which in the Mortgagee's judgment may have any adverse effect on the receipt of the Facility Lease Payments.

ARTICLE V

PROVISIONS REQUIRED UNDER GROUND LEASE

Section 5.1. Article 9 of the Ground Lease. In accordance with Article 9 of the Ground Lease, iii) this Mortgage is executed upon the condition that no purchaser at any foreclosure sale shall acquire any right, title or interest in or to 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, shall, in the instrument transferring to such purchaser or to such assignee the interest of Tenant (as defined in the Ground Lease) under the Ground Lease, assumes and agrees to perform all of the terms, covenants and conditions of the Ground Lease thereafter to be observed or performed on the part of Tenant, and moreover, that no further or additional mortgage or assignment of the Ground Lease shall be made except in accordance with the provisions contained in Article 9 of the Ground Lease, and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged by such purchaser or such assignee and in recordable form, is delivered to Landlord (as defined in the Ground Lease) under the Ground Lease immediately after the consummation of such sale, or, in any event, prior to taking possession of the premises demised thereby; and (b) the Mortgagee waives all right and option to retain and apply the proceeds of any insurance payable by reason of any special endorsement covering the cost of Demolition (as defined in the Ground Lease) toward payment of the sum secured by this Mortgage to the extent such proceeds are required for the demolition of the mortgaged premises in accordance with the provisions of the Ground Lease.

ARTICLE VI

REMEDIES; EVENTS OF DEFAULT

Section 6.1. Protective Action. The Mortgagee (at the direction of the Majority Holders) may take such action as the Mortgagee deems reasonably appropriate upon ten (10) days prior written notice to the Debtor (except that no such prior notice shall be required if in the reasonable judgment of the Mortgagee an emergency condition shall exist that threatens to do severe damage to or destruction of the Facility) to protect the Mortgaged Property or the status or priority of the lien of this Mortgage thereon including, but not limited to, entry upon the Facility to protect it from deterioration or damage, or to cause the Mortgaged Property to be put in compliance with any governmental, insurance rating or contract requirements; dispossession of the Debtor if necessary to remedy an emergency condition; payments of amounts due on liens having priority over this Mortgage if such lien constitutes a default pursuant to this Mortgage; curing any default by the Debtor under any of the Security Documents including this Mortgage; payment of any tax or charge for purposes of assuring the priority or enforceability of this Mortgage if failure to pay such tax by the Debtor is a default pursuant to this Mortgage; obtaining insurance on the Mortgaged Property; or commencement or defense of any legal action or proceeding to assert or protect the validity or priority of the lien of this Mortgage. The Debtor agrees to reimburse the Mortgagee for all expenses in taking any such action, on demand, with interest at a rate being the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under the applicable usury law, and the amount thereof shall be secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the Obligations heretofore stated.

Section 6.2. Benefit of Section 254 of the Real Property Law. Nothing herein contained shall be construed as depriving the Mortgagee of any right or advantage available under Section 254 of the Real Property Law of the State of New York, but all covenants herein differing therefrom shall be construed as conferring additional and not substitute rights and advantages.

Section 6.3. Sole Discretion of the Mortgagee. Wherever pursuant to this Mortgage, the Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to the Mortgagee, the decision of the Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of the Mortgagee and shall be final and conclusive. Notwithstanding the foregoing, if, pursuant to the terms of the Indenture or this Mortgage, a stated percentage of Holders of the Outstanding Bonds has the right to direct the Mortgagee in the exercise of any such right, such direction shall be final and conclusive, provided that such direction shall not be arbitrary or capricious.

Section 6.4. Recovery of Sums Required To Be Paid. The Mortgagee shall have the right (at the written direction of the Majority Holders) from time to time to take action to recover any sum or sums which constitutes a part of the Obligations as the same becomes due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Debtor existing at the time such earlier action was commenced.

Section 6.5. Events of Default. Any one or more of the following events shall constitute an “Event of Default” hereunder:

- (a) Failure of the Debtor to pay any amount that has become due and payable hereunder, and continuance of such failure for a period of two (2) Business Days after written notice has been given to the Debtor specifying the nature of such default by the Mortgagee;
- (b) Failure of the Debtor to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 5.6(a) above) and (1) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Debtor specifying the nature of such failure by the Mortgagee, or (2) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Debtor fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure;
- (c) The Debtor or the Parent shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;
- (d) A proceeding or case shall be commenced, without the application or consent of the Debtor or the Parent in any court of competent jurisdiction, seeking (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Debtor or the Parent or of all or any substantial part of their respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Debtor or the Parent shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); the terms “dissolution” or “liquidation” of the Debtor or the Parent as used above shall not be construed to prohibit any action otherwise permitted under the Security Documents;
- (e) Any representation or warranty made by the Debtor (i) in the application and related materials submitted to the Issuer for approval of the Project or the transactions contemplated by this Mortgage, (ii) herein, (iii) in any other Project Document, or (iv) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall, in any case, prove to be false, misleading or incorrect in any material respect as of the date made;

(f) The Debtor shall be in default under any other mortgage covering any part of the Mortgaged Property and proceedings shall have been commenced to foreclose such mortgage, whether it be superior or inferior to the lien of this Mortgage; or

(g) An "Event of Default" under any Security Document shall occur and be continuing.

Section 6.6. Remedies Following an Event of Default. Upon the occurrence of an Event of Default hereunder, the Mortgagee may, in addition to any other rights or remedies available to it hereunder or elsewhere, take such action, without notice or demand, as it deems advisable, as directed by the Majority Holders, to protect and enforce its rights against the Debtor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee, as directed by the Majority Holders, may determine, in its sole discretion, subject, however, to the Ground Lease, without impairing or otherwise affecting the other rights and remedies of the Mortgagee:

(a) enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys, and dispossess the Debtor and its agents and servants therefrom, and thereupon the Mortgagee, as directed by the Majority Holders, may:

- (1) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct business thereat and therewith;
- (2) complete any construction, renovation, rebuilding or repairing of the Mortgaged Property in such manner and form as the Mortgagee deems advisable;
- (3) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property;
- (4) exercise all rights and powers of the Debtor with respect to the Mortgaged Property, in the name of the Debtor, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof; and
- (5) apply the receipts from the Mortgaged Property to the payment of the Obligations in accordance with Section 8.03 of the Indenture;

(b) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Obligations then due and payable, subject to the continuing security and lien of this Mortgage for the balance of the Obligations not then due;

(c) institute proceedings to foreclose the lien of this Mortgage against all or, from time to time, against any part of the Mortgaged Property and to have the same sold under the judgment or decree of a court of competent jurisdiction to the highest bidder, at public or private sale, subject to statutory and other legal requirements, if any, including all right, title and interest, claim and demand therein and thereto and all right of redemption thereof;

(d) sell, assign or transfer the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Debtor therein and right of redemption thereof, pursuant to power of sale or otherwise, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law (provided that ten (10) days notice of sale of the Mortgaged Property shall be deemed reasonable notice) for such price and form of consideration as the Mortgagee may determine or as may be required by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein;

(f) apply for the appointment of or appoint a trustee, receiver, liquidator or conservator of the Mortgaged Property, without regard for the adequacy of the security for the Obligations and without regard for the solvency of any Person liable for the payment of the Obligations whether or not in connection with an action to foreclose this Mortgage;

(g) take possession of the Mortgaged Property (which shall, to the extent practicable, be assembled and made available to the Mortgagee by the Debtor at such place in New York City or elsewhere as may be required by the Mortgagee) and otherwise exercise any and all of the rights of secured parties under the New York State Uniform Commercial Code-Secured Transactions;

(h) without prejudice to its right to bring an action for foreclosure of this Mortgage, sell the Mortgaged Property, or any part thereof, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted and pursuant to the procedures provided by applicable law, including, without limitation, Article 14 of the Real Property Actions and Proceedings Law of the State of New York and any amendments or substitute statutes in regard thereto, at one or more sales as a single parcel or in parcels, and at such time and place and upon such terms and after such notice thereof as may be required or permitted by law; or

(i) pursue such other remedies as the Mortgagee may have under applicable law.

Further, the Debtor, if there shall occur an Event of Default, shall pay monthly in advance to the Mortgagee, or to any receiver appointed at the request of the Mortgagee to collect the rents, revenues, issues, income and profits of the Mortgaged Property, the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or of such part thereof as may be in the possession of the Debtor. Upon default in the payment thereof, the Debtor shall vacate and surrender possession of the Mortgaged Property to the Mortgagee or such receiver, and upon a failure so to do may be evicted by summary proceedings.

If an Event of Default shall happen and be subsisting, in case there shall be pending proceedings for the bankruptcy or for the reorganization of the Debtor under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Debtor or in the case of any other similar judicial proceedings relative to the Debtor, or to the credits or property of the Debtor, the Mortgagee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Mortgage, irrespective of whether the principal of the Obligations or any amount hereunder shall then be due and payable as therein or herein expressed or by declaration or otherwise, and irrespective of whether the Mortgagee shall have made any demand pursuant to the provisions of this Section 6.6 or of Section 8.01 of the Indenture, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Mortgagee allowed in such judicial proceedings relative to the Debtor, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of their charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Mortgagee, and to pay to the Mortgagee any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it up to the date of such distribution.

Section 6.7. Appointment of a Receiver. Upon the occurrence of an Event of Default, the Mortgagee shall be entitled to the appointment of a receiver. The right to have a receiver appointed shall be a matter of strict right and without regard to the value or adequacy of the security and such receiver may enter upon and take possession of the Mortgaged Property, collect the rents, issues and profits therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers as a receiver may have under the laws of the State of New York. The expenses, including, without limitation, receiver's fees, counsel fees and expenses, costs and agent's commissions and compensation incurred pursuant to the powers herein granted shall be added to the principal portion of the Obligations and secured hereby.

Section 6.8. Foreclosure. In a case of a foreclosure sale or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety in one parcel (or as one integrated unit) or separate parcels (or one or more of the interests comprising the Mortgaged Property separately from the others) in such manner or order as the Mortgagee in its sole and absolute discretion may elect. If the Mortgagee so elects it may sell the remainder of the property except for the land, buildings and improvements, at one or more separate sales in the manner provided by the Uniform Commercial Code of the State of New York. One or more exercises of the powers herein granted shall neither extinguish nor exhaust such powers, until the entire property is sold or the Obligations secured hereby are paid in full or otherwise provided for in accordance with their terms.

Section 6.9. Non-Impairment. No provision of this Mortgage: (a) is or shall be deemed to be a release or impairment of any of the Obligations including this Mortgage, (b) shall preclude the Mortgagee, upon the occurrence of an Event of Default hereunder, from foreclosing this Mortgage or from enforcing its rights hereunder or under any other instrument governing or securing the Obligations, (c) shall preclude or bar the Mortgagee upon foreclosure from obtaining a deficiency judgment against the Debtor, against any subsequent owner of the Mortgaged Property who assumes the Obligations on a non-recourse basis, or against any other Person liable for the payment and performance of the Obligations, (d) shall require the Mortgagee to accept a part of the Mortgaged Property (as distinguished from its entirety) as payment of the debt secured hereby, or (e) shall compel the Mortgagee to accept or allow any apportionment of the debt secured hereby to or among any separate parts of the Mortgaged Property.

Section 6.10. No Remedy Exclusive. No remedy conferred upon or reserved to the Mortgagee hereunder is or shall be deemed to be exclusive of any other available remedy or remedies. Each such remedy shall be distinct, separate and cumulative, shall not be deemed to be inconsistent with or in exclusion of any other available remedy, may be exercised in the discretion of the Mortgagee at any time, in any manner, and in any order, and shall be in addition to and separate and distinct from every other remedy given the Mortgagee under this Mortgage or any other Security Document or now or hereafter existing in favor of the Mortgagee at law or in equity or by statute. Without limiting the generality of the foregoing, the Mortgagee shall have the right to exercise any available remedy to recover any amount due and payable hereunder without regard to whether any other amount is due and payable, and without prejudice to the Mortgagee to exercise any available remedy for other Events of Default existing at the time the earlier action was commenced.

Section 6.11. Delay To Not Constitute Waiver. Any delay, omission or failure by the Mortgagee to insist upon the strict performance by the Debtor of any of the covenants, conditions and agreements herein set forth to be exercised by it or to exercise any right or remedy available to it upon the occurrence of an Event of Default hereunder shall not impair any such right or remedy or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, by injunction or other appropriate legal or equitable remedy, strict compliance by the Debtor with all of the covenants, conditions and agreements herein to be exercised by it, or of the right to exercise any such rights or remedies if such default by the Debtor be continued or repeated. Any failure of the Mortgagee to exercise the option to accelerate the maturity of Obligations secured hereby, or any forbearance by the Mortgagee before or after any exercise of any such option, or any forbearance to exercise any other remedy of the Mortgagee, or any withdrawal or abandonment of the Mortgagee of any of its rights in any one circumstance shall not be construed as a waiver of any option, power, remedy or right of the Mortgagee hereunder. The rights and remedies of the Mortgagee expressed and contained in this Mortgage are cumulative and none of them shall be deemed to be exclusive of any other or of any right or remedy the Mortgagee may now or hereafter have in law or in equity. The election of any one or more remedies shall not be deemed to be an election of remedies under any statute, rule, regulation or case law. The covenants of this Mortgage shall run with the Mortgaged Property and other properties and the estates hereby mortgaged and bind the Debtor and its assigns, legal representatives and successors and shall inure to the benefit of the Mortgagee, its successors and assigns.

Section 6.12. Effect of Discontinuance of Proceedings. In case any proceedings taken by the Mortgagee on account of any Event of Default hereunder shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every such case, the Debtor, the Mortgagee and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Mortgagee shall continue as in effect prior to the commencement of such proceedings.

Section 6.13. Marshalling. The Debtor waives and releases any right to have the Mortgaged Property marshalled.

Section 6.14. Actions and Proceedings. The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding which the Mortgagee, in its discretion, determines to be brought to protect its interest in the Mortgaged Property. The Mortgagee shall further have the right, from time to time, to sue for any sums required to be paid under the terms of this Mortgage or any other mortgage to which this Mortgage is expressly subordinate, as the same become due, without regard to whether or not the principal sums secured or any other sums secured by this Mortgage shall be due and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure or any other action for a default or defaults by the Debtor existing at the time such earlier action was commenced.

Section 6.15. Attorneys' Fees and Other Costs. The Debtor agrees to bear all costs, fees and expenses including court costs and reasonable expenses (including reasonable attorneys' fees and disbursements) for legal services of or incidental to the enforcement of any provisions hereof (whether incurred during the continuance of an Event of Default or by the Mortgagee or any Holders of the Bonds), or enforcement, compromise or settlement of any of the collateral pledged hereunder, and for the curing thereof, or defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise, and will pay to the Mortgagee any such expenses incurred, and such expenses shall be deemed part of the Obligations secured by this Mortgage and shall be collectible in like manner as the Obligations secured by this Mortgage, and until so paid shall bear interest at a rate being the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under the applicable usury law. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently.

Section 6.16. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Mortgage should be breached by the Debtor and thereafter waived by the Mortgagee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the Mortgagee. No course of dealing between the Debtor and/or any other Person or any delay or omission on the part of the Mortgagee in exercising any rights hereunder shall operate as a waiver.

Section 6.17. Application of Proceeds. All proceeds derived through the exercise of any remedies or the commencement of any proceedings under this Mortgage shall be applied in accordance with Section 8.03 of the Indenture.

Section 6.18. Waiver of Moratorium. The Debtor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, or the exemption from execution from sale of any or all of the property, now or any time hereafter enacted or enforced, nor claim, take or insist upon the benefit of any law now or hereafter enacted or enforced providing for the valuation or appraisal of the Mortgaged Property or any part thereof prior to any sale or sales thereof which may be made pursuant to any provisions herein or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted or enforced to redeem the property so sold or any part thereof. The Debtor, to the extent permitted by law, hereby expressly waives the benefit or advantage of any such law or laws and covenants not to delay or impede the execution of any power herein granted or delegated to the Mortgagee.

Section 6.19. Waiver of Notice. The Debtor shall not be entitled to any notices of any nature whatsoever from the Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by the Mortgagee to the Debtor, and the Debtor hereby expressly waives the right to receive any notice from the Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of such notice.

ARTICLE VII

LIMITATIONS ON LIABILITY

Section 7.1. No Liability of Debtor's Members, Managers, Officers, Directors, Employees and Agents. It is agreed that, other than the Parent, the members, managers, directors, officers, employees and agents of the Debtor shall have no personal liability hereunder. All covenants, stipulations, promises, agreements and obligations of the Debtor contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Debtor and, other than the Parent, not of any member, manager, director, officer, employee or agent of the Debtor in his individual capacity, and no recourse shall be had hereunder for the payment of the principal of any debt or interest thereon or any of the Obligations or for any claim based thereon or hereunder against any member, manager, director, officer, employee or agent of the Debtor, other than the Parent, or any natural person executing this Mortgage.

Section 7.2. Usury Laws. This Mortgage and all other Security Documents are subject to the express condition that at no time shall the Debtor be obligated or required to pay interest on the principal balance due under the Obligations at a rate which could subject the holder of the Obligations to either civil or criminal liability as a result of being in excess of the maximum interest rate which the Debtor, is permitted by law to contract or agree to pay. If by the terms of this Mortgage or any of the other Security Documents, the Debtor is at any time required or obligated to pay interest on the principal balance due under the Obligations at a rate in excess of such maximum rate, the rate of interest under the Obligations shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Applicability of Section 13 of the Lien Law. This Mortgage is given in order to secure funds to pay for the Project and by reason thereof, it is intended that this Mortgage shall be superior to any laborers', mechanics' or materialmen's liens which may be placed upon the Mortgaged Property subsequent to the recordation hereof. The Debtor shall, therefore, in compliance with Section 13 of the New York Lien Law, 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 the Improvements and shall apply the same first to the payment of the cost of the Improvements before using any part of the total of the same for any other purpose.

Section 8.2. No Merger. It is the intention of this Mortgage that if the Mortgagee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, or any interest therein or lien thereon under any other mortgage or instrument, then, and until the Obligations have been paid in full or otherwise discharged or satisfied in accordance with their terms, the interest of the Mortgagee hereunder and the security interest created by this Mortgage shall not merge or become merged in or with the estate and interest of the Mortgagee as the holder and owner of title to all or any portion of the Mortgaged Property, or in or with the interest of the Mortgagee under or the lien of such other mortgage or instrument, and that, until such payment, discharge or satisfaction, the estate of the Mortgagee in the Mortgaged Property and the security interest created by this Mortgage and the interest of the Mortgagee hereunder shall continue in full force and effect to the same extent as if the Mortgagee had not acquired title to all or any portion of the Mortgaged Property or any other interest therein or lien thereon. If, however, the Mortgagee shall consent to such merger or if such merger shall nevertheless occur without its consent, then this Mortgage shall attach to, and cover and be a conveyance of the fee title or any other estate, title or interest in the Mortgaged Property acquired by the Debtor, and the same shall be considered as granted, released, assigned, transferred, pledged, conveyed and set over to the Mortgagee and this Mortgage spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, conveyed, set over and spread, provided, however, the Debtor shall pay any and all transfer, recording or other taxes in connection therewith.

Section 8.3. This Mortgage Constitutes A Commercial Transaction. THE DEBTOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ITS RIGHTS TO NOTICE AND HEARING AS ALLOWED UNDER ANY STATE OR FEDERAL LAW OR OTHER RIGHT WITH RESPECT TO ANY PREJUDGMENT REMEDY OR OTHER RIGHT WHICH THE MORTGAGEE MAY DESIRE TO USE. FURTHER, THE DEBTOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, AP PRAISEMENT, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.

Section 8.4. Consents. Wherever in this Mortgage the prior consent of the Mortgagee is required, the consent of the Mortgagee given as to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. Any such consents shall be in writing.

Section 8.5. Service of Process. The Debtor represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Debtor under this Mortgage shall be satisfied and met. If for any reason the Debtor should cease to be so subject to service of process in the State, the Debtor hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing General Counsel, at Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Debtor as a result of any of its obligations under this Mortgage. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Debtor hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Debtor as a result of any of its obligations under this Mortgage; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Debtor's obligations hereunder.

For such time as any of the obligations, covenants and agreements of the Debtor under this Mortgage remain unsatisfied, the Debtor's agent(s) designated in this Section 8.5 shall accept and acknowledge on the Debtor's behalf each service of process in any such suit, action or proceeding brought in any such court. The Debtor agrees and consents that each such service of process upon such agents and written notice of such service to the Debtor in the manner set forth in Section 8.6 shall be taken and held to be valid personal service upon the Debtor whether or not the Debtor shall then be doing, or at any time shall have done, business within the State and that each such service of process shall be of the same force and validity as if service were made upon the Debtor according to the laws governing the validity and requirements of such service in the State, and waive all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Debtor or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Debtor.

Section 8.6. Notices. All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including bank wire, teletype or similar writing) and shall be given to such party or other Person, addressed to it, at its address or teletype number set forth below or such other address or teletype number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

<u>Party</u>	<u>Address</u>
Debtor	Albee Retail Development LLC c/o Acadia Realty Trust 1311 Mamaroneck Avenue, Suite 260 White Plains, New York 10605 Attention: General Counsel
with a copy to:	Washington Square Partners 675 Third Avenue, 25 th Floor New York, New York 10017 Attention: Paul Travis
	and
	Akerman Senterfitt LLP 335 Madison Avenue Suite 2600 New York, New York 10017 Attention: Steven P. Polivy, Esq.
Mortgagee	The Bank of New York Mellon 101 Barclay Street, Floor 7W New York, New York 10286 Attn: Corporate Trust Administration

Any party hereunder may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 8.7. Consent to Jurisdiction. The Debtor irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Mortgage or any other Security Document, the Facility, the Project, the Debtor's leasehold, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Debtor commences any action against the Mortgagee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Debtor shall, upon request from the Mortgagee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Debtor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 8.8. Mortgage for Benefit of Debtor and Mortgagee. The covenants and agreements contained in this Mortgage (including all indemnities set forth herein) shall run with the land and bind the Debtor, and its heirs, executors, administrators, legal representatives, successors and assigns and each Person constituting the Debtor, and all subsequent owners, encumbrances and tenants of the Mortgaged Property, or any part thereof, and shall inure to the benefit of the Mortgagee, its respective successors and assigns, and all subsequent beneficial owners of this Mortgage, and survive the foreclosure of this Mortgage.

Section 8.9. Authorization. The execution of this Mortgage has been duly authorized by the appropriate Governing Body of the Debtor.

Section 8.10. Amendments and Modifications. This Mortgage shall be amended, modified or supplemented only by a written agreement executed by the Debtor and the Mortgagee and, in any event, only in accordance with the Indenture.

Section 8.11. Applicable Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 8.12. Date of Mortgage for Reference Purposes Only. The date of this Mortgage shall be for reference purposes only and shall not be construed to imply that this Mortgage was executed on the date first above written. This Mortgage was executed and delivered on the Closing Date.

Section 8.13. Incorporation of Certain Indenture Provisions. All provisions of Article IX of the Indenture shall be construed as extending to and including all of the rights, duties and obligations imposed upon the Trustee under this Mortgage as fully and for all purposes as if said Article IX were contained in this Mortgage.

Section 8.14. Entire Agreement; Counterparts. This Mortgage constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof (other than any Project Documents) and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 8.15. Severability. If any one or more of the provisions of this Mortgage shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions of this Mortgage, but this Mortgage shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.16. Waiver of Jury Trial. The Debtor hereby expressly waives, to the extent permitted by law, the right to assert a counterclaim in any action or proceeding brought against it by the Mortgagee, and waives, to the extent permitted by law, all rights to a trial by jury on any cause of action or proceeding brought by any party hereto against the other or in any counterclaim asserted by the Mortgagee against the Debtor, or in any matters whatsoever arising out of or in any way connected with this Mortgage or the Obligations, the Debtor's obligations hereunder, the Facility, the Mortgaged Property, the Project, the Debtor's leasehold, use or occupancy of the Facility and/or any claim for injury or damages.

Section 8.17. Property Not Covered. This Mortgage does not cover property principally improved or to be improved by one or more structures containing in the aggregate not more than six individual residential dwelling units, each having its own separate cooking facilities.

Section 8.18. Mortgage Subject to Other Mortgages. This Mortgage is and shall be subject to the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) and to the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan).

Section 8.19. Assignment of Mortgage Upon Refinancing of the Bonds. Upon written request of the Debtor in connection with a refinancing in whole of the Bonds, the Mortgagee shall assign this Mortgage, without recourse, warranty or representation whatsoever, to the refinancing lender upon (i) termination of the Loan Agreement pursuant to Article IX thereof, (ii) discharge of the Indenture, (iii) payment of all costs and expenses (including, without limitation, reasonable in-house and outside attorney's fees) incurred in connection with the assignment of this Mortgage, and (iv) the delivery by the Debtor to the Mortgagee of an affidavit pursuant to Section 275 of the New York Real Property Law and such other documents and instruments as the Mortgagee may reasonably request.

IN WITNESS WHEREOF, the Debtor has duly executed this Mortgage as of the date first above written.

ALBEE RETAIL DEVELOPMENT LLC

By: /s/ Robert Masters

Robert Masters
Senior Vice President

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the 30 day of June, in the year two thousand ten, before me, the undersigned, personally appeared Robert Masters, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

/s/ Kara A. Lobdell
Notary Public

Kara A. Lobdell
Notary Public, State of New York
No. 02 LO6031220
Qualified in New York County
Commission Expires Sept. 27, 2013

EXHIBIT A

DESCRIPTION OF LAND

(Block 149, Lot 103)

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:

BEGINNING at the corner formed by the intersection of the northerly side of Dekalb Avenue with the easterly side of Gold Street;

RUNNING THENCE easterly, along the easterly side of Gold Street, 114 feet to a point;

RUNNING THENCE easterly, at right angles to the easterly side of Gold Street, 129.12 feet to the northwesterly side of Fleet Street;

RUNNING THENCE southwesterly, along the northwesterly side of Fleet Street, 132.02 feet to the corner formed by the intersection of the northwesterly side of Fleet Street, with the northerly side of Dekalb Avenue;

RUNNING THENCE westerly, along the northerly side of Dekalb Avenue, 63.76 feet to the point or place of BEGINNING.

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EXHIBITS

EXHIBIT A — Description of Land

BUILDING LOAN AGREEMENT

by and among

NEW YORK CITY CAPITAL RESOURCE CORPORATION,

a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038, as “**Issuer**”,

THE BANK OF NEW YORK MELLON,

a banking corporation duly organized and existing under the laws of the State of New York, together with any successor Trustee under the Indenture of Trust referred to herein, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286, as “**Trustee**” and “**Mortgagee**”, and

ALBEE RETAIL DEVELOPMENT LLC,

a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as “**Company**”

Block:149 Lot: 103
County:Kings
City:New York
State:New York
Premises:1 DeKalb Avenue, Brooklyn, New York

Dated as of July 1, 2010

\$20,000,000
New York City Capital Resource Corporation
Recovery Zone Facility Revenue Bonds
(Albee Retail Development LLC Project),
Series 2010

BUILDING LOAN AGREEMENT

THIS BUILDING LOAN AGREEMENT, made as of the date set forth on the cover page hereof (this "Building Loan Agreement"), by and among **NEW YORK CITY CAPITAL RESOURCE CORPORATION**, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York (the "Issuer"), having its principal office at 110 William Street, New York, New York 10038, **ALBEE RETAIL DEVELOPMENT LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "Company"), having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and **THE BANK OF NEW YORK MELLON**, a New York banking corporation as Trustee (the "Trustee"), under the Indenture and the Building Loan Mortgage, each as hereunder defined, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286 (capitalized terms but not otherwise defined herein shall have the meanings ascribed to them in the Indenture of Trust or Loan Agreement referred to herein):

WITNESSETH:

WHEREAS, the Issuer is authorized pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended, and its Certificate of Incorporation, to promote community and economic development and the creation of jobs for the citizens of the City by developing and providing programs for manufacturing and industrial businesses and other entities to access low interest cost tax-exempt and non-tax-exempt financing for their eligible projects, and to issue and sell one or more series or classes of bonds, notes and other obligations through public letting, private placement, or negotiated underwriting to finance such activities above, on a secured or unsecured basis; and

WHEREAS, the Company entered into negotiations with officials of the Issuer for the construction, renovation, equipping and furnishing of the Facility; and

WHEREAS, pursuant to the American Recovery and Reinvestment Act of 2009, as amended, on June 9, 2009, as amended on February 9, 2010, the Board of Directors of the Issuer established a program for the issuance of recovery zone facility bonds including program requirements ("Program Requirements"), threshold requirements ("Threshold Requirements") and selection criteria ("Selection Criteria"), and designated certain areas within the City as "Recovery Zones"; and

WHEREAS, on July 17, 2009, the Mayor of the City ratified the designations made by the Issuer of the "Recovery Zones"; and

WHEREAS, on September 15, 2009, the Issuer adopted a resolution approving the eligibility of the Project to receive a \$20,000,000 allocation for the issuance of recovery zone facility bonds and determined, among other things, that the Project is located in a designated "Recovery Zone", and that, in applying the Threshold Requirements and the Selection Criteria, the Project qualifies for the issuance of recovery zone facility bonds; and

WHEREAS, the Issuer has determined that the providing of financial assistance to the Company for the Project will promote and is authorized by and will be in furtherance of the Program Requirements and the corporate purposes of the Issuer; and

WHEREAS, the site for the Facility, including the improvements to be constructed thereon, will be subject to the Ground Lease; and

WHEREAS, to facilitate the Project and the issuance by the Issuer of its recovery zone facility revenue bonds to finance a portion of the costs of the Project, the Issuer and the Company have entered into negotiations pursuant to which (i) the Issuer will make the Loan of the proceeds of the Initial Bonds, in the original principal amount of the Initial Bonds, to the Company pursuant to the Loan Agreement, and (ii) the Company will execute the Promissory Note in favor of the Issuer and the Trustee to evidence the Company's obligation under the Loan Agreement to repay the Loan; and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Initial Bonds, the Issuer has authorized the issuance of the Initial Bonds in the Authorized Principal Amount pursuant to the Bond Resolution and the Indenture; and

WHEREAS, concurrently with the execution hereof, in order to further secure the Initial Bonds, (i) the payment of the principal of, Sinking Fund Installments for, Purchase Price, redemption premium, if any, and interest on the Initial Bonds, and the payments, obligations, covenants and agreements of the Company under the Loan Agreement and under the Promissory Note, will be guaranteed by the Guarantors pursuant to the Bond Guaranty Agreement in favor of the Trustee; (ii) the completion of the Project will be guaranteed by the Guarantors pursuant to the Project Completion Guaranty Agreement in favor of the Trustee; (iii) the Company will grant a lien on Facility Revenues and the remainder of the Pledged Collateral pursuant to the Pledge and Security Agreement in favor of the Trustee, subject only to the lien of the Mortgage; and (iv) the Company will grant mortgage liens on and security interests in its leasehold interest in the Facility under the Ground Lease, and an assignment of leases and rents, to the Trustee pursuant to the Mortgage; and

WHEREAS, as a result of such negotiations, the Company has requested the Issuer to issue the Initial Bonds to finance a portion of the costs of the Project, of which (i) the Building Loan Proceeds will be advanced from time to time pursuant to the provisions hereof and of the Indenture to pay for some or all of the direct cost of construction at the Facility (collectively, the "**Construction Costs**"); provided however, that such Construction Costs do not in the aggregate exceed the amount of the Building Loan Proceeds, and which Building Loan Proceeds shall be secured by, among other things, a second mortgage lien on the Facility under the Building Loan Mortgage (as hereinafter defined), (ii) the Indirect Costs Loan Proceeds will be advanced from time to time pursuant to the provisions of the Indenture to pay for some or all of the indirect costs or soft costs related to the Project or for some or all of certain costs incurred in connection with the issuance of the Initial Bonds (collectively, the "**Indirect Costs**"); provided however, that such Indirect Costs do not in the aggregate exceed the amount of the Indirect Costs Loan Proceeds, and which Indirect Costs Loan Proceeds shall be secured by, among other things, a third mortgage lien on the Facility under that certain Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) dated as of even date herewith from the Company to the Trustee, as Mortgagee, and (iii) the Acquisition Proceeds will be, pursuant to the terms and conditions of the Indenture, advanced simultaneously with the execution and delivery of this Building Loan Agreement for, among other things, the financing of certain costs incurred in connection with the construction of the Facility and the issuance of the Initial Bonds (collectively, the "**Acquisition Costs**"), and which Acquisition Proceeds shall be secured by, among other things, a first mortgage lien on the Facility under that certain Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan) dated as of even date herewith from the Company to the Trustee, as Mortgagee; and

WHEREAS, contemporaneously with the execution of this Building Loan Agreement, the Issuer has issued the Initial Bonds pursuant to the Bond Resolution, and the Issuer and the Trustee have contemporaneously with the execution of this Building Loan Agreement entered into the Indenture to provide funds for the Construction Costs, the Indirect Costs and the Acquisition Costs; and

WHEREAS, in order to better secure the Initial Bonds, contemporaneously with the execution of this Building Loan Agreement, the Company has entered into a Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) dated as of even date herewith (herein referred to as the "Building Loan Mortgage") in the principal amount of the Building Loan Proceeds in favor of the Trustee, as Mortgagee;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS BUILDING LOAN AGREEMENT WITNESSETH:

Section 1. Definitions. The following terms shall have the respective meanings in this Building Loan Agreement, except as the context otherwise requires:

Acquisition Proceeds shall mean \$1,685,597.43.

Bond Guaranty Agreement shall mean the Bond Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Bond Resolution shall mean the resolution of the Issuer adopted on February 9, 2010, as amended on April 13, 2010, authorizing the issuance of the Initial Bonds.

Building Loan Proceeds shall mean \$15,857,458.57.

City shall mean The City of New York, New York.

Closing Date shall mean July 1, 2010, the date of the initial issuance and delivery of the Series 2010 Bonds.

Commencement Date shall mean July 1, 2010, on which date this Building Loan Agreement was executed and delivered.

Company shall mean Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Company under Section 7.8 or 7.19 of the Loan Agreement.

Facility shall mean, collectively, the Land and the Improvements.

Facility Revenues shall have the meaning assigned to such term in the Loan Agreement.

Ground Lease shall mean that certain Severance Lease (Site 1A), dated June 30, 2010, between the City, as landlord, and Albee Development, LLC, a Delaware limited liability company (“Albee Development”), as assigned on July 1, 2010 by Albee Development to, and assumed by, the Company, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Loan Agreement.

Improvements shall mean:

(i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date and erected or situated on the Land;

(ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land throughout the term of the Loan Agreement (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2 of the Loan Agreement); and

(iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

Indenture shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Initial Bonds shall mean the Issuer’s \$20,000,000 Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010 authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

Issuer shall mean New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

Indirect Costs Loan Proceeds shall mean \$2,456,944.00.

Land shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn (County of Kings), Block 149 and Lot 103, generally known by the street address 1 DeKalb Avenue, Brooklyn, New York, all as more particularly described in Exhibit A - “Description of the Land”, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 7.9(c) of the Loan Agreement.

Loan shall mean the loan made by the Issuer to the Company pursuant to Section 4.1 of the Loan Agreement.

Loan Agreement shall mean the Loan Agreement, dated as of even date herewith, between the Issuer and the Company, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Mortgage shall mean, collectively, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Parent shall mean Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Parent under Section 3.6 of the Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, dated as of even date herewith, from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Pledged Collateral shall have the meaning assigned to such term in Section 3.1 of the Pledge and Security Agreement.

Project shall mean the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility to be leased to retail commercial tenants.

Project Completion Guaranty Agreement shall mean the Project Completion Guaranty Agreement, dated as of even date herewith, from the Company and the Parent to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project Documents shall mean, collectively, the Ground Lease, the Issuer Indemnification Agreement, the Remarketing Agreement, the Bond Placement Agreement, the Facility Leases and the Security Documents.

Promissory Note shall mean, with respect to the Initial Bonds, that certain Promissory Note in substantially the form of Exhibit G to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

Security Documents shall mean, collectively, the Loan Agreement, the Promissory Note, the Pledge and Security Agreement, the Indenture, the Bond Guaranty Agreement, the Project Completion Guaranty Agreement, the Tax Regulatory Agreement, this Building Loan Agreement and the Mortgage.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean The Bank of New York Mellon, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Section 2. Construction.

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Building Loan Agreement, refer to this Building Loan Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Sections of this Building Loan Agreement shall be solely for convenience of reference and shall not constitute a part of this Building Loan Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless the content indicates otherwise, references to designated “Exhibits”, “Sections”, “clauses” and other subdivisions are to the designated Exhibits, Sections, clauses and other subdivisions of or to this Building Loan Agreement.

(f) The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

(g) The word “will” shall be construed to have the same meaning and effect as the word “shall”.

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person’s successors and assigns or such Person’s successors in such capacity, as the case may be.

Section 3. Representations. The Company makes the following representations and warranties:

(a) The Company is limited liability company duly organized under the laws of the State of Delaware, is validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing under the laws of the State, is not in violation of any provision of the Company’s Organizational Documents, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Building Loan Agreement and each other Project Document to which it is or shall be a party.

(b) The execution, delivery and performance of this Building Loan Agreement and each other Project Document to which the Company is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Company’s Organizational Documents, or any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) The Company has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Closing Date in connection with the execution and delivery of this Building Loan Agreement and each other Project Document to which it shall be a party or in connection with the performance of its obligations hereunder and under each of the Project Documents.

(d) This Building Loan Agreement and the other Project Documents to which the Company is a party (x) have been duly authorized by all necessary action on the part of the Company, (y) have been duly executed and delivered by the Company, and (z) constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, subject to limitations on enforceability resulting from bankruptcy, insolvency and principles of equity.

(e) There is no action or proceeding pending or, to the best of the Company's knowledge, after diligent inquiry, threatened by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under this Building Loan Agreement or any other Project Document to which it is or shall be a party. Such knowledge is based upon the knowledge of Robert Masters, a Senior Vice President of the Parent, and a person employed by the Parent with actual knowledge of the Project and of the matters set forth in this paragraph.

Section 4. Building Loan Agreement. This Building Loan Agreement, the Indenture, the Building Loan Mortgage and the Loan Agreement (copies of which are annexed hereto and incorporated herein as Exhibits B, C and D, respectively) shall, taken together, constitute the building loan agreement for the financing of the Construction Costs of the Project. The Building Loan Proceeds shall be secured by, among other things, the Building Loan Mortgage and shall be deposited, disbursed, applied and advanced subject to and in accordance with the applicable provisions of the Indenture and the Loan Agreement. The Company shall on demand by the Trustee do any act or execute any additional documents reasonably required by the Trustee to confirm the lien of the Building Loan Mortgage or to comply with the provisions of the Lien Law of the State of New York. The Company shall further cause to be filed in the Office of the Register of The City of New York in Kings County, all necessary amendments to this Building Loan Agreement as may be appropriate to reflect any changes in the amount of the Construction Costs. The Company further agrees to apply the proceeds of each of the Acquisition Loan Proceeds and the Indirect Costs Loan Proceeds (which proceeds shall be advanced separately and independently from the Building Loan Proceeds and which shall not depend upon the progress of the construction of the Project) to pay for costs other than Construction Costs.

Section 5. Trust Fund. This Building Loan Agreement, the Indenture, the Building Loan Mortgage and the Loan Agreement are subject to the Trust Fund provisions of Section 13 of the Lien Law of the State of New York. The Company shall receive all advances of the Building Loan Proceeds and will hold the right to receive the same as a trust fund for the purpose of paying the costs of the improvement and shall apply the same first to such payment before using any part thereof for any other purpose permitted hereunder. In addition, a true statement under oath, verified by the Company, as required by Section 22 of such Lien Law, is attached hereto as Exhibit E, and made a part hereof.

Section 6. Strict Compliance; No Third Party Beneficiaries. All conditions of the obligations of the Issuer and/or the Trustee to make any advance of the Building Loan Proceeds or any funds in respect thereof are imposed solely and exclusively for the benefit of the Issuer and the Trustee and their respective successors and assigns and no other party shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Issuer and/or the Trustee will refuse to make any advance in the absence of strict compliance with any or all such conditions, and no other party shall, under any circumstances, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived, in whole or in part, by the Issuer and/or the Trustee at any time if, in their sole discretion, they deem it advisable to do so.

Section 7. No Modifications. Neither this Building Loan Agreement nor any provision hereof may be changed, modified, amended, waived, discharged, abandoned or terminated orally, except by an instrument in writing complying with the Indenture and signed by the party against whom enforcement of the change, modification, amendment, waiver, discharge, abandonment or termination is sought.

Section 8. Severability; Effective Date; Counterparts. If any one or more of the provisions of this Building Loan Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Building Loan Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein. The date of this Building Loan Agreement shall be for reference purposes only and shall not be construed to imply that this Building Loan Agreement was executed on the date first above written. This Building Loan Agreement was delivered on the Closing Date and shall become effective upon its delivery on the Closing Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9. Governing Law. This Building Loan Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 10. No Pecuniary Liability of Issuer or Members. No provision, covenant or agreement contained in this Building Loan Agreement or any obligations herein imposed upon the Issuer or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit. The Issuer has not obligated itself in making the agreements, provisions and covenants set forth in this Building Loan Agreement.

All covenants, stipulations, promises, agreements and obligations of the Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, employee or agent of the Issuer in his individual capacity, and no recourse shall be had for the payment of any amounts or obligations hereunder against any member, director, officer, employee or agent of the Issuer. In addition, in the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not create a debt of the State of New York or of the City and neither the State of New York nor the City shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the loan payments, revenues and receipts derived from or in connection with the Facility and payable to the Issuer by the Company under the Loan Agreement.

Section 11. Successors and Assigns. The provisions and covenants of this Building Loan Agreement shall be binding upon the Company and shall inure to the benefit of the Company, the Issuer and the Trustee and their respective successors and permitted assigns.

Section 12. Waiver of Jury Trial. The Company and the Issuer each hereby waive, to the extent permitted by law, the right to assert a counterclaim in any action or proceeding brought against them by the Trustee, and waive, to the extent permitted by law, all rights to a trial by jury on any cause of action or proceeding brought by any party hereto against the other or in any counterclaim asserted by the Trustee against the Company and the Issuer, or in any matters whatsoever arising out of or in any way connected with this Building Loan Agreement, the obligations of the Company hereunder, the Facility, the Project, the relationship between the Issuer and the Company, the Company's leasehold, use or occupancy of the Facility and/or any claim for injury or damages.

Section 13. Service of Process. The Company represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Company under this Building Loan Agreement shall be satisfied and met. If for any reason the Company should cease to be so subject to service of process in the State, the Company hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing General Counsel, at Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Building Loan Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Company hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Building Loan Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the obligations of the Company hereunder.

For such time as any of the obligations, covenants and agreements of the Company under this Building Loan Agreement remain unsatisfied, the agent(s) of the Company designated in this Section 13 shall accept and acknowledge on the behalf of the Company, service of process in any such suit, action or proceeding brought in any such court. The Company agrees and consents that each such service of process upon such agents and written notice of each such service to the Company in the manner set forth in Section 14 shall be taken and held to be valid personal service upon the Company whether or not the Company shall then be doing, or at any time shall have done, business within the State and that each such service of process shall be of the same force and validity as if service were made upon the Company according to the laws governing the validity and requirements of such service in the State, and waive all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Company or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Company.

Section 14. Notices. All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including bank wire, teletype or similar writing) and shall be given to such party or other Person, addressed to it, at its address or teletype number set forth below or such other address or teletype number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

Party

Address

To the Company

Albee Retail Development LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: General Counsel

with a copy to

Washington Square Partners
675 Third Avenue, 25th Floor
New York, New York 10017
Attention: Paul Travis

and

Akerman Senterfitt LLP
335 Madison Avenue, 26th Floor
New York, New York 10017
Attention: Steven P. Polivy, Esq.

To the Issuer

New York City Capital Resource Corporation
110 William Street
New York, New York 10038
Attention: General Counsel (with a copy to the Executive Director of the Issuer at the same address)

To the Trustee

The Bank of New York Mellon
101 Barclay Street, Floor 7W
New York, New York 10286
Attention: Corporate Trust Administration

Any party hereunder may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 15. Consent to Jurisdiction. The Company irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Building Loan Agreement or any other Project Document, the Facility, the Project, the relationship between the Issuer and the Company, the Company's leasehold, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Company commences any action against the Issuer or the Trustee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Company shall, upon request from the Issuer or the Trustee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has caused its corporate name to be hereunto subscribed by its duly authorized representative, the Trustee has caused these presents to be signed in its name and behalf by an Assistant Vice President or Vice President, and of the Company has caused its name to be hereunto subscribed by its respective duly authorized representative, all being done as of the year and day first above written.

NEW YORK CITY CAPITAL RESOURCE CORPORATION

By: /s/ Kyle Kimball
Kyle Kimball
Executive Director

THE BANK OF NEW YORK MELLON,
as Trustee

By: /s/ Gaspare Mulé
Gaspare Mulé
Vice President

ALBEE RETAIL DEVELOPMENT LLC

By: /s/ Robert Masters
Robert Masters
Senior Vice President

STATE OF NEW YORK)
): ss.:
COUNTY OF NEW YORK)

On the 29th day of June, in the year two thousand ten, before me, the undersigned, personally appeared Kyle Kimball, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

/s/ Carol M. Hyde

Notary Public

Carol M. Hyde
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 20, 2011

STATE OF NEW YORK)
): ss.:
COUNTY OF NEW YORK)

On the 30th day of June, in the year two thousand ten, before me, the undersigned, personally appeared Robert Masters, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

/s/ Kara A. Lobdell

Notary Public

Kara A. Lobdell
Notary Public, State of New York
No. 02 LO6031220
Qualified in New York County
Commission Expires Sept. 27, 2013

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK) ss.:

On the 30th day of June, in the year two thousand ten, before me, the undersigned, personally appeared Gaspare Mulé, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

/s/ Kara A. Lobdell

Notary Public

Kara A. Lobdell
Notary Public, State of New York
No. 02 LO6031220
Qualified in New York County
Commission Expires Sept. 27, 2013

EXHIBIT A

DESCRIPTION OF THE LAND

(Block 149, Lot 103)

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:

BEGINNING at the corner formed by the intersection of the northerly side of Dekalb Avenue with the easterly side of Gold Street;

RUNNING THENCE easterly, along the easterly side of Gold Street, 114 feet to a point;

RUNNING THENCE easterly, at right angles to the easterly side of Gold Street, 129.12 feet to the northwesterly side of Fleet Street;

RUNNING THENCE southwesterly, along the northwesterly side of Fleet Street, 132.02 feet to the corner formed by the intersection of the northwesterly side of Fleet Street, with the northerly side of Dekalb Avenue;

RUNNING THENCE westerly, along the northerly side of Dekalb Avenue, 63.76 feet to the point or place of BEGINNING.

EXHIBIT B
INDENTURE OF TRUST
(See Tab 3)

EXHIBIT C

**MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS
(BUILDING LOAN)**

(See Tab _)

EXHIBIT D
LOAN AGREEMENT
(See Tab _)

EXHIBIT E

AFFIDAVIT PURSUANT TO SECTION 22
OF THE LIEN LAW OF THE STATE OF NEW YORK

STATE OF NEW YORK)
): ss.:
COUNTY OF NEW YORK)

Robert Masters, being duly sworn, deposes and says:

I have an office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York, and am an Authorized Representative of Albee Retail Development LLC, the "Company" mentioned in that certain Building Loan Agreement, that certain Indenture of Trust, and that certain Loan Agreement, each dated as of July 1, 2010 (collectively, the "Loan Agreement").

There is no consideration paid, or to be paid by the Company for the building loan proceeds (the "Building Loan Proceeds"). There are no other sums being deducted for "cost of improvement" items as all such costs are being paid from other sources.

The net sum available to the Company for the Improvement is \$15,857,458.57, less such amounts as may become due or payable for insurance premiums, interest on the Building Loan Proceeds, ground rent, taxes, assessments, water rents and sewer rents accruing during the making of the Improvement.

This statement is made pursuant to Section 22 of the Lien Law of the State of New York.

The facts herein stated are true to the knowledge of the deponent.

/s/ Robert Masters
Robert Masters
Senior Vice President

Sworn to before me this
30th day of June, 2010

/s/ Kara A. Lobdell
Notary Public

Kara A. Lobdell
Notary Public, State of New York
No. 02LO6031220
Qualified in New York County
Commission Expires Sept. 27, 2013

PLEDGE AND SECURITY AGREEMENT

from

ALBEE RETAIL DEVELOPMENT LLC,
as Obligor,

to

THE BANK OF NEW YORK MELLON,
as Trustee

Dated as of July 1, 2010

\$20,000,000
New York City Capital Resource Corporation
Recovery Zone Facility Revenue Bonds
(Albee Retail Development LLC Project),
Series 2010

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PLEDGE AND SECURITY AGREEMENT

This **PLEDGE AND SECURITY AGREEMENT** made and entered into as of July 1, 2010 (as the same may be amended or supplemented, this "Pledge and Security Agreement"), from **ALBEE RETAIL DEVELOPMENT LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "Obligor"), having an office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, party of the first part, to **THE BANK OF NEW YORK MELLON**, a New York banking corporation together with any successor trustee (the "Trustee") at the time serving as such under the Indenture referred to below, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286, party of the second part (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Indenture and the Loan Agreement referred to below):

WITNESSETH:

WHEREAS, the Obligor has entered into negotiations with the New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York (the "Issuer") for the construction, renovation, equipping and furnishing of the Facility generally known by the street address 1 DeKalb Avenue, Brooklyn, New York; and

WHEREAS, pursuant to the American Recovery and Reinvestment Act of 2009, as amended, on June 9, 2009, as amended on February 9, 2010, the Board of Directors of the Issuer established a program for the issuance of recovery zone facility bonds including program requirements ("Program Requirements"), threshold requirements ("Threshold Requirements") and selection criteria ("Selection Criteria"), and designated certain areas within The City of New York (the "City") as "Recovery Zones"; and

WHEREAS, on July 17, 2009, the Mayor of the City ratified the designations made by the Issuer of the "Recovery Zones"; and

WHEREAS, on September 15, 2009, the Issuer adopted a resolution approving the eligibility of the Project to receive a \$20,000,000 allocation for the issuance of recovery zone facility bonds and determined, among other things, that the Project is located in a designated "Recovery Zone", and that in applying the Threshold Requirements and the Selection Criteria, the Project qualifies for the issuance of recovery zone facility bonds; and

WHEREAS, the site for the Facility, including the improvements to be constructed thereon, will be subject to the Ground Lease (as defined herein); and

WHEREAS, the Obligor may hereafter enter into various Facility Leases with Facility Tenants at the Facility; and

WHEREAS, to facilitate the Project and the issuance by the Issuer of its recovery zone facility revenue bonds to finance a portion of the costs of the Project, the Issuer and the Obligor have entered into negotiations pursuant to which (i) the Issuer will make the Loan of the proceeds of the Bonds, in the original principal amount of the Bonds, to the Obligor pursuant to the Loan Agreement, and (ii) the Obligor will execute the Promissory Note (as defined herein) in favor of the Issuer and the Trustee to evidence the Obligor's obligation under the Loan Agreement to repay the Loan; and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Bonds, the Issuer has authorized the issuance of the Bonds in the Authorized Principal Amount pursuant to the Bond Resolution and the Indenture; and

WHEREAS, concurrently with the execution hereof, in order to further secure the Bonds, (i) the payment of the principal of, Sinking Fund Installments for, Purchase Price, redemption premium, if any, and interest on the Bonds, and the payments, obligations, covenants and agreements of the Obligor under the Loan Agreement and under the Promissory Note, will be guaranteed by the Guarantors pursuant to the Bond Guaranty Agreement in favor of the Trustee; (ii) the completion of the Project will be guaranteed by the Guarantors pursuant to the Project Completion Guaranty Agreement in favor of the Trustee; and (iii) the Obligor will grant mortgage liens on and security interests in its leasehold interest in the Facility under the Ground Lease, and an assignment of leases and rents, to the Trustee pursuant to the Mortgage; and

WHEREAS, the Obligor is desirous that the Issuer issue, sell and deliver the Bonds and apply the proceeds as aforesaid and enter into the Loan Agreement with the Obligor and is willing to enter into this Pledge and Security Agreement in order to enhance the marketability of the Bonds and thereby achieve interest cost and other savings to the Obligor as an inducement to the purchase of the Bonds by all who shall at any time become the holders of the Bonds;

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration received, the Obligor does hereby represent, warrant, covenant and agree with the Trustee as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Terms Defined in Other Documents. Except as otherwise defined herein, capitalized terms used herein shall have the respective meanings set forth or referred to in the Indenture or in the Loan Agreement.

Section 1.2. Definitions. As used herein, the following terms shall have the following meanings (such definitions to be equally applicable to the singular and plural forms of the terms defined):

Account shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Account Debtor shall mean any Person who is or may become obligated to the Obligor under, with respect to, or on account of, any Account, Chattel Paper, Receivable, Contract, General Intangible or other Pledged Collateral.

Authorized Principal Amount shall mean, in the case of the Bonds, \$20,000,000.

Bond Resolution shall mean the resolution of the Issuer adopted on February 9, 2010, as amended on April 13, 2010, authorizing the issuance of the Bonds.

Bonds shall mean the Issuer's \$20,000,000 Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010 authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

Certificated Security shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Chattel Paper shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

City shall mean The City of New York, New York.

Closing Date shall mean July 1, 2010, the date of the initial issuance and delivery of the Bonds.

Construction Contracts shall mean all contracts relating to the construction, renovation, equipping and furnishing of the Facility.

Contract Rights shall mean all rights of the Obligor (including without limitation all rights to payment) under or in respect of each Contract.

Contracts shall mean each and every contract to which the Obligor is or becomes a party or in which the Obligor has or acquires an interest (whether by way of assignment or otherwise).

Contracts for Sale shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Deposit Account shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Documents shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Equipment shall mean any "equipment" as such term is defined in the Uniform Commercial Code as in effect from time to time in the State of New York, and, in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings, fixtures and vehicles and any and all additions, substitutions and replacements of any of the foregoing, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

Event of Default shall have the meaning specified in Section 5.1.

Facility shall mean, collectively, the Land and the Improvements.

Facility Leases shall mean, collectively, all leases or other occupancy or use agreements, other than the Ground Lease, entered into with any Person for the use, possession or occupancy of the Facility or any portion thereof.

Facility Revenues shall mean all revenues, income, fees, receipts, charges, income and other money received in any period by or on behalf of the Obligor, derived from the leasing or operation of the Facility, including proceeds derived from insurance (including environmental insurance) and/or condemnation proceeds with respect to the Facility and Business Interruption Insurance and Extra Expense Insurance, in each case whether existing as of the Closing Date or hereafter coming into existence.

Facility Tenants shall mean all Persons as shall use, possess or occupy all or any portion of the Facility pursuant to a Facility Lease.

General Intangibles shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Goods shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Ground Lease shall mean that certain Severance Lease (Site 1A), dated June 30, 2010, between the City, as landlord, and Albee Development, LLC, a Delaware limited liability company (“Albee Development”), as assigned on July 1, 2010 by Albee Development to, and assumed by, the Obligor, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Loan Agreement.

Guarantors shall mean, collectively, the Obligor and the Parent, and their respective successors and assigns.

Indenture shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Instrument shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Investment Property shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Issuer shall mean New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

Issuer Indemnification Agreement shall mean the Issuer Indemnification Agreement, dated as of even date herewith, from the Parent to the Issuer, and shall include any and all amendments thereof and supplements thereto hereafter made.

Letter of Credit shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Licenses shall mean all licenses, rights of use, covenants or other similar instruments benefiting or permitting the use and operation of the Facility or any part thereof.

Loan Agreement shall mean the Loan Agreement, dated as of even date herewith, between the Issuer and the Obligor, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Management Contracts shall mean all contracts for the management or operation of the Facility or any part of it.

Mortgage shall mean, collectively, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Obligor to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Obligations shall mean (a) any and all indebtedness, obligations and liabilities of the Obligor or the Parent under the Security Documents, (b) the payment of the principal or Redemption Price of, Purchase Price, Sinking Fund Installments for, and interest on, the Bonds, and (c) in the event of any proceeding by the Trustee for the collection or enforcement of any indebtedness, obligations or liabilities under the Bonds or any or all of the Security Documents, all reasonable fees and expenses incurred by the Trustee in re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Pledged Collateral, or in exercising its rights hereunder or under the other Security Documents, together with all reasonable attorneys' fees and expenses and court costs relating thereto.

Obligor shall mean Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Obligor under Section 7.8 or 7.19 of the Loan Agreement.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Parent shall mean Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Parent under Section 3.6 of the Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement.

Permits shall mean all permits, approvals, consents, waivers, exemptions, variances, franchises, orders, authorizations, rights and licenses from any Federal, state or other governmental authority or agency relating to the construction, renovation, equipping or operation of the Facility.

Person shall mean an individual or any Entity.

Plans and Specifications shall mean the plans and specifications prepared for the Project by or on behalf of the Obligor, as amended from time to time by or on behalf of the Obligor to reflect any remodeling or relocating of the Project or substitutions, additions, modifications and improvements to the Project made by the Obligor in compliance with the Loan Agreement, said plans and specifications being duly certified by an Authorized Representative of the Obligor and filed in the designated corporate trust office of the Trustee and available to the Issuer.

Pledged Collateral shall have the meaning specified in Section 3.1 of this Pledge and Security Agreement.

Principals shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity, and any Person as shall have the power to Control such Entity, and "principal" shall mean any of such Persons.

Proceeds shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York or under other relevant law and, in any event shall include, but not be limited to (a) any and all proceeds of any insurance, indemnity, warranty, or guaranty payable to the Trustee or the Obligor from time to time with respect to any of the Pledged Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to the Obligor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Pledged Collateral by any governmental authority (or any Person acting under color of governmental authority), and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Pledged Collateral and, including, without limitation, any Pledged Collateral acquired with cash proceeds of any Pledged Collateral.

Project shall mean the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility to be leased to retail commercial tenants.

Project Completion Guaranty Agreement shall mean the Project Completion Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project Documents shall mean, collectively, the Ground Lease, the Issuer Indemnification Agreement, the Remarketing Agreement, the Bond Placement Agreement, the Facility Leases and the Security Documents.

Promissory Note shall mean, with respect to the Bonds, that certain Promissory Note in substantially the form of Exhibit C to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

Property shall mean all personal property or rights to such property which the Obligor currently owns, leases or hereafter acquires.

Receivables shall mean all accounts, receipts, Facility Revenues, rentals, income and other moneys received by or on behalf of the Obligor from any source (including, without limitation, all rights to receive the same whether in the form of Accounts, Contract Rights, Chattel Paper, Instruments, General Intangibles or otherwise, and the Proceeds thereof), whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the Obligor, and shall include (a) all books, records, ledger cards, and invoices relating thereto, (b) all credit information, reports and memoranda relating thereto, and (c) all other writings and all discs, tapes, cards, computer runs and computer programs related in any way to the foregoing.

Security shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Security Certificate shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Security Documents shall mean, collectively, the Loan Agreement, the Promissory Note, this Pledge and Security Agreement, the Indenture, the Bond Guaranty Agreement, the Project Completion Guaranty Agreement, the Tax Regulatory Agreement, the Building Loan Agreement and the Mortgage.

Security Entitlement shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Obligor to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean The Bank of New York Mellon, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Uncertificated Security shall have the meaning assigned to that term under the Uniform Commercial Code as in effect from time to time in the State of New York.

Warranties shall mean all warranties, guarantees, sureties, payment bonds, performance bonds, maintenance, repair or replacement agreements, and other contractual obligations of any contractor, subcontractor, surety, guarantor, manufacturer, dealer, laborer, supplier or materialman made with respect to the design, construction, renovation, equipping and operation of the Facility or any part thereof.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE OBLIGOR

Section 2.1. **Obligor Representations and Warranties.** The Obligor does hereby represent and warrant as follows:

(a) The Obligor is a limited liability company duly organized under the laws of the State of Delaware, is validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing under the laws of the State, is not in violation of any provision of its Organizational Documents, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Pledge and Security Agreement and each other Security Document or Project Document to which it is or shall be a party.

(b) The execution, delivery and performance of this Pledge and Security Agreement and each other Security Document or Project Document to which the Obligor is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Organizational Documents of the Obligor, or any indenture, agreement or other instrument to which the Obligor is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such in denture, agreement or other instrument, or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) There is no action or proceeding pending or, to the best of the Obligor's knowledge, after diligent inquiry, threatened by or against the Obligor by or before any court or administrative agency that would adversely affect the ability of the Obligor to perform its obligations under this Pledge and Security Agreement or any other Security Document or Project Document to which it is a party. Such knowledge is based upon the knowledge of Robert Masters, a Senior Vice President of the Parent, and a person employed by the Parent with actual knowledge of the Project and of the matters set forth in this paragraph.

(d) The Obligor has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Obligor as of the Closing Date in connection with the execution and delivery of this Pledge and Security Agreement and each other Security Document or Project Document to which the Obligor is a party or in connection with the performance of the obligations of the Obligor hereunder and under each of the Security Documents or Project Documents.

(e) This Pledge and Security Agreement and each other Security Document or Project Document to which the Obligor is a party (x) have been duly authorized by all necessary action on the part of the Obligor, (y) have been duly executed and delivered by the Obligor, and (z) constitute the legal, valid and binding obligations of the Obligor, enforceable against the Obligor in accordance with their respective terms, subject to the limitations on enforceability resulting from bankruptcy, insolvency and principles of equity.

(f) There exists no indebtedness for money borrowed or representing the deferred purchase price of property of the Obligor which is secured by a Lien on the Pledged Collateral, other than Permitted Encumbrances.

(g) The Obligor has not granted, and has no knowledge of, any other Lien in the Pledged Collateral, other than Permitted Encumbrances. The Obligor has not described the Pledged Collateral in any New York Uniform Commercial Code financing statement currently in effect except in connection with the pledge made by the Mortgage and by this Pledge and Security Agreement.

(h) This Pledge and Security Agreement creates a pledge and security interest in the Pledged Collateral in favor of the Trustee as security for payment of the Obligations and is not prohibited by, and does not constitute a default under, any agreements constituting a part of the Pledged Collateral and no consent is required of any Person to effect such pledge and security interest. The pledge and security interest in the Pledged Collateral and the proceeds thereof will be perfected upon the filing of the Uniform Commercial Code financing statement to the extent it can be perfected by filing. By the Closing Date, the Obligor will have taken all action necessary to file all Uniform Commercial Code financing statements describing such of the Pledged Collateral as may be perfected by such filings, and for so long as any Obligations are unpaid, the Obligor will file, continue, and amend all such financing statements as may be necessary to establish and maintain such priority in each jurisdiction in which the Obligor is organized or the Pledged Collateral may be located or that may otherwise be applicable pursuant to Sections 9.301-9.316 of the Uniform Commercial Code of such jurisdiction. Under the laws of the State, the security interest hereby granted to secure the Obligations is and shall be prior to any judicial lien hereafter imposed on the Pledged Collateral to enforce a judgment against the Obligor on a simple contract, and the Obligor shall not hereafter make or suffer to exist any pledge or assignment of, Lien on, or security interest in the Pledged Collateral, or file any financing statement describing any such pledge, assignment, Lien, or security interest, except as expressly permitted hereby.

ARTICLE III

PLEGDED COLLATERAL

Section 3.1. Pledge of Pledged Collateral. i) As security for the prompt payment and performance of all of the Obligations, the Obligor hereby pledges, assigns, hypothecates, bargains, sells, conveys, mortgages and grants to the Trustee, subject to the Mortgage, a security interest in and general Lien upon all of the right, title and interest of the Obligor in all of the following (collectively referred to as the "Pledged Collateral"):

(i) all furnishings, furniture, fixtures, machinery, apparatus, equipment, fittings, appliances, building supplies and materials, vehicles, chattels, goods, consumer goods, farm products, inventory, warranties, chattel paper, documents, accounts, general intangibles, trade names, trademarks, servicemarks, logos (including any names or symbols by which the Facility is known) and goodwill related thereto, and all other articles of personal property of every kind and nature whatsoever, tangible or intangible, now, heretofore or hereafter arising out of or related to the leasing or operation of the Facility, or acquired with proceeds of any indebtedness secured by the Facility or any of the Pledged Collateral, or located in, on or about the Facility, or used or intended to be used with or in connection with the construction, equipping, leasing, use, operation or enjoyment of the Facility;

(ii) all franchise agreements, management contracts, service contracts, supply contracts, utility contracts, support services agreements, leases of equipment, documents and agreements relating to the construction, equipping, leasing or operation of the Facility (including any and all construction contracts, architectural contracts, engineering contracts, designs, plans, specifications, drawings, surveys, tests, reports, bonds and governmental approvals) and all other contracts, licenses and permits now or hereafter affecting the Facility or any part thereof and all warranties with respect to any of the foregoing;

(iii) all insurance policies or binders relating to the Pledged Collateral, including any unearned premiums thereon and any insurance proceeds thereof;

(iv) all furniture, fixtures and equipment now or hereafter acquired, and all proceeds thereof, not otherwise described in clause (i) above;

(v) all utility, escrow, trust and all other deposits (and all letters of credit, certificates of deposit, negotiable instruments and other rights and evidence of rights to cash) now or hereafter relating to the Facility or the Pledged Collateral or the purchase, construction, equipping, furnishing or operation thereof;

(vi) all cash funds, deposit accounts, certificates of deposit, negotiable instruments and other rights and evidence of rights to cash, now or hereafter created under or held by the Trustee under the Indenture, including, without limitation, all Funds, Accounts and sub-Accounts created pursuant to the Indenture (except as stated below);

(vii) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action, and all cash (or evidences of cash or of rights to cash) or other property or rights thereto relating to such claims or causes of action;

(viii) all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds of any of the foregoing;

(ix) all Accounts, Contracts (including, without limitation, all Construction Contracts and Management Contracts), Contract Rights, Chattel Paper, Deposit Accounts, Documents, Instruments, Equipment, Certificated Securities, Contracts for Sale, Plans and Specifications, fixtures, Goods, General Intangibles, Investment Property, Letters of Credits, Licenses, Receivables, Permits, Property, Project Documents, Facility Revenues, Security Certificates, Security Entitlements and Warranties, to the extent not set forth above; and

(x) all Proceeds of any of the property described hereinabove;

provided, however, that notwithstanding anything to the contrary contained in this Pledge and Security Agreement, the Trustee shall have no Lien on the Rebate Fund established under the Indenture or any deposits made therein or any investments held therein or made with the funds therein.

(b) This Pledge and Security Agreement shall also be, and be construed as, a security agreement with respect to any of the properties or interests described herein characterized by law as items of personal property, of whatever nature, including proceeds thereof. The Obligor shall use its best efforts to obtain all consents or waivers from any party to any agreement or other instrument constituting part of the Pledged Collateral to the extent necessary to enable the Obligor to grant the pledge and Lien hereunder with respect to the Pledged Collateral without being in breach of or in default under any of the agreements included in the Pledged Collateral or any agreement to which the Obligor is a party relating to any of the Pledged Collateral. Nothing in this Section 3.1 shall be deemed to effect any assignment or release of liability of the Obligor under any of the agreements referred to above. The Obligor will deliver to the Trustee executed counterparts (or, if not available, copies of executed documents) of each contract, agreement, permit and all other agreements, documents or other instruments constituting part of the Pledged Collateral promptly after each such document has been executed. So long as any Obligations shall remain unpaid, the Trustee on behalf of the Holders of the Bonds shall have all of the rights of a secured party under the Uniform Commercial Code of the State (as said law may at any time be amended) or other applicable law, and in addition thereto the rights and remedies provided for herein and in the other Security Documents. The Obligor agrees that it will join with the Trustee in executing and, at the expense of the Obligor, filing or recording, such notices, financing statements and other documents, in form and substance reasonably satisfactory to the Trustee, as is necessary for the perfection of the security interest and Lien of the Trustee hereunder, and will execute and deliver to the Trustee such additional agreements, instruments and other documents, in form reasonably satisfactory to the Trustee and do such further acts and things of any nature as may be required to carry out the purposes of this Section 3.1. Except as and to the extent permitted under the Loan Agreement, the Mortgage or the Indenture, the Obligor will not sell, assign, transfer, pledge or encumber the Pledged Collateral, or any portion thereof, to secure any indebtedness of the Obligor or to secure any payment constituting the deferred purchase price of property, and will otherwise keep the Pledged Collateral free of all Liens other than Permitted Encumbrances and the security interest granted by the Mortgage and this Pledge and Security Agreement.

(c) The Obligor hereby irrevocably constitutes and appoints the Trustee as its true and lawful agent and attorney-in-fact, with full power, if an Event of Default shall occur and be existing under this Agreement or under any other Security Document, (v) to take possession of and endorse in the name of the Obligor any notes, checks, drafts, bills of exchange, money orders, commercial paper of any kind, and any other documents received in payment of the Pledged Collateral, or any part thereof; (w) to collect, sue for and give acquittances for, moneys due on account of the Pledged Collateral; (x) to withdraw any claims, suits or proceedings pertaining to, or arising out of the assignment of, the Pledged Collateral; (y) to take any and all such action as the Trustee or any of its agents, nominees or attorneys may, in its or their reasonable discretion, reasonably determine as necessary or advisable for the purpose of maintaining, preserving or protecting the security constituted by this Pledge and Security Agreement or any of the rights, remedies, powers or privileges of the Trustee under this Pledge and Security Agreement; and (z) generally, in the name of the Obligor to exercise all or any of the powers, authorities and discretions, conferred on or reserved to the Trustee by or pursuant to this Pledge and Security Agreement, and (without prejudice to the generality of any of the foregoing) to seal and deliver or otherwise perfect any deed, assurance, agreement, instrument or act as the Trustee may deem proper in or for the purpose of exercising any of such powers, authorities or discretions, in each case. The Obligor hereby ratifies and confirms, and hereby agrees to ratify and confirm, whatever lawful acts the Trustee or any of the Trustee's agents, nominees or attorneys shall do or purport to do in the exercise of the power of attorney granted to the Trustee pursuant to this Section 3.1(c) which power of attorney, being given for security, is irrevocable.

(d) The Obligor will deliver to the Trustee upon written request:

(i) executed counterparts (or, if not available, copies of executed documents) of each Contract constituting part of the Pledged Collateral promptly after each such contract or agreement has been executed, together with (to the extent obtainable by the Obligor after the exercise of diligent, good faith, commercially reasonable efforts) an assignment acknowledgment and consent by each other party to such contract or agreement, and

(ii) executed counterparts or photocopies of all material permits, all material warranties and all other material agreements, documents or other instruments constituting part of the Pledged Collateral, and, promptly upon request by the Trustee therefor, executed counterparts or photocopies of all other permits, warranties, agreements, documents or other instruments constituting part of the Pledged Collateral.

Except as and to the extent otherwise provided in the Indenture or in the Loan Agreement, the Obligor may amend, modify or change any agreements or documents (other than any Security Document) constituting part of the Pledged Collateral, or transfer, assign or rescind any agreement or document constituting part of the Pledged Collateral (provided that such agreement or document shall not otherwise be governed by applicable provisions of the Indenture or the Loan Agreement as to its amendment, modification or change) (any such amendment, modification, change, transfer, assignment or rescission being collectively referred to as a "Document Disposition"), provided that no such Document Disposition shall materially reduce the value, utility or operating capability of the Facility as intended for the purposes of the Loan Agreement and the other Security Documents, or shall have a material adverse effect upon Facility Revenues.

The Obligor shall have the right to effect the release of any non-material element of the Pledged Collateral (excluding therefrom any portion of the Facility, the release of any component of which shall be governed by the Loan Agreement and the Mortgage) upon the delivery to the Trustee of a certificate of an Authorized Representative of the Obligor to the effect that the release to be effected will not have a material adverse effect upon Facility Revenues.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

The Obligor represents, warrants and covenants as follows:

Section 4.1. No Liens. The Obligor is, and as to Pledged Collateral acquired by it from time to time after the Closing Date, the Obligor will be, the owner of all Pledged Collateral free from any Liens (other than Liens created hereby and other Permitted Encumbrances); and the Obligor shall defend the Pledged Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein, in any case, inconsistent with the foregoing warranty of the Obligor. The Obligor shall not hereafter make or suffer to exist any pledge or assignment of, Lien on, or security interest in, the Pledged Collateral except as expressly permitted by the Security Documents.

Section 4.2. Other Financing Statements. So long as any of the Obligations remain unpaid, the Obligor will not execute or authorize to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) or statements relating to the Pledged Collateral, except financing statements filed or to be filed in respect of and covering the Liens and security interests granted pursuant to this Pledge and Security Agreement and the other Security Documents or in respect of other Permitted Encumbrances.

Section 4.3. Chief Executive Office. The place of business and the chief executive office of the Obligor (as either of such terms is used in Article 9 of the Uniform Commercial Code as in effect on the Closing Date in the State of New York) is and will be located at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605. The Obligor shall not establish any new location for such office until the Obligor shall have taken such action as, in the Opinion of Counsel to the Obligor, is necessary to maintain the perfection of the security interest of the Trustee in the Pledged Collateral which is granted hereby.

Section 4.4. Delivery of Records. After the occurrence and during the continuance of an Event of Default, if requested by the Trustee, the Obligor shall deliver to the Trustee all such tangible evidence of the Receivables and Contract Rights that constitute Pledged Collateral (including, without limitation, originals or copies, of all documents evidencing the same) as are then in the possession of, or in the books and records of, the Obligor.

Section 4.5. Direction to Account Debtors; Contracting Parties, etc. After the occurrence and during the continuance of an Event of Default, the Obligor shall (a) cause all payments that constitute Pledged Collateral and all proceeds of any Pledged Collateral or other payments payable to the Obligor under or in respect of the Pledged Collateral to be made directly to the Trustee or its designee, and (b) notify (and the Obligor agrees that the Trustee may, at its option, notify) the Account Debtors and other obligors with respect to any of the foregoing to make payments with respect thereto as provided in the preceding clause (a). Without notice to or assent by the Obligor, the Trustee may, after the occurrence and during the continuance of an Event of Default, (i) enforce any Receivable or Contract that constitutes Pledged Collateral against the other party or parties thereto on behalf of the Obligor, and (ii) collect all payments on account of the Receivables and the Contracts that constitute Pledged Collateral and collect and/or enforce all other payments payable to the Obligor under or in respect of the Pledged Collateral. The Obligor hereby authorizes and directs any party to any Receivable or Contract that constitutes Pledged Collateral and any obligor with respect to payments payable to the Obligor under or in respect of the Pledged Collateral to comply with any notice given by the Trustee and to recognize any action taken by the Trustee, in each case, in accordance with this Section 4.5.

Section 4.6. Filing of Financing Statements. b) The Obligor will join the Trustee in authenticating and delivering or approving one or more financing statements pursuant to the New York Uniform Commercial Code or other notices appropriate under applicable law in form satisfactory to the Trustee and will pay all filing or recording costs with respect thereto and all costs relating to the continuation of the perfection of the Liens and security interests of the Trustee, and all costs of filing such statements with respect to this Pledge and Security Agreement or any other instrument, agreement or document executed and delivered pursuant hereto in all public offices where filing or recording is deemed by the Trustee to be necessary to perfect the security interest created hereunder. The Obligor hereby authorizes the Trustee to take all action (including, without limitation, the filing of any Uniform Commercial Code Financing Statements or amendments thereto without the signature of the Obligor) which the Trustee may deem necessary to perfect or otherwise protect the Liens and security interests created hereunder and to obtain the benefits of this Pledge and Security Agreement. All costs (including reasonable attorneys' fees) incurred in connection with subjecting and continuing the Pledged Collateral to the Lien of this Pledge and Security Agreement shall be paid by the Obligor.

(b) The Trustee and the Obligor acknowledge that, as of the Closing Date,

(i) Section 9-515(b) of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a "public-financed transaction" is effective for a period of 30 years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least 20 years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral in connection with the Bonds, and because the Bonds are municipal securities with a term that is greater than 20 years in duration, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statements in order to preserve the Liens and security interests that they create for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date; provided, however, that notwithstanding the above-quoted provisions of the New York State Uniform Commercial Code - Secured Transactions, the Obligor shall confirm on or prior to each fifth (5th) anniversary of the Closing Date whether the financing statements so filed on the Closing Date shall continue to be effective through the thirtieth anniversary of the Closing Date and, if such financing statements shall cease to be effective, the Obligor shall promptly re-file such prior financing statements in order to preserve the Liens and security interests above-stated through the thirtieth anniversary of the Closing Date.

(c) Subsequent to the foregoing recordation and filings, if in the Opinion of Counsel to the Obligor (described hereinbelow), to preserve (after the thirtieth (30th) anniversary of the Closing Date) the Lien and security interest of this Pledge and Security Agreement, it is necessary to re-record and/or re-index documents, re-file financing statements and/or file continuation statements and/or take any other actions (individually or collectively, the "Continuation Action(s)"), then, the Obligor in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Trustee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Trustee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Trustee written certification (upon which the Trustee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause "(i)" and the others in the manner described in clause "(ii)"; and (B) deliver or cause to be delivered to the Trustee the Opinion of Counsel to the Obligor. The Trustee may conclusively rely upon (y) when applicable, the certification referred to in clause "(A)(ii)," and (z) in all instances, the Opinion of Counsel to the Obligor. In the event the Obligor chooses to have the Trustee perform all or some of the Continuation Actions, as provided in clause "(A)(i)" hereinabove, the Trustee shall reasonably promptly perform such Continuation Actions at the Obligor's sole expense. The Obligor shall perform the obligations described hereinabove in clauses "(A)" and "(B)" no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause "(i)") on which a Continuation Action is to be taken to preserve the Lien and security interest of this Pledge and Security Agreement.

(d) The Opinion of Counsel to the Obligor shall be addressed to the Obligor and the Trustee. Counsel shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year period thereafter through the term of the Bonds, and/or (ii) the date of any required Continuation Action not covered by clause "(i)," in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Obligor, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Trustee with instruments and papers prepared by the Obligor, or (ii) the Obligor through electronic filing, or (iii) the Trustee as to some Continuation Actions, and the Obligor as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Obligor and the Trustee then requisite to the maintenance of the perfection of the security interest of the Trustee in and to all property and interests which by the terms of this Pledge and Security Agreement are to be subjected to the Lien and security interest of this Pledge and Security Agreement.

(e) Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Trustee shall have the right to designate a company (which shall be reasonably acceptable to the Trustee) to facilitate the filing of the Uniform Commercial Code financing statements.

(f) The Obligor and the Trustee acknowledge and agree that neither the Issuer nor the Trustee, nor any of their respective directors, members, officers, employees, servants, agents, persons under its control or supervision, or attorneys (including Bond Counsel to the Issuer), shall have any responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section, or the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

(g) All costs (including reasonable attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Obligor.

Section 4.7. General Covenants. The Obligor shall:

(a) furnish to the Trustee from time to time at its request written statements and schedules further identifying and describing the Pledged Collateral in such detail as the Trustee may reasonably require;

(b) advise the Trustee promptly, in sufficient detail, of any substantial change in the Pledged Collateral, and of the occurrence of any event which would have a material adverse effect on the value of the Pledged Collateral or on the Trustee's security interest therein;

(c) comply with all Legal Requirements applicable to the Pledged Collateral or any part thereof or to the operation of the Obligor's business, provided that the Obligor may contest any acts, rules, regulations, orders and directions of such bodies or officials in any reasonable manner which will not, in the Obligor's opinion, adversely affect its rights or the priority of its security interest in the Pledged Collateral;

(d) promptly execute and deliver to the Trustee such further deeds, mortgages, assignments, security agreements and other instruments, documents, certificates and assurances and take such further action as may from time to time be necessary to perfect, protect or enforce its security interest in the Pledged Collateral or otherwise to effectuate the intent of this Pledge and Security Agreement;

(e) maintain the Pledged Collateral in good operating condition and repair, subject to ordinary wear and tear;

(f) deliver to the Trustee promptly upon its request all certificates, schedules, lists, invoices, bills of lading, documents of title, original purchase orders, receipts, chattel paper, instruments or other items relating to any of the Pledged Collateral;

(g) make, stamp or record such entries or legends on any of the Obligor's books and records relating to the Pledged Collateral, including without limitation, notation of the security interest of the Trustee on any certificates of title or other evidence of ownership outstanding with respect thereto;

(h) defend the Pledged Collateral at its own expense against any and all claims or demands of third parties at any time claiming an interest in any of the Pledged Collateral;

(i) promptly notify the Trustee of the existence of any claims, liens, security interests, rights or other encumbrances which may be or become adverse to the interest of the Trustee in any of the Pledged Collateral and which are not permitted by the Security Documents;

(j) notify the Trustee in the event of a material loss or damage to the Pledged Collateral or of any material adverse change in the Obligor's financial condition, business affairs or with respect to any of the Pledged Collateral, or of any other occurrence which may materially adversely affect the security interest of the Trustee therein;

(k) pay all expenses incurred with respect to the purchase, delivery, use, repair or other handling of the Pledged Collateral, as well as all taxes which will or may become a Lien on the Pledged Collateral, promptly when due; and

(l) execute and deliver to the Trustee such other and further documents, instruments or writings which may be necessary in order to effectuate or protect the Trustee's security interest in the Pledged Collateral.

ARTICLE V

EVENTS OF DEFAULT; REMEDIES

Section 5.1. Events of Default. An "Event of Default" shall exist if any of the following occurs and is continuing:

- (a) the Obligor fails to observe and perform any covenant, condition or agreement of this Pledge and Security Agreement and (i) continuance of such default or failure for more than thirty (30) days after written notice of such default or failure has been given to the Obligor by the Trustee, or (ii) if by reason of the nature of such default or failure the same can be remedied, but not within the said thirty (30) days, the Obligor fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;
- (b) any warranty, representation or other statement made or given by or on behalf of the Obligor in this Pledge and Security Agreement is false, misleading or incorrect in any material respect as of the date made; or
- (c) an Event of Default under the Indenture or under any other Security Document shall occur and be continuing.

Upon an Event of Default the Trustee shall have the right to proceed first and directly against the Obligor under this Pledge and Security Agreement without proceeding against or exhausting any other remedies which it may have and without resorting to any security held by the Trustee or by any obligor under any of the Security Documents. All moneys recovered by the Trustee pursuant to this Pledge and Security Agreement shall be deposited in accordance with Section 8.03 of the Indenture and used and applied in accordance with Section 8.03 of the Indenture.

The Trustee shall be under no obligation to institute any suit or to take any remedial action under this Pledge and Security Agreement, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the enforcement of any rights and powers under this Pledge and Security Agreement, until it shall be indemnified to its satisfaction against any and all liability (including, without limitation, reasonable compensation for services, costs and expenses, outlays, and counsel fees and other disbursements) not due to its gross negligence or willful misconduct.

Section 5.2. Remedies; Obtaining the Pledged Collateral Upon Default. Upon the occurrence and during the continuance of an Event of Default under the Indenture, the Trustee, in addition to any rights now or hereafter existing under applicable law or in equity, shall have all rights of a secured creditor under the Uniform Commercial Code as in effect in all relevant jurisdictions, including, without limitation, the right to:

- (a) personally, or by agents or attorneys, immediately take or retake possession of the Pledged Collateral or any part thereof, from the Obligor or any other Person who then has possession of any part thereof, and for that purpose may enter upon the Obligor's premises where any of the Pledged Collateral is located and remove the same and, in connection with such removal, and may use any and all services, supplies, aids and other facilities of the Obligor;

(b) instruct the obligor or obligors on any agreement, instrument or other obligation (including, without limitation, any Contract and any Receivable) constituting Pledged Collateral to render any performance or to make any payment required by the terms of such instrument or agreement directly to the Trustee or its designee;

(c) sell, assign or otherwise liquidate, or direct the Obligor to sell, assign or otherwise liquidate any or all of the Pledged Collateral or any part thereof, and take possession of the proceeds of any such sale or liquidation; and

(d) take possession of such portions of the Pledged Collateral as may be moveable or any part thereof, by directing the Obligor in writing to deliver the same to the Trustee at any place or places designated by the Trustee, in which event the Obligor shall at its own expense:

(i) forthwith cause the same to be moved to the place or places so designated by the Trustee and there delivered to the Trustee,

(ii) store and keep any Pledged Collateral so delivered to the Trustee at such place or places pending further action by the Trustee as provided in Section 5.3, and

(iii) while the Pledged Collateral shall be so stored and kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain the Pledged Collateral in good condition;

(e) during normal business hours enter upon the property of the Obligor and examine and make copies of the financial books and records of the Obligor relating to the Pledged Collateral and take possession of all Instruments, Chattel Paper, checks or other orders for payment of money and moneys in the possession of the Obligor representing Pledged Collateral or proceeds thereof; provided that the Trustee shall thereafter promptly provide to the Obligor a list of all such items taken;

(f) notify any Account Debtors obligated on any Pledged Collateral to make payments directly to the Trustee and of the amount to be so paid; provided, however, that written notice of such notification shall be mailed to the Obligor five (5) days prior to mailing or otherwise making such notification to Account Debtors and that, immediately upon receipt of such notice, the Obligor shall deliver to the Trustee the name, address and telephone and facsimile numbers and any other contact information for each of its Account Debtors, together with information with respect to its efforts to enforce and collect Pledged Collateral owing from each such Account Debtor, and shall thereupon cease all such efforts; and provided further that until the Obligor shall receive such notice it shall have the full authority and responsibility to enforce, collect and settle Pledged Collateral owing from its Account Debtors;

(g) following the above-mentioned notification to Account Debtors, collect, or, in good faith, compromise, settle, compound or extend amounts payable as Pledged Collateral which are in the form of Accounts Receivable or Contract Rights from the Obligor's Account Debtors by suit or other means and give a full acquittance therefor and receipt therefor in the name of the Obligor whether or not the full amount of any such Account Receivable or Contract Right owing shall be paid to the Trustee; provided that the Trustee shall, promptly after each such action, provide notice to the Obligor of such action taken in sufficient detail for the Obligor to track and document the Pledged Collateral affected;

(h) by written notice to the Obligor, forbid the Obligor to extend, compromise, compound or settle any Accounts Receivable or Contract Rights which represent any unpaid assigned Pledged Collateral, or release, wholly or partly, any Person liable for the payment thereof (except upon receipt of the full amount due) or to allow any credit or discount thereon; and

(i) by prior written notice to the Obligor, endorse in the name of the Obligor any checks or other orders for the payment of money representing any unpaid assigned Pledged Collateral or the proceeds thereof.

It is understood that the Obligor's obligation so to deliver the moveable Pledged Collateral is of the essence of this Pledge and Security Agreement and that, accordingly, upon application to a court of equity having jurisdiction, the Trustee shall be entitled to a decree requiring specific performance by the Obligor of said obligation.

Section 5.3. Remedies; Disposition of the Pledged Collateral. Upon the occurrence and during the continuance of an Event of Default under the Indenture, any Pledged Collateral repossessed by or transferred to the Trustee under or pursuant to Section 5.2 hereof and any other Pledged Collateral whether or not so repossessed by the Trustee, may be sold, assigned, leased or otherwise disposed of (at the expense of the Obligor) under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, at public or private sale, and in general in such manner, at such time or times, at such place or places and on such terms as may be commercially reasonable. Any of the Pledged Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Trustee or after any overhaul or repair which may be commercially reasonable. Any such disposition which shall be a private sale shall be made upon not fewer than ten (10) days' written notice to the Obligor specifying the time at which such disposition is to be made and the intended sale price or other consideration therefor (which notice the Obligor agrees is commercially reasonable). Any such disposition which shall be a public sale shall be made upon not fewer than ten (10) days written notice to the Obligor specifying the time and place of such sale (which notice the Obligor agrees is commercially reasonable) and, in the absence of applicable requirements of law, shall be by public auction (which may, at the Trustee's option, be subject to reserve), after publication of notice of such auction not less than ten (10) days prior thereto in one newspaper in general circulation in the City. To the extent permitted by applicable law, the Trustee may bid for and become the purchaser of the Pledged Collateral or any item thereof, offered for sale in accordance with this Section 5.3 without accountability to the Obligor (except to the extent provided in Section 5.6).

Section 5.4. Waiver of Claims. Upon the occurrence and during the continuance of an Event of Default, then, to the extent permitted by applicable law, the Obligor waives all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law that may prevent or delay the enforcement of this Pledge and Security Agreement or the absolute sale of the Pledged Collateral or any portion thereof and all benefit of all laws relating thereto.

Section 5.5. Effect of Realization. Any sale of, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the Obligor therein and thereto, and shall be a perpetual bar both at law and in equity against the Obligor and against any and all Persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through and under the Obligor.

Section 5.6. Application of Proceeds. All the proceeds of any Pledged Collateral and any other amounts received or realized by the Trustee by reason of the exercise by the Trustee of any right or remedy with respect to the Pledged Collateral shall be applied in accordance with, and in the manner set forth in, Section 8.03 of the Indenture. The Obligor shall remain liable to the extent of any deficiency between the aggregate amount so received or realized by the Trustee and the aggregate amount of the Obligations.

Section 5.7. Remedies Cumulative; No Waiver of Remedies. i) Each and every right, power and remedy hereby specifically given to the Trustee shall be in addition to every other right, power and remedy specifically given hereunder or under the other Security Documents or now or hereafter existing at law or in equity, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Trustee. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Trustee in the exercise of any right, power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy. In the event that the Trustee shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Trustee may recover reasonable expenses, including reasonable attorneys' fees and expenses, and the amounts thereof shall be included in such judgment.

(b) No delay on the part of the Trustee in exercising any of its rights, remedies, powers and privileges hereunder, and no partial or single exercise thereof, shall constitute a waiver thereof. No notice to or demand on the Obligor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Trustee to any other or further action in any circumstances without notice or demand.

(c) To the extent permitted by applicable law, the Lien of the Trustee in the Pledged Collateral and the obligations of the Obligor hereunder shall remain in full force and effect without regard to, and shall not be impaired by, (i) any exercise or non-exercise, or any waiver of, any right, remedy, power or privilege under or in respect of this Pledge and Security Agreement or any other Security Document (except as may be otherwise specifically agreed in writing by the Trustee); or (b) any amendment to or modification of any Security Document or any security for any of the Obligations; whether or not the Obligor shall have notice or knowledge of any of the foregoing.

Section 5.8. Discontinuance of Proceedings. In case the Trustee shall have instituted any proceeding to enforce any right, power or remedy under this Pledge and Security Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then and in every such case the Obligor and the Trustee shall, subject to any binding decision by a court of competent jurisdiction, be restored to their former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies and powers of the Trustee shall continue as if no such proceeding had been instituted.

Section 5.9. Limitation on the Trustee's Duty in Respect of the Pledged Collateral. The Trustee shall not have any duty as to any Pledged Collateral in its possession or control or in the possession or control of any agent or nominee of it or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto, except that the Trustee shall use reasonable care with respect to the Pledged Collateral in its possession or under its control. Upon request of the Obligor, the Trustee shall account promptly for any moneys received by it in respect of any foreclosure on or disposition of the Pledged Collateral.

Section 5.10. Waiver of Notice; Expenses. The Obligor hereby expressly waives notice from the Trustee or the Holders from time to time of the Bonds of their acceptance and reliance on this Pledge and Security Agreement or of any action taken or omitted in reliance hereon. The Obligor further expressly waives diligence, presentment, demand for payment, protest, any requirement that any right or power be exhausted or any action be taken against the Issuer or the Obligor or against any other obligor under any of the Security Documents or against any Pledged Collateral security for the Bonds. The Obligor agrees to pay all costs, Trustee's fees and commissions and expenses (including all court costs and reasonable attorneys' fees and expenses) which may be incurred by the Trustee in enforcing or attempting to enforce this Pledge and Security Agreement following any default on the part of the Obligor hereunder, whether the same shall be enforced by suit or otherwise.

Section 5.11. Benefit and Enforcement. This Pledge and Security Agreement is entered into by the Obligor for the benefit of the Trustee, the Issuer and the Holders from time to time of the Bonds, all of whom shall be entitled in the same manner as set forth in the Indenture to enforce performance and observance of this Pledge and Security Agreement to the same extent as if all were parties signatory hereto.

Section 5.12. Waiver of Rights of Trustee. No payment hereunder by the Obligor shall entitle the Obligor by subrogation to the rights of the Trustee to any payment by any other obligor or out of the property of any other obligor, except after payment and performance in full of the Bonds. The Obligor waives any benefit of, or any right to participation in, any security whatsoever now or hereafter held by the Trustee.

Section 5.13. No Waiver or Set-Off. No act or commission or omission of any kind or at any time upon the part of the Trustee in respect of any matter whatsoever shall in any way impair the rights of the Trustee to enforce any right, power or benefit under this Pledge and Security Agreement and no set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature (other than performance by the Obligor of its obligations hereunder), which the Obligor or any other obligor under any of the Security Documents has or may have against the Trustee or any other Person shall be available hereunder to the Obligor.

ARTICLE VI

SERVICE OF PROCESS, NOTICE, JURISDICTION,
WAIVER OF JURY TRIAL

Section 6.1. Service of Process. The Obligor represents that it is subject to service of process in the State and covenants that it will remain so subject so long as any of the Obligations remain unpaid or unsatisfied. If for any reason the Obligor should cease to be so subject to service of process in the State, the Obligor hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing General Counsel, at Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Obligor as a result of any of its obligations under this Pledge and Security Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Obligor hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Obligor as a result of any of its obligations under this Pledge and Security Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to any Obligor's obligations hereunder.

For such time as any of the Obligations shall be unpaid in whole or in part, the Obligor's agents designated in this Section 6.1 shall accept and acknowledge on the Obligor's behalf each service of process in any such suit, action or proceeding brought in any such court. The Obligor agrees and consents that each such service of process upon such agents and written notice of such service to the Obligor in the manner set forth in Section 6.2 shall be taken and held to be valid personal service upon the Obligor whether or not the Obligor shall then be doing, or at any time shall have done, business within the State, and that each such service of process shall be of the same force and validity as if service were made upon the Obligor according to the laws governing the validity and requirements of such service in the State, and waive all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Obligor or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Obligor.

Section 6.2. Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

(a) if to the Issuer, to New York City Capital Resource Corporation, 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Issuer at the same address, and

(b) if to the Obligor, to Albee Retail Development LLC, c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, Attention: General Counsel, with a copy to (y) Washington Square Partners, 675 Third Avenue, 25th Floor, New York, New York 10017, Attention: Paul Travis, and (z) Akerman Senterfitt LLP, 335 Madison Avenue, 26th Floor, New York, New York 10017, Attention: Steven Polivy, Esq.; and

(c) if to the Trustee, to The Bank of New York Mellon, 101 Barclay Street, Floor 7W, New York, New York 10286, Attention: Corporate Trust Administration.

The Issuer, the Trustee and the Obligor may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 6.3. Consent to Jurisdiction. The Obligor irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Pledge and Security Agreement may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts ; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Obligor commences any action against the Trustee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Obligor shall, upon request from the Trustee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Obligor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 6.4. Waiver of Trial by Jury. The Obligor does hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Pledge and Security Agreement or any matters whatsoever arising out of or in any way connected with this Pledge and Security Agreement or the Obligations.

ARTICLE VII

MISCELLANEOUS

Section 7.1. Pledge and Security Agreement to Become Effective. The date of this Pledge and Security Agreement shall be for reference purposes only and shall not be construed to imply that this Pledge and Security Agreement was executed on the date first above written. This Pledge and Security Agreement was executed and delivered on the Commencement Date. The obligations of the Obligor hereunder shall arise absolutely and unconditionally on the Closing Date.

Section 7.2. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Pledge and Security Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default, default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.3. No Implied Waiver. In the event any provision contained in this Pledge and Security Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Pledge and Security Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties thereunto duly authorized by this Pledge and Security Agreement.

Section 7.4. Entire Agreement; Counterparts. This Pledge and Security Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, other than the Loan Agreement, the Promissory Note and any other Security Document or Project Document, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 7.5. Severability. If any one or more of the provisions of this Pledge and Security Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions of this Pledge and Security Agreement, but this Pledge and Security Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 7.6. Release. Upon the payment and satisfaction of all Obligations, the Trustee shall release in writing the Obligor from its obligations hereunder, and, upon written request of the Obligor, execute such termination statements under the Uniform Commercial Code of the State and take such other action, at the expense of the Obligor, as shall be necessary to effect the release of the Trustee's interest in the Pledged Collateral.

Section 7.7. Applicable Law. This Pledge and Security Agreement shall be governed by and construed in accordance with the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

Section 7.8. Successors and Assigns. This Pledge and Security Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 7.9. Incorporation of Certain Indenture Provisions. All provisions of Article IX of the Indenture shall be construed as extending to and including all of the rights, duties and obligations imposed upon the Trustee under this Pledge and Security Agreement as fully and for all purposes as if said Article IX were contained in this Pledge and Security Agreement.

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IN WITNESS WHEREOF, the Obligor has duly authorized the execution of this Pledge and Security Agreement as of the date first above written.

ALBEE RETAIL DEVELOPMENT LLC

By: /s/ Robert Masters
Robert Masters
Senior Vice President

Accepted this 1st day of July, 2010

THE BANK OF NEW YORK MELLON,
as Trustee

By: /s/ Gaspare Mulé
Gaspare Mulé
Vice President



BOND GUARANTY AGREEMENT

From

ALBEE RETAIL DEVELOPMENT LLC,
a limited liability company organized and existing under the laws of the State of Delaware,
having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as “**Company**”,

and

ACADIA STRATEGIC OPPORTUNITY FUND II LLC,
a limited liability company organized and existing under the laws of the State of Delaware,
having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York
10605, as “**Parent**” (together with the Company, the “**Guarantors**”),

To

THE BANK OF NEW YORK MELLON,
a banking corporation organized and existing under the laws of the State of New York,
having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286, together
with any successor trustee at the time serving as such under the Indenture of Trust referred to
herein, the “**Trustee**”

Dated as of July 1, 2010

New York City Capital Resource Corporation
\$20,000,000 Recovery Zone Facility Revenue Bonds
(Albee Retail Development LLC Project), Series 2010

BOND GUARANTY AGREEMENT

This **BOND GUARANTY AGREEMENT** made and entered into as of the date set forth on the cover page hereof (this "Bond Guaranty Agreement") (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement or in the Indenture of Trust referred to herein), from **ALBEE RETAIL DEVELOPMENT LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "Company"), having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and **ACADIA STRATEGIC OPPORTUNITY FUND II LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "Parent", and, together with the Company, collectively the "Guarantors"), having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, parties of the first part, to **THE BANK OF NEW YORK MELLON**, a New York banking corporation together with any successor trustee (the "Trustee") at the time serving as such under the Indenture referred to below, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286, party of the second part:

WITNESSETH:

WHEREAS, the New York City Capital Resource Corporation, a local development corporation duly organized and existing under the laws of the State of New York (the "Issuer") and established pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended (the "Act"), intends to issue its Bonds pursuant to the Act, the Bond Resolution and an Indenture of Trust dated as of even date herewith between the Issuer and the Trustee (as the same may be amended or supplemented, the "Indenture"); and

WHEREAS, pursuant to the American Recovery and Reinvestment Act of 2009, as amended, on June 9, 2009, as amended on February 9, 2010, the Board of Directors of the Issuer established a program for the issuance of recovery zone facility bonds including program requirements ("Program Requirements"), threshold requirements ("Threshold Requirements") and selection criteria ("Selection Criteria"), and designated certain areas within the City as "Recovery Zones"; and

WHEREAS, on July 17, 2009, the Mayor of the City ratified the designations made by the Issuer of the "Recovery Zones"; and

WHEREAS, on September 15, 2009, the Issuer adopted a resolution approving the eligibility of the Project to receive a \$20,000,000 allocation for the issuance of recovery zone facility bonds and determined, among other things, that the Project is located in a designated "Recovery Zone", and that in applying the Threshold Requirements and the Selection Criteria, the Project qualifies for the issuance of recovery zone facility bonds; and

WHEREAS, the Issuer has determined that the providing of financial assistance to the Company for the Project will promote and is authorized by and will be in furtherance of the corporate purposes of the Issuer; and

WHEREAS, the site of the Facility, including the improvements to be constructed thereon, will be subject to the Ground Lease (as defined herein); and

WHEREAS, to facilitate the Project and the issuance by the Issuer of the Bonds to finance a portion of the costs of the Project, the Issuer and the Company have entered into negotiations pursuant to which (i) the Issuer will make the loan of the proceeds of the Bonds, in the original principal amount of the Bonds, to the Company pursuant to a Loan Agreement, dated as of even date herewith, between the Issuer and Company (as the same may be amended or supplemented, the "Loan Agreement") and (ii) the Company will execute the Promissory Note (as defined herein) in favor of the Issuer and the Trustee to evidence the Company's obligation under the Loan Agreement to repay the Loan; and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Bonds, the Issuer has authorized the issuance of the Bonds in the Authorized Principal Amount pursuant to the Bond Resolution and the Indenture; and

WHEREAS, concurrently with the execution hereof, in order to further secure the Bonds, (i) the completion of the Project will be guaranteed by the Guarantors pursuant to the Project Completion Guaranty Agreement in favor of the Trustee; (ii) the Company will grant a lien in Facility Revenues and the remainder of the Pledged Collateral pursuant to the Pledge and Security Agreement in favor of the Trustee, subject only to the lien of the Mortgage; and (iii) the Company will grant mortgage liens on and security interests in its leasehold interest in the Facility under the Ground Lease, and an assignment of leases and rents, to the Trustee pursuant to the Mortgage; and

WHEREAS, the Guarantors are desirous that the Issuer issue, sell and deliver the Bonds for the purposes as aforesaid and enter into the Loan Agreement with the Company and are willing to enter into this Bond Guaranty Agreement in order to enhance the marketability of the Bonds and thereby achieve interest cost and other savings to the Company as an inducement to the purchase of the Bonds by all who shall at any time become the Holders of the Bonds;

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration received, the Guarantors do hereby represent, warrant, covenant and agree, jointly and severally with the Trustee, as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1. Certain Definitions. The following terms shall have the respective meanings in this Bond Guaranty Agreement, except as the context otherwise requires:

Authorized Principal Amount shall mean, in the case of the Bonds, \$20,000,000.

Bond Resolution shall mean the resolution of the Issuer adopted on February 9, 2010, as amended on April 13, 2010, authorizing the issuance of the Bonds.

Bonds shall mean the Issuer's \$20,000,000 Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010 authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

City shall mean The City of New York, New York.

Closing Date shall mean July 1, 2010, the date of the initial issuance and delivery of the Bonds.

Company shall mean Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Company under Section 7.8 or 7.19 of the Loan Agreement.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Event of Default shall have the meaning specified in Section 3.4.

Facility Revenues shall have the meaning assigned to such term in the Loan Agreement.

Favorable Opinion of Bond Counsel shall mean, with respect to any action the occurrence of which requires such an opinion, an unqualified Opinion of Counsel, which shall be a Nationally Recognized Bond Counsel, to the effect that such action is permitted under the Indenture and will not adversely affect the exclusion of interest on a Series of Bonds from gross income for purposes of Federal income taxation (subject to the inclusion of any exceptions contained in the opinion delivered upon original issuance of such Series of Bonds).

Fiscal Year shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Company for accounting purposes as to which the Company shall have given prior written notice thereof to the Issuer and the Trustee at least ninety (90) days prior to the commencement thereof.

GAAP shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Company, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Ground Lease shall mean that certain Severance Lease (Site 1A), dated June 17, 2010, between the City, as landlord, and Albee Development, LLC, a Delaware limited liability company (“Albee Development”), as assigned on July 1, 2010 by Albee Development to, and assumed by, the Company, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Loan Agreement.

Guarantors shall mean, collectively, the Company and the Parent and their respective successors and assigns.

Indenture shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Independent Accountant shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Issuer and the Trustee (such approvals not to be unreasonably withheld or delayed).

Issuer shall mean New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

Issuer Indemnification Agreement shall mean the Issuer Indemnification Agreement, dated as of even date herewith, from the Parent to the Issuer, and shall include any and all amendments thereof and supplements thereto hereafter made.

Majority Holders shall mean the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

Mortgage shall mean, collectively, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Nationally Recognized Bond Counsel shall mean counsel reasonably acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

Notice Parties shall mean the Issuer, the Company, the Parent, the Bond Registrar, the Paying Agents, the Trustee, the Tender Agent and the Remarketing Agent.

Opinion of Counsel shall mean a written opinion of counsel for the Company, the Parent or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Parent shall mean Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Parent under Section 3.6 of this Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement.

Person shall mean an individual or any Entity.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, dated as of even date herewith, from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Pledged Collateral shall have the meaning assigned to such term in Section 3.1 of the Pledge and Security Agreement.

Preliminary Resolution shall mean the resolution of the Issuer adopted on September 15, 2009 approving the eligibility of the Project to receive an allocation for the issuance of up to \$20,000,000 of recovery zone facility bonds to finance the Project.

Principals shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity, and any Person as shall have the power to Control such Entity, and "principal" shall mean any of such Persons.

Project shall mean the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility to be leased to retail commercial tenants.

Project Completion Guaranty Agreement shall mean the Project Completion Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project Documents shall mean, collectively, the Ground Lease, the Issuer Indemnification Agreement, the Remarketing Agreement, the Bond Placement Agreement, the Facility Leases and the Security Documents.

Promissory Note shall mean, with respect to the Bonds, that certain Promissory Note in substantially the form of Exhibit G to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

Security Documents shall mean, collectively, the Loan Agreement, the Promissory Note, the Pledge and Security Agreement, the Indenture, this Bond Guaranty Agreement, the Project Completion Guaranty Agreement, the Tax Regulatory Agreement, the Building Loan Agreement and the Mortgage.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean The Bank of New York Mellon, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Section 1.2. Construction. In this Bond Guaranty Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Bond Guaranty Agreement, refer to this Bond Guaranty Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Bond Guaranty Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Bond Guaranty Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless the content indicates otherwise, references to designated "Articles", "Sections", "Subsections", "clauses" and other subdivisions are to the designated Articles, Sections, Subsections, clauses and other subdivisions of or to this Bond Guaranty Agreement.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

ARTICLE II

REPRESENTATIONS AND WARRANTIES
OF THE GUARANTORS

Section 2.1. Representations and Warranties. The Guarantors do hereby jointly and severally represent and warrant that:

(a) Each Guarantor is a limited liability company duly organized under the laws of the State of Delaware, is validly existing and in good standing under the laws of the State of Delaware, is not in violation of any provision of its Organizational Documents, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Bond Guaranty Agreement and each other Security Document or Project Document to which it is or shall be a party.

(b) The Company is duly qualified to do business and in good standing under the laws of the State.

(c) The execution, delivery and performance of this Bond Guaranty Agreement and each other Security Document or Project Document to which each Guarantor is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Organizational Documents of any Guarantor, or any indenture, agreement or other instrument to which any Guarantor is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or, to the best of each Guarantor's knowledge, after diligent inquiry, threatened by or against any Guarantor by or before any court or administrative agency that would adversely affect the ability of any Guarantor to perform its obligations under this Bond Guaranty Agreement or any other Security Document or Project Document to which it is a party. Such knowledge is based upon the knowledge of Robert Masters, a Senior Vice President of the Parent, and a person employed by the Parent with actual knowledge of the Project and of the matters set forth in this paragraph.

(e) Each Guarantor has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by such Guarantor as of the Closing Date in connection with the execution and delivery of this Bond Guaranty Agreement and each other Security Document or Project Document to which such Guarantor is a party or in connection with the performance of the obligations of such Guarantor hereunder and under each of the Security Documents or Project Documents.

(f) This Bond Guaranty Agreement and each other Security Document or Project Document to which each of the Guarantors is a party (x) have been duly authorized by all necessary action on the part of each Guarantor, (y) have been duly executed and delivered by the Guarantors, and (z) constitute the legal, valid and binding obligations of the respective Guarantors, enforceable against the Guarantors in accordance with their respective terms, subject to limitations on enforceability resulting from bankruptcy, insolvency and principles of equity.

- (g) The assumption by each Guarantor of its obligations hereunder will result in a direct financial benefit to such Guarantor.
- (h) The Parent has a net worth of \$191,359,000 as of the Closing Date as determined in accordance with GAAP (the "Parent Closing Date Net Worth").

ARTICLE III

AGREEMENT TO GUARANTEE

Section 3.1. Obligations Guaranteed. i) The Guarantors, hereby, jointly and severally, unconditionally guarantee to the Trustee for the benefit of the Holders from time to time of the Bonds;

(i) the full and prompt payment of the principal of the Bonds and the indebtedness represented thereby, the Purchase Price, if applicable, the Sinking Fund Installments for, and the redemption premium, if any, on the Bonds when and as the same shall become due and payable, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise;

(ii) the full and prompt payment of interest on the Bonds when and as the same shall become due and payable;

(iii) the full and prompt payment of an amount equal to each and all of the loan payments and other sums when and as the same shall become due, required to be paid by the Company under the terms of the Loan Agreement and the Promissory Note; and

(iv) the full and prompt performance and observance by the Company of all of the obligations, covenants and agreements required to be performed and observed by the Company under the terms of the Loan Agreement and the Promissory Note

(the payments, obligations, covenants and agreements in clauses (i) through (iv) above being collectively referred to herein as the “**Guaranteed Obligations**”).

(b) The Guarantors further hereby jointly and severally, irrevocably and unconditionally agree that upon any default in any of the Guaranteed Obligations, the Guarantors will promptly pay the same or effect the observance of such obligations, covenants and agreements, as the case may be. All payments by the Guarantors shall be paid in lawful money of the United States of America. Each and every default in any of the Guaranteed Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

(c) Reference is made to Article X of the Indenture which provides that, subject to certain conditions, the Indenture may be discharged prior to the date on which all of the Bonds have become due and payable if there shall be deposited with the Trustee moneys and/or Defeasance Obligations in an amount sufficient to pay the entire principal of, redemption premium, if any, and interest due and to become due on such Bonds on or prior to the maturity or redemption thereof. If any lien, encumbrance or charge based on any claim of any kind (including, without limitation, any claim for income, franchise or other taxes, whether Federal, state or otherwise but excluding any claim against any Bondholder) shall be asserted or filed against any moneys so deposited with the Trustee (or the income therefrom) so as to

- (1) interfere with the due application by the Trustee of such moneys to the payment of the Bonds pursuant to the applicable provisions of the Indenture, or
- (2) subject the Holders of the Bonds to any obligation to refund any moneys applied to payment of the Bonds,

then the Guarantors promptly will take, or cause the taking of, such action (including, but not limited to, the payment of money) as may be necessary to prevent, or to nullify the cause or result of, such interference or such obligation, as the case may be.

The discharge of the lien and pledge of the Indenture prior to the date on which all Bonds have become due and payable shall not release the Guarantors from their obligations under this Bond Guaranty Agreement.

The Guarantors further waive, to the extent permitted by law, any benefits of any credit for the fair market value of the Facility in any action for foreclosure or for a deficiency judgment (including any credit under Section 1371 of the New York Real Property Actions and Proceedings Law).

(d) To the extent that any of the Guaranteed Obligations of the Company under clauses (iii) and (iv) of Section 3.1(a) shall also be a primary obligation of the Company under the Loan Agreement, the Guarantors agree that the Trustee may elect to enforce its rights under any of this Bond Guaranty Agreement, the Project Completion Guaranty Agreement, the Promissory Note and/or the Loan Agreement.

Section 3.2. Obligations Unconditional. ii) The Guarantors jointly and severally agree that this Bond Guaranty Agreement constitutes an absolute, unconditional, present and continuing guarantee of performance and payment and not of collection, and waive any right to require that any resort be had by the Trustee or the Holders of the Bonds to (1) any security held by or for the benefit of the Holders of the Bonds for any of the Guaranteed Obligations, (2) the Trustee's or any Bondholder's rights against any other Person, or (3) any other right or remedy available to the Trustee or any Holder of the Bonds by contract, applicable law or otherwise. The obligations of the Guarantors under this Bond Guaranty Agreement are joint and several, absolute, direct, unconditional and completely independent of the obligations of any other Person, and a separate cause of action or separate causes of action may be brought and prosecuted against the Guarantors without the necessity of joining the Issuer, the Company or any other party or previously proceeding with or exhausting any other remedy against any other Person who might have become liable for any of the Guaranteed Obligations or of realizing upon any security held by or for the benefit of the Holders of the Bonds.

(b) The respective obligations of the Guarantors under this Bond Guaranty Agreement shall be absolute and unconditional, and joint and several, and shall remain in full force and effect until the Guaranteed Obligations shall have been paid in full or provided for, and all costs, fees, commissions and expenses, if any, referred to in Section 3.5 shall have been paid in full, and, to the extent permitted by law, such obligations shall not be affected, modified, released or impaired by any state of facts or the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to, or the consent of, any of the Guarantors:

- (i) the invalidity, irregularity, illegality or unenforceability of, or any defect in, any of the Security Documents or Project Documents, the Bonds or any collateral security for any thereof;
- (ii) any present or future law or order of any government (de jure or de facto) or of any agency thereof purporting to reduce, amend or otherwise affect the Bonds or any other obligation of the Issuer or any other obligor or to vary any terms of payment;
- (iii) any claim of immunity on behalf of the Issuer or any other obligor or with respect to any property of the Issuer or any other obligor;
- (iv) the compromise, settlement, release, extension, indulgence, change, modification or termination of any or all of the obligations, covenants or agreements of any obligor under any of the Security Documents or Project Documents;
- (v) the failure to give notice to any obligor under any of the Security Documents or Project Documents of the occurrence of any default or Event of Default under the terms and provisions of any of the Security Documents or Project Documents (except as may be specifically provided in any such Security Document or Project Document);
- (vi) the actual or purported assignment or mortgaging of all or any part of the interest of the Issuer in the Loan Agreement or the Promissory Note, or any failure of title with respect to the Company's interest in the Facility;
- (vii) the actual or purported assignment or mortgaging of all or any part of the interest of the Company in the Loan Agreement, the Promissory Note or the Facility, or any failure of title with respect to the interest of the Company in the Facility;
- (viii) the actual or purported assignment of any of the obligations, covenants and agreements contained in this Bond Guaranty Agreement or in any other Security Document or Project Document;
- (ix) the waiver of the payment, performance or observance by the Issuer, the Company or any other obligor under any of the Security Documents or Project Documents of any of the obligations, conditions, covenants or agreements of any or all of them contained in any such Security Document or Project Document;
- (x) the receipt and acceptance by the Trustee or the Issuer of notes, checks or other instruments for the payment of money made by the Company or any other obligor under any of the Security Documents or Project Documents and any extensions and renewals thereof;
- (xi) the extension of the time for payment of the principal of, Purchase Price, Sinking Fund Installments for, redemption premium, if any, or interest on the Bonds or any other amounts that are due or may become due under any of the Security Documents or Project Documents, or of the time for performance of any other obligations, covenants or agreements under or arising out of the Bonds or any of the Security Documents or Project Documents or any extension or renewal thereof;

- Documents;
- (xii) the modification or amendment (whether material or otherwise) of any duty, obligation, covenant or agreement set forth in the Bonds or in any of the Security Documents or Project Documents;
 - (xiii) the taking of or the omission to take any action referred to in the Bonds or in any of the Security Documents or Project Documents;
 - (xiv) any failure, omission or delay on the part of the Issuer, the Trustee or any other Person to enforce, assert or exercise any right, power or remedy conferred on the Issuer, the Trustee or such other Person in this Bond Guaranty Agreement or in any of the Security Documents or Project Documents or any other act or acts on the part of the Issuer, the Trustee or the Holders from time to time of the Bonds;
 - (xv) the voluntary or involuntary liquidation, dissolution, merger, consolidation, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting any Guarantor, the Issuer or any other obligor under any of the Security Documents or Project Documents or any or all of the assets of any of them, or any allegation or contest of the validity of this Bond Guaranty Agreement or any other Security Document or Project Document in any such proceeding; it is specifically understood, consented and agreed to that this Bond Guaranty Agreement shall remain and continue in full force and effect and shall be enforceable against the Guarantors to the same extent and with the same force and effect as if such proceedings had not been instituted; and it is the intent and purpose of this Bond Guaranty Agreement that the Guarantors shall and do hereby waive all rights and benefits which might accrue to the Guarantors by reason of any such proceedings to the extent permitted by law;
 - (xvi) to the extent permitted by law, the release or discharge of any of the Guarantors from the performance or observance of any obligation, covenant or agreement contained in this Bond Guaranty Agreement by operation of law;
 - (xvii) the default or failure of any Guarantor fully to perform any of its obligations set forth in this Bond Guaranty Agreement;
 - (xviii) any release or impairment of the security pledged under the Indenture or under any other Security Document;
 - (xix) the release, substitution or replacement in accordance with the terms of the Loan Agreement or the Mortgage of any property subject thereto or any redelivery, repossession, surrender or destruction of any such property, in whole or in part;
 - (xx) any limitation on the liability or obligations of the Trustee, the Issuer or any of the Guarantors or any other obligor under any of the Security Documents or Project Documents, or any termination, cancellation, frustration, invalidity or unenforceability, in whole or in part, of the Loan Agreement, the Indenture or any other Security Document or Project Document or any term thereof, or the Bonds;

- (xxi) any failure of the Issuer or the Trustee to mitigate damages resulting from any default by any obligor under any of the Security Documents or Project Documents;
- (xxii) the merger or consolidation of any obligor under any of the Security Documents or Project Documents into or with any other Person, or any sale, lease or transfer of any or all of the assets of any such obligor to any Person;
- (xxiii) the failure of any credit provider or liquidity provider with respect to the Bonds to honor any of its respective obligations under any related credit facility or liquidity facility;
- (xxiv) the termination or expiration of the Ground Lease;
- (xxv) any other circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or a guarantor; or
- (xxvi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

Section 3.3. No Waiver or Set-Off. No act of commission or omission of any kind or at any time upon the part of the Issuer or the Trustee in respect of any matter whatsoever shall in any way impair the rights of the Trustee to enforce any right, power or benefit under this Bond Guaranty Agreement and no set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature (other than performance by the Guarantors of their obligations hereunder), which any Guarantor or any obligor under any of the Security Documents or Project Documents has or may have against the Issuer or the Trustee shall be available hereunder to the Guarantors.

Section 3.4. Events of Default. An "Event of Default" shall exist if any of the following occurs and is continuing:

- (a) any Guarantor defaults in the payment or performance of any Guaranteed Obligation referred to in Section 3.1(a)(i), (ii) or (iii) and such default continues for more than five (5) Business Days after written notice thereof has been given to any of the Guarantors by the Trustee, such written notice not to be given prior to written notice of any related default is given to the Company under the Loan Agreement;
- (b) any Guarantor fails to observe and perform any covenant, condition or agreement on its part to be performed under Section 3.6 and such failure continues for a period of thirty (30) days after receipt by any Guarantor of written notice specifying the nature of such default or failure from the Trustee;
- (c) any Guarantor fails to observe and perform any covenant, condition or agreement hereunder to be performed by such Guarantor (except as set forth in Section 3.4(a) or (b)) and (i) continuance of such failure for a period of thirty (30) days after receipt by such Guarantor of written notice specifying the nature of such failure from the Trustee, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, such Guarantor fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure;

(d) any Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself, himself or herself in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) a proceeding or case shall be commenced, without the application or consent of any Guarantor in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of any Guarantor or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against any Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); the terms "dissolution" or "liquidation" of any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 7.19 of the Loan Agreement, Section 3.4 of the Issuer Indemnification Agreement or Section 3.6;

(f) any representation or warranty made by any Guarantor (i) in the application and related materials submitted to the Issuer for approval of the Project or the transactions contemplated by this Bond Guaranty Agreement, (ii) herein, (iii) in any other Security Document or Project Document, or (iv) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall, in any case, prove to be false, misleading or incorrect in any material respect as of the date made; or

(g) an Event of Default under the Indenture or under any other Security Document shall occur and be continuing.

Upon an Event of Default, the Trustee shall have the right to proceed first and directly against any or all of the Guarantors jointly and severally under this Bond Guaranty Agreement without proceeding against or exhausting any other remedies which it may have under the Loan Agreement or any other Security Document and without resorting to any security held by the Trustee or by any other Person under any of the Security Documents. All moneys recovered by the Trustee pursuant to this Bond Guaranty Agreement shall be deposited in accordance with Section 8.03 of the Indenture and used and applied in accordance with Section 8.03 of the Indenture.

The Trustee shall be under no obligation to institute any suit or to take any remedial action under this Bond Guaranty Agreement, or to enter any appearance or in any way defend in any suit in which it may be made a defendant, or to take any steps in the enforcement of any rights and powers under this Bond Guaranty Agreement, until it shall be indemnified to its satisfaction against any and all liability (including, without limitation, reasonable compensation for services, costs and expenses, outlays, and counsel fees and expenses and other disbursements) not due to its gross negligence or willful misconduct.

Section 3.5. Waiver of Notice; Expenses. Each Guarantor hereby expressly waives presentment, demand, protest and notice of non-payment and further waives notice from the Trustee or the Holders from time to time of the Bonds of their acceptance and reliance on this Bond Guaranty Agreement or of any action taken or omitted in reliance hereon, and of any default by any Guarantor in the Guaranteed Obligations. Each Guarantor further expressly waives diligence, presentment, demand for payment, protest, and requirement that any right or power be exhausted or any action be taken against the Issuer, the Comp any or against any other obligor under any of the Security Documents or against any collateral security for the Guaranteed Obligations. The Guarantors, jointly and severally, agree to pay all costs, the Trustee's and any Bondholder's fees and expenses, and Trustee commissions and expenses (including all court costs and reasonable attorneys' fees and expenses) which may be incurred by the Trustee or any Bondholder in enforcing or attempting to enforce this Bond Guaranty Agreement following any default on the part of any or all of the Guarantors hereunder, whether the same shall be enforced by suit or otherwise.

Section 3.6. Dissolution or Merger of Parent; Restrictions on Parent.

- (a) The Parent covenants and agrees that at all times during the term of this Bond Guaranty Agreement, it will
 - (i) maintain its existence as a limited liability company,
 - (ii) continue to be subject to service of process in the State,
 - (iii) not liquidate, wind up or dissolve or otherwise dispose of all or substantially all of its property, business or assets ("**Transfer**") remaining after the Commencement Date, except as provided in Section 3.6(b),
 - (iv) not consolidate with or merge into another Entity or permit one or more Entities to consolidate with or merge into it ("**Merge**"), except as provided in Section 3.6(b), and
 - (v) not change or permit the change of any Principal of the Parent, or a change in the relative ownership and/or Control of the Parent of any of the existing Principals, except in each case as provided in Section 3.6(c).
- (b) Notwithstanding Section 3.6(a), the Parent may Merge or participate in a Transfer if the following conditions are satisfied on or prior to the Merger or Transfer, as applicable:
 - (i) when the Parent is the surviving, resulting or transferee Entity,

- (1) the Parent shall have a net worth (as determined by an Independent Accountant in accordance with GAAP) at least equal to the Parent Closing Date Net Worth, and
- (2) the Parent shall deliver to the Issuer a Required Disclosure Statement with respect to itself as surviving Entity in form and substance satisfactory to the Issuer acting in its sole discretion; or
- (ii) when the Parent is not the surviving, resulting or transferee Entity (the "**Successor Parent**"),
- (1) the predecessor Parent (the "**Predecessor Parent**") shall not have been in default under this Bond Guaranty Agreement or under any other Security Document or Project Document,
- (2) the Successor Parent shall be solvent and subject to service of process in the State,
- (3) the Successor Parent shall have assumed in writing (or by operation of law) all of the obligations of the Predecessor Parent contained in this Bond Guaranty Agreement and in all other Security Documents or Project Documents to which the Predecessor Parent shall have been a party,
- (4) the Successor Parent shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion,
- (5) each Principal of the Successor Parent shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion,
- (6) the Successor Parent shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an Opinion of Counsel to the effect that (y) this Bond Guaranty Agreement and all other Security Documents or Project Documents to which the Predecessor Parent shall be a party constitute the legal, valid and binding obligations of the Successor Parent and each is enforceable in accordance with their respective terms to the same extent as it was enforceable against the Predecessor Parent, and (z) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents, and
- (7) the Successor Parent shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an opinion of an Independent Accountant to the effect that the Successor Parent has a net worth (as determined in accordance with GAAP) after the Merger or Transfer at least equal to the Parent Closing Date Net Worth.

Section 3.7. Benefit and Enforcement. This Bond Guaranty Agreement is entered into by the Guarantors for the benefit of the Trustee, the Issuer and the Holders from time to time of the Bonds, all of whom shall be entitled in the same manner as set forth in the Indenture to enforce performance and observance of this Bond Guaranty Agreement to the same extent as if all were parties signatory hereto.

Section 3.8. Survival of Guaranteed Obligation. If the Trustee receives any payment on account of the Guaranteed Obligations, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be transferred or repaid to a trustee, receiver, assignee for the benefit of creditors or any other party under any bankruptcy act or code, state or federal law or common law or equitable doctrine or for any other reason whatsoever, then to the extent of any sum not finally retained by the Trustee, this Bond Guaranty Agreement shall remain in full force and effect until the Guarantors shall have made payment to the Trustee of such sum, which payment shall be due on demand. If the Trustee chooses to contest any such matter, the Guarantors agree to indemnify and hold harmless the Trustee with respect to all costs (including court costs and reasonable attorneys' fees and expenses) of such litigation.

Section 3.9. Waiver of Rights of Trustee. No payment hereunder by any or all of the Guarantors shall entitle any or all of the Guarantors by subrogation to the rights of the Trustee to any payment by any other obligor or out of the property of any other obligor, except after payment and performance in full of the Guaranteed Obligations. Each Guarantor waives any benefit of, or any right to participation in, any security whatsoever now or hereafter held by the Trustee.

Section 3.10. Right of Set-Off. Each Guarantor hereby grants to the Trustee a lien and right to set-off for all of its liabilities and obligations under this Bond Guaranty Agreement against all the deposits, credits and property of such Guarantor and any collateral of such Guarantor now or hereafter in the possession, under the control or in transit to the Trustee, and agrees that the same may be applied against such liabilities and obligations then due, at any time after an Event of Default has occurred and continues under this Bond Guaranty Agreement.

Section 3.11. Notice Not Required. In order to entitle the Trustee to exercise any remedy reserved to it in this Bond Guaranty Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Bond Guaranty Agreement or otherwise required by law.

Section 3.12. Insurance Requirements. In addition to any insurance required pursuant to Section 7.1 of the Loan Agreement, the Guarantors do hereby warrant and agree as follows:

(a) At all times throughout the term of this Bond Guaranty Agreement, including without limitation during any period of construction, reconstruction or substantial renovation of the Facility, the Company shall maintain insurance, or cause there to be maintained insurance, if applicable, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company. In addition to this general requirement, such insurance shall, for purposes of subsections (b) through (f) of this Section 3.12, include, without limitation, insurance coverage described in paragraphs (i) through (iv) below (hereinafter, "Specific Coverage"):

(i) (A) Property damage insurance, and (B) during any period of construction, reconstruction or substantial renovation of the Facility (to the extent not otherwise covered by property damage insurance), Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" and coverage for property damage insurance, all of which insurance shall include (when necessary) coverage for removal of debris, insuring the buildings, structures, facilities, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by all risk of physical loss at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Issuer, the Company or the Trustee from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to the greater of (A) 110% of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Company) not less often than once every three years, at the expense of the Company, and (B) the principal amount of the Outstanding Bonds; any such insurance may provide that the insurer is not liable to the extent of the first \$25,000 with the result that the Company is its own insurer to the extent of \$25,000 of such risks;

(ii) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus located on the Facility from risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar business enterprises;

(iii) To the extent the Facility may be located in a flood zone, or if otherwise required by federal law, flood certification or flood insurance, to the extent not covered by property damage insurance, in an amount equal to the greater of the full replacement cost or the maximum amount then available under the National Flood Insurance Program; and

(iv) Such other insurance, including revision of the insurance requirements set forth above, in such amounts and against such insurable hazards as the Trustee (at the specific written direction of the Majority Holders) from time to time may reasonably require; provided, however, that any such other insurance coverage shall be consistent with prevailing practices of other retail projects of like size, nature and location, and such insurance coverage is available for the Facility at commercially reasonable rates.

(b) All Specific Coverage required by Section 3.12(a) shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and having an A.M. Best rating of "A" or better. At least once every two Fiscal Years, the Company agrees to deliver a certificate of an independent insurance consultant to the Trustee which indicates that the insurance then maintained by the Company meets the requirements of this Section 3.12 and Section 7.1 of the Loan Agreement.

(c) Each of the policies evidencing the Specific Coverage required above to be obtained shall:

(i) designate the Company and the Trustee as additional insureds as their respective interests may appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the property of the Facility be endorsed and made payable to the Trustee and shall name the Trustee as a loss payee under the standard loss payee clause and as a mortgagee under the terms of a standard mortgagee clause, which insurance proceeds shall, subject to the Ground Lease, be paid over to the Trustee and deposited in the Renewal Fund;

(iii) provide that there shall be no recourse against the Trustee for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iv) provide that in respect of the interest of the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Trustee regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(v) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Trustee to the extent that such other insurance provides the Trustee with contingent and/or excess liability insurance with respect to its interest in the Facility;

(vi) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Trustee until at least thirty (30) days, or ten (10) days due to nonpayment of premium, after receipt by the Trustee of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

(vii) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and

(viii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of its properties, require to be contained in policies or interim insurance contracts with respect to facilities similar to the Facility owned or operated by it.

(d) Subject to the Ground Lease, the Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility (except if such Net Proceeds so received for any Loss Event shall be less than \$50,000 in which event such Net Proceeds shall be paid directly to the Company and applied by the Company to the rebuilding, replacement, repair and restoration of the Facility with any excess to be retained by the Company) shall be deposited in the Renewal Fund and applied in accordance with Section 5.2 of the Loan Agreement and the Indenture.

(e) The Company shall deliver or cause to be delivered to the Trustee the following documents evidencing compliance with the Specific Coverage requirements of this Section 3.12: (i) on or prior to the Commencement Date: (A) a broker's certificate of coverage, upon which the Trustee may conclusively rely in order to confirm compliance with the requirements of this Section 3.12, confirming that the Company, as of the Closing Date, has obtained Specific Coverage in accordance with the requirements of this Section 3.12, and (B) evidence of property insurance and certificates or other evidence of other required insurance and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Company shall furnish the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Bond Guaranty Agreement.

(f) The Company shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Trustee (upon the specific written direction of the Majority Holders) to collect from insurers for any loss covered by any insurance required to be obtained by this Section 3.12. The Company shall not do any act, or suffer or permit any act to be done, whereby any Specific Coverage required by this Section 3.12 would or might be suspended or impaired.

(g) THE GUARANTORS EACH ACKNOWLEDGE THAT THE INSURANCE SPECIFIED HEREIN AND IN THE LOAN AGREEMENT IS NOT IN ANY WAY A REPRESENTATION BY THE ISSUER OR THE TRUSTEE THAT SUCH INSURANCE, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE COMPANY.

ARTICLE IV

SERVICE OF PROCESS, NOTICE, JURISDICTION,
WAIVER OF JURY TRIAL

Section 4.1. Service of Process. Each Guarantor represents that it is subject to service of process in the State and covenants that it will remain so subject so long as any of the Guaranteed Obligations remain unpaid or unsatisfied. If for any reason any Guarantor should cease to be so subject to service of process in the State, each such Guarantor hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing General Counsel, at Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon any Guarantor as a result of any of its obligations under this Bond Guaranty Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, each Guarantor hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon such Guarantor as a result of any of its obligations under this Bond Guaranty Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to any Guarantor's obligations hereunder.

For such time as any of the Guaranteed Obligations shall be unpaid in whole or in part, the Guarantors' agents designated in this Section 4.1 shall accept and acknowledge on the Guarantors' behalf each service of process in any such suit, action or proceeding brought in any such court. The Guarantors agree and consent that each such service of process upon such agents and written notice of such service to the Guarantors in the manner set forth in Section 4.2 shall be taken and held to be valid personal service upon the Guarantors whether or not the Guarantors shall then be doing, or at any time shall have done, business within the State, and that each such service of process shall be of the same force and validity as if service were made upon the Guarantors according to the laws governing the validity and requirements of such service in the State, and waive all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Guarantors or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Guarantors.

Section 4.2. Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

(a) if to the Issuer, to New York City Capital Resource Corporation, 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Issuer at the same address, and

(b) if to any or all of the Guarantors, c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, Attention: General Counsel, with a copy to (y) Washington Square Partners, 675 Third Avenue, 25th Floor, New York, New York 10017, Attention: Paul Travis, and (z) Akerman Senterfitt LLP, 335 Madison Avenue, 26th Floor, New York, New York 10017, Attention: Steven Polivy, Esq.; and

(c) if to the Trustee, to The Bank of New York Mellon, 101 Barclay Street, Floor 7W, New York, New York 10286, Attention: Corporate Trust Administration.

The Issuer, the Trustee and any Guarantor may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 4.3. Consent to Jurisdiction. Each Guarantor irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Bond Guaranty Agreement may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If a Guarantor commences any action against the Trustee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, such Guarantor shall, upon request from the Trustee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, such Guarantor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 4.4. Waiver of Trial by Jury. The Guarantors do hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Bond Guaranty Agreement or any matters whatsoever arising out of or in any way connected with this Bond Guaranty Agreement or the Guaranteed Obligations.

ARTICLE V

MISCELLANEOUS

Section 5.1. No Alteration Without Consent. No amendment, change, modification, alteration or termination of the Indenture, the Loan Agreement, the Promissory Note or the Bonds shall be made which would in any way increase any or all of the Guarantors' obligations under this Bond Guaranty Agreement without obtaining the prior written consent thereto of the Guarantors. Neither the acts or omissions recited in Section 3.2 hereof, nor any partial redemption of the Bonds, shall constitute any such amendment, change, modification, alteration or termination within the meaning of this Section 5.1.

Section 5.2. Bond Guaranty Agreement to Become Effective. The date of this Bond Guaranty Agreement shall be for reference purposes only and shall not be construed to imply that this Bond Guaranty Agreement was executed on the date first above written. This Bond Guaranty Agreement was executed and delivered on the Commencement Date. The obligations of the Guarantors hereunder shall arise absolutely and unconditionally on the Closing Date.

Section 5.3. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Bond Guaranty Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default, default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 5.4. No Implied Waiver. In the event any provision contained in this Bond Guaranty Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Bond Guaranty Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties thereunto duly authorized by this Bond Guaranty Agreement.

Section 5.5. Entire Agreement; Counterparts. This Bond Guaranty Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, other than the Loan Agreement, the Promissory Note and any other Security Document or Project Document, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 5.6. Severability. If any one or more of the provisions of this Bond Guaranty Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions of this Bond Guaranty Agreement, but this Bond Guaranty Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 5.7. Release. Upon the payment and satisfaction of all Guaranteed Obligations and, if applicable, upon payment of the costs, fees and expenses required by Section 3.5, the Trustee shall release in writing the Guarantors from their obligations hereunder, except as provided in Section 3.1(c) or 3.8 and except to the extent that any of the Guaranteed Obligations are stated to survive the termination of the Loan Agreement.

Section 5.8. Applicable Law. This Bond Guaranty Agreement shall be governed by and construed in accordance with the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

Section 5.9. Successors and Assigns. This Bond Guaranty Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 5.10. Incorporation of Certain Indenture Provisions. All provisions of Article IX of the Indenture shall be construed as extending to and including all of the rights, duties and obligations imposed upon the Trustee under this Bond Guaranty Agreement as fully and for all purposes as if said Article IX were contained in this Bond Guaranty Agreement.

[Intentionally Left Blank]

IN WITNESS WHEREOF, each Guarantor has duly authorized the execution of this Bond Guaranty Agreement as of the date first above written.

ALBEE RETAIL DEVELOPMENT LLC
as Guarantor

By: /s/ Robert Masters
Robert Masters
Senior Vice President

**ACADIA STRATEGIC OPPORTUNITY
FUND II LLC,**
as Guarantor

By: /s/ Robert Masters
Robert Masters
Senior Vice President

Accepted this July 1, 2010 by

THE BANK OF NEW YORK MELLON,
as Trustee

By: /s/Gaspard Mulé
Gaspard Mulé
Vice President

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SERVICE OF PROCESS, NOTICE, JURISDICTION, WAIVER OF JURY TRIAL

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PROJECT COMPLETION GUARANTY AGREEMENT

From

ALBEE RETAIL DEVELOPMENT LLC,

a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as “**Company**”,

and

ACADIA STRATEGIC OPPORTUNITY FUND II LLC,

a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as “**Parent**” (together with the Company, the “**Guarantors**”),

To

THE BANK OF NEW YORK MELLON,

a banking corporation organized and existing under the laws of the State of New York, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286, together with any successor trustee at the time serving as such under the Indenture of Trust referred to herein, the “**Trustee**”

Dated as of July 1, 2010

New York City Capital Resource Corporation
\$20,000,000 Recovery Zone Facility Revenue Bonds
(Albee Retail Development LLC Project), Series 2010

PROJECT COMPLETION GUARANTY AGREEMENT

This **PROJECT COMPLETION GUARANTY AGREEMENT** made and entered into as of the date set forth on the cover page hereof (this "Project Completion Guaranty Agreement") (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement or in the Indenture of Trust referred to herein), from **ALBEE RETAIL DEVELOPMENT LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "Company"), having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and **ACADIA STRATEGIC OPPORTUNITY FUND II LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "Parent", and, together with the Company, collectively the "Guarantors"), having its principal office at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, parties of the first part, to **THE BANK OF NEW YORK MELLON**, a New York banking corporation together with any successor trustee (the "Trustee") at the time serving as such under the Indenture referred to below, having a corporate trust office at 101 Barclay Street, Floor 7W, New York, New York 10286, party of the second part:

WITNESSETH:

WHEREAS, the New York City Capital Resource Corporation, a local development corporation duly organized and existing under the laws of the State of New York (the "Issuer") and established pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended (the "Act"), intends to issue its Bonds pursuant to the Act, the Bond Resolution and an Indenture of Trust dated as of even date herewith between the Issuer and the Trustee (as the same may be amended or supplemented, the "Indenture"); and

WHEREAS, pursuant to the American Recovery and Reinvestment Act of 2009, as amended, on June 9, 2009, as amended on February 9, 2010, the Board of Directors of the Issuer established a program for the issuance of recovery zone facility bonds including program requirements ("Program Requirements"), threshold requirements ("Threshold Requirements") and selection criteria ("Selection Criteria"), and designated certain areas within the City as "Recovery Zones"; and

WHEREAS, on July 17, 2009, the Mayor of the City ratified the designations made by the Issuer of the "Recovery Zones"; and

WHEREAS, on September 15, 2009, the Issuer adopted a resolution approving the eligibility of the Project to receive a \$20,000,000 allocation for the issuance of recovery zone facility bonds and determined, among other things, that the Project is located in a designated "Recovery Zone", and that in applying the Threshold Requirements and the Selection Criteria, the Project qualifies for the issuance of recovery zone facility bonds; and

WHEREAS, the Issuer has determined that the providing of financial assistance to the Company for the Project will promote and is authorized by and will be in furtherance of the corporate purposes of the Issuer; and

WHEREAS, the site of the Facility, including the improvements to be constructed thereon, will be subject to the Ground Lease; and

WHEREAS, to facilitate the Project and the issuance by the Issuer of the Bonds to finance a portion of the costs of the Project, the Issuer and the Company have entered into negotiations pursuant to which (i) the Issuer will make the loan of the proceeds of the Bonds, in the original principal amount of the Bonds, to the Company pursuant to a Loan Agreement, dated as of even date herewith, between the Issuer and Company (as the same may be amended or supplemented, the "Loan Agreement") and (ii) the Company will execute the Promissory Note in favor of the Issuer and the Trustee to evidence the Company's obligation under the Loan Agreement to repay the Loan; and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Bonds, the Issuer has authorized the issuance of the Bonds in the Authorized Principal Amount pursuant to the Bond Resolution and the Indenture; and

WHEREAS, concurrently with the execution hereof, in order to further secure the Bonds, (i) the payment of the principal of, Sinking Fund Installments for, Purchase Price, redemption premium, if any, and interest on the Bonds, and the payments, obligations, covenants and agreements of the Company under the Loan Agreement and under the Promissory Note, will be guaranteed by the Guarantors pursuant to the Bond Guaranty Agreement in favor of the Trustee; (ii) the Company will grant a lien in Facility Revenues and the remainder of the Pledged Collateral pursuant to the Pledge and Security Agreement in favor of the Trustee, subject only to the lien of the Mortgage; and (iii) the Company will grant mortgage liens on and security interests in its leasehold interest in the Facility under the Ground Lease, and an assignment of leases and rents, to the Trustee pursuant to the Mortgage; and

WHEREAS, the Guarantors are desirous that the Issuer issue, sell and deliver the Bonds for the purposes as aforesaid and enter into the Loan Agreement with the Company and are willing to enter into this Project Completion Guaranty Agreement in order to enhance the marketability of the Bonds and thereby achieve interest cost and other savings to the Company as an inducement to the purchase of the Bonds by all who shall at any time become the Holders of the Bonds; and

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration received, the Guarantors do hereby represent, warrant, covenant and agree, jointly and severally, with the Trustee, as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1. Certain Definitions. The following terms shall have the respective meanings in this Project Completion Guaranty Agreement, except as the context otherwise requires:

Authorized Principal Amount shall mean, in the case of the Bonds, \$20,000,000.

Bond Guaranty Agreement shall mean the Bond Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Bond Resolution shall mean the resolution of the Issuer adopted on February 9, 2010, as amended on April 13, 2010, authorizing the issuance of the Bonds.

Bonds shall mean the Issuer's \$20,000,000 Recovery Zone Facility Revenue Bonds (Albee Retail Development LLC Project), Series 2010 authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

City shall mean The City of New York, New York.

Closing Date shall mean July 1, 2010, the date of the initial issuance and delivery of the Bonds.

Company shall mean Albee Retail Development LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Company under Section 7.8 or 7.19 of the Loan Agreement.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Event of Default shall have the meaning specified in Section 3.4.

Facility Revenues shall have the meaning assigned to such term in the Loan Agreement.

Favorable Opinion of Bond Counsel shall mean, with respect to any action the occurrence of which requires such an opinion, an unqualified Opinion of Counsel, which shall be a Nationally Recognized Bond Counsel, to the effect that such action is permitted under the Indenture and will not adversely affect the exclusion of interest on a Series of Bonds from gross income for purposes of Federal income taxation (subject to the inclusion of any exceptions contained in the opinion delivered upon original issuance of such Series of Bonds).

Fiscal Year shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Company for accounting purposes as to which the Company shall have given prior written notice thereof to the Issuer and the Trustee at least ninety (90) days prior to the commencement thereof.

GAAP shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Commencement Date, so as to properly reflect the financial position of the Company, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Ground Lease shall mean that certain Severance Lease (Site 1A), dated June 30, 2010, between the City, as landlord, and Albee Development, LLC, a Delaware limited liability company (“Albee Development”), as assigned on July 1, 2010 by Albee Development to, and assumed by, the Company, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Loan Agreement.

Guarantors shall mean, collectively, the Company and the Parent, and their respective successors and assigns.

Indenture shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Independent Accountant shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Issuer and the Trustee (such approvals not to be unreasonably withheld or delayed).

Issuer shall mean New York City Capital Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

Issuer Indemnification Agreement shall mean the Issuer Indemnification Agreement, dated as of even date herewith, from the Parent to the Issuer, and shall include any and all amendments thereof and supplements thereto hereafter made.

Loan Agreement shall mean the Loan Agreement, dated as of even date herewith, between the Issuer and the Company, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Majority Holders shall mean the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

Mortgage shall mean, collectively, the Mortgage and Security Agreement and Assignment of Leases and Rents (Acquisition Loan), the Mortgage and Security Agreement and Assignment of Leases and Rents (Building Loan) and the Mortgage and Security Agreement and Assignment of Leases and Rents (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Nationally Recognized Bond Counsel shall mean counsel reasonably acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

Notice Parties shall mean the Issuer, the Company, the Parent, the Bond Registrar, the Paying Agents, the Trustee, the Tender Agent and the Remarketing Agent.

Opinion of Counsel shall mean a written opinion of counsel for the Company, the Parent or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Parent shall mean Acadia Strategic Opportunity Fund II LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Parent under Section 3.6 of the Bond Guaranty Agreement or Section 3.4 of the Issuer Indemnification Agreement.

Person shall mean an individual or any Entity.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, dated as of even date herewith, from the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Pledged Collateral shall have the meaning assigned to such term in Section 3.1 of the Pledge and Security Agreement.

Preliminary Resolution shall mean the resolution of the Issuer adopted on September 15, 2009 approving the eligibility of the Project to receive an allocation for the issuance of up to \$20,000,000 of recovery zone facility bonds to finance the Project.

Principals shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity, and any Person as shall have the power to Control such Entity, and "principal" shall mean any of such Persons.

Project shall mean the construction, renovation, equipping and furnishing of an approximately 50,000 square foot facility to be leased to retail commercial tenants.

Project Completion Guaranty Agreement shall mean this Project Completion Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Project Documents shall mean, collectively, the Ground Lease, the Issuer Indemnification Agreement, the Remarketing Agreement, the Bond Placement Agreement, the Facility Leases and the Security Documents.

Promissory Note shall mean, with respect to the Bonds, that certain Promissory Note in substantially the form of Exhibit G to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

Security Documents shall mean, collectively, the Loan Agreement, the Promissory Note, the Pledge and Security Agreement, the Indenture, this Project Completion Guaranty Agreement, the Bond Guaranty Agreement, the Tax Regulatory Agreement, the Building Loan Agreement and the Mortgage.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Company to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean The Bank of New York Mellon, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Section 1.2. Construction. In this Project Completion Guaranty Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Project Completion Guaranty Agreement, refer to this Project Completion Guaranty Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Closing Date.

- (b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.
- (c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.
- (d) Any headings preceding the texts of the several Articles and Sections of this Project Completion Guaranty Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Project Completion Guaranty Agreement, nor shall they affect its meaning, construction or effect.
- (e) Unless the content indicates otherwise, references to designated "Articles", "Sections", "Subsections", "clauses" and other subdivisions are to the designated Articles, Sections, Subsections, clauses and other subdivisions of or to this Project Completion Guaranty Agreement.
- (f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- (g) The word "will" shall be construed to have the same meaning and effect as the word "shall".
- (h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).
- (i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

ARTICLE II

REPRESENTATIONS AND WARRANTIES
OF THE GUARANTORS

Section 2.1. Representations and Warranties. The Guarantors do hereby jointly and severally represent and warrant that:

(a) Each Guarantor is a limited liability company duly organized under the laws of the State of Delaware, is validly existing and in good standing under the laws of the State of Delaware, is not in violation of any provision of its Organizational Documents, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Project Completion Guaranty Agreement and each other Security Document or Project Document to which it is or shall be a party.

(b) The Company is duly qualified to do business and in good standing under the laws of the State.

(c) The execution, delivery and performance of this Project Completion Guaranty Agreement and each other Security Document or Project Document to which each Guarantor is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Organizational Documents of any Guarantor, or any indenture, agreement or other instrument to which any Guarantor is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or, to the best of each Guarantor's knowledge, after diligent inquiry, threatened by or against any Guarantor by or before any court or administrative agency that would adversely affect the ability of any Guarantor to perform its obligations under this Project Completion Guaranty Agreement or any other Security Document or Project Document to which it is a party. Such knowledge is based upon the knowledge of Robert Masters, a Senior Vice President of the Parent, and a person employed by the Parent with actual knowledge of the Project and of the matters set forth in this paragraph.

(e) Each Guarantor has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by such Guarantor as of the Closing Date in connection with the execution and delivery of this Project Completion Guaranty Agreement and each other Security Document or Project Document to which such Guarantor is a party or in connection with the performance of the obligations of such Guarantor hereunder and under each of the Security Documents or Project Documents.

(f) This Project Completion Guaranty Agreement and each other Security Document or Project Document to which each of the Guarantors is a party (x) have been duly authorized by all necessary action on the part of each Guarantor, (y) have been duly executed and delivered by the Guarantors, and (z) constitute the legal, valid and binding obligations of the respective Guarantors, enforceable against the Guarantors in accordance with their respective terms, subject to limitations on enforceability resulting from bankruptcy, insolvency and principles of equity.

(g) The assumption by each Guarantor of its obligations hereunder will result in a direct financial benefit to such Guarantor.

ARTICLE III

AGREEMENT TO GUARANTEE

Section 3.1. Obligations Guaranteed. i) The Guarantors, hereby, jointly and severally, unconditionally guarantee to the Trustee for the benefit of the Holders from time to time of the Bonds;

(i) the completion of the Project in accordance with the requirements, terms and time limits of the Loan Agreement and the Ground Lease, in compliance with all applicable Legal Requirements, and free and clear of all Liens other than Permitted Encumbrances;

(ii) the payment of all obligations, liabilities, costs and expenses when due necessary to effect the completion of the Project as provided in clause (i) above, to the extent that the proceeds of the Bonds shall not be sufficient or otherwise available therefor; and

(iii) the prompt obtaining of all required occupancy permits for the Improvements, if legally required, issued by the City to permit the operation of the Facility for the Approval Project Operations

(the payments, obligations, covenants and agreements in clauses (i), (ii) and (iii) above being collectively referred to herein as the “**Guaranteed Obligations**”).

(b) The Guarantors further hereby jointly and severally, irrevocably and unconditionally agree that upon any default in any of the Guaranteed Obligations, the Guarantors will promptly pay the same or effect the observance of such obligations, covenants and agreements, as the case may be. All payments by the Guarantors shall be paid in lawful money of the United States of America. Each and every default in any of the Guaranteed Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

(c) To the extent that any of the Guaranteed Obligations of the Company under Section 3.1(a) shall also be a primary obligation of the Company under the Loan Agreement, the Guarantors agree that the Trustee may elect to enforce its rights under either this Project Completion Guaranty Agreement and/or the Loan Agreement.

Section 3.2. Obligations Unconditional. ii) The Guarantors jointly and severally agree that this Project Completion Guaranty Agreement constitutes an absolute, unconditional, present and continuing guarantee of performance and payment and not of collection, and waive any right to require that any resort be had by the Trustee or the Holders of the Bonds to (1) any security held by or for the benefit of the Holders of the Bonds for any of the Guaranteed Obligations, (2) the Trustee’s or any Bondholder’s rights against any other Person, or (3) any other right or remedy available to the Trustee or any Holder of the Bonds by contract, applicable law or otherwise. The obligations of the Guarantors under this Project Completion Guaranty Agreement are joint and several, absolute, direct, unconditional and completely independent of the obligations of any other Person, and a separate cause of action or separate causes of action may be brought and prosecuted against the Guarantors without the necessity of joining the Issuer, the Company or any other party or previously proceeding with or exhausting any other remedy against any other Person who might have become liable for any of the Guaranteed Obligations or of realizing upon any security held by or for the benefit of the Holders of the Bonds.

(b) The respective obligations of the Guarantors under this Project Completion Guaranty Agreement shall be absolute and unconditional, and joint and several, and shall remain in full force and effect until the Guaranteed Obligations shall have been fulfilled, and all costs, fees, commissions and expenses, if any, referred to in Section 3.5 shall have been paid in full, and, to the extent permitted by law, such obligations shall not be affected, modified, released or impaired by any state of facts or the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to, or the consent of, any of the Guarantors:

- (i) the invalidity, irregularity, illegality or unenforceability of, or any defect in, any of the Security Documents or Project Documents, the Bonds or any collateral security for any thereof;
- (ii) any present or future law or order of any government (de jure or de facto) or of any agency thereof purporting to reduce, amend or otherwise affect the Bonds or any other obligation of the Issuer or any other obligor or to vary any terms of payment;
- (iii) any claim of immunity on behalf of the Issuer or any other obligor or with respect to any property of the Issuer or any other obligor;
- (iv) the compromise, settlement, release, extension, indulgence, change, modification or termination of any or all of the obligations, covenants or agreements of any obligor under any of the Security Documents or Project Documents;
- (v) the failure to give notice to any obligor under any of the Security Documents or Project Documents of the occurrence of any default or Event of Default under the terms and provisions of any of the Security Documents or Project Documents (except as may be specifically provided in any such Security Document or Project Document);
- (vi) the actual or purported assignment or mortgaging of all or any part of the interest of the Issuer in the Loan Agreement or the Promissory Note, or any failure of title with respect to the Company's interest in the Facility;
- (vii) the actual or purported assignment or mortgaging of all or any part of the interest of the Company in the Loan Agreement, the Promissory Note or the Facility, or any failure of title with respect to the interest of the Company in the Facility;
- (viii) the actual or purported assignment of any of the obligations, covenants and agreements contained in this Project Completion Guaranty Agreement or in any other Security Document or Project Document;
- (ix) the waiver of the payment, performance or observance by the Issuer, the Company or any other obligor under any of the Security Documents or Project Documents of any of the obligations, conditions, covenants or agreements of any or all of them contained in any such Security Document or Project Document;

(x) the receipt and acceptance by the Trustee or the Issuer of notes, checks or other instruments for the payment of money made by the Company or any other obligor under any of the Security Documents or Project Documents and any extensions and renewals thereof;

(xi) the extension of the time for payment of the principal of, Purchase Price, Sinking Fund Installments for, redemption premium, if any, or interest on the Bonds or any other amounts that are due or may become due under any of the Security Documents or Project Documents, or of the time for performance of any other obligations, covenants or agreements under or arising out of the Bonds or any of the Security Documents or Project Documents or any extension or renewal thereof;

(xii) the modification or amendment (whether material or otherwise) of any duty, obligation, covenant or agreement set forth in the Bonds or in any of the Security Documents or Project Documents;

(xiii) the taking of or the omission to take any action referred to in the Bonds or in any of the Security Documents or Project Documents;

(xiv) any failure, omission or delay on the part of the Issuer, the Trustee or any other Person to enforce, assert or exercise any right, power or remedy conferred on the Issuer, the Trustee or such other Person in this Project Completion Guaranty Agreement or in any of the Security Documents or Project Documents or any other act or acts on the part of the Issuer, the Trustee or the Holders from time to time of the Bonds;

(xv) the voluntary or involuntary liquidation, dissolution, merger, consolidation, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting any Guarantor, the Issuer or any other obligor under any of the Security Documents or Project Documents or any or all of the assets of any of them, or any allegation or contest of the validity of this Project Completion Guaranty Agreement or any other Security Document or Project Document in any such proceeding; it is specifically understood, consented and agreed to that this Project Completion Guaranty Agreement shall remain and continue in full force and effect and shall be enforceable against the Guarantors to the same extent and with the same force and effect as if such proceedings had not been instituted; and it is the intent and purpose of this Project Completion Guaranty Agreement that the Guarantors shall and do hereby waive all rights and benefits which might accrue to the Guarantors by reason of any such proceedings to the extent permitted by law;

(xvi) to the extent permitted by law, the release or discharge of any of the Guarantors from the performance or observance of any obligation, covenant or agreement contained in this Project Completion Guaranty Agreement by operation of law;

- (xvii) the default or failure of any Guarantor fully to perform any of its obligations set forth in this Project Completion Guaranty Agreement;
- (xviii) any release or impairment of the security pledged under the Indenture or under any other Security Document;
- (xix) the release, substitution or replacement in accordance with the terms of the Loan Agreement or the Mortgage of any property subject thereto or any redelivery, repossession, surrender or destruction of any such property, in whole or in part;
- (xx) any limitation on the liability or obligations of the Trustee, the Issuer or any of the Guarantors or any other obligor under any of the Security Documents or Project Documents, or any termination, cancellation, frustration, invalidity or unenforceability, in whole or in part, of the Loan Agreement, the Indenture or any other Security Document or Project Document or any term thereof, or the Bonds;
- (xxi) any failure of the Issuer or the Trustee to mitigate damages resulting from any default by any obligor under any of the Security Documents or Project Documents;
- (xxii) the merger or consolidation of any obligor under any of the Security Documents or Project Documents into or with any other Person, or any sale, lease or transfer of any or all of the assets of any such obligor to any Person;
- (xxiii) the failure of any credit provider or liquidity provider with respect to the Bonds to honor any of its respective obligations under any related credit facility or liquidity facility;
- (xxiv) any other circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or a guarantor; or
- (xxv) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

Section 3.3. No Waiver or Set-Off. No act of commission or omission of any kind or at any time upon the part of the Issuer or the Trustee in respect of any matter whatsoever shall in any way impair the rights of the Trustee to enforce any right, power or benefit under this Project Completion Guaranty Agreement and no set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature (other than performance by the Guarantors of their obligations hereunder), which any Guarantor or any obligor under any of the Security Documents or Project Documents has or may have against the Issuer or the Trustee shall be available hereunder to the Guarantors.

Section 3.4. Events of Default. An "Event of Default" shall exist if any of the following occurs and is continuing:

- (a) any Guarantor defaults in the payment or performance of any Guaranteed Obligation referred to in Section 3.1(a)(ii) and such default continues for more than five (5) Business Days after written notice thereof has been given to any of the Guarantors by the Trustee, such written notice not to be given prior to written notice of any related default is given to the Company under the Loan Agreement;

(b) any Guarantor fails to observe and perform any Guaranteed Obligation under Section 3.1(a)(i) or (iii) or any other covenant, condition or agreement hereunder to be performed by such Guarantor (except as set forth in Section 3.4(a)) and (i) continuance of such failure for a period of thirty (30) days after receipt by such Guarantor of written notice specifying the nature of such failure from the Trustee, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, such Guarantor fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure;

(c) any Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself, himself or herself in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(d) a proceeding or case shall be commenced, without the application or consent of any Guarantor in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of any Guarantor or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against any Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); the terms "dissolution" or "liquidation" of any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 7.19 of the Loan Agreement, Section 3.4 of the Issuer Indemnification Agreement or Section 3.6 of the Bond Guaranty Agreement;

(e) any representation or warranty made by any Guarantor (i) in the application and related materials submitted to the Issuer for approval of the Project or the transactions contemplated by this Project Completion Guaranty Agreement, (ii) herein, (iii) in any other Security Document or Project Document, or (iv) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall, in any case, prove to be false, misleading or incorrect in any material respect as of the date made; or

(f) an Event of Default under the Indenture or under any other Security Document shall occur and be continuing.

Upon an Event of Default, the Trustee shall have the right to proceed first and directly against any or all of the Guarantors jointly and severally under this Project Completion Guaranty Agreement without proceeding against or exhausting any other remedies which it may have under the Loan Agreement or any other Security Document and without resorting to any security held by the Trustee or by any other Person under any of the Security Documents. All moneys recovered by the Trustee pursuant to this Project Completion Guaranty Agreement shall be deposited in accordance with Section 8.03 of the Indenture and used and applied in accordance with Section 8.03 of the Indenture.

The Trustee shall be under no obligation to institute any suit or to take any remedial action under this Project Completion Guaranty Agreement, or to enter any appearance or in any way defend in any suit in which it may be made a defendant, or to take any steps in the enforcement of any rights and powers under this Project Completion Guaranty Agreement, until it shall be indemnified to its satisfaction against any and all liability (including, without limitation, reasonable compensation for services, costs and expenses, outlays, and counsel fees and expenses and other disbursements) not due to its gross negligence or willful misconduct.

Section 3.5. Waiver of Notice; Expenses. Each Guarantor hereby expressly waives presentment, demand, protest and notice of non-payment and further waives notice from the Trustee or the Holders from time to time of the Bonds of their acceptance and reliance on this Project Completion Guaranty Agreement or of any action taken or omitted in reliance hereon, and of any default by any Guarantor in the Guaranteed Obligations. Each Guarantor further expressly waives diligence, presentment, demand for payment, protest, and requirement that any right or power be exhausted or any action be taken against the Issuer, the Company or against any other obligor under any of the Security Documents or against any collateral security for the Guaranteed Obligations. The Guarantors, jointly and severally, agree to pay all costs, the Trustee's and any Bondholder's fees and expenses, and Trustee commissions and expenses (including all court costs and reasonable attorneys' fees and expenses) which may be incurred by the Trustee or any Bondholder in enforcing or attempting to enforce this Project Completion Guaranty Agreement following any default on the part of any or all of the Guarantors hereunder, whether the same shall be enforced by suit or otherwise.

Section 3.6. Benefit and Enforcement. This Project Completion Guaranty Agreement is entered into by the Guarantors for the benefit of the Trustee, the Issuer and the Holders from time to time of the Bonds, all of whom shall be entitled in the same manner as set forth in the Indenture to enforce performance and observance of this Project Completion Guaranty Agreement to the same extent as if all were parties signatory hereto.

Section 3.7. Survival of Guaranteed Obligation. If the Trustee receives any payment on account of the Guaranteed Obligations, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be transferred or repaid to a trustee, receiver, assignee for the benefit of creditors or any other party under any bankruptcy act or code, state or federal law or common law or equitable doctrine or for any other reason whatsoever, then to the extent of any sum not finally retained by the Trustee, this Project Completion Guaranty Agreement shall remain in full force and effect until the Guarantors shall have made payment to the Trustee of such sum, which payment shall be due on demand. If the Trustee chooses to contest any such matter, the Guarantors agree to indemnify and hold harmless the Trustee with respect to all costs (including court costs and reasonable attorneys' fees and expenses) of such litigation.

Section 3.8. Waiver of Rights of Trustee. No payment hereunder by any or all of the Guarantors shall entitle any or all of the Guarantors by subrogation to the rights of the Trustee to any payment by any other obligor or out of the property of any other obligor, except after payment and performance in full of the Guaranteed Obligations. Each Guarantor waives any benefit of, or any right to participation in, any security whatsoever now or hereafter held by the Trustee.

Section 3.9. Right of Set-Off. Each Guarantor hereby grants to the Trustee a lien and right to set-off for all of its liabilities and obligations under this Project Completion Guaranty Agreement against all the deposits, credits and property of such Guarantor and any collateral of such Guarantor now or hereafter in the possession, under the control or in transit to the Trustee, and agrees that the same may be applied against such liabilities and obligations then due, at any time after an Event of Default has occurred and continues under this Project Completion Guaranty Agreement.

Section 3.10. Notice Not Required. In order to entitle the Trustee to exercise any remedy reserved to it in this Project Completion Guaranty Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Project Completion Guaranty Agreement or otherwise required by law.

ARTICLE IV

SERVICE OF PROCESS, NOTICE, JURISDICTION,
WAIVER OF JURY TRIAL

Section 4.1. Service of Process. Each Guarantor represents that it is subject to service of process in the State and covenants that it will remain so subject so long as any of the Guaranteed Obligations remain unpaid or unsatisfied. If for any reason any Guarantor should cease to be so subject to service of process in the State, each such Guarantor hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing General Counsel, at Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon any Guarantor as a result of any of its obligations under this Project Completion Guaranty Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, each Guarantor hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon such Guarantor as a result of any of its obligations under this Project Completion Guaranty Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to any Guarantor's obligations hereunder.

For such time as any of the Guaranteed Obligations shall be unpaid in whole or in part, the Guarantors' agents designated in this Section 4.1 shall accept and acknowledge on the Guarantors' behalf each service of process in any such suit, action or proceeding brought in any such court. The Guarantors agree and consent that each such service of process upon such agents and written notice of such service to the Guarantors in the manner set forth in Section 4.2 shall be taken and held to be valid personal service upon the Guarantors whether or not the Guarantors shall then be doing, or at any time shall have done, business within the State, and that each such service of process shall be of the same force and validity as if service were made upon the Guarantors according to the laws governing the validity and requirements of such service in the State, and waive all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Guarantors or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Guarantors.

Section 4.2. Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

(a) if to the Issuer, to New York City Capital Resource Corporation, 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Issuer at the same address, and

(b) if to any or all of the Guarantors, c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, Attention: General Counsel, with a copy to (y) Washington Square Partners, 675 Third Avenue, 25th Floor, New York, New York 10017, Attention: Paul Travis, and (z) Akerman Senterfitt LLP, 335 Madison Avenue, 26th Floor, New York, New York 10017, Attention: Steven Polivy, Esq.; and

(c) if to the Trustee, to The Bank of New York Mellon, 101 Barclay Street, Floor 7W, New York, New York 10286, Attention: Corporate Trust Administration.

The Issuer, the Trustee and any Guarantor may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 4.3. Consent to Jurisdiction. Each Guarantor irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Project Completion Guaranty Agreement may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If a Guarantor commences any action against the Trustee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, such Guarantor shall, upon request from the Trustee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, such Guarantor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 4.4. Waiver of Trial by Jury. The Guarantors do hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Project Completion Guaranty Agreement or any matters whatsoever arising out of or in any way connected with this Project Completion Guaranty Agreement or the Guaranteed Obligations.

ARTICLE V

MISCELLANEOUS

Section 5.1. No Alteration Without Consent. No amendment, change, modification, alteration or termination of the Loan Agreement shall be made which would in any way increase any or all of the Guarantors' obligations under this Project Completion Guaranty Agreement without obtaining the prior written consent thereto of the Guarantors. Neither the acts or omissions recited in Section 3.2 hereof, nor any partial redemption of the Bonds, shall constitute any such amendment, change, modification, alteration or termination within the meaning of this Section 5.1.

Section 5.2. Project Completion Guaranty Agreement to Become Effective. The date of this Project Completion Guaranty Agreement shall be for reference purposes only and shall not be construed to imply that this Project Completion Guaranty Agreement was executed on the date first above written. This Project Completion Guaranty Agreement was executed and delivered on the Commencement Date. The obligations of the Guarantors hereunder shall arise absolutely and unconditionally on the Closing Date.

Section 5.3. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Completion Guaranty Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default, default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 5.4. No Implied Waiver. In the event any provision contained in this Project Completion Guaranty Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Project Completion Guaranty Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties thereunto duly authorized by this Project Completion Guaranty Agreement.

Section 5.5. Entire Agreement; Counterparts. This Project Completion Guaranty Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, other than the Loan Agreement, the Promissory Note and any other Security Document or Project Document, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 5.6. Severability. If any one or more of the provisions of this Project Completion Guaranty Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions of this Project Completion Guaranty Agreement, but this Project Completion Guaranty Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 5.7. Release. Upon the payment, satisfaction and fulfillment of all Guaranteed Obligations and, if applicable, upon payment of the costs, fees and expenses required by Section 3.5, the Trustee shall release in writing the Guarantors from their obligations hereunder, except as provided in Section 3.7.

Section 5.8. Applicable Law. This Project Completion Guaranty Agreement shall be governed by and construed in accordance with the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

Section 5.9. Successors and Assigns. This Project Completion Guaranty Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 5.10. Incorporation of Certain Indenture Provisions. All provisions of Article IX of the Indenture shall be construed as extending to and including all of the rights, duties and obligations imposed upon the Trustee under this Project Completion Guaranty Agreement as fully and for all purposes as if said Article IX were contained in this Project Completion Guaranty Agreement.

[Intentionally Left Blank]

IN WITNESS WHEREOF, each Guarantor has duly authorized the execution of this Project Completion Guaranty Agreement as of the date first above written.

ALBEE RETAIL DEVELOPMENT LLC
as Guarantor

By: /s/ Robert Masters
Robert Masters
Senior Vice President

**ACADIA STRATEGIC OPPORTUNITY
FUND II LLC,**
as Guarantor

By: /s/ Robert Masters
Robert Masters
Senior Vice President

Accepted this July 1, 2010 by

THE BANK OF NEW YORK MELLON,
as Trustee

By: /s/Gaspard Mulé
Gaspard Mulé
Vice President

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AMENDED AND RESTATED NOTEDate of Note: August 19, 2010Note Amount: \$20,650,000Maturity Date: August 12, 2013

THIS AMENDED AND RESTATED NOTE (this "Note"), is made as of August 19, 2010 by ALBEE DEVELOPMENT LLC, a Delaware limited liability company ("Borrower"), in favor of BANK OF AMERICA, N.A. (together with any and all of its successors and assigns and/or any other holder of this Note, "Lender").

RECITALS

A. Lender is now the lawful owner and holder of those certain consolidated notes described in, and modified by, that certain Note Assumption and Modification Agreement dated as of June 13, 2007 (the "Initial Note") between Borrower and Lender which evidenced a principal indebtedness of \$34,000,000, as modified and extended by Note Modification and Extension Agreement between Lender and Borrower dated as of June 10, 2008 (the "First Modification"), as modified and extended by Second Note Modification and Extension Agreement between Lender and Borrower dated as of August 13, 2008 (the "Second Modification"), as modified and extended by Third Note Modification and Extension Agreement between Lender and Borrower dated as of August 13, 2009 (the "Third Modification"), as modified and extended by Fourth Note Modification and Extension Agreement between Lender and Borrower dated as of February 10, 2010 (the "Fourth Modification") and as modified by Note and Mortgage Modification and Severance Agreement between Lender and Borrower dated as of June 28, 2010 (the "Severance Agreement"; the Initial Note, the First Modification, the Second Modification, the Third Modification, the Fourth Modification and the Severance Agreement, collectively, the "Existing Note").

B. The Existing Note is secured by the consolidated mortgage described in, and modified by, that certain Mortgage Assumption and Modification Agreement dated as of June 13, 2007, which was recorded on June 29, 2007 in the Office of the New York City Register, Kings County (the "Office") under CRFN 2007000336507, as modified by the Severance Agreement, which was recorded in the Office on July 8, 2010 as CRFN 2010000225320 (collectively, as the same may from time to time be amended, restated, modified or supplemented, the "Mortgage").

C. Borrower and Lender desire to extend the maturity of the Existing Note and otherwise amend and restate in its entirety the Existing Note on the terms and conditions provided in this Note as hereinafter set forth.

D. Borrower and Lender intend these Recitals to be a material part of this Note.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

I. Borrower is obligated to pay the indebtedness evidenced by the Existing Note and hereby agrees to pay the indebtedness evidenced thereby in accordance with the terms hereof.

II. From and after the date hereof, the terms, covenants and provisions of the Existing Note are hereby modified, amended and restated in their entirety so that henceforth the terms, covenants and provisions of this Note shall supersede those of the Existing Note;

III. Neither this Note nor anything contained herein shall be construed as a substitution or novation of the Borrower's indebtedness to Lender or of the Existing Note all of which shall remain in full force and effect, as hereby confirmed, modified, amended and restated in their entirety;

IV. In consideration of Lender's extension of the Maturity Date hereby, Borrower hereby agrees to pay Lender an extension fee of \$154,875 on the date hereof;

V. On the date hereof, the principal amount outstanding under the Existing Note is \$20,650,000; and

VI. Borrower represents, warrants and covenants to Lender that there are no offsets, counterclaims or defenses with respect to Borrower's obligations under the Existing Note.

NOW, THEREFORE, FURTHER, FOR VALUE RECEIVED, Borrower does hereby covenant and promise to pay to the order of Lender, without offset, in immediately available funds in lawful money of the United States of America, at One Bryant Park, 35th Floor, New York, New York 10036, the principal sum of Twenty Million Six Hundred Fifty Thousand (\$20,650,000) (or the unpaid balance of all principal outstanding under 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.

Section 1. Payment Schedule and Maturity Date. Prior to maturity, accrued and unpaid interest shall be due and payable in arrears on the first day of each month commencing on September 1, 2010. The entire principal balance of this Note, as reduced, then unpaid, together with all accrued and unpaid interest and all other amounts payable hereunder and under the other Loan Documents (as hereinafter defined), shall be due and payable in full on August 12, 2013 (the "Maturity Date"), the final maturity of this Note.

Section 1A. Extension Options. Borrower may elect to extend the Maturity Date for two (2) periods of one year each (the end of each such period, the "Extended Maturity Date"), upon and subject to the following terms and conditions:

(a) Basic Conditions for the First One Year Extension. Unless otherwise agreed by Lender in writing:

- (i) Borrower shall request the extension, if at all, by written notice to Lender not more than ninety (90) days, and not less than thirty (30) days, prior to the Maturity Date.
- (ii) Borrower shall have made payments in reduction of the principal amount of this Note so that the outstanding principal balance of this Note is \$8,260,000 or less.
- (iii) At the time of the request, and at the time of the extension, there shall not exist any Event of Default, nor any condition or state of facts which after notice and/or lapse of time would constitute an Event of Default.
- (iv) Current financial statements regarding Borrower and all other financial statements and other information as may be required under the Loan Documents regarding Borrower and Acadia Strategic Opportunity Fund II LLC ("Guarantor") and the Property, shall have been submitted to Lender as and when required under the Loan Documents, and there shall not have occurred, in the reasonable opinion of Lender, any material adverse change in the business or financial condition of Borrower or Guarantor, or in the Property or in any other state of facts submitted to Lender in connection with the Loan Documents, from that which existed on the date of this Note.
- (v) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with the proposed extension (pre- and post-closing), including appraisal fees, environmental audit and reasonable attorneys' fees actually incurred by Lender; all such costs and expenses incurred up to the time of Lender's written agreement to the extension shall be due and payable prior to Lender's execution of that agreement (or if the proposed extension does not become effective, then upon demand by Lender), and any future failure to pay such amounts shall constitute a default under the Loan Documents.
- (vi) All applicable regulatory requirements, including appraisal requirements, shall have been satisfied with respect to the extension.
- (vii) Not later than the Maturity Date, (A) the extension shall have been consented to and documented to Lender's satisfaction by Borrower, Guarantor, Lender, and all other parties deemed necessary by Lender (such as any permitted subordinate lienholders); (B) Lender shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Lender; and (C) Borrower shall have paid to Lender a non-refundable extension fee in the amount of an amount equal to 0.35% of the then outstanding principal balance hereunder.
- (viii) At the time of such extension, the Property shall have a loan-to-value ratio ("Loan-to-Value Ratio") of not greater than 25%, which Loan-to-Value Ratio shall be calculated as the Net Commitment Amount (as hereinafter defined) of the Loan divided by the Market Value (as hereinafter defined) of the Property. As used herein, "Net Commitment Amount" means, as of any date, the outstanding principal amount of the loan evidenced by this Note (the "Loan"). As used herein, "Market Value" means the as-is market value of the Property based on an appraisal meeting all applicable regulatory requirements, taking into account current market conditions, including vacancy factors, discount rates, and rental rates and concessions, as accepted by Lender in its sole and absolute discretion. Lender may determine the Market Value based on a current appraisal or the original appraisal obtained in connection with the amendment and restatement of this Note, as Lender in its reasonable discretion may elect. Any appraisal used to determine the Market Value shall be satisfactory to Lender in all respects and shall be obtained at the sole cost and expense of Borrower. In the event this Loan-to-Value Ratio is not met, Borrower may satisfy this Loan-to-Value Ratio prior to the Maturity Date by either (A) making a voluntary paydown of the Loan, subject to the satisfaction of any conditions to prepayment, including the payment of any prepayment fee or premium, together with a mutually agreed-upon reduction in the committed amount of the Loan, and/or (B) providing additional collateral acceptable to Lender, which shall have value (as determined by Lender) which when added to the Property value is sufficient to satisfy this Loan-to-Value Ratio.

(ix) At the time of such extension, the Property shall have a loan-to-cost ratio ("Loan-to-Cost Ratio") of not greater than 20%, which Loan-to-Cost Ratio shall be calculated as the Net Commitment Amount of the Loan divided by the Acquisition and Development Costs Amount of the Property. As used herein, "Acquisition and Development Costs Amount" means the aggregate out-of-pocket costs incurred by Borrower for the acquisition of the Property and the development thereof, including demolition costs (but expressly excluding acquisition and development costs related to any real property which is no longer encumbered by the Mortgage at the time of such extension), all subject to the reasonable approval and verification of Lender. Borrower and Lender stipulate that, as of the date hereof, the Acquisition and Development Costs Amount is \$168,767,904. In the event this Loan-to-Cost Ratio is not met, Borrower may satisfy this Loan-to-Cost Ratio prior to the extension date by either (A) making a voluntary paydown of the Loan, subject to the satisfaction of any conditions to applicable prepayment, including the payment of any prepayment fee or premium and/or (B) providing additional collateral acceptable to Lender, which shall have value (as determined by Lender) which when added to the Property value is sufficient to satisfy this Loan-to-Cost Ratio.

If all of the foregoing conditions are not satisfied strictly in accordance with their terms, the extension shall not be or become effective.

(b) Basic Conditions for the Second One-Year Extension. Unless otherwise agreed by Lender in writing:

- (i) Borrower shall request the extension, if at all, by written notice to Lender not more than ninety (90) days, and not less than thirty (30) days, prior to the first Extended Maturity Date.
- (ii) Borrower shall have made payments in reduction of the principal amount of this Note so that the outstanding principal balance of this Note is \$6,608,000 or less.

(iii) At the time of the request, and at the time of the extension, there shall not exist any Event of Default, nor any condition or state of facts which after notice and/or lapse of time would constitute an Event of Default.

(iv) Current financial statements regarding Borrower and all other financial statements and other information as may be required under the Loan Documents regarding Borrower and Acadia Strategic Opportunity Fund II LLC ("Guarantor") and the Property, shall have been submitted to Lender as and when required under the Loan Documents, and there shall not have occurred, in the opinion of Lender, any material adverse change in the business or financial condition of Borrower or Guarantor or any tenant of the Property, or in the Property or in any other state of facts submitted to Lender in connection with the Loan Documents, from that which existed on the date of this Note.

(v) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with the proposed extension (pre- and post-closing), including appraisal fees, environmental audit and reasonable attorneys' fees actually incurred by Lender; all such costs and expenses incurred up to the time of Lender's written agreement to the extension shall be due and payable prior to Lender's execution of that agreement (or if the proposed extension does not become effective, then upon demand by Lender), and any future failure to pay such amounts shall constitute a default under the Loan Documents.

(vi) All applicable regulatory requirements, including appraisal requirements, shall have been satisfied with respect to the extension.

(vii) Not later than the then Maturity Date (as extended pursuant to Section 1A(a) above), (A) the extension shall have been consented to and documented to Lender's satisfaction by Borrower, Guarantor, Lender, and all other parties deemed necessary by Lender (such as any permitted subordinate lienholders); (B) Lender shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Lender; and (C) Borrower shall have paid to Lender a non-refundable extension fee in the amount of an amount equal to 0.35% of the then outstanding principal balance hereunder.

(viii) At the time of such extension, the Property shall have a Loan-to-Value Ratio of not greater than 25%. Any appraisal used to determine the Market Value shall be satisfactory to Lender in all respects and shall be obtained at the sole cost and expense of Borrower. In the event this Loan-to-Value Ratio is not met, Borrower may satisfy this Loan-to-Value Ratio prior to the Maturity Date by either (A) making a voluntary paydown of the Loan, subject to the satisfaction of any conditions to prepayment, including the payment of any prepayment fee or premium, together with a mutually agreed-upon reduction in the committed amount of the Loan, and/or (B) providing additional collateral acceptable to Lender, which shall have value (as determined by Lender) which when added to the Property value is sufficient to satisfy this Loan-to-Value Ratio.

(ix) At the time of such extension, the Property shall have a Loan-to-Cost Ratio of not greater than twenty percent (20%). In the event this Loan-to-Cost Ratio is not met, Borrower may satisfy this Loan-to-Cost Ratio prior to the extension date by either (A) making a voluntary paydown of the Loan, subject to the satisfaction of any conditions to applicable prepayment, including the payment of any prepayment fee or premium and/or (B) providing additional collateral acceptable to Lender, which shall have value (as determined by Lender) which when added to the Property value is sufficient to satisfy this Loan-to-Cost Ratio.

(x) The first of the two extension options set forth in this Section shall be for the period (the "First Extension Term") commencing on August 13, 2013 and ending on August 12, 2014 and the second and final extension option shall be for the period (the "Second Extension Term") commencing on August 13, 2014 and ending on August 12, 2015. It shall be a condition to Borrower's option to extend the Maturity Date for the Second Extension Term that Borrower shall have previously validly exercised Borrower's option with respect to the First Extension Term and satisfied the conditions with respect thereto. Borrower shall have no option or other right to extend the Maturity Date past the Second Extension Term.

If all of the foregoing conditions are not satisfied strictly in accordance with their terms, the extension shall not be or become effective.

(c) Changes in Loan Terms. All terms and conditions of the Loan Documents shall continue to apply to the extended term except to the extent changed as indicated below (such changes to be effective on and after the original Maturity Date, if the extension becomes effective as provided herein):

(i) Definition of Maturity Date. The Maturity Date shall mean the Extended Maturity Date.

Section 2. Security; Loan Documents. The security for this Note includes the Mortgage conveying and encumbering certain real and personal property more particularly described therein (the "Property"). This Note, the Mortgage and all other documents now or hereafter securing, guaranteeing or executed in connection with the Loan, as the same may from time to time be amended, restated, modified or supplemented, are herein sometimes called individually a "Loan Document" and together the "Loan Documents".

Section 3. Interest Rate.

(a) BBA LIBOR Daily Floating Rate. The unpaid principal balance of this Note from day to day outstanding which is not past due, shall bear interest at a fluctuating rate of interest per annum (the "Floating Rate") equal to the BBA LIBOR Daily Floating Rate for that day plus two hundred fifty (250) basis points per annum. The "BBA LIBOR Daily Floating Rate" shall mean a fluctuating rate of interest per annum 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 Lender 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 Lender's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. 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) **Alternative Rates.** Lender may notify Borrower if the BBA LIBOR Daily Floating Rate is not available for any reason, or if Lender 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 Lender of funding the Loan, or that any applicable Laws (as hereinafter defined) or regulation or compliance therewith by Lender prohibits or restricts or makes impossible the charging of interest based on the BBA LIBOR Daily Floating Rate. If Lender so notifies Borrower, then interest shall accrue and be payable on the unpaid principal of this Note at a fluctuating rate of interest equal to the Prime Rate (as hereinafter defined) of Lender plus two hundred fifty (250) basis points per annum from the date of such notification by Lender until Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, or until the Maturity Date of this Note (whether by acceleration, declaration, extension or otherwise, whichever is earlier to occur). The term "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. The term "Prime Rate" means, on any day, the rate of interest per annum then most recently established by Lender as its "prime rate". Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by Lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that Lender may make various business or other loans at rates of interest having no relationship to such rate. Any change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of a change in Lender's Prime Rate. If Lender (including any subsequent holder of this Note) 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.

(c) **Default Rate.** Notwithstanding anything to the contrary contained herein, if any amount payable by Borrower under any Loan Document is not paid when due and such failure continues beyond the cure or grace period, if any, set forth in Section 8 hereof or in the Mortgage, such amount shall bear interest from the date due at the Default Rate (as defined below) 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 fluctuating rate per annum (the "Default Rate") equal to the sum of (x) the interest rate otherwise applicable under clauses (a) and (b) of this Section 3 plus (y) five hundred (500) basis points.

Section 4. **Prepayment.** Borrower may prepay the principal balance of this Note, in full at any time or in part from time to time, without fee, premium or penalty, provided that: (a) no prepayment may be made which in Lender's judgment would contravene or prejudice funding under any applicable permanent loan commitment or tri-party agreement or the like; (b) Lender 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; (c) each prepayment shall be in the amount of \$1,000 or a larger integral multiple of \$1,000 (unless the prepayment retires the outstanding balance of this Note in full); and (d) 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 Lender under the Loan Documents on or before the date of prepayment but have not been paid. If this Note is prepaid in full, any commitment of Lender for further advances shall automatically terminate. No Prepaid Principal may be reborrowed.

Section 5. Late Charges. If Borrower shall fail to make any payment under the terms of this Note (other than the payment due at maturity) within fifteen (15) days after the date such payment is due, Borrower shall pay to Lender on demand a late charge equal to 4% of the amount 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 Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other amount that Lender may be entitled to receive or action that Lender may be authorized to take as a result of such late payment.

Section 6. Certain Provisions Regarding Payments. All payments made under this Note shall be applied, to the extent thereof, to late charges, to accrued but unpaid interest, to unpaid principal, and to any other sums due and unpaid to Lender under the Loan Documents, in such manner and order as Lender may elect in its sole discretion, any instructions from Borrower or anyone else to the contrary notwithstanding. Remittances shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and shall be 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 Lender of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only, notwithstanding any notation on or accompanying such partial payment to the contrary, and shall not in any way (a) waive or excuse the existence of an Event of Default (as hereinafter defined), (b) waive, impair or extinguish any right or remedy available to Lender hereunder or under the other Loan Documents, or (c) waive the requirement of punctual payment and performance or constitute a novation in any respect. Payments received after 2:00 p.m. shall be deemed to be received on, and shall be posted as of, the following Business Day. Whenever any payment under this Note or any other Loan Document falls due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

Section 7. Loan-to-Value Covenant. At all times the Property shall have a Loan-to-Value Ratio of not greater than 25%. Any appraisal used to determine the Market Value shall be satisfactory to Lender in all respects and shall be obtained at the sole cost and expense of Borrower, provided, however, that unless an Event of Default shall have occurred, Borrower shall not be required to pay the cost of more than one such appraisal per calendar year. In the event this Loan-to-Value Ratio is not met, Borrower may satisfy this Loan-to-Value Ratio prior to the Maturity Date by doing the following within thirty (30) days of Notice from Lender to Borrower of any failure to meet the required Loan-to-Value Ratio: either (A) making a voluntary paydown of the Loan, subject to the satisfaction of any conditions to prepayment, including the payment of any prepayment fee or premium, together with a mutually agreed-upon reduction in the committed amount of the Loan, and/or (B) providing additional collateral acceptable to Lender (which may include an acceptable stand-by letter of credit in favor of Lender), which shall have value (as determined by Lender) which when added to the Property value is sufficient to satisfy this Loan-to-Value Ratio. If the required Loan-to-Value Ratio is not met and Borrower fails to satisfy this covenant as aforesaid within such thirty (30) day period, such occurrence shall constitute an Event of Default.

Section 8. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" under this Note:

- otherwise.
- (a) Borrower fails to pay the final principal balance of this Note when due, together with accrued and unpaid interest thereon, whether upon the Maturity Date, upon acceleration or otherwise.
 - (b) Borrower fails to pay when and as due and payable any installment of interest or interest and principal when due under this Note or any other amounts payable by Borrower to Lender under the terms of this Note or any of the other Loan Documents and such failure continues for ten (10) days.
 - (c) Any covenant, agreement or condition in this Note is not fully and timely performed, observed or kept, subject to any applicable grace or cure period.
 - (d) An Event of Default (as therein defined) occurs under any of the Loan Documents other than this Note (subject to any applicable grace or cure period).

Section 9. Remedies. Upon the occurrence of an Event of Default, Lender may at any time thereafter exercise any one or more of the following rights, powers and remedies:

- (a) Lender may accelerate the Maturity Date and declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts payable hereunder and under the other Loan Documents, at once due and payable, and upon such declaration the same shall at once be due and payable.
- (b) Lender may set off the amount owed by Borrower to Lender, whether or not matured and regardless of the adequacy of any other collateral securing this Note, against any and all accounts, credits, money, securities or other property now or hereafter on deposit with, held by or in the possession of Lender to the credit or for the account of Borrower, without notice to or the consent of Borrower.
- (c) Lender may exercise any of its other rights, powers and remedies under the Loan Documents or at law or in equity.

Section 10. Remedies Cumulative. All of the rights and remedies of Lender under this Note and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, nor delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Event of Default.

Section 11. Costs and Expenses of Enforcement. Borrower agrees to pay to Lender on demand all costs and expenses incurred by Lender in seeking to collect this Note or to enforce any of Lender's rights and remedies under the Loan Documents, including court costs and reasonable attorneys' fees and expenses, whether or not suit is filed hereon, or whether in connection with bankruptcy, insolvency or appeal.

Section 12. Service of Process. Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Note 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, Esq., Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, Robert Masters, individually, being 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 a ny such suit, action, or proceeding. Nothing in this Note shall affect the right of Lender to serve process in any manner otherwise permitted by law and nothing in this Note will limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions.

Section 13. 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.

Section 14. 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 each party executing this Note as Borrower 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 Lender shall not 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 State of New York, the state and county in which payment of this Note is to be made for the enforcement of any and all obligations under this Note and the other 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 title, security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate to the Loan and the Loan Documents any and all rights against Borrower and any 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 the laws of the State of New York (without regard to any principles of conflicts of laws) and applicable United States federal law. Whenever a time of day is referred to herein, unless otherwise specified such time shall be the local time of the place where payment of this Note is to be made. The term "Business Day" shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Mortgage. The words "include" and "including" shall be interpreted as if followed by the words "without limitation".

Section 15. 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 terms of the Mortgage regarding notices.

Section 16. No Usury. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits 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 Lender'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 Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of this Note and all other indebtedness secured by the Mortgage, 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 Lender for the use or forbearance of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread through out the full stated term of the Loan.

Section 17. Lost Note. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of this Note or any other security document which is not of public record, and, in the case of any such loss, theft, destruction or mutilation, upon cancellation of this Note or other security document, Borrower will issue, in lieu thereof, a replacement note or other security document in the same principal amount thereof and otherwise of like tenor.

Section 18. Method of Payment. All payments due under this Note shall be made by Borrower to Lender at One Bryant Park, 35th Floor, New York, New York 10036 or such other place as Lender may from time to time specify in writing in lawful currency of the United States of America in immediately available funds, without counterclaim or setoff and free and clear of, and without any deduction or withholding for, any taxes or other payments.

Section 19. Pledge to the Federal Reserve. Lender may at any time pledge or assign all or any portion of its rights under the Loan Documents, which evidence and/or secure the Loan, including any portion of this Note, to any of the twelve (12) Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. Section 341. No such pledge or assignment or enforcement thereof shall release Lender from its obligations under any of the Loan Documents, which evidence and/or secure the Loan.

Section 20. Right of Setoff. Borrower hereby grants to Lender, a continuing lien, security interest and right of setoff as security for all liabilities and obligations to Lender whether now existing or hereafter arising, upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Lender or any entity under the control of Bank of America Corporation and its successors and/or assigns or in transit to any of them. At any time, without demand or notice (any such notice being expressly waived by Borrower), Lender may setoff the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral security for the Loan which is evidenced by this Note. **ANY AND ALL RIGHTS TO REQUIRE LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LOAN WHICH IS EVIDENCED BY THIS NOTE PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE BORROWER OR ANY GUARANTOR, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.**

Section 21. Waiver of Jury Trial. BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF LENDER RELATING TO THE ADMINISTRATION OF THE LOAN EVIDENCED BY THIS NOTE OR ENFORCEMENT OF THE LOAN DOCUMENTS EVIDENCING AND/OR SECURING THE LOAN, AND AGREE THAT NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR LENDER TO ACCEPT THIS NOTE AND MAKE THE LOAN.

Section 22. Choice of Law. BORROWER AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT. BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT FORUM.

Section 23. Counterparts. This Note may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original and all of which taken together shall constitute but one agreement.

Section 24. Exculpation. The exculpation provisions set forth in Section 3.17 of the Mortgage are herein incorporated in this Note by reference all with the same force and effect as if fully set forth herein.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower and Lender have duly executed this Note as of the date first above written.

BORROWER:

ALBEE DEVELOPMENT LLC, a Delaware
limited liability company

By /s/ Robert Masters
Robert Masters
Senior Vice President

Address of Borrower:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605

BANK OF AMERICA, N.A.,

By /s/ Gregory Egli
Gregory Egli
Senior Vice President

Location of Premises:

70-90 Albee Square a/k/a 405-469 Albee Square
a/k/a 1-7 DeKalb Avenue a/k/a 126-140 Willoughby
Street, Brooklyn, New York

This is to certify that this Amended and Restated Note was executed by Borrower in my presence on the date hereof by the party whose signature appears above on behalf of Borrower in the capacity indicated.

/s/ Debra Leibler-Jones
Notary Public

My Commission Expires:

April 20, 2014 _____

As of August 19, 2010

Bank of America, N.A.
One Bryant Park, 35th Floor
New York, New York 10036

Attention: Real Estate Finance

Re: Mortgage Loan (the "Loan") from Bank of America, N.A.
("Lender") to Albee Development LLC ("Borrower")

Gentlemen:

Reference is made to (i) a certain Indemnity Agreement dated as of June 13, 2007 made by Borrower and Acadia Strategic Opportunity Fund II, LLC ("ASOF II"), a Delaware limited liability company (collectively, "Indemnitors") to Lender (the "HM Indemnity") and (ii) a certain Guaranty of Payment - Mortgage Loan dated as of June 13, 2007 made by ASOF II to Lender, as modified by that certain Guaranty Modification Agreement dated as of November 30, 2009 (collectively, the "Guaranty"), pursuant to which ASOF guaranteed certain obligations of Borrower in connection with the Loan.

In order to induce Lender to modify the terms and provisions of the Loan, which modification is evidenced by, among other things, an Amended and Restated Note between Borrower and Lender dated the date hereof (the "Modification"), Indemnitors hereby reaffirm all of their obligations under the HM Indemnity and the Guaranty and agree that references therein to loan documents shall include the Modification and any other modifications to the documents evidencing and securing the Loan which Borrower may execute from time to time. ASOF II further hereby agrees to comply with the provisions of the Modification applicable to ASOF II.

[Remainder of page intentionally left blank]

We hereby covenant, represent and warrant to Lender that the HM Indemnity and the Guaranty remain in full force and effect and that there exists no offsets, counterclaims, causes of action or defenses with respect to our obligations thereunder.

Very truly yours,

ALBEE DEVELOPMENT LLC, a Delaware limited liability company

By: /s/ Robert Masters
Robert Masters
Senior Vice President

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
Robert Masters
Senior Vice President

By and Among

ACADIA-P/A 161ST STREET LLC
(Borrower),

ACADIA-P/A HOLDING COMPANY, LLC
(Guarantor), and

BANK OF AMERICA, N.A.,
successor by merger to LaSalle Bank National Association, as trustee for the benefit of the
holders of RBS Commercial Funding Inc. (f/k/a Greenwich Capital Commercial Funding
Corp.), Commercial Mortgage Trust 2006-FL4, Commercial Mortgage Pass-Through
Certificates, Series 2006-FL4
(Lender)

THIRD LOAN EXTENSION AND MODIFICATION AGREEMENT

Dated: As of July 9, 2010

Property Location: 244 - 268 East 161st Street
Bronx, New York

Block: 2443
Lot: 0100

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

Alston & Bird LLP
101 South Tryon Street, Suite 4000
Charlotte, North Carolina 28202
Attention: Robert J. Sullivan, Esq.

**THIS THIRD LOAN EXTENSION AND MODIFICATION AGREEMENT DOES NOT COVER REAL
PROPERTY PRINCIPALLY IMPROVED BY ONE OR MORE STRUCTURES CONTAINING, IN THE
AGGREGATE, NOT MORE THAN SIX RESIDENTIAL DWELLING UNITS, EACH HAVING ITS OWN
SEPARATE COOKING FACILITIES**

THIRD LOAN EXTENSION AND MODIFICATION AGREEMENT

This **THIRD LOAN EXTENSION AND MODIFICATION AGREEMENT** (this "**Agreement**") is made as of July 9, 2010 by and among ACADIA-P/A 161ST STREET LLC, a Delaware limited liability company ("**Borrower**"), having an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, ACADIA-P/A HOLDING COMPANY, LLC, a Delaware limited liability company ("**Guarantor**"), having an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and BANK OF AMERICA, N.A., successor by merger to LaSalle Bank National Association, as trustee for the benefit of the holders of RBS Commercial Funding Inc. (f/k/a Greenwich Capital Commercial Funding Corp.), Commercial Mortgage Trust 2006-FL4, Commercial Mortgage Pass-Through Certificates, Series 2006-FL4 ("**Lender**"), by and through Wells Fargo Bank, N.A., successor-by-merger to Wachovia Bank, National Association, having an address at 301 South College Street, TW-17, Charlotte, North Carolina 28288-0170, solely in its capacity as Special Servicer pursuant to that certain Pooling and Servicing Agreement, dated as of December 29, 2006, by and among RBS Commercial Funding Inc. (f/k/a Greenwich Capital Commercial Funding Corp.), as Depositor, Wells Fargo Bank, N.A., successor-by-merger to Wachovia Bank, National Association, as Servicer and Special Servicer, and Lender, as Trustee.

WITNESSETH:

WHEREAS, RBS Financial Products Inc. (f/k/a Greenwich Capital Financial Products, Inc.) ("**Original Lender**") made a loan to Borrower in the original principal amount of THIRTY MILLION AND 00/100 DOLLARS (\$30,000,000.00) (the "**Loan**") as evidenced and secured by the following documents:

- (a) Each of the notes secured by the Existing Mortgages (as defined below) including, but not limited to, that certain Amended, Restated and Consolidated Promissory Note, dated as of March 27, 2006, executed by Borrower in favor of Original Lender (as the foregoing may from time to time be further amended or replaced, the "**Existing Notes**");
 - (b) That certain Loan Agreement, dated as of March 27, 2006, by and between Borrower and Original Lender, as amended by that certain First Amendment to Loan Agreement, dated as of December ____, 2006, by and between Borrower and Original Lender (as the foregoing may from time to time be further amended or replaced, the "**Loan Agreement**");
 - (c) The mortgages described on Schedule 1 to this Agreement (as the foregoing may from time to time be further amended or replaced, collectively, the "**Existing Mortgages**") with respect to the land described in Exhibit A to this Agreement;
 - (d) That certain Guaranty of Recourse Obligations, dated as of March 27, 2006, made by Guarantor in favor of Original Lender (as the foregoing may from time to time be amended or replaced, the "**Guaranty**");
-

- (e) That certain Loan Extension Agreement, dated as of March 17, 2008, by and between Borrower and Lender (as the foregoing may from time to time be amended or replaced, the "**First Extension Agreement**"), a copy of which is attached as **Schedule 2** to this Agreement; and
- (f) That certain Second Loan Extension Agreement, dated as of April 1, 2009, by and between Borrower and Lender (as the foregoing may from time to time be amended or replaced, the "**Second Extension Agreement**"), a copy of which is attached as **Schedule 3** to this Agreement.

The Existing Notes, the Loan Agreement, the Existing Mortgages, the Guaranty, the First Extension Agreement and the Second Extension Agreement, together with any and all other documents from time to time executed by Borrower, Original Lender, Lender, and/or Guarantor in connection with the Loan, including, without limitation, this Agreement, are collectively called the "**Loan Documents**." All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

WHEREAS, Original Lender assigned, sold and transferred its interest in the Loan and all Loan Documents to Lender and Lender is the current holder of all of Original Lender's interest in the Loan and Loan Documents.

WHEREAS, Borrower has requested that Lender grant a three-year extension option (the "**Third Extension**").

WHEREAS, Lender hereby consents to the Third Extension subject to all covenants, terms and conditions herein provided (including, but not limited to, the Principal Paydown referred to in **Section B.1** of this Agreement, **after which the outstanding principal balance of the Loan shall be reduced to \$28,900,000.00**).

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Guarantor and Lender, notwithstanding anything in the Loan Documents to the contrary, hereby agree to modify the Loan, amend the Loan Documents, and otherwise agree as follows:

A. Extension of the Maturity Date.

Subject to the satisfaction of all conditions set forth in this Agreement as determined by Lender in its sole and absolute discretion, the Loan is hereby modified as follows:

1. Subject to Borrower's satisfaction of all terms and conditions contained in this Agreement, Lender and Borrower agree that the Maturity Date shall be extended to April 1, 2013 (the "**Third Extended Maturity Date**").
 2. All references to the term "Maturity Date" appearing in the Loan Documents are hereby changed to refer to the Third Extended Maturity Date.
-

3. All references to the term "Loan Documents" are hereby changed to mean the "Loan Documents" as defined in this Agreement, and shall be deemed to include this Agreement, together with any and all other documents, instruments and agreements executed or delivered in connection herewith.

4. The definition of "Cash Management Period" in Section 1.1 of the Loan Agreement is deleted in its entirety and replaced with the following:

"Cash Management Period: shall commence upon Lender giving notice to the Clearing Bank of the occurrence of any of the following: (i) the Stated Maturity Date, (ii) an Event of Default, or (iii) if, as of any Calculation Date, the Debt Service Coverage Ratio is less than 1.10:1 (a **"DSCR Cash Management Period"**); and shall end on the Maturity Date."

5. The definition of "Spread" in Section 1.1 of the Loan Agreement is deleted in its entirety and replaced with the following:

"Spread: From and including April 1, 2010 through and including March 31, 2011, 4.00%; from and including April 1, 2011 through and including March 31, 2012, 5.50%; and from and including April 1, 2012 through and including the Third Extended Maturity Date, 6.00%."

6. Section 2.6.1(1) of the Loan Agreement is deleted in its entirety and replaced with the following:

"(1) the Interest Rate Protection Agreement is with a financial institution having a long term, unsecured and unsubordinated debt rating of at least "A" by S&P and "A2" by Moody's (an **"Acceptable Counterparty"**); has a term ending no earlier than the Stated Maturity Date; is an interest rate cap in respect of a notional amount not less than the maximum principal amount of the Loan that shall have the effect of capping LIBOR at 6.00% per annum; and provides that the only obligation of Borrower thereunder is the making of a single payment upon the execution and delivery thereof."

7. Section 2.6.1(4) of the Loan Agreement is deleted in its entirety and replaced with the following:

"(4) In the event of any downgrade, withdrawal or qualification of the rating of the issuer of the Interest Rate Protection Agreement below "A-" by S&P or "A3" by Moody's, Borrower shall replace the Interest Rate Protection Agreement with a replacement Interest Rate Protection Agreement from an Acceptable Counterparty (with terms identical to the Interest Rate Protection Agreement being replaced, or otherwise approved by Lender in its reasonable discretion and the Rating Agencies) not later than thirty (30) days following receipt of notice from Lender or the Servicer of such downgrade, withdrawal or qualification."

8. Section 2.8 of the Loan Agreement is deleted in its entirety.

9. Section 3.9 of the Loan Agreement is hereby amended by adding the following at the end of such Section:

“Notwithstanding the foregoing, during a Cash Management Period, if there are insufficient amounts in the Capital Reserve Subaccount, the Rollover Reserve Subaccount or the NYSDOP Rollover Reserve Subaccount for the payment of an Approved Capital Expense, Approved Leasing Expense or Approved NYSDOP Lease Leasing Expense, Lender agrees to apply the necessary amount from the Cash Collateral Subaccount to pay the shortfall related to such Approved Capital Expense, Approved Leasing Expense or Approved NYSDOP Lease Leasing Expense, as applicable, in accordance with the terms of Section 3.4 or Section 3.5 above, as applicable.”

10. Lender hereby waives all interest accrued and currently outstanding on the Loan at the Default Rate pursuant to Section 2.2.2 of the Loan Agreement. For the avoidance of doubt, Lender does not waive any interest accrued on the Loan at the Interest Rate pursuant to Section 2.2.1 during the continuance of such Event of Default. Further, Lender does not waive its right to charge Default Rate on the Loan at any other time as provided under the Loan Agreement.

11. Lender hereby waives the Late Payment Charge that has accrued and is currently outstanding on the Loan pursuant to Section 2.5.3 of the Loan Agreement. For the avoidance of doubt, Lender does not waive its right to charge a Late Payment Charge on the Loan at any other time as provided under the Loan Agreement.

12. Lender hereby waives the Exit Fee that would be due and payable on the Principal Paydown (as defined below) pursuant to Section 2.7.2 of the Loan Agreement. For the avoidance of doubt, Lender does not waive its right to charge an Exit Fee on future principal prepayments of the Loan at any other time as provided under the Loan Agreement.

13. The outstanding principal balance of the Loan, after giving effect to the Principal Paydown set forth in Section B.1 of this Agreement, shall be reduced to \$28,900,000.00.

B. Conditions to this Agreement.

On or prior to the date hereof (or at such other time as may be specified below), as a condition to the Lender’s agreement to the Third Extension, Borrower shall satisfy the following conditions:

1. On or before the date of this Agreement, Borrower shall have prepaid the outstanding principal balance of the Loan by One Million One Hundred Thousand and NO/100 Dollars (\$1,100,000.00) pursuant to Section 2.3.3 of the Loan Agreement (the “*Principal Paydown*”). Lender hereby waives the condition precedent to the Principal Paydown that Borrower deliver thirty (30) days’ prior written notice thereof with respect solely to the Principal Paydown. For the avoidance of doubt, Lender does not waive such notice requirement for any additional optional prepayments of the Loan.

2. Borrower and Guarantor shall each have certified to Lender that no Default or Event of Default has occurred and is continuing on the date of this Agreement.

3. Borrower shall have secured, on or before the date of this Agreement, an extension of or the replacement of the Interest Rate Protection Agreement, which shall (i) be for a term commencing on or prior to the date hereof and expiring no earlier than the Third Extended Maturity Date, (ii) have a notional amount which shall not at any time be less than the outstanding principal balance of the Loan, (iii) have a strike price equal to six percent (6.00%), (iv) be with a Counterparty satisfying the requirements set forth in Section 2.6 of the Loan Agreement (as amended by this Agreement), (v) have terms acceptable to Lender, and (vi) be assigned to Lender.

4. Borrower shall have delivered to Lender, at Borrower's sole cost and expense (a) an updated title search for the Property, (b) a title insurance date down endorsement issued in connection with the Title Insurance Policy insuring the continued priority of the lien of the Existing Mortgages, which shows no encumbrances on the Property other than the Permitted Encumbrances and any subsequent encumbrances expressly approved in writing by Lender and (c) new or updated appraisals, environmental reports, and engineering reports, if required by Lender.

5. Borrower shall have paid to Lender an application fee in an amount equal to \$170,500.00.

6. An original copy of this Agreement executed by Borrower and Guarantor and all other documentation related to the extension of the Loan as contemplated by this Agreement shall be delivered to Lender.

7. Borrower shall have paid to Lender (x) any Principal and interest due in accordance with the terms of the Existing Notes (including, for the avoidance of doubt, interest at the increased Spread from April 1, 2010, as modified pursuant to Section A.5 of this Agreement), (y) any other sums due and payable under the Loan Documents and (z) all other fees, costs and expenses of Lender incident to the preparation and execution hereof and the consummation of this Agreement, including, but not limited to, reasonable attorneys' fees and disbursements, any servicing fees and any expenses (including, but not limited to, appraisals).

C. Representations, Warranties and Covenants.

1. Borrower covenants to continue to make monthly payments as provided under the Existing Notes on each Payment Date up to and including the Third Extended Maturity Date in the same manner set forth in the Loan Documents

2. Borrower and Guarantor each certifies to Lender that no Default or Event of Default has occurred and is continuing on the date of this Agreement.

3. Borrower and Guarantor acknowledge that, except as expressly set forth herein, nothing contained herein shall be construed to relieve Borrower or Guarantor from any of their respective obligations under the Existing Notes, the Loan Agreement, the Existing Mortgages, the Guaranty, the First Extension Agreement, the Second Extension Agreement and the other Loan Documents.

4. Borrower and Guarantor hereby (i) ratify and confirm to Lender that all of the terms, covenants, indemnifications and provisions of the Existing Notes, the Loan Agreement, the Existing Mortgages, the Guaranty, the First Extension Agreement, the Second Extension Agreement and the other Loan Documents are and shall remain in full force and effect without change, except as otherwise expressly and specifically modified by this Agreement, (ii) represent and warrant to Lender that Borrower and Guarantor are in compliance with all of the terms applicable to Borrower and Guarantor, as applicable, under the Loan Documents and no Default or Event of Default has occurred and is continuing, and (iii) re new and confirm as of the date hereof each of the representations and warranties made by Borrower and Guarantor under the Loan Documents.

5. Borrower and Guarantor represent, warrant and covenant that Borrower and Guarantor each have full power, authority and legal right to execute this Agreement and to keep and observe all of the terms of this Agreement on its part to be observed or performed.

6. In the event of any conflict or ambiguity between the terms, covenants and provisions of this Agreement and those of the Existing Notes, the Loan Agreement, the Existing Mortgages, the Guaranty, the First Extension Agreement, the Second Extension Agreement and the other Loan Documents, the terms, covenants and provisions of this Agreement shall control.

7. Borrower and Guarantor shall each indemnify, defend and hold Lender harmless against any and all liability, obligations, losses, damages, penalties, claims, actions suits, costs and expenses (including Lender's reasonable attorneys' fees) of whatever kind or nature which may be asserted against, imposed on or incurred by Lender in connection with the Debt, this Agreement, the Existing Mortgages, the Property, or any part thereof, or the exercise by Lender of any rights or remedies granted to it under this Agreement or the Existing Mortgages. Each of Borrower and Guarantor acknowledges that the obligations set forth in this paragraph obligate Borrower and Guarantor even if the liabilities, obligations, losses, penalty, fines, claims, suits or other proceedings and costs and expenses arose out of a claim, cause of action, or suit that is based on or alleged to be based on Lender's negligence or strict liability of Lender. Borrower's and Guarantor's obligation to indemnify Lender in accordance with this Agreement is in addition to, and not in derogation or in lieu of, any other indemnity obligations contained in the Loan Documents.

8. Borrower and Guarantor each hereby represents and warrants to, and covenants with, Lender that as of the date hereof (a) none of Borrower or Guarantor has any defense, offset, counterclaim, abatement or right of rescission of any kind or nature whatsoever against Lender with respect to this Agreement or the other Loan Documents or the transactions contemplated therein, or any action previously taken or not taken by Lender with respect thereto or with respect to any security interest, encumbrance, lien or collateral in connection therewith to secure the liabilities of Borrower and Guarantor thereunder and (b) Lender has fully performed all obligations to Borrower and Guarantor which they may have had or have on and as of the date hereof. Without limiting the generality of the foregoing, Borrower and Guarantor, on each of its own behalf and on the behalf of its past, present and future representatives, partners, and managers, members, shareholders, officers, directors, agents, employees, servants, successors and assigns (hereinafter referred to as the "**Borrowing Group**") hereby waives, releases and forever discharges Lender, and each of its past, present and future officers, directors, subsidiary and affiliated entities or companies, agents, servants, employees, shareholders, partners, members, managers, representatives, successors, assigns, attorneys, accountants, assets and properties, as the case may be (hereinafter referred to as the "**Lender Group**") from and against all manner of actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills specialties, covenants, contracts, controversies, agreements, promises, obligations, liabilities, costs, expenses, losses, damages, judgments, executions, claims and demands, of whatever kind and nature, in law or in equity, whether known or unknown, whether or not concealed or hidden, arising out of or relating to any matter, cause or thing, whatsoever, that any of the Borrowing Group, jointly or severally, may have had, or now have or that may subsequently accrue against the Lender Group by reason of any matter or thing whatsoever through the date hereof arising out of or in any way connected to the Loan. Borrower and Guarantor acknowledge and agree that Lender is specifically relying upon the representations, warranties, covenants and agreements contained herein and that such representations, warranties, covenants, and agreements constitute a material inducement to enter into the transactions contemplated in this Agreement. Nothing set forth above shall be construed as releasing Lender from its obligations hereunder.

9. This Agreement may not be modified, amended, waived, changed or terminated orally, but only by an agreement in writing signed by the party against whom the enforcement of the modification, amendment, waiver, change or termination is sought.

10. This Agreement shall be binding upon and inure to the benefit of Borrower, Guarantor and Lender and their respective successors and assigns.

11. This Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

12. If any term, covenant or condition of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the applicable laws of the United States of America.

14. It is the intention and understanding of the parties hereto that this Agreement shall act as an extension of the Loan and that this Agreement shall not act as a novation of such Loan.

D. State of New York Provisions.

1. In the event of any inconsistencies between the terms and conditions of this Section D and the other terms and conditions of this Agreement, the terms and conditions of this Section D shall control and be binding.
 2. The terms, covenants and conditions contained herein shall be construed as affording to Lender 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 (other than paragraph 4 thereof).
 3. In compliance with Section 13 and Article 3-A of the Lien Law of the State of New York, Borrower will receive all advances secured by the Existing Mortgages and will hold the right to receive all such advances as a trust fund to be applied first for the purpose of paying the cost of improvements, and will apply all such advances first to the payment of the cost of improvements before using any part of such advances for any other purpose. Borrower will indemnify and hold Lender harmless from and against any loss, liability, cost or expense, including, without limitation, any judgments, reasonable attorneys' fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by B of any applicable lien law provisions including, without limitation, any section of Article 3-A of the New York Lien Law.
 4. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE MAXIMUM AMOUNT OF PRINCIPAL INDEBTEDNESS SECURED BY THE EXISTING MORTGAGES AT THE TIME OF EXECUTION OR WHICH UNDER ANY CONTINGENCY MAY HEREAFTER BECOME SECURED HEREBY AT ANY TIME IS THIRTY MILLION AND NO/100 DOLLARS (\$30,000,000.00) PROVIDED THAT SUCH LIMITATION SHALL NOT LIMIT THE SECURITY OF THE EXISTING MORTGAGES WITH RESPECT TO (I) INTEREST ON THE AFORESAID MAXIMUM AMOUNT OF PRINCIPAL INDEBTEDNESS AT THE RATES SET FORTH IN THE EXISTING NOTES, (II) SUMS TO PAY TAXES, (III) SUMS TO PAY PREMIUMS ON INSURANCE POLICIES COVERING THE PROPERTY, (IV) EXPENSES INCURRED AFTER AN EVENT OF DEFAULT IN UPHOLDING OR ENFORCING THE LIEN OF THE EXISTING MORTGAGES, INCLUDING, BUT NOT LIMITED TO, THE EXPENSES OF ANY LITIGATION TO PROSECUTE OR DEFEND THE RIGHTS AND LIEN CREATED BY THE EXISTING MORTGAGES, (V) ANY AMOUNT, COSTS OR CHARGE TO WHICH LENDER BECOMES SUBROGATED, UPON PAYMENT, WHETHER UNDER RECOGNIZED PRINCIPLES OF LAW OR EQUITY, OR UNDER EXPRESS STATUTORY AUTHORITY, AND (VI) ANY OTHER AMOUNT SECURED BY THE EXISTING MORTGAGES WHICH, IF NOT LIMITED BY SUCH LIMITATION, WOULD NOT INCREASE THE AMOUNT OF MORTGAGE RECORDING TAXES, IF ANY, PAYABLE WITH RESPECT TO THE EXISTING MORTGAGES OR THIS AGREEMENT.
 5. The Existing Mortgages do not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separated cooking facilities.
 6. Reference is made to Section 291-f of the Real Property Law of New York for purposes of obtaining the benefit of said Section in connection with this Agreement.
-

7. Upon the occurrence and during the continuance of an Event of Default and acceleration of the indebtedness secured hereby, Lender shall have the right to sell the Property, including, without limitation, pursuant to Article 14 of the New York Real Property Actions and Proceedings Law, as same may have been or may hereafter be amended.

8. Lender shall, at the request of Borrower, deliver an assignment of the Existing Mortgages (together with the Existing Notes) in lieu of a release or satisfaction hereof upon the payment of the Debt in full, provided that (i) other than containing a representation that Lender shall not have previously transferred its rights under the Existing Mortgages and the amount of the then outstanding indebtedness secured by the Existing Mortgages, the instrument of assignment shall be without representation or warranty by, or recourse to, Lender, in any event whatsoever, (ii) the assignee shall be a third party that is refinancing the Loan, (iii) Lender is permitted by law to deliver an assignment in lieu of recording a satisfaction and (iv) Borrower shall pay all reasonable fees and expenses of Lender in connection with such assignment.

9. It is expressly understood and agreed that this Agreement is given for the purpose of continuing the lien evidenced by the Existing Mortgages and modifying the terms, provisions, covenants and conditions of the Existing Mortgages, as provided herein. The terms, provisions, covenants and conditions of the Existing Mortgages are in their entirety modified and superseded by the terms, provisions, covenants and conditions of this Agreement. No part of the indebtedness evidenced by the Existing Notes shall be disturbed, discharged, canceled or impaired by the execution and delivery of this Agreement, it being the intention of the parties hereto that such execution and delivery shall create no new or further principal indebtedness other than the principal indebtedness evidenced by the Existing Notes.

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IN WITNESS WHEREOF, Borrower, Guarantor and Lender have executed and delivered this Agreement on the date first set forth above.

BORROWER:

ACADIA-P/A 161ST STREET LLC, a Delaware limited liability company

By:

/s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

STATE OF NEW YORK)
) ss:)
COUNTY OF WESTCHESTER)

On July 7, 2010 before me, Robert Masters, personally appeared Robert Masters, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Dawn M. Portney
Notary Public

Dawn M. Portney
Notary Public, State of New York
Registration# 02PO6046122
Qualified in Rockland County
My Commission Expires: August 7, 2010

[Notarial Seal]

GUARANTOR:

ACADIA-P/A HOLDING COMPANY, LLC, a Delaware
limited liability company

By: Acadia Strategic Opportunity Fund II, LLC, its managing
member

By: Acadia Realty Acquisition II, LLC, its managing
member

By: Acadia Realty Limited Partnership, its sole
member

By: Acadia Realty Trust, its general partner

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

On July 7, 2010 before me, Robert Masters, personally appeared Robert Masters, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Dawn M. Portney
Notary Public

Dawn M. Portney
Notary Public, State of New York
Registration# 02PO6046122
Qualified in Rockland County
My Commission Expires: August 7, 2010

LENDER:

**BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO
LASALLE BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE BENEFIT OF THE HOLDERS OF
RBS COMMERCIAL FUNDING INC. (F/K/A GREENWICH
CAPITAL COMMERCIAL FUNDING CORP.),
COMMERCIAL MORTGAGE TRUST 2006-FL4,
COMMERCIAL MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-FL4**

By: Wells Fargo Bank, N.A., a national banking association,
solely in its capacity as Special Servicer, as authorized
under that certain Pooling and Servicing Agreement, dated
December 29, 2006

By: /s/ Daniel S. Lamont
Name: Daniel S. Lamont
Title: Vice President

STATE OF NORTH CAROLINA)
) ss:
COUNTY OF MECKLENBURG)

On July 8, 2010 before me, Patricia C. Black, personally appeared Daniel S. Lamont, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Patricia C. Black
Notary Public, State of North Carolina
My Commission Expires: 4-1-2

[Notarial Seal]

**SCHEDULE 1
MORTGAGES**

Mortgage A

Mortgage and Security Agreement dated October 8, 1998 made by 421 Melrose LLC to The Bank of New York to secure the principal sum of \$16,200,000.00 and recorded in the Office of the New York City Register, Bronx County, on February 24, 1999 in Reel 1624 page 2410. Mortgage tax paid in the amount of \$445,500.00.

Assignment of Mortgage dated as of August 5, 2005 made by The Bank of New York to Bank of America, N.A. and recorded in the Office of the New York City Register, Bronx County, on August 17, 2005 under CRFN 2005000463131. Assigns Mortgage A.

Mortgage Modification Agreement dated as of August 5, 2005 made by Acadia-P/A 161st Street LLC to Bank of America, N.A. and recorded in the Office of the New York City Register, Bronx County, on August 17, 2005 under CRFN 2005000463132. Modifies terms of Mortgage A.

Assignment of Mortgage dated as of December 1, 2005 made by Bank of America, N.A. to Greenwich Capital Financial Products, Inc. and recorded in the Office of the New York City Register, Bronx County, on August 22, 2006 under CRFN 2006000475049. Assigns Mortgage A.

Mortgage B

Mortgage, Assignment of Leases and Rents and Security Agreement (Gap) dated as of March 27, 2006 made by Acadia-P/A 161st Street LLC to Greenwich Capital Financial Products, Inc. to secure the principal sum of \$17,934,131.31 and recorded in the Office of the New York City Register, Bronx County, on August 22, 2006 under CRFN 2006000475050. Mortgage tax paid in the amount of \$502,154.81.

Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of March 27, 2006 made by Acadia-P/A 161st Street LLC to Greenwich Capital Financial Products, Inc. to secure the principal sum of \$30,000,000.00 and recorded in the Office of the New York City Register, Bronx County, on August 22, 2006 under CRFN 2006000475051. Modifies terms of Mortgage B.

Assignment of Mortgage dated as of December 29, 2006 made by Greenwich Capital Financial Products, Inc. to LaSalle Bank National Association, as trustee for the benefit of the holders of Greenwich Capital Commercial Funding Corp., Commercial Mortgage Trust 2006-FL4, Commercial Mortgage Pass-Through Certificates, Series 2006-FL4 and recorded in the Office of the New York City Register, Bronx County, on November 21, 2007 under CRFN 2007000579338. Assigns Mortgage B.

SCHEDULE 2
FIRST EXTENSION AGREEMENT

SCHEDULE 3
SECOND EXTENSION AGREEMENT

**EXHIBIT A
LEGAL DESCRIPTION**

Parcel A

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough and County of Bronx, City and State of New York, being bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of East 161st Street and the westerly side of Morris Avenue (now known as Concourse Village East);

RUNNING THENCE westerly along the southerly side of East 161st Street, 255.50 feet;

THENCE southerly parallel with Morris Avenue, n/k/a Concourse Village East, 65.58 feet;

THENCE easterly parallel with East 161st Street, 190 feet;

THENCE southerly parallel with Morris Avenue, n/k/a Concourse Village East, 99.92 feet;

THENCE easterly parallel with East 161st Street, 65.50 feet to the westerly side of Morris Avenue;

THENCE northerly along the westerly side of Morris Avenue, 165.50 feet to the point or place of BEGINNING;

Parcel B

TOGETHER with the benefits of the easements granted, set forth, defined and limited in that certain Easement Agreement between 421 Port Associates and Concourse Plaza Associates dated August 6, 1990, and recorded in the Office of the City Register, Bronx County, on August 24, 1990, in Reel 1002, page 2284, as amended by Amendment to Easement Agreement dated as of October 25, 1990, and recorded in the Office of the City Register, Bronx County, on November 16, 1990, in Reel 1017, page 772; and

(continued on next page)

EXHIBIT A

(CONT.)

Parcel C

TOGETHER with the benefits of the easements granted, set forth, defined and limited in that certain Deed between The New York Central Railroad Company, as grantor, and 260-161 Corp, as grantee, dated October 28, 1963, and recorded in the Office of the City Register, Bronx County, on November 1, 1963, in Liber 2566, cp. 183, over the following parcel:

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough and County of Bronx, City and State of New York, being bounded and described as follows:

BEGINNING at a point in the westerly side of Morris Avenue, n/k/a Concourse Village East distant southerly 165.50 feet from the corner formed by the intersection of the westerly side of Morris Avenue, n/k/a Concourse Village East and the southerly side of East 161st Street;

RUNNING THENCE westerly parallel with the East 161st Street, 65.50 feet;

THENCE, northerly parallel with Morris Avenue, n/k/a/ concourse Village East, 99.92 feet;

THENCE westerly and parallel with East 161st Street, 190 feet;

THENCE northerly parallel with Morris Avenue, n/k/a Concourse Village East, 65.58 feet to the southerly side of East 161st Street;

THENCE westerly along the southerly side of East 161st Street, 10 feet

THENCE southerly parallel with Morris Avenue, n/k/a Concourse Village East, 85.58 feet;

THENCE easterly parallel with East 161st Street, 180 feet;

THENCE southerly parallel with Morris Avenue, n/k/a Concourse Village East, 99.92 feet;

THENCE easterly parallel with East 161st Street, 85.50 feet to the westerly side of Morris Avenue, n/k/a Concourse Village East;

THENCE northerly along the westerly side of Morris Avenue, n/k/a Concourse Village East, 20 feet to the point or place of BEGINNING.

END OF EXHIBIT A

FOURTH AMENDMENT TO PROJECT LOAN AGREEMENT AND AMENDMENT OF CERTAIN OTHER LOAN DOCUMENTS

Dated: as of August 26, 2010

By and between

P/A-ACADIA PELHAM MANOR, 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: 2 Penn Place
Village: Pelham Manor
Town: Pelham
County: Westchester
Section: 166.76
Block: 1
Lots: 8, 9 and 10

MERS MIN: 8000101-0000007140-6

FOURTH AMENDMENT TO PROJECT LOAN AGREEMENT AND AMENDMENT OF
CERTAIN OTHER LOAN DOCUMENTS

This FOURTH AMENDMENT TO PROJECT LOAN AGREEMENT AND AMENDMENT OF CERTAIN OTHER LOAN DOCUMENTS (this "**Amendment**"), dated as of August 26, 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 **P/A-ACADIA PELHAM MANOR, 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 ("**Guarantor**"), **ACADIA-P/A MANAGEMENT SERVICES, LLC**, a Delaware limited liability company ("**P/A Manager**") and **SELF STORAGE MANAGEMENT LLC**, a Delaware limited liability company ("**Self Storage Manager**").

WITNESSETH:

WHEREAS, pursuant to the terms and conditions of that certain Project Loan Agreement, dated as of December 10, 2007, as amended by (i) that certain First Amendment to Project Loan Agreement, dated as of January 9, 2008, (ii) that certain Second Amendment to Project Loan Agreement, dated as of February 29, 2008, and (iii) that certain Third Amendment to Project Loan Agreement, dated as of September 19, 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 Twelve Million Six Hundred Thirty-Seven Thousand Ninety-Three and 40/100 Dollars (\$12,637,093.40) (the "**Project Loan**"), which Project Loan is secured, inter alia, by that certain Project Loan Fee and Leasehold Mortgage and Security Agreement, dated as of December 10, 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 10, 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 as follows:

1. Representations and Warranties. Borrower and Guarantor hereby represent and warrant to Lender that, as of the Effective Date hereof:

(a) The construction of the shell of each of the Improvements (the "**Shell Work**") was completed on or about June 9, 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 Shell Work 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) Borrower has previously bonded, or caused to be bonded each of (i) that certain lien in favor of Naber Electric Corp., recorded on April 10, 2009, in the amount of \$24,668.00, by that certain Bond Discharging Mechanic's Lien, Bond No. 136124 and (ii) that certain lien in favor of C&B Plumbing and Heating Inc., recorded on January 1, 2009, in the amount of \$11,500.00, by that certain Bond Discharging Mechanic's Lien, Bond No. 136095, filed with the County Clerk on March 27, 2009. Further, Borrower has caused the lis pendens filed on September 24, 2009 as Index Number 21532/09, by Palermo-Too Construction, Inc. to be removed of record and otherwise satisfied;

(i) That certain lien in favor of Palermo-Too Construction, Inc., recorded on November 7, 2008, in the amount of \$192,739.96, which had been bonded by that certain Bond to Discharge Mechanic's Lien, Bond No. 105084411, filed with the County Clerk on December 9, 2008, was satisfied by that certain Satisfaction of Mechanic's Lien, dated as of July 30, 2010 delivered to Borrower by Palermo-Too Construction, Inc.;

(j) 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

(k) The outstanding principal balance of the Project Loan is \$11,567,290.00.

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 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 eighty-two thousandths percent (7.382%).

“**Monthly Debt Service Payment Amount**” shall mean (a) an amount equal to interest only on the outstanding principal balance of the Project Loan, calculated in accordance with Section 2.2 hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in August, 2010, and (b) commencing with the Payment Date occurring in September, 2010 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:

“**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.

“**4th BLA Modification Agreement**” shall mean that certain Fourth Amendment to Building Loan Agreement, dated as of the 4th PLA Modification Effective Date, by and among Borrower, Lender, Guarantor and Manager.

"**4th PLA Modification Effective Date**" shall mean August 26, 2010.

"**4th PLA Modification Agreement**" shall mean that certain Fourth Amendment to Project Loan Agreement and Amendment of Certain Other Loan Documents, dated as of the 4th 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 any of the foregoing.

"**Loan Hold Period**" shall mean the period commencing on the 4th 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 Building 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.

"**Omni Litigation**" shall mean that certain action brought in the Supreme Court of the State of New York, County of Westchester, Index No. 08-24678, filed November 3, 2008 by The Omni Health & Fitness Complex of Pelham, Inc., Plaintiff, against P/A-Acadia Pelham Manor, LLC, P/A Associates, LLC, Acadia Realty Trust, Joseph Hogan, Joel Braun, Aaron Malinsky, Paul Slayton, Rusciano & Son, Inc., Rusciano Associates, Inc., Secor Lane Corp, Secor Lane Company, LLC and VJK Management, Inc., Defendants.

"**P&I Payment Amount**" shall mean an amount equal to \$84,595.39 (which such amount is based upon (i) interest accrued on the outstanding principal balance of the Project Loan in accordance with **Section 2.2** hereof and (ii) a principal payment based on a twenty-five (25) year amortization schedule).

“**Total PLA Commitment Amount**” shall have the meaning ascribed to such term in the 4th PLA Modification Agreement.

- (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 prepay ment. 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 Westchester 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)(xiv), (xvii), (xviii) and (xxi) 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)(xiii) of the Project Loan Agreement is hereby deleted in its entirety and each replaced with the following: (xiii) if there is a judgment (or other disposition) against Borrower and/or Guarantor (or other disposition) in connection with the Omni Litigation that results in a Lien against the Property or any other assets of Borrower;

(h) Each of Borrower and Guarantor hereby acknowledge and agree that the 4th 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

With a copy to:

BlackRock Financial Management Inc.
55 East 52nd 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 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 4th BLA Modification Agreement or (x) Borrower's failure to comply with the obligations set forth in Section 5.1.47 hereof.

5. [Intentionally omitted].

6. 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.

7. 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.

8. 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.

9. 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

10. Representations, Warranties, and Covenants.

(a) Borrower and Guarantor agree that all of the representations, warranties, and covenants contained in the Loan Documents, including, without limitation, Sections 4.1.22, 5.1.44 and 5.1.46 of the Building Loan Agreement (as incorporated into the Project Loan Agreement by reference pursuant to Sections 4.1 and 5.1 of the Project Loan Agreement) 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.

11. [Intentionally omitted].

12. 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.

(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.

(1) 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]

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:

P/A-ACADIA PELHAM MANOR, 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 this 19th day of August, 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 04/20/2014

LENDER:

**U.S.BANK NATIONAL ASSOCIATION, NOT
INDIVIDUALLY BUT SOLELY AS TRUSTEE
FOR THE MAIDEN LANE COMMERCIAL
MORTGAGE BACKED SECURITIES TRUST
2008-1**

By: Bank of America, N.A., as Master Servicer

By: /s/ Steven M. Vaughn
Name: Steven M. Vaughn
Title: Director

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

On this 18 day of August, in the year 2010, before me the undersigned, personally appeared Steven M. Vaughn, 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/ Yolanda Bonet
Notary Public

Yolanda Bonet
Notary Public, Mecklenburg County
North Carolina
My Commission Expires 06/03/2013

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 this 19th day of August, 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 04/20/2014

P/A MANAGER:

ACADIA-P/A MANAGEMENT SERVICES, 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 this 19th day of August, 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 04/20/2014

SELF STORAGE 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 HENRY)

On this 24th day of August, 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
Commission Expires May 20, 2013

EXHIBIT A

LEGAL DESCRIPTION

FEE PARCEL:

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Pelham Manor, Town of Pelham, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Secor Lane distant 414.37 feet easterly from the corner formed by the intersection of the said southerly side of Secor Lane and the easterly side of Pelham Parkway and which point of beginning is also at the easterly end of a curve connecting the said southerly side of Secor Lane and the Easterly side of a proposed street;

THENCE RUNNING along the said southerly side of Secor Lane, North 63 degrees 57 minutes 50 seconds east 80 feet to a corner;

THENCE RUNNING south 26 degrees 02 minutes 10 seconds east along land now or formerly of William B. Cray 100 feet to another corner;

RUNNING THENCE south 63 degrees 57 minutes 50 seconds west along land now or formerly of Secor Realty Company 100 feet to another corner and the easterly side of a proposed Street;

THENCE RUNNING along the easterly side of said proposed street, north 26 degrees 02 minutes 10 seconds west 80 feet to the southerly end of a curve connecting the said easterly side of the proposed street with the southerly side of Secor Lane;

THENCE RUNNING on a curve to the right having a radius of 20 feet a distance of 31.42 feet to the aforesaid southerly side of Secor Lane to the point or place of BEGINNING.

For information only: Said premises are known as 32 Secor Lane, Pelham, NY, and designated as Section 166.26 Block 1 Lot 10 on the Westchester County Land and Tax Map.

GROUND LEASE PARCEL:

BLANKET DESCRIPTION – LOTS 8 and 9

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 374.53 feet to a point of curvature ; the following three (3) courses along the common dividing line between lot 8 and lot 10, block 1;
 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 57 minutes 50 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 point, thence
 5. Along a common dividing line between lot 9 and lot 10, block 1, north 26 degrees 02 minutes 10 seconds west, a distance of 100.00 feet to a point on the aforementioned southerly line of Secor Lane; thence
 6. Continuing along said southerly line, north 63 degrees 57 minutes 50 seconds east, a distance of 686.89 to a point of curvature, thence
 7. 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;
 8. South 10 degrees 37 minutes 00 seconds east, a distance of 406.03 feet to a rebar with cap set, thence
 9. South 08 degrees 04 minutes 18 seconds east, a distance of 152.58 feet to a rebar with cap set, thence
 10. South 81 degrees 55 minutes 42 seconds west, a distance of 125.00 feet to a rebar with cap set, thence
 11. 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
 12. 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
 13. South 63 degrees 57 minutes 50 seconds west, a distance of 4.45 feet to a rebar with cap set, thence
 14. South 26 degrees 04 minutes 30 seconds east, a distance of 188.85 feet to a point, thence
-

15. 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
16. North 26 degrees 04 minutes 30 seconds west, a distance of 82.31 feet to a pk nail set, thence
17. North 63 degrees 55 minutes 30 seconds east, a distance of 10.33 feet to a pk nail set, thence
18. North 26 degrees 04 minutes 30 seconds west, a distance of 19.84 feet to a pk nail set, thence
19. South 63 degrees 55 minutes 30 seconds west, a distance of 10.33 feet to a pk nail set, thence
20. North 26 degrees 04 minutes 30 seconds west, a distance of 90.55 feet to a rebar with cap set, thence
21. North 63 degrees 55 minutes 30 seconds east, a distance of 4.05 feet to a pk nail set, thence
22. North 26 degrees 04 minutes 30 seconds west, a distance of 9.55 feet to a pk nail set, thence
23. 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
24. North 26 degrees 04 minutes 30 seconds west, a distance of 296.81 feet to a pk nail, thence
25. Continuing along the easterly line of Pelham Parkway, north 62 degrees 43 minutes 40 seconds west, a distance of 99.10 feet to a pk nail set a point of curvature, thence
26. 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.

For information only: Said premises are known as 2 Penn Place, Pelham, NY, and designated as section 166.26 Block 1 Lots 8 and 9 on the Westchester County Land and Tax Map.

Parcel A - (Lot 8)

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, 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 known, shown and designated as Lots 1 through 36 inclusive in Block A; Lots 1 through 46 inclusive in Block B; Lot 2 in Block C; Lots 1 through 24 inclusive in Block D; Lots 1 through 32 inclusive in Block E; Lots 6 through 40 in Block F; Lots 1 through 30 in Block G and Lots 1 through 27 in Block H.

Together with the land in the beds of the following roads: Bridge Road Short Road, Hillside Road south of Secor Lane, Center Road, West Road, South Road and Sheep Lane.

All on a certain map entitled "Property of Secor Realty Company on Hutchinson River in the Village of Pelham Manor, Town of Pelham, Westchester County, N.Y." made by William A. Smith, dated December 10, 1928 and filed in the Office of the County Clerk of Westchester on May 26, 1935 as Map No. 3958.

Parcel B - (Lot 9)

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 side of Secor Lane distant easterly as measured along the same 454.525 feet from the northeasterly end of a curve having a radius of 20.00 feet and a length of 44.22 feet connecting said southerly side of Secor Lane with the northeasterly side of Pelham Parkway;

RUNNING THENCE south 26 degrees 02 minutes 10 seconds east, 221.90 feet to a corner;

RUNNING THENCE north 63 degrees 57 minutes 50 seconds east, 176.92 feet to another corner;

RUNNING THENCE north 26 degrees 02 minutes 10 seconds west, 221.90 feet to the southerly side of Secor Lane;

RUNNING THENCE along the southerly side of Secor Lane, south 63 degrees 57 minutes 50 seconds west, 176.92 feet to the point or place of BEGINNING.

SCHEDULE I

Work Providers

CON ED
ETRE ASSOCIATES, LTD
GEROGE J. MARRONE, P.E.
VERIZON COMMUNICATIONS
ROBERT DONOHUE
VERIZON
CAP EQUIPMENT LEASING CORP.
CNS MANAGEMENT CORP
EDWARD & MARY DOYLE
GATOFF MECHANICAL GROUP
K.P. INDUSTRIES INC
NABER ELECTRIC CORP
NATIONAL LAWN SPRINKLERS INC.
OAK VALLEY DEVELOPMENT CORP
PENGAT TECHNICAL INSPECTIONS
UNITED PAVEMENT MARKING INC.
UNITED WATER NEW ROCHELLE
VILLAGE OF PELHAM MANOR
YATES SIGN COMPANY
CORPORATE COMPUTER SOLUTIONS
MABEY BRIDGE & SHORE, INC
MILESTONE ENVIRONMENTAL CORP.
SOIL MECHANICS DRILLING CORP
SOIL SAFE INCORPORATED
TMI WRECKING INC
TURBO GROUP INC
UNITED RENTALS NORTH
WHITESTONE ASSOCIATES
NATIONAL CONSTRUCTION RENTALS
CAP EQUIPMENT LEASING CORP
ALL BRIGHT ELECTRIC (CORP)
GARITO CONTRACTING, INC
METRO TRUCK TIRE SERVICE CENTER
PAVILION DRAINAGE SUPPLY CO. INC.
NATIONAL CONSTRUCTION
ANDY LOPES BLDG. CORP.
FEDERAL EXPRESS
THE OFFICE OF JAMES RUDDERMAN LLP
BYTE CONSTRUCTION
CANATAL INDUSTRIES
CAPITOL AWNING CO., INC.
D&S FIRE PROTECTION CORP
EMPIRE LUMBER & MILWORK COMPANY
M.D. MECHANICAL CONTRACTORS INC
MONPAT CONSTRUCTION INC.
MONSEY GLASS CO.
NES EQUIPMENT SERVICES CORPORATION
PALMERO TOO CONSTRUCTION, INC.
SET-RITE CORPORATION
ALL STATE INTERIOR
IMPERIA BROS., INC.

LENNOX NATIONAL ACCOUNTS
NORTHEAST LANDSCAPE ASSOCIATES
WESTCHESTER LANDSCAPE DEPOT CORP
LISS & CO. INC.
AEC REPROGRAPHICS
CALL-A-HEAD CORP
CELTIC BUILDING SUPPLIES
COMPLIANCE POSTER COMPANY
CRP SANITATION, INC.
D&S FIRE PROTECTION CORP
ELIAS SLAIBY
ELIASON CORPORATION
GAF PAINTING
GRANITE TELECOMMUNICATIONS
DOME DEPOT CREDIT SERVICES
JOHN CHRISTODOULOU
JOHN SPEARANDO
LIKER ASSOCIATES
MAV CONSTRUCTION CORP
MINER FLEET MANAGEMENT
MORROW EQUIPMENT SYSTEMS, INC.
MULBERRY SIGN
PARACO GAS CORP
PHOENIX CONSTRUCTION LLC
POLAND SPRINGS
PRIDE EQUIPMENT CORP
RADIANT CLEANING SERVICES, INC.
SHOWPLACE FLOORING INC.
SPARTA CHEM INC.
SPRINT
SSG DOOR AND HARDWARE
STANLEY ACCESS TECHNOLOGIES
STAPLES CREDIT PLAN
SUBURBAN CARTING
W.B. MASON CO., INC.
EXTREME DRYWALL & ACOUSTICS
ZEE MEDICAL, INC.
ALLSTATE INTERIOR
C&B PLUMBING AND HEATING INC
WESTCHESTER COUNTRY DEPARTMENT
A&A MAINTENANCE ENTERPRISE
ALL POINTS TECHNOLOGIES OF N.Y.
ALLSTAR ELECTRIC CORP
ARLINGTON CONSTRUCTION WOODWORKING
BUILDING SPECIALTIES
C & B PLUMBING AND HEATING INC
CENTRAL ENTERPRISES
CHAMPION HI PERFORMANCE
GLOBAL GATES
LOFTUS CONTRACTING CORP

MASTER KITCHENS USA, INC
MONFRONT BROS, INC
OEHLER CONTRACTING CORP
PELHAM WELDGIN 7 IRON FABRICATION
PETER GISONDI & CO., INC.
PORTUGALIA CONSTRUCTION CORP
SIGN-A-RAMA
TASZ CONSTRUCTION, INC.
THYSSENKRUPP ELEVATOR CORPORATION
US DOOR & BUILDING COMPONENTS
ULTIMATE ACCESS SOLUTIONS
GREENBERG FARROW ARCHIT CORP
JOHN COLLINS ENGINEERS, P.C.
GREENBERG FARROW ARCHIT CORP
MG MCLAREN P.C.
LILKER ASSOCIATES
THE OFFICE OF JAMES RUDDERMAN LLP
ART & DESIGN STUDIOS INC.
BUTZ-WILBERN
SBLM ARCHITECTS P.C.
J&J BACKFLOW DEVICE TESTERS
ACADIA REALTY LTD PARTNERSHIP
ALLIED OFFICE PRODUCTS
AM EXCLUSIVE BUSINESS MACHINES
BELL FIRE EXTINGUISHER CO., INC.
BRONXMEDIA, LLC
C.A.C MAINTENANCE INC
CDC PUBLISHING
CLIFFORD R. BRAGDON & ASSOCIATES
COLORTONE AUDIO VISUAL
COMMON CENTS EMS SUPPLY
COMPLETE BUSINESS FORMS
CONCRETE CUTTING CO
CON EDISON
CONTROL POINT ASSOCIATES
CORPORATE EXPRESS INC
COUNTRY WASTE MANAGEMENT
DELMARVA POWER COMPANY

DIAMOND Z LANDSCAPING
DIVERSIFIED CARTING INC.
EARTHCAM, INC.
GEROGE J. MARRONE, P.E.
GERMAN VELEZ
GLOBRITE CLEANING SERVICES
GRAINGER CORP
JEFFREY HOGAN
JOE HOGAN
JOHN CASCARANO
JOSEPH HOGAN
JUST DIGITA, (CORP)
MANOR DISCOUNT INC
MARK SURRA
MICHAEL ARIGOT
MICHAEL ROSSI
MR. JOHN INC
NORTHER FRONTIER
NORTHERN SAFETY COMPANY, INC.
NYC DEPARTMENT OF TRANSPORTATION
PAUL ZANATTE
PETER WELLSTOOD
PRO ENERGY SERVICES
PROSPER UWERA
RUBACHEM SYSTEMS, INC.
SAFETY STAR LLC
SCHIMOLER'S LOCKSMITHS INC.
SIMKISS AGENCY
STAPLES BUSINESS ADVANTAGE
TESTWELL LABORATORIES
TIMOTHY CLARK
TRAFFIC CLOSURE, LLC
TRI-STATE SAFETY CONSULTING
UNITED WATER NEW YORK
VINCENT LAPOLLA
WEST STAR FUEL OIL CORP
WILLIAMS SCOTSMAN INC.

FOURTH AMENDMENT TO BUILDING LOAN AGREEMENT

Dated: as of August 26, 2010

By and between

P/A-ACADIA PELHAM MANOR, 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: 2 Penn Place
Village: Pelham Manor
Town: Pelham
County: Westchester
Section: 166.76
Block: 1
Lots: 8, 9 and 10

MERS MIN: 8000101-0000007140-6

FOURTH AMENDMENT TO BUILDING LOAN AGREEMENT

This FOURTH AMENDMENT TO BUILDING LOAN AGREEMENT (this "**Amendment**"), dated as of August 26, 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 **P/A-ACADIA PELHAM MANOR, LLC**, a Delaware limited liability company, having its principal place of business at c/o Acadia Realty Trust, 131 1 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 ("**Guarantor**"), **ACADIA-P/A MANAGEMENT SERVICES, LLC**, a Delaware limited liability company ("**P/A Manager**") and **SELF STORAGE MANAGEMENT LLC**, a Delaware limited liability company ("**Self Storage Manager**").

WITNESSETH:

WHEREAS, pursuant to the terms and conditions of that certain Building Loan Agreement, dated as of December 10, 2007, which Building Loan Agreement was filed in the office of the Clerk of Westchester County ("**County Clerk**") on December 19, 2007 as File No. 38662, as amended by (i) that certain First Amendment to Building Loan Agreement, dated as of January 9, 2008, (ii) that certain Second Amendment to Building Loan Agreement, dated as of February 29, 2008, and (iii) that certain Third Amendment to Building Loan Agreement, dated as of September 19, 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 Twenty-Three Million Twenty-Six Thousand Nine Hundred Six and 60/100 Dollars (\$23,026,906.60) (the "**Building Loan**"), which Building Loan is secured, inter alia, by that certain Building Loan Fee and Leasehold Mortgage and Security Agreement, dated as of December 10, 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 construction of the shell of each of the Improvements (the "**Shell Work**") was completed on or about June 9, 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 Shell Work 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) Borrower has previously bonded, or caused to be bonded each of (i) that certain lien in favor of Naber Electric Corp., recorded on April 10, 2009, in the amount of \$24,668.00, by that certain Bond Discharging Mechanic's Lien, Bond No. 136124 and (ii) that certain lien in favor of C&B Plumbing and Heating Inc., recorded on January 1, 2009, in the amount of \$11,500.00, by that certain Bond Discharging Mechanic's Lien, Bond No. 136095, filed with the County Clerk on March 27, 2009. Further, Borrower has caused the lis pendens filed on September 24, 2009 as Index Number 21532/09, by Palermo-Too Construction, Inc. to be removed of record and otherwise satisfied;
 - (i) That certain lien in favor of Palermo-Too Construction, Inc., recorded on November 7, 2008, in the amount of \$192,739.96, which had been bonded by that certain Bond to Discharge Mechanic's Lien, Bond No. 105084411, filed with the County Clerk on December 9, 2008, was satisfied by that certain Satisfaction of Mechanic's Lien, dated as of July 30, 2010 delivered to Borrower by Palermo-Too Construction, Inc.;
 - (j) 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
-

(k) The outstanding principal balance of the Building Loan is \$20,084,350.37.

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 other than the Permissible TI Advances (defined below).

(c) Notwithstanding anything to the contrary in the Building Loan Agreement or the other Loan Documents, Borrower, Lender and Guarantor hereby acknowledge and agree that Borrower shall not be permitted to request and/or receive any Permissible TI Advances (defined below) under the Building Loan if such Permissible TI Advance would cause the total amount of principal Advanced under the Building Loan to exceed the amount of \$22,090,530.18 (the "**Total BLA Commitment Amount**").

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:

"**Interest Rate**" shall mean seven and three hundred eighty-two thousandths percent (7.382%).

"**Monthly Debt Service Payment Amount**" shall mean (a) an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with Section 2.2 hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in August, 2010, and (b) commencing with the Payment Date occurring in September, 2010 and on each Payment Date thereafter, the P&I Payment Amount.

"**Required Completion Date**" shall mean the date any tenant improvements are required to be completed pursuant to the terms of any Lease.

(b) The following defined terms shall be incorporated into Section 1.1 of the Building Loan Agreement:

"**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.

“**4th BLA Modification Effective Date**” shall mean August 26, 2010.

“**4th BLA Modification Agreement**” shall mean that certain Fourth Amendment to Building Loan Agreement, dated as of the 4th BLA Modification Effective Date, by and among Borrower, Lender, Guarantor and Manager.

“**4th PLA Modification Agreement**” shall mean that certain Fourth Amendment to Project Loan Agreement and Amendment of Certain Other Loan Documents, dated as of the 4th 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.

“**Loan Hold Period**” shall mean the period commencing on the 4th 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.

“**Minimum Disbursement Amount**” shall mean \$50,000.00.

“**Omni Litigation**” shall mean that certain action brought in the Supreme Court of the State of New York, County of Westchester, Index No. 08-24678, filed November 3, 2008 by The Omni Health & Fitness Complex of Pelham, Inc., Plaintiff, against P/A-Acadia Pelham Manor, LLC, P/A Associates, LLC, Acadia Realty Trust, Joseph Hogan, Joel Braun, Aaron Malinsky, Paul Slayton, Rusciano & Son, Inc., Rusciano Associates, Inc., Secor Lane Corp, Secor Lane Company, LLC and VJK Management, Inc., Defendants.

“**P&I Payment Amount**” shall mean an amount equal to \$146,883.46 (which such amount is based upon (i) interest accrued on the outstanding principal balance of the Building Loan in accordance with **Section 2.2** hereof and (ii) a principal payment based on a twenty-five (25) year amortization schedule); it being specifically understood that the amount required to be paid to Lender above shall be increased as calculated by Lender to reflect the increased principal balance of the Building Loan upon the occurrence of each Permissible TI Advance and such calculation shall be conclusive and binding on Borrower absent manifest error.

“**Total BLA Commitment Amount**” shall have the meaning ascribed to such term in the 4th BLA Modification Agreement.

- (c) The following sentence is hereby deleted from the definition of “**Gross Income from Operations**” set forth in Section 1.1 of the Building Loan Agreement:

Notwithstanding anything to the contrary contained herein, for the purpose of calculating Rents, Lender shall disregard the BJ’s Lease and shall assume that the Sublease dated as of December 21, 2006 with Home Depot U.S.A., Inc. is still in effect.

- (d) The second and third sentences of Section 2.3.1 of the Building Loan Agreement are hereby deleted in their entirety.

- (e) 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 Westchester 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.

(f) 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].

(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) Each of Section 5.1.28(b) and Section 5.1.28(d) of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following: [Intentionally omitted].

(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 (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 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 4th 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 4th 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 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following:

Section 7.2 [Intentionally omitted].

- (m) 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: \$3,962.00 (the "**Replacement Reserve Monthly Deposit**") on each Payment Date occurring after the 4th BLA Modification Effective Date, for replacements and repairs required to be made to the Property (collectively, the "**Replacements**").

- (n) Section 7.4 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following: [Intentionally omitted].

- (o) Section 7.7 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following: [Intentionally omitted].

- (p) The first sentence of Section 7.8.1 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following:
-

Borrower shall pay to Lender the following amounts: \$15,645.33 (the “**Rollover Reserve Monthly Deposit**”) on each Payment Date occurring after the 4th BLA Modification Effective Date, which amounts shall be deposited with and held by Lender for tenant improvements and leasing commission obligations incurred following the date hereof.

(q) The first sentence of Section 7.8.2 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following:

Lender shall make disbursements from the Rollover Reserve Fund for tenant improvements and leasing commission obligations incurred by Borrower with respect to renewal tenants or new tenants occupying space at the Property previously occupied by another tenant.

(r) The first sentence of Section 7.9.1 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following:

On the 4th BLA Modification Effective Date, Borrower shall pay to Lender an amount equal to \$250,000.00, which amount shall be deposited into the Ground Lease Reserve Account and held by Lender as additional security for the Loan.

(s) The first sentence of Section 7.10.1 of the Building Loan Agreement is hereby deleted in its entirety and replaced with the following:

On the 4th BLA Modification Effective Date, Borrower shall pay to Lender an amount equal to \$800,000.00 (the “**Storage Facility Reserve Deposit**”), representing one (1) year’s Storage Facility Rent under the Storage Facility Master Lease, which amount shall be deposited with and held by Lender as additional security for the Loan. 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 \$401,235.94, to be applied to reduce Borrower’s Storage Facility Reserve Deposit obligation.

(t) Sections 8.1(a)(xiv), (xvii), (xviii) and (xxi) of the Building Loan Agreement are each hereby deleted in its entirety and each replaced with the following: [Intentionally omitted];

(u) Section 8.1(a)(xiii) of the Building Loan Agreement is hereby deleted in its entirety and each replaced with the following: (xiii) if there is a judgment (or other disposition) against Borrower and/or Guarantor (or other disposition) in connection with the Omni Litigation that results in a Lien against the Property or any other assets of Borrower;

(v) The “.” at the end of Section 9.3(x) of the Building Loan Agreement is hereby deleted and replaced with “; or”.

(w) The following shall be incorporated into the Building Loan Agreement as Section 9.3(xi): (xi) the Omni Litigation.

(x) 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 4th Amendment; or (ix) Borrower's failure to comply with the obligations set forth in Section 5.1.47 hereof.

(y) 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
Fax: (212) 720-1953

With a copy to:

BlackRock Financial Management Inc.
55 East 52nd 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. Advances for Permissible Tenant Improvements.

(a) Notwithstanding anything to the contrary in the Building Loan Agreement or the other Loan Documents, including, without limitation, Sections 2.10, 2.11 and 2.12 of the Building Loan Agreement, Lender shall advance to Borrower, subject to Section 5(e) below, an amount up to \$2,006,179.81 (the "**Permissible TI Advance Funds**") for the direct payment of Permissible TI Costs as provided in the Building Loan Budget (each, a "**Permissible TI Advance**"), upon satisfaction of the conditions set forth in this Section 5. As used herein, "**Permissible TI Costs**" shall mean actual costs of tenant improvements that Borrower is required to perform and/or pay for in connection with a new Lease for any portion of the Property not set forth on Schedule II attached hereto which qualify as Costs of the Improvement (as defined in the Building Loan Agreement). Notwithstanding the foregoing, Borrower shall not be permitted to request nor receive a Permissible TI Advance with respect to the Vet Upgrade (as defined in Section 1.5 of Exhibit D to that certain Shopping Center Lease Agreement, between Borrower and PetSmart, Inc., a Delaware corporation).

(i) Borrower shall submit a Draw Request for an advance to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Permissible TI Costs to be reimbursed;

(ii) On the date such request is received by Lender and on the date such advance is to be made, no default or Event of Default has occurred and is 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 a default or Event of Default under the Loan Documents;

(iii) Notwithstanding anything to the contrary set forth in Section 5.1.20 of the Building Loan Agreement, Lender shall have reviewed and approved the Lease (including, without limitation, the rental rates, the creditworthiness of the prospective tenant and the proposed tenant improvement and leasing commission schedule) in respect of which Borrower is obligated to pay or reimburse Permissible TI Costs;

(iv) Lender shall have received and approved a budget for the Permissible TI Costs and the requested disbursement will be used to pay all or a portion of such costs and payments;

(v) Lender shall have received a certificate (the "**Funding Certificate**") from Borrower (A) stating that all Permissible TI Costs at the Property to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required in connection with the Permissible TI Costs, (B) identifying each Person that supplied materials or labor in connection with the Permissible TI Costs to be funded by the requested disbursement, (C) the location for delivery of payment to such Person (whether by wire-transfer or check), and (D) stating that each such Person will be paid in full upon receipt of the requested payment;

(vi) Lender shall have received itemized invoices evidencing the amount of the applicable Permissible TI Costs to be paid;

(vii) at Lender's option, a title search for the Property, at Borrower's sole cost and expense, indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Lender;

(viii) Lender shall have received such other evidence as Lender shall reasonably request that the Permissible TI Costs at the Property to be funded by the requested disbursement have been completed;

(ix) Lender shall have received lien waivers evidencing that the Permissible TI Costs, or portion thereof, for which a Permissible TI Advance had previously been made have been completed lien free and the costs of which have been paid in full;

(x) The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of such Permissible TI Advance;

(xi) Lender shall have received, at Borrower's sole cost and expense, a "datedown" endorsement to Lender's title insurance policy as described in the form set forth in Exhibit C of the Building Loan Agreement, which continuation or endorsement shall increase the coverage of the Title Insurance Policy by the amount of the Permissible TI Advance through the pending disbursement clause (but not the overall policy amount which shall be for the full amount of the Loan), amend the effective date of the Title Insurance Policy to the date of such Permissible TI Advance, continue to insure the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances and which shall state that since the last disbursement of the Loan there have been no changes in the state of title to the Property (other than Permitted Encumbrances) and that there are no additional survey exceptions not previously approved by Lender;

(b) If required by Lender, Lender shall have received an inspection report issued by an inspector selected and retained by Lender, the cost of which shall be paid by Borrower, evidencing that all Permissible TI Costs covered by the advance have been completed in a workmanlike manner and in accordance with applicable Legal Requirements.

(c) Lender shall not be required to make advances for Permissible TI Costs more frequently than once each calendar month or in an amount less than the Minimum Disbursement Amount (or a lesser amount if the total amount of Permissible TI Advance Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the account shall be made).

(d) Borrower shall complete, or shall cause the completion of, the lien-free performance or installation of the applicable permitted tenant improvements in a workmanlike manner and in accordance with all applicable Legal Requirements.

(e) Upon receipt by Borrower of confirmation that Lender has approved the applicable Draw Request, Borrower shall deliver to Lender an amount equal to forty percent (40%) of the amount of the Permissible TI Advance approved by Lender ("**Borrower's Portion**"). Provided that Lender has approved the Draw Request and Borrower's Portion is received by Lender prior to 11:00 AM (Eastern Standard Time) on a Business Day, Lender shall, and is specifically authorized by Borrower hereby to, on the next Business Day, advance an amount under the Building Loan equal to sixty percent (60%) of the amount of the Permissible TI Advance approved by Lender ("Lender's Portion"), which amount together with the Borrower's Portion shall be paid directly by Lender, on behalf of Borrower, to the applicable Work Provider pursuant to the payment instructions set forth in Borrower's Funding Certificate. In the event Borrower delivers Borrower's Portion to Lender (i) prior to Lender's approval of the applicable Draw Request or (ii) after 11:00 AM (Eastern Standard Time) on a Business Day after Lender's approval of the applicable Draw Request, then such funds shall be held by Lender as additional collateral for the Building Loan until (x) in the case of (i) above, the Business Day following Lender's approval of the applicable Draw Request and (y) in the case of (ii) above, the second Business Day following Lender's receipt of Borrower's Portion.

6. 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.

7. 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.

8. 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.

9. 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

10. Representations, Warranties, and Covenants.

(a) Borrower and Guarantor agree that all of the representations, warranties, and covenants contained in the Loan Documents, including, without limitation, Sections 4.1.22, 5.1.44 and 5.1.46 of the Building Loan Agreement 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.

11. [Intentionally omitted].

12. 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 Westchester.

(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 December 19, 2007 as File No. 38662, 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 in accordance with the terms hereof.

[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:

P/A-ACADIA PELHAM MANOR, 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 this 19th day of August, 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 04/20/2014

LENDER:

**U.S. BANK NATIONAL ASSOCIATION, NOT
INDIVIDUALLY BUT SOLELY AS TRUSTEE
FOR THE MAIDEN LANE COMMERCIAL
MORTGAGE BACKED SECURITIES TRUST 2008-1**

By: Bank of America, N.A., as Master Servicer

By: /s/ Steven Vaughn
Name: Steven M. Vaughn
Title: Director

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

On this 18 day of August, in the year 2010, before me the undersigned, personally appeared Steven M. Vaughn, 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/ Yolanda Bonet
Notary Public

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 this 19th day of August, 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 04/20/2014

P/A MANAGER:

ACADIA-P/A MANAGEMENT SERVICES, 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 this 19th day of August, 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 04/20/2014

SELF STORAGE 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 HENRY)

On this 24th day of August, 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

Commission Expires May 20, 2013

EXHIBIT A

LEGAL DESCRIPTION

FEE PARCEL:

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Pelham Manor, Town of Pelham, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Secor Lane distant 414.37 feet easterly from the corner formed by the intersection of the said southerly side of Secor Lane and the easterly side of Pelham Parkway and which point of beginning is also at the easterly end of a curve connecting the said southerly side of Secor Lane and the Easterly side of a proposed street;

THENCE RUNNING along the said southerly side of Secor Lane, North 63 degrees 57 minutes 50 seconds east 80 feet to a corner;

THENCE RUNNING south 26 degrees 02 minutes 10 seconds east along land now or formerly of William B. Cray 100 feet to another corner;

RUNNING THENCE south 63 degrees 57 minutes 50 seconds west along land now or formerly of Secor Realty Company 100 feet to another corner and the easterly side of a proposed Street;

THENCE RUNNING along the easterly side of said proposed street, north 26 degrees 02 minutes 10 seconds west 80 feet to the southerly end of a curve connecting the said easterly side of the proposed street with the southerly side of Secor Lane;

THENCE RUNNING on a curve to the right having a radius of 20 feet a distance of 31.42 feet to the aforesaid southerly side of Secor Lane to the point or place of BEGINNING.

For information only: Said premises are known as 32 Secor Lane, Pelham, NY, and designated as Section 166.26 Block 1 Lot 10 on the Westchester County Land and Tax Map.

GROUND LEASE PARCEL:

BLANKET DESCRIPTION – LOTS 8 and 9

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 374.53 feet to a point of curvature ; the following three (3) courses along the common dividing line between lot 8 and lot 10, block 1;
 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 57 minutes 50 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 point, thence
 5. Along a common dividing line between lot 9 and lot 10, block 1, north 26 degrees 02 minutes 10 seconds west, a distance of 100.00 feet to a point on the aforementioned southerly line of Secor Lane; thence
 6. Continuing along said southerly line, north 63 degrees 57 minutes 50 seconds east, a distance of 686.89 to a point of curvature, thence
 7. 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;
 8. South 10 degrees 37 minutes 00 seconds east, a distance of 406.03 feet to a rebar with cap set, thence
 9. South 08 degrees 04 minutes 18 seconds east, a distance of 152.58 feet to a rebar with cap set, thence
 10. South 81 degrees 55 minutes 42 seconds west, a distance of 125.00 feet to a rebar with cap set, thence
 11. 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
 12. 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
 13. South 63 degrees 57 minutes 50 seconds west, a distance of 4.45 feet to a rebar with cap set, thence
 14. South 26 degrees 04 minutes 30 seconds east, a distance of 188.85 feet to a point, thence
-

15. 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
16. North 26 degrees 04 minutes 30 seconds west, a distance of 82.3i feet to a pk nail set, thence
17. North 63 degrees 55 minutes 30 seconds east, a distance of 10.33 feet to a pk nail set, thence
18. North 26 degrees 04 minutes 30 seconds west, a distance of 19.84 feet to a pk nail set, thence
19. South 63 degrees 55 minutes 30 seconds west, a distance of 10.33 feet to a pk nail set, thence
20. North 26 degrees 04 minutes 30 seconds west, a. distance of 90.55 feet to a rebar with cap set, thence
21. North 63 degrees 55 minutes 30 seconds east, a distance of 4.05 feet to a pk nail set, thence
22. North 26 degrees 04 minutes 30 seconds west, a distance of 9.55 feet to a pk nail set, thence
23. 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
24. North 26 degrees 04 minutes 30 seconds west, a distance of 296.81 feet to a pk nail, thence
25. Continuing along the easterly line of Pelham Parkway, north 62 degrees 43 minutes 40 seconds west, a distance of ~Q9.10 feet to a pk nail set a point of curvature, thence
26. 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.

For information only: Said premises are known as 2 Penn Place, Pelham, NY, and designated as section 166.26 Block 1 Lots 8 and 9 on the Westchester County Land and Tax Map.

Parcel A - (Lot 8)

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, 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 known, shown and designated as Lots 1 through 36 inclusive in Block A; Lots 1 through 46 inclusive in Block B; Lot 2 in Block C; Lots 1 through 24 inclusive in Block D; Lots 1 through 32 inclusive in Block #; Lots 6 through 40 in Block F; Lots 1 through 30 in Block G and Lots 1 through 27 in Block H.

Together with the land in the beds of the following roads: Bridge Road Short Road, Hillside Road south of Secor Lane, Center Road, West Road, South Road and Sheep Lane.

All on a certain map entitled "Property of Secor Realty Company on Hutchinson River in the Village of Pelham Manor, Town of Pelham, Westchester County, N.Y." made by William A. Smith, dated December 10, 1928 and filed in the Office of the County Clerk of Westchester on May 26, 1935 as Map No. 3958.

Parcel B - (Lot 9)

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 side of Secor Lane distant easterly as measured along the same 454.525 feet from the northeasterly end of a curve having a radius of 20.00 feet and a length of 44.22 feet connecting said southerly side of Secor Lane with the northeasterly side of Pelham Parkway;

RUNNING THENCE south 26 degrees 02 minutes 10 seconds east, 221.90 feet to a corner;

RUNNING THENCE north 63 degrees 57 minutes 50 seconds east, 176.92 feet to another corner;

RUNNING THENCE north 26 degrees 02 minutes 10 seconds west, 221.90 feet to the southerly side of Secor Lane;

RUNNING THENCE along the southerly side of Secor Lane, south 63 degrees 57 minutes 50 seconds west, 176.92 feet to the point or place of BEGINNING.

EXHIBIT B

LIEN LAW STATEMENT

(Attached hereto)

SCHEDULE I

Work Providers

CON ED
ETRE ASSOCIATES, LTD
GEROGE J. MARRONE, P.E.
VERIZON COMMUNICATIONS
ROBERT DONOHUE
VERIZON
CAP EQUIPMENT LEASING CORP.
CNS MANAGEMENT CORP
EDWARD & MARY DOYLE
GATOFF MECHANICAL GROUP
K.P. INDUSTRIES INC
NABER ELECTRIC CORP
NATIONAL LAWN SPRINKLERS INC.
OAK VALLEY DEVELOPMENT CORP
PENGAT TECHNICAL INSPECTIONS
UNITED PAVEMENT MARKING INC.
UNITED WATER NEW ROCHELLE
VILLAGE OF PELHAM MANOR
YATES SIGN COMPANY
CORPORATE COMPUTER SOLUTIONS
MABEY BRIDGE & SHORE, INC
MILESTONE ENVIRONMENTAL CORP.
SOIL MECHANICS DRILLING CORP
SOIL SAFE INCORPORATED
TMI WRECKING INC
TURBO GROUP INC
UNITED RENTALS NORTH
WHITESTONE ASSOCIATES
NATIONAL CONSTRUCTION RENTALS
CAP EQUIPMENT LEASING CORP
ALL BRIGHT ELECTRIC (CORP)
GARITO CONTRACTING, INC
METRO TRUCK TIRE SERVICE CENTER
PAVILION DRAINAGE SUPPLY CO. INC.
NATIONAL CONSTRUCTION
ANDY LOPES BLDG. CORP.
FEDERAL EXPRESS
THE OFFICE OF JAMES RUDDERMAN LLP
BYTE CONSTRUCTION
CANATAL INDUSTRIES
CAPITOL AWNING CO., INC.
D&S FIRE PROTECTION CORP
EMPIRE LUMBER & MILWORK COMPANY
M.D. MECHANICAL CONTRACTORS INC
MONPAT CONSTRUCTION INC.
MONSEY GLASS CO.
NES EQUIPMENT SERVICES CORPORATION
PALMERO TOO CONSTRUCTION, INC.
SET-RITE CORPORATION
ALL STATE INTERIOR
IMPERIA BROS., INC.

LENNOX NATIONAL ACCOUNTS
NORTHEAST LANDSCAPE ASSOCIATES
WESTCHESTER LANDSCAPE DEPOT CORP
LISS & CO. INC.
AEC REPROGRAPHICS
CALL-A-HEAD CORP
CELTIC BUILDING SUPPLIES
COMPLIANCE POSTER COMPANY
CRP SANITATION, INC.
D&S FIRE PROTECTION CORP
ELIAS SLAIBY
ELIASON CORPORATION
GAF PAINTING
GRANITE TELECOMMUNICATIONS
DOME DEPOT CREDIT SERVICES
JOHN CHRISTODOULOU
JOHN SPEARANDO
LIKER ASSOCIATES
MAV CONSTRUCTION CORP
MINER FLEET MANAGEMENT
MORROW EQUIPMENT SYSTEMS, INC.
MULBERRY SIGN
PARACO GAS CORP
PHOENIX CONSTRUCTION LLC
POLAND SPRINGS
PRIDE EQUIPMENT CORP
RADIANT CLEANING SERVICES, INC.
SHOWPLACE FLOORING INC.
SPARTA CHEM INC.
SPRINT
SSG DOOR AND HARDWARE
STANLEY ACCESS TECHNOLOGIES
STAPLES CREDIT PLAN
SUBURBAN CARTING
W.B. MASON CO., INC.
EXTREME DRYWALL & ACOUSTICS
ZEE MEDICAL, INC.
ALLSTATE INTERIOR
C&B PLUMBING AND HEATING INC
WESTCHESTER COUNTRY DEPARTMENT
A&A MAINTENANCE ENTERPRISE
ALL POINTS TECHNOLOGIES OF N.Y.
ALLSTAR ELECTRIC CORP
ARLINGTON CONSTRUCTION WOODWORKING
BUILDING SPECIALTIES
C & B PLUMBING AND HEATING INC
CENTRAL ENTERPRISES
CHAMPION HI PERFORMANCE
GLOBAL GATES
LOFTUS CONTRACTING CORP

MASTER KITCHENS USA, INC
MONFRONT BROS, INC
OEHLER CONTRACTING CORP
PELHAM WELDGIN 7 IRON FABRICATION
PETER GISONDI & CO., INC.
PORTUGALIA CONSTRUCTION CORP
SIGN-A-RAMA
TASZ CONSTRUCTION, INC.
THYSSENKRUPP ELEVATOR CORPORATION
US DOOR & BUILDING COMPONENTS
ULTIMATE ACCESS SOLUTIONS
GREENBERG FARROW ARCHIT CORP
JOHN COLLINS ENGINEERS, P.C.
GREENBERG FARROW ARCHIT CORP
MG MCLAREN P.C.
LILKER ASSOCIATES
THE OFFICE OF JAMES RUDDERMAN LLP
ART & DESIGN STUDIOS INC.
BUTZ-WILBERN
SBLM ARCHITECTS P.C.
J&J BACKFLOW DEVICE TESTERS
ACADIA REALTY LTD PARTNERSHIP
ALLIED OFFICE PRODUCTS
AM EXCLUSIVE BUSINESS MACHINES
BELL FIRE EXTINGUISHER CO., INC.
BRONXMEDIA, LLC
C.A.C MAINTENANCE INC
CDC PUBLISHING
CLIFFORD R. BRAGDON & ASSOCIATES
COLORTONE AUDIO VISUAL
COMMON CENTS EMS SUPPLY
COMPLETE BUSINESS FORMS
CONCRETE CUTTING CO
CON EDISON
CONTROL POINT ASSOCIATES
CORPORATE EXPRESS INC
COUNTRY WASTE MANAGEMENT
DELMARVA POWER COMPANY
DIAMOND Z LANDSCAPING
DIVERSIFIED CARTING INC.
EARTHCAM, INC.
GEROGE J. MARRONE, P.E.
GERMAN VELEZ
GLOBRITE CLEANING SERVICES
GRAINGER CORP
JEFFREY HOGAN
JOE HOGAN
JOHN CASCARANO
JOSEPH HOGAN
JUST DIGITA, (CORP)
MANOR DISCOUNT INC
MARK SURRA
MICHAEL ARIGOT
MICHAEL ROSSI
MR. JOHN INC
NORTHER FRONTIER

NORTHERN SAFETY COMPANY, INC.
NYC DEPARTMENT OF TRANSPORTATION
PAUL ZANATTE
PETER WELLSTOOD
PRO ENERGY SERVICES
PROSPER UWERA
RUBACHEM SYSTEMS, INC.
SAFETY STAR LLC
SCHIMOLER'S LOCKSMITHS INC.
SIMKISS AGENCY
STAPLES BUSINESS ADVANTAGE
TESTWELL LABORATORIES
TIMOTHY CLARK
TRAFFIC CLOSURE, LLC
TRI-STATE SAFETY CONSULTING
UNITED WATER NEW YORK
VINCENT LAPOLLA
WEST STAR FUEL OIL CORP
WILLIAMS SCOTSMAN INC.

SCHEDULE II

Occupied Space

The portion of the Property occupied as of the Effective Date by:

BJ's Wholesale Club
Game Stop
Michaels
Nuts About Candy
Sleepy's
Vitamin Shoppe
Self Storage

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 P/A-Acadia Pelham Manor, 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 10, 2007, which Building Loan Agreement was filed in the office of the Clerk of Westchester County (“**County Clerk**”) on December 19, 2007 as File No. 38662, as amended by (i) that certain First Amendment to Building Loan Agreement, dated as of January 9, 2008, (ii) that certain Second Amendment to Building Loan Agreement, dated as of February 29, 2008, (iii) that certain Third Amendment to Building Loan Agreement, dated as of September 19, 2008, and (iv) that certain Fourth Amendment to Building Loan Agreement, dated as of August 25, 2010 (as the same has been or 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 \$23,026,906.60 (the “**Original Loan Amount**”).
 4. As of the date hereof, the amount of the Loan under the Building Agreement is up to \$22,090,530.18 (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: \$5,566,117.27.
 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:
-

Engineer's and Architect's Fees: \$355,554.00;

Contingency: \$6,963.00;

Total: \$362,517.00

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: \$13,930,428.33, 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: \$16,161,895.91, 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: \$14,155,716.10.

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: \$2,006,179.81, 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.

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 19th
day of August, 2010.

/s/ Robert Masters
ROBERT MASTERS, Senior Vice President

/s/ Debra Leibler-Jones
Notary Public

Debra Leibler-Jones
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 04/20/2014

SECOND MORTGAGE MODIFICATION AGREEMENT

BY AND BETWEEN

ACADIA – P/A LIBERTY LLC, a Delaware limited liability company,
as Mortgagor

and

PNC BANK, NATIONAL ASSOCIATION,
as Mortgagee

Date: September 17, 2010 (effective as of September 17, 2010)

RECORD AND RETURN TO:

Emmet, Marvin & Martin, LLP
177 Madison Avenue
Morristown, NJ 07960
Attn: Neil V. Williams, Esq.

SECOND MORTGAGE MODIFICATION AGREEMENT

made as of the 17th day of September, 2010, effective as of September 17, 2010
(this "Modification Agreement")

BY AND BETWEEN

PNC BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under and by virtue of the laws of the United States of America, having an office at Two Tower Center Boulevard, 18th Floor, East Brunswick, New Jersey 08816 (the "Mortgagee"),

AND

ACADIA – P/A LIBERTY LLC, a Delaware limited liability company, with an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 (the "Mortgagor").

WITNESSETH:

WHEREAS, on May 18, 2006, the Mortgagor, as maker, delivered to the Mortgagee, as payee, a building loan note in the aggregate principal amount of TWELVE MILLION FOURTY NINE THOUSAND SIX HUNDRED THIRTY THREE AND 00/100 (\$12,049,633.00) DOLLARS (the "Original Note") in connection with a building loan made to the Mortgagor by the Mortgagee (hereinafter said loan as modified shall be referred to as the "Loan"); and

WHEREAS, on May 18, 2006, the Mortgagor and the Mortgagee entered into a certain Building Loan Agreement dated May 18, 2006, providing for the advances of the Loan to the Mortgagor to construct the "Improvements" as such term was defined therein; hereinafter referred to as the "Loan Agreement"); and

WHEREAS, on May 18, 2006, the Mortgagor, as mortgagor, delivered to the Mortgagee, as mortgagee, a certain Mortgage securing the Mortgagor's obligations under the Original Note (the "Mortgage"), which Mortgage encumbers certain real property premises located in the City of New York, Borough and County of Queens and State of New York, as more fully described in Schedule A attached hereto and made a part hereof (the "Mortgaged Property"), which Mortgage was recorded on June 2, 2006 in the City Register of the City of New York's office ("Register's Office") as CRFN 200600307479 *et seq.*; and

WHEREAS, on May 18, 2006, the Mortgagor, as mortgagor, delivered to the Mortgagee, as mortgagee, a certain Assignment of Leases and Rents securing the Mortgagor's obligations under the Original Note (the "Assignment of Leases"), which Assignment of Leases encumbers the Mortgaged Property, which Assignment of Leases was recorded on June 2, 2006 in the Register's Office as CRFN 200600307480 *et seq.*; and

WHEREAS, pursuant to that certain Amended and Restated Mortgage Note dated July 22, 2009 (effective as of July 18, 2009) from Mortgagor to Mortgagee in the reduced principal amount of \$10,450,000.00 (the "First Restated Note"), the parties have amended and restated the indebtedness evidenced by the Original Note and secured by the Mortgage, as modified as set forth below; and

WHEREAS, on July 22, 2009, the Mortgagor, as mortgagor, delivered to the Mortgagee, as mortgagee, a certain Mortgage Modification Agreement dated July 22, 2009 (effective as of July 18, 2009) securing the Mortgagor's obligations under the First Restated Note (the "First Modification Agreement"), which First Modification Agreement encumbered the Mortgaged Property and was recorded on August 14, 2009 in the Register's Office as CRFN 2009000255450 *et seq.*, which First Modification Agreement was corrected by a correction First Modification Agreement encumbered the Mortgaged Property to be recorded in the Register's Office just prior to this Modification agreement; and

WHEREAS, pursuant to that certain Second Amended and Restated Mortgage Note dated the date hereof from Mortgagor to Mortgagee in the reduced principal amount of \$10,000,000.00 (the "Restated Note"), the parties have amended and restated the indebtedness evidenced by the First Restated Note and secured by the Mortgage, as previously modified and as modified and restated hereby; and

WHEREAS, the Mortgagee, the owner and holder of the Original Note, the First Restated Note, the Restated Note and the Mortgage, and the Mortgagor, the owner in fee simple of the Mortgaged Property, have mutually agreed to modify the terms of the Mortgage and the other Loan Documents in the manner hereinafter set forth; and

WHEREAS, hereinafter the Original Note, the Restated Note, the Mortgage, the Assignment of Leases, the Loan Agreement, the First Modification Agreement, this Modification Agreement, and all other instruments, certificates, affidavits, and documents executed in connection with the Loan shall be referred to as the "Loan Documents".

NOW, THEREFORE, in pursuance of said agreement and in consideration of the sum of ONE DOLLAR and other valuable consideration each to the other in hand paid, receipt of which is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. PRINCIPAL AMOUNT OWING.

Upon the receipt by the Mortgagee of a principal reduction payment of \$450,000.00, the aggregate principal sum of **TEN MILLION AND 00/100 (\$10,000,000.00) DOLLARS** is now due and owing under the Restated Note, all without any offset, defense or counterclaim whatsoever.

2. REPRESENTATIONS.

The Mortgagor represents, warrants and agrees with the Mortgagee as follows:

- (a) The Mortgage is in full force and effect and has not been modified.

(b) The Mortgage, this Agreement, and all documents executed and delivered in connection with this Agreement including, without limitation, the Restated Note, have been duly authorized, executed and delivered by the Mortgagor and constitute legal, valid and binding obligations of the Mortgagor, enforceable against the Mortgagor in accordance with their respective terms without offset, defense or counterclaim.

(c) The Mortgage is a valid first mortgage lien in favor of the Mortgagee on the Mortgaged Property, securing the obligations under the Restated Note.

(d) The Mortgagor is the sole owner of the ground leasehold interest in the Mortgaged Property, and no mortgage (other than the Mortgage), ground leasehold interest, judgment or other lien encumbers the Mortgaged Property.

(e) All real estate taxes and municipality charges in respect of the Mortgaged Property have been paid as of the date on which same are due.

(f) No material adverse change in the financial condition of the Mortgagor has occurred since the date of the most recent financial statement of the Mortgagor delivered to the Mortgagee.

(g) There is no action, suit or proceeding pending or threatened against or affecting the Mortgagor or the Mortgaged Property.

(h) The Mortgaged Property has not been damaged or destroyed by fire or other casualty, and no condemnation or eminent domain proceedings have been commenced with respect to the Mortgaged Property and, to the best of the Mortgagor's knowledge, no such condemnation or eminent domain proceeding is threatened.

(i) To the best of the Mortgagor's knowledge, the Mortgaged Property is being used and operated in compliance with all applicable laws.

3. MODIFICATION OF MORTGAGE AND ASSIGNMENT OF LEASES.

The Mortgage and Assignment of Leases shall secure all indebtedness and obligations of the Mortgagor evidenced by and advances made under the Restated Note, including, without limitation, all Additional Interest payable under the Restated Note (as such term is defined therein).

4. FINANCIAL REPORTING.

The Mortgagor covenant and agrees to deliver to the Mortgagee (or cause to be delivered to the Mortgagee) the following:

(a) Within one hundred twenty (120) days after the end of each fiscal year of Mortgagor during the term of the Loan, with financial statements of Mortgagor in form reasonably satisfactory to the Mortgagee. Such financial statements shall be prepared on a GAAP basis excluding the effect of straight-line rent and FAS 141R adjustments, and shall include balance sheets and income statements as the Mortgagee may reasonably require. Such financial statements shall be certified by the Mortgagor's managing member as being true and accurate in all material respects and consistent with prior practices by a satisfactory officer of Mortgagor.

(b) Within one hundred eighty (180) days after the end of each fiscal year during the term of the Loan, audited financial statements of Acadia Strategic Opportunity Fund II, LLC (the "Guarantor") in form satisfactory to the Mortgagee. Such financial statements shall be certified as being true and accurate in all material respects and consistent with prior practices by an officer of the Guarantor.

(c) Within one hundred twenty (120) days of calendar year end, annual budgets and forecasts for the Project;

(d) Within one hundred twenty (120) days of fiscal year end, annual financial covenant certificates of the Guarantor regarding the Guarantor's financial covenants set forth in the Guaranty, together with calculations.

(e) Within sixty (60) days after each calendar quarter end, quarterly statements of net operating income prepared on the same basis as the annual financial statements of the Mortgagor (including rent rolls) of the Project.

(f) Annual income tax return of the Mortgagor within thirty (30) days of filing.

(g) In addition to, and not by way of limitation of, the reporting requirements set forth above, the Mortgagor shall provide and cause the Guarantor to provide the Mortgagee with such other information as reasonably requested by the Mortgagee from time to time for purposes of evaluating the financial condition, liquidity and cash flow of the Project, the Mortgagor, the Guarantor and any related entities.

5. REFERENCES.

Whenever in the Mortgage or other Loan Documents reference is made to the "Note" or "Building Loan Note" the same shall mean the Restated Note as described herein and as may hereafter be modified or amended. Unless otherwise specified herein (a) words importing any gender include the other gender and (b) the words "include" or "including" or words of similar import, shall be deemed to be followed by the words "but not limited to" or "without limitation." The terms "Owner" and "Mortgagor" as used in the Mortgage, in the Restated Note or this Agreement, shall be interchangeable and shall refer to the "Mortgagor", as defined in this Agreement.

6. MODIFICATIONS.

The terms hereof may not be waived, changed, modified, terminated or discharged orally, but only by an agreement in writing signed by the party against whom enforcement of such waiver, change, modification, termination and discharge is sought.

7. UNMODIFIED TERMS.

Except as herein expressly modified and amended herein, all of the terms, covenants and conditions of the Mortgage and other Loan Documents shall remain in full force and effect.

8. CONFLICTS.

To the extent that the terms, covenants and conditions of the Restated Note, Mortgage, and/or other Loan Documents shall conflict with those set forth herein, the terms, covenants and conditions of the Restated Note, Mortgage, and other Loan Documents hereby are and shall be superseded and replaced by the terms, covenants and conditions set forth herein, and the Mortgagor agrees to comply with and be subject to all of the terms, covenants and conditions of the Restated Note, Mortgage, and other Loan Documents as modified hereby.

9. SUCCESSORS AND ASSIGNS.

This Modification Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

10. FEES.

(a) The Mortgagor shall be responsible for and shall pay to the Mortgagee, upon demand, the Mortgagee's loan modification fee referenced in the Restated Note and all of the Mortgagee's reasonable attorney's fees, plus out of pocket disbursements) and title insurance company fees and charges, if any, in connection with the entering into of this Modification Agreement and the transactions contemplated by this Modification Agreement, and such costs and expenses incurred to and including the date hereof shall be paid simultaneously with the execution and delivery of this Modification Agreement.

(b) In the event of the bringing of any action or suit by the Mortgagee against the Mortgagor by reason of any breach of any of the covenants, agreements or provisions on the part of the Mortgagor arising out of this Modification Agreement, the Mortgage, or the Restated Note, then in that event the Mortgagee shall be entitled to have and recover from the other party all reasonable and necessary out-of-pocket costs and expenses of the action or suit, including actual attorneys' fees, accounting and engineering fees, and any other professional fees and expenses resulting therefrom.

(c) All sums which are to be paid by the Mortgagor to the Mortgagee pursuant to this Section 10 which are not paid when due shall be deemed additional principal under the Mortgage, shall bear interest at the Default Rate set forth in the Restated Note until paid in full and the payment thereof shall be secured by the lien of the Mortgage.

11. NO NOVATION.

It is the intention of the parties hereto that this Modification Agreement is an extension of the existing obligations of the Mortgagor under the Restated Land Note and Restated Construction Note, and shall not constitute a novation and shall in no way adversely affect or impair the lien priority of the Mortgage. In the event this Modification Agreement, or any portion hereof, or any of the instruments executed in connection herewith shall be construed or shall operate to affect the lien priority of the Mortgage, then to the extent such instrument creates a charge upon the Mortgaged Property, in excess of that contemplated and permitted thereby, and to the extent third parties acquiring an interest in the Mortgaged Property between the time of recording of the Mortgage and the recording of this Modification Agreement are prejudiced hereby, if any, this Modification Agreement shall be void and of no force and effect as to such third parties; provided, however, that, notwithstanding the foregoing, the parties hereto, as among themselves, shall be bound by all terms and conditions hereof until all indebtedness evidenced by the Restated Note shall have been paid.

12. NO DURESS.

The Mortgagor hereby states, acknowledges, and affirms that it has entered into this Modification Agreement freely and without duress, having had the opportunity to seek and receive the advice of counsel in this matter.

13. GOVERNING LAW.

This Modification Agreement shall be governed by and construed in accordance with the internal laws of the State of New Jersey without reference to its rules governing conflicts of laws.

14. COUNTERPARTS.

This Modification Agreement may be executed in counterparts by one or more parties to this Modification Agreement and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

15. WAIVER OF JURY TRIAL.

MORTGAGOR AND MORTGAGEE MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MODIFICATION AGREEMENT OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR MORTGAGEE TO ACCEPT THIS MODIFICATION AGREEMENT AND MODIFY THE LOAN.

16. CORRECTIONS.

The Mortgagor will, at the request of the Mortgagee and at the cost and expense of the Mortgagor (A) promptly correct any defect, error or omission which may be discovered in the contents of this Agreement or in any of the Loan Documents, or in the execution, acknowledgment or recordation thereof, and (B) promptly do, execute, acknowledge and deliver any and all such further acts and instruments as the Mortgagee reasonably require from time to time in order to effectuate the purposes and intent of this Modification Agreement.

17. LIMITATION ON LIABILITY.

NO CLAIM MAY BE MADE BY THE MORTGAGOR, ANY GUARANTOR OF THE LAND LOAN AND/OR THE CONSTRUCTION LOAN, OR ANY OTHER PERSON AGAINST THE MORTGAGEE OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS OR AGENTS OF THE MORTGAGEE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR, TO THE FULLEST EXTENT PERMITTED BY LAW, FOR ANY PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM OR CAUSE OF ACTION (WHETHER BASED ON CONTRACT, TORT, STATUTORY LIABILITY, OR ANY OTHER GROUND) BASED ON, ARISING OUT OF OR RELATED TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, AND THE MORTGAGOR (FOR ITSELF AND ON BEHALF OF EACH GUARANTOR OF THE LOAN AND EACH OTHER PERSON) HEREBY WAIVES, RELEASES AND AGREES NEVER TO SUE UPON ANY CLAIM FOR ANY SUCH DAMAGES, WHETHER SUCH CLAIM NOW EXISTS OR HEREAFTER ARISES AND WHETHER OR NOT IT IS NOW KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

18. LOST OR MISPLACED DOCUMENTS.

Upon receipt of an affidavit of an officer of the Mortgagee as to the loss, theft, destruction or mutilation of the Restated Land Note and Restated Construction Note, the Mortgage, this Agreement or any other security document which is not of public record, and in the case of any such loss, theft, destruction or mutilation, upon surrender and cancellation of the Restated Note, the Mortgage, this Agreement or other security document, Mortgagor will issue in lieu thereof, a replacement or restated note or notes, mortgage or other security document in the same principal amount thereof and otherwise of like tenor.

19. USURY LAWS.

All agreements between Mortgagor and Mortgagee are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use or the forbearance of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. As used herein, the term "applicable law" shall mean the law in effect as of the date hereof; provided, however, that in the event there is a change in the law which results in a higher permissible rate of interest, then this Modification Agreement shall be governed by such new law as of its effective date. In this regard, it is expressly agreed that it is the intent of Mortgagor and Mortgagee in the execution, delivery and acceptance of this Modification Agreement to contract in strict compliance with the laws of the State of New Jersey from time to time in effect. If, under or from any circumstances whatsoever, fulfillment of any provision hereof or of any of the Loan Documents or the security documents at the time of performance of such provision shall be due, shall involve transcending the limit of such validity prescribed by applicable law, then the obligation to be fulfilled shall automatically be reduced to the limits of such validity, and if under or from circumstances whatsoever Mortgagee should ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Mortgagor and Mortgagee.

IN WITNESS WHEREOF the parties have executed this Modification Agreement as of the day and year first above written.

PNC BANK, NATIONAL ASSOCIATION

By: /s/ Brian Kelly
Brian Kelly, Vice President

ACADIA – P/A LIBERTY LLC

By: /s/ Robert Masters
Robert Masters, Senior Vice President

STATE OF NEW JERSEY :
 SS:
COUNTY OF MIDDLESEX :

On the 17th day of September, in the year 2010, before me, the undersigned, personally appeared **BRIAN KELLY**, personally known to me or proved 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Terri Berlin
Notary Public

Terri Berlin
Notary Public, State of New Jersey
My Commission Expires Aug. 2, 2014
I.D. # 2168548

STATE OF NEW YORK:

ss:

COUNTY OF WESTCHESTER:

On the 16th day of September, in the year 2010, before me, the undersigned, personally appeared **ROBERT MASTERS**, personally known to me or proved 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 executed the same in his capacity, and that by his 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 4/20/2014

SCHEDULE A

LEGAL DESCRIPTION

Policy Number: M-8912-000881957

Title Number: 832793

DESCRIPTION SHEET

Parcel I

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Fourth Ward of the Borough and County of the Queens, City and State of New York, bounded and described as follows:-

BEGINNING at the corner formed by the intersection of the easterly side of 97th Street with the northerly side of Liberty Avenue;

RUNNING THENCE easterly along the northerly side of Liberty Avenue 201.365 feet (deed) 201.18 (survey) to the corner formed by the intersection of the northerly side of Liberty Avenue with the westerly side of 98th Street;

THENCE northerly along the westerly side of 98th Street 262.81 feet (deed), 262.92 feet (survey);

THENCE westerly at right angles to 98th Street, 100 feet 0 inches;

THENCE southerly parallel to the westerly side of 98th Street 125.03 feet;

THENCE westerly at right angles to the previous course, and along the southerly line of Lot No. 1108 as shown on a Map entitled, "Hitchcock's & Dentons Complete Map of Ozone Park" filed in the Queens County Clerk's Office on 10/14/1884 as Map No. 288, 50 feet 0 inches;

THENCE southerly along the division line of Lot Nos. 1110 and 1111 as shown on said Map and parallel with the easterly side of 97th Street 26.12 feet (deed), 26.03 feet (survey);

THENCE westerly along a line forming a right angle to the easterly side of 97th Street, 50 feet to a point on the easterly side of 97th Street;

THENCE southerly along said side of 97th Street, 90.01 feet (deed), 90.10 feet (survey) to the corner formed by the intersection of the easterly side of 97th Street with the northerly side of Liberty Avenue, the point or place of BEGINNING.

Subject to an easement over the most northerly 10 feet of premises described in Deed in Reel 843 page 1397 for the purpose of ingress and egress for foot passengers only to and from the buildings immediately adjoining the hereinabove described premises on the east and fronting on Liberty Avenue and the building immediately adjoining the hereinabove described premises on the north and fronting on 97' Street.

For information only: Said premises are known as 103-71 97th Street a/k/a 97-01/97-15 Liberty Avenue, Ozone Park, Queens, New York and are designated as Section 39 Block 9120 Lot 40 as shown on the Tax Map of the City of New York, County of Queens.

continued.....

DESCRIPTION SHEET
(continued - page 2)

Parcel II

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Fourth Ward of the Borough and County of the Queens, City and State of New York, bounded and described as follows:-

BEGINNING at the corner formed by the intersection of the northerly side of Liberty Avenue with the easterly side of 98th Street;

RUNNING THENCE easterly 201.18 feet to the corner formed by the intersection of the northerly side of Liberty Avenue with the westerly side of 99th Street;

THENCE northerly along said side of 99th Street, 190.12 feet more or less to the division line between Lots 24 and 30, as said lots exist on the current Tax Map;

THENCE westerly parallel with the southerly side of 103rd Avenue 100.0 feet to a point on the center line of the block;

THENCE northerly parallel with the easterly side of 98th Street and along the center line of the of the block 50.04 feet;

THENCE easterly parallel with the southerly side of 103rd Avenue, 100.0 feet to a point on the westerly side of 99th Street;

THENCE northerly along the westerly side of 99th Street 225.18 feet more or less to a point along the division line between Lots Nos. 18 and 24 on the current Tax Map;

continued.....

DESCRIPTION SHEET
(continued - page 3)

THENCE westerly 200.0 feet to a point on the easterly side of 98th Street distant 300.25 feet southerly from the southeasterly corner of 103rd Avenue and 98th Street;

THENCE southerly along the easterly side of 98th Street, 443.58 feet to the corner formed by the intersection of the northerly side of Liberty Avenue with the easterly side of 98th Street, the point or place of BEGINNING.

For information only: Said premises are known as 103-37/103-49 98th Street a/k/a 103-30/103-52 99th Street and 103-51/103-65 98th Street a/k/a 103-56/103-60 99th Street a/k/a 98-01/98-15 Liberty Avenue, Ozone Park, Queens, New York and are designated as Section 39 Block 9121 Lot 24 as shown on the Tax Map of the City of New York, County of Queens.

Amendment to Loan Documents



THIS AMENDMENT TO LOAN DOCUMENTS (this “Amendment”) is made as of September 17, 2010 (effective as of September 2, 2010), between ACADIA-P/A LIBERTY, LLC, a Delaware limited liability company (the “Borrower”), ACADIA STRATEGIC OPPORTUNITY FUND II, LLC, a Delaware limited liability company (the “Guarantor”) and PNC BANK, NATIONAL ASSOCIATION (the “Bank”).

BACKGROUND

A. The Borrower and the Guarantor have executed and delivered to the Bank (or a predecessor which is now known by the Bank’s name as set forth above), one or more promissory notes, letter agreements, loan agreements, security agreements, mortgages, pledge agreements, collateral assignments, and other agreements, instruments, certificates and documents, some or all of which are more fully described on attached Exhibit A, which is made a part of this Amendment (collectively as amended from time to time, the “Loan Documents”) which evidence or secure some or all of the Borrower’s obligations to the Bank for one or more loans or other extensions of credit (the “Obligations”).

B. The Borrower, the Guarantor and the Bank desire to amend the Loan Documents as provided for in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

1. Certain of the Loan Documents are amended as set forth in Exhibit A. Any and all references to any Loan Document in any other Loan Document shall be deemed to refer to such Loan Document as amended by this Amendment. This Amendment is deemed incorporated into each of the Loan Documents. Any initially capitalized terms used in this Amendment without definition shall have the meanings assigned to those terms in the Loan Documents. To the extent that any term or provision of this Amendment is or may be inconsistent with any term or provision in any Loan Document, the terms and provisions of this Amendment shall control.

2. The Borrower and the Guarantor hereby certify that: (a) all of their representations and warranties in the Loan Documents, as amended by this Amendment, are, except as may otherwise be stated in this Amendment: (i) true and correct as of the date of this Amendment, (ii) ratified and confirmed without condition as if made anew, and (iii) incorporated into this Amendment by reference, (b) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default, exists under any Loan Document which will not be cured by the execution and effectiveness of this Amendment, (c) no consent, approval, order or authorization of, or registration or filing with, any third party is required in connection with the execution, delivery and carrying out of this Amendment or, if required, has been obtained, and (d) this Amendment has been duly authorized, executed and delivered so that it constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms. The Borrower confirms that the Obligations remain outstanding without defense, set off, counterclaim, discount or charge of any kind as of the date of this Amendment.

3. The Borrower and the Guarantor hereby confirm that any collateral for the Obligations, including liens, security interests, mortgages, and pledges granted by the Borrower or third parties (if applicable), shall continue unimpaired and in full force and effect, and shall cover and secure all of the Borrower’s existing and future Obligations to the Bank, as modified by this Amendment.

4. As a condition precedent to the effectiveness of this Amendment, the Borrower and the Guarantor shall comply with the terms and conditions (if any) specified in Exhibit A.
5. To induce the Bank to enter into this Amendment, the Borrower and the Guarantor waive and release and forever discharge the Bank and its officers, directors, attorneys, agents, and employees from any liability, damage, claim, loss or expense of any kind that it may have against the Bank or any of them arising out of or relating to the Obligations. The Borrower and the Guarantor further agree to indemnify and hold the Bank and its officers, directors, attorneys, agents and employees harmless from any loss, damage, judgment, liability or expense (including attorneys' fees) suffered by or rendered against the Bank or any of them on account of any claims arising out of or relating to the Obligations. &# 160;The Borrower and the Guarantor further state that he or it has carefully read the foregoing release and indemnity, knows the contents thereof and grants the same as its own free act and deed.
6. This Amendment may be signed in any number of counterpart copies and by the parties to this Amendment on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Amendment by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.
7. This Amendment will be binding upon and inure to the benefit of the Borrower and the Bank and their respective heirs, executors, administrators, successors and assigns.
8. This Amendment has been delivered to and accepted by the Bank and will be deemed to be made in the State where the Bank's office indicated in the Loan Documents is located. This Amendment will be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State where the Bank's office indicated in the Loan Documents is located, excluding its conflict of laws rules.
9. The Borrower and Guarantor covenant and agree that there is currently due and owing on the Loan the principal sum of \$10,450,000.00, together with interest thereon and other charges evidenced thereby, without offset, defense or counterclaim of any kind or nature whatsoever.
10. Except as amended hereby, the terms and provisions of the Loan Documents remain unchanged, are and shall remain in full force and effect, and are hereby ratified and confirmed, unless and until modified or amended in writing in accordance with their terms. Except as expressly provided herein, this Amendment shall not constitute an amendment, waiver, consent or release with respect to any provision of any Loan Document, a waiver of any default or Event of Default under any Loan Document, or a waiver or release of any of the Bank's rights and remedies (all of which are hereby reserved). **The Borrower and the Guarantor expressly ratify and confirm the confession of judgment (if applicable) and waiver of jury trial provisions contained in the Loan Documents.**

WITNESS the due execution of this Amendment as a document under seal as of the date first written above.

BORROWER:

ACADIA – P/A LIBERTY LLC

By: /s/ Robert Masters
Robert Masters, Senior Vice President

GUARANTOR:

ACADIA STRATEGIC OPPORTUNITY FUND II, LLC

By: Acadia Realty Acquisition II, LLC, its Managing Member
By: Acadia Realty Limited Partnership, its sole member
By: Acadia Realty Trust, its General Partner

By: /s/ Robert Masters
Robert Masters, Senior Vice President

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) ss:

On the 3rd day of September, in the year 2010, before me, the undersigned, personally appeared **ROBERT MASTERS**, personally known to me or proved 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 executed the same in his capacity, and that by his 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 4/20/2014

PNC BANK, NATIONAL ASSOCIATION

By: /s/ Brian Kelly
Brian Kelly
Vice President

**EXHIBIT A TO
AMENDMENT TO LOAN DOCUMENTS
DATED AS OF SEPTEMBER 17, 2010
(EFFECTIVE AS OF SEPTEMBER 2, 2010)**

- A. The "Loan Documents" that are the subject of this Amendment include the following (as any of the foregoing have previously been amended, modified or otherwise supplemented):
1. The Amended and Restated Mortgage Note dated July 22, 2009 (effective as of July 18, 2009), executed by the Borrower and delivered to the Lender, as amended by amendment agreement dated and effective July 19, 2010 ("the "Note");
 2. The Building Loan Leasehold Mortgage and Security Agreement dated May 18, 2006, executed by the Borrower and delivered to the Lender regarding certain real property located in the Borough of Queens, City of New York, State of New York, as modified by the Amendment to Loan Documents dated May 21, 2009 (effective as of May 18, 2009) and Mortgage Modification Agreement dated July 22, 2009 (effective as of July 18, 2009), as amended by amendment agreement dated and effective July 19, 2010;
 3. The Building Loan Agreement dated May 18, 2006, executed by the Borrower and the Lender regarding the Loan, as modified by the Amendment to Loan Documents dated May 21, 2009 (effective as of May 18, 2009) and Mortgage Modification Agreement dated July 22, 2009 (effective as of July 18, 2009);
 4. The Building and Term Loan Assignment of Rents, Leases and Profits dated May 18, 2006, executed by the Borrower and delivered to the Lender regarding the Premises, as modified by the Amendment to Loan Documents dated May 21, 2009 (effective as of May 18, 2009) and Mortgage Modification Agreement dated July 22, 2009 (effective as of July 18, 2009), as amended by amendment agreement dated and effective July 19, 2010;
 5. The Guaranty and Suretyship dated May 18, 2006, executed by the Guarantor and delivered to the Lender, as reaffirmed on May 21, 2009 (effective as of May 18, 2009) on July 22, 2009 (effective as of July 18, 2009) and on July 19, 2010;
 6. The Environmental Indemnity Agreement dated May 18, 2006, executed by the Borrower and the Guarantor and delivered to the Lender, as modified by the Amendment to Loan Documents dated May 21, 2009 (effective as of May 18, 2009) and Mortgage Modification Agreement dated July 22, 2009 (effective as of July 18, 2009), as amended by amendment agreement dated and effective July 19, 2010;
 7. UCC-1 Financing Statements (the "Financing Statements") to be filed in the applicable county filing office and the Secretary of State's Office; and
 8. All other documents, instruments, agreements, and certificates executed and delivered in connection with the Loan Documents listed in this Section A.
- B. The Note is hereby amended as follows:
1. The term "Maturity Date" is hereby amended to mean September 17, 2010.
- C. Conditions to Effectiveness of Amendment: The Bank's willingness to agree to the amendments set forth in this Amendment are subject to the prior satisfaction of the following conditions:
1. Execution by all parties and delivery to the Bank of this Amendment.

CONSENT OF GUARANTOR

Each of the undersigned guarantors (jointly and severally if more than one, the "**Guarantor**") consents to the provisions of the foregoing Amendment (the "**Amendment**") and all prior amendments (if any) and confirms and agrees that: (a) the Guarantor's obligations under its Guaranty and Suretyship Agreement dated May 18, 2006, as reaffirmed to date (collectively if more than one, the "**Guaranty**"), relating to the Obligations mentioned in the Amendment, shall be unimpaired by the Amendment; (b) the Guarantor has no defenses, set offs, counterclaims, discounts or charges of any kind against the Bank, its officers, directors, employees, agents or attorneys with respect to the Guaranty; and (c) all of the terms, conditions and covenants in the Guaranty remain unaltered and in full force and effect and are hereby ratified and confirmed and apply to the Obligations, as modified by the Amendment. The Guarantor certifies that all representations and warranties made in the Guaranty are true and correct.

The Guarantor hereby confirms that any collateral for the Obligations, including liens, security interests, mortgages, and pledges granted by the Guarantor or third parties (if applicable), shall continue unimpaired and in full force and effect, shall cover and secure all of the Guarantor's existing and future Obligations to the Bank, as modified by this Amendment.

By signing below, each Guarantor who is an individual provides written authorization to the Bank or its designee (and any assignee or potential assignee hereof) to obtain the guarantor's personal credit profile from one or more national credit bureaus. Such authorization shall extend to obtaining a credit profile for the purposes of update, renewal or extension of such credit or additional credit and for reviewing or collecting the resulting account. A photocopy or facsimile copy of this authorization shall be valid as the original. By signature below, each such Guarantor affirms his/her identity as the respective individual(s) identified in the Guaranty.

The Guarantor ratifies and confirms the indemnification, confession of judgment (if applicable) and waiver of jury trial provisions contained in the Guaranty.

WITNESS the due execution of this Consent as a document under seal as of the date of this Amendment, intending to be legally bound hereby.

ACADIA STRATEGIC OPPORTUNITY FUND II, LLC

By: Acadia Realty Acquisition II, LLC, its Managing Member
By: Acadia Realty Limited Partnership, its sole member
By: Acadia Realty Trust, its General Partner

By: /s/ Robert Masters
Robert Masters, Senior Vice President

Amended and Restated Mortgage Note
(LIBOR Swap Transaction)



\$10,000,000.00

September 17, 2010 (effective as of
September 17, 2010)

FOR VALUE RECEIVED, ACADIA – P/A LIBERTY LLC, a Delaware limited liability company (the “**Borrower**”), with an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, promises to pay to the order of **PNC BANK, NATIONAL ASSOCIATION** (the “**Bank**”), in lawful money of the United States of America in immediately available funds at its offices located at Two Tower Center Boulevard, 18th Floor, East Brunswick, New Jersey 08816, or at such other location as the Bank may designate from time to time, the principal sum of **TEN MILLION AND 00/100 (\$10,000,000.00) DOLLARS** (the “**Loan**” or the “**Facility**”), together with interest accruing from the date of initial advance on the outstanding principal balance hereof, as provided below:

1. Maturity Date and Extension Option.

(a) The “**Maturity Date**” shall mean September 1, 2011; provided, however, in the event that the Borrower exercises the Extension Option (as such term is defined in Paragraph 1(b) below), the “**Maturity Date**” shall mean September 1, 2012. The Borrower acknowledges and agrees that in no event will the Bank be under any obligation to extend or renew the Facility or this Note beyond the Maturity Date, except as expressly set forth herein. No further advances shall be made hereunder.

(b) Anything to the contrary notwithstanding, the Borrower shall have the option (the “**Extension Option**”) to extend the Maturity Date from September 1, 2011 for a period of one (1) year (the “**Extension Period**”) ending on September 1, 2012, provided that the following conditions shall have been met:

(i) No Event of Default (as such term is defined in Paragraph 9 below or in the Mortgage, as hereinafter defined), shall have occurred and be continuing;

(ii) Prior to the commencement of the Extension Period, the Borrower shall have provided the Bank with at least sixty (60) days prior written notice (the “**Extension Period Notice**”) of the Borrower’s intention to extend the Maturity Date;

(iii) CVS O.P., LLC is in occupancy and 85% of the in-line retail space of the Improvements is leased and occupied;

(iv) Guarantor financial covenant compliance is evidenced;

(v) The Facility does not exceed 65% of the “as-stabilized” value of the Property (as defined in the Mortgage);

(vi) DSCR (as hereinafter defined) is not less than 1.20 to 1.00; and

(vii) With the Extension Period Notice, the Borrower shall have paid to the Bank a non-refundable fee of three tenths of one percent (0.30%) of the outstanding principal balance of the Loan on the first day of the Extension Period. In connection with the Borrower’s request for the Extension Option, the Bank, at its option, may order a new appraisal of the Property, at the cost of the Borrower.

"DSCR" will be defined as NOI divided by Debt Service. "NOI" will be calculated on an annualized pro forma basis based on the prior three months of operating history, including rents from self storage tenants not more than 45 days in arrears and expected effective minimum rent from certain executed leases with tenants in occupancy or who are not yet in occupancy but are scheduled to take occupancy within ninety (90) days of the test date, but excluding to-be-determined reasonable, customary tenant improvements/capital expenditure reserves and income from tenants in default, bankruptcy and more than sixty days in arrears in the payment of base rent. "Debt Service" will be calculated on an annualized basis assuming the higher of (i) actual interest expense and scheduled principal amortization of the commitment under the Facility, (ii) mortgage-style amortization of the commitment under the Facility over 25 years at a rate of 1.50% over the yield to maturity of the 10-year Treasury Note, or (iii) a 8.29% mortgage constant, each calculated immediately prior to each extension.

If a reduction in the Facility is necessary to meet the loan-to-value requirement or the DSCR requirements set forth above, the Borrower may elect to (A) make a permanent principal reduction payment, or (B) deliver a letter of credit in form and issued by an issuer acceptable to the Bank, in either case in an amount which will satisfy the loan to value or DSCR requirement and thereby obtain the applicable extension, so long as the other conditions for extension are met. In the event Borrower elects to post a letter of credit in order to satisfy the above DSCR requirement, the letter of credit shall be released when the DSCR requirement is met and maintained for a period of sixty (60) consecutive days, provided no default or Event of Default exists.

2. **Rate of Interest.** Amounts outstanding under this Note will bear interest at a rate per annum equal to the sum of (A) LIBOR in effect on each Reset Date plus (B) three hundred twenty five (325) basis points (3.25%). Interest hereunder will be calculated based on the actual number of days that principal is outstanding over a year of 360 days. Notwithstanding the foregoing, in the event that the Master Agreement (as defined in Paragraph 13 herein), amendment or successor t hereto or other interest or currency swap, future, option or other interest rate protection is not in effect, amounts outstanding under this Note will bear interest at a rate per annum equal to, as determined at the option of the Borrower (each, an "**Option**"), at (1) the sum of (a) LIBOR in effect on each Reset Date plus (b) three hundred twenty five (325) basis points (3.25%) or (2) the sum of (a) the Base Rate plus (b) two hundred twenty five (225) basis points (2.25%). In no event will the rate of interest hereunder exceed the maximum rate allowed by law.

For purposes hereof, the following terms shall have the following meanings:

"Base Rate" shall mean, for any day, a fluctuating per annum rate of interest equal to the highest of (i) the Prime Rate, which rate may not be the lowest rate then being charged commercial borrowers by the Bank, (ii) the Federal Funds Open Rate plus 50 basis points (0.5%), and (iii) the Daily LIBOR Rate plus 100 basis points (1.0%), so long as a Daily LIBOR Rate is offered, ascertainable and not unlawful. If and when the Base Rate (or any component thereof) changes, the rate of interest with respect to any advance bearing interest at the floating rate will change automatically without notice to the Borrower, effective on the date of any such change. Interest on borrowings at the Base Rate is calculated on an actual/actual day basis and is payable monthly.< /font>

"Federal Funds Open Rate" for any day shall mean the rate per annum (based on a year of 360 days and actual days elapsed) determined by the Bank in accordance with its usual procedures (which determination shall be conclusive absent manifest error) to be the Open Rate for federal funds transactions as of the opening of business for federal funds transactions among members of the Federal Reserve System arranged by federal funds brokers on such day, as quoted by Garvin Guybutler (or any successor) or any other broker selected by the Bank, as set forth on the applicable Telerate display page; provided however, that if such day is not a Business Day, the ; Federal Funds Open Rate for such day shall be the Open Rate on the immediately preceding Business Day or if no such rate shall be quoted by a federal funds broker at such time, such other rate as determined by the Bank in accordance with its usual procedures (which determination shall be conclusive absent manifest error). If and when the Federal Funds Open Rate changes, the rate of interest hereunder will change automatically without notice to the Borrower, effective on the date of any such change.

“**Daily LIBOR Rate**” shall mean, for any day, the rate per annum determined by the Bank by dividing (x) the Published Rate by (y) a number equal to 1.00 *minus* the percentage prescribed by the Federal Reserve for determining the maximum reserve requirements with respect to any Eurocurrency funding by banks on such day.

“**Published Rate**” shall mean the rate of interest published each Business Day in The Wall Street Journal “Money Rate” listing under the caption “London Interbank Offered Rate” for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the eurodollar rate for a one month period as published in another publication determined by the Bank).

“**Business Day**” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in New York, New York.

“**LIBOR**” shall mean, for each Reset Date, the interest rate per annum determined by the Bank by dividing (i) the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which US dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by the Bank which has been approved by the British Bankers’ Association as an authorized information vendor for the purpose of displaying rates at which US dollar deposits are offered by leading banks in the London interbank deposit market (an “Alternate Source”), at approximately 11:00 a.m., London time, two (2) Business Days prior to such Reset Date, as the one (1) month London interbank offered rate for U.S. Dollars commencing on such Reset Date (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any Alternate Source, a comparable replacement rate determined by the Bank at such time (which determination shall be conclusive absent manifest error)), by (ii) a number equal to 1.00 minus the LIBOR Reserve Percentage.

“**LIBOR Reserve Percentage**” shall mean the maximum effective percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including, without limitation, supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as “Eurocurrency liabilities”).

“**Prime Rate**” shall mean the rate publicly announced by the Bank from time to time as its prime rate. The Prime Rate is determined from time to time by the Bank as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index, and does not necessarily reflect the lowest rate of interest actually charged by the Bank to any particular class or category of customers. If and when the Prime Rate changes, the rate of interest with respect to any amounts hereunder to which the Base Rate applies will change automatically without notice to the Borrower, effective on the date of any such change.

“**Reset Date**” shall mean, subject to the proviso below, the first (1st) day of every month hereafter, provided that: (a) if any such day is not a Business Day, then the first succeeding day that is a Business Day shall instead apply, unless that day falls in the next succeeding calendar month, in which case the next preceding day that is a Business Day shall instead apply, and (b) if any such day is a day of a calendar month for which there is no numerically corresponding day in certain other months (each, a “**Non- Conforming Month**”), then any Reset Date that falls within a Non-Conforming Month shall be the last day of such Non-Conforming Month.

LIBOR shall be adjusted on and as of (a) each Reset Date, and (b) the effective date of any change in the LIBOR Reserve Percentage. The Bank shall give prompt notice to the Borrower of LIBOR as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

If the Bank determines (which determination shall be final and conclusive) that, by reason of circumstances affecting the eurodollar market generally, deposits in dollars (in the applicable amounts) are not being offered to banks in the eurodollar market for the selected term, or adequate means do not exist for ascertaining LIBOR, then the Bank shall give notice thereof to the Borrower. Thereafter, until the Bank notifies the Borrower that the circumstances giving rise to such suspension no longer exist, (a) the availability of LIBOR shall be suspended, and (b) the interest rate for all amounts outstanding under this Note shall be converted on the next succeeding Reset Date to a rate of interest per annum equal to (A) the Base Rate plus two hundred twenty five (225) basis points (2.25%).

In the event that the Master Agreement, amendment or successor thereto or other interest or currency swap, future, option or other interest rate protection or similar agreement is not in effect, the Borrower may select different Options to apply simultaneously to different portions of the advances and may select up to five (5) different interest periods (or four (4) different interest periods if the Base Rate Option is also in use) to apply simultaneously to different portions of the advances bearing interest under the LIBOR Option. Interest hereunder will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event will the rate of interest hereunder exceed the maximum rate allowed by law.

In addition, if, after the date of this Note, the Bank shall determine (which determination shall be final and conclusive) that any enactment, promulgation or adoption of or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by a governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank with any guideline, request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for the Bank to make or maintain or fund loans based on LIBOR, the Bank shall notify the Borrower. Upon receipt of such notice, until the Bank notifies the Borrower that the circumstances giving rise to such determination no longer apply, (a) the availability of LIBOR shall be suspended, and (b) the interest rate on all amounts outstanding under this Note shall be converted to the Base Rate either (i) on the next succeeding Reset Date if the Bank may lawfully continue to maintain or fund loans based on LIBOR to such day, or (ii) immediately if the Bank may not lawfully continue to maintain or fund loans based on LIBOR.

3. Interest Rate Election. In the event that the Master Agreement, amendment or successor thereto or other interest or currency swap, future, option or other interest rate protection or similar agreement is not in effect, subject to the terms and conditions of this Note, at the end of each interest period applicable to any advance, the Borrower may renew the Option applicable to such advance or convert such advance to a different Option; provided that, during any period in which any Event of Default has occurred and is continuing, any advances bearing interest under the LIBOR Option shall, at the Bank's sole discretion, be converted at the end of the applicable LIBOR Interest Period to the Base Rate Option and the LIBOR Option will not be available to Borrower with respect to any new advances until such Event of Default has been cured by the Borrower or waived by the Bank. The Borrower shall notify the Bank in writing of each election of an Option, each conversion from one Option to another, the amount of the advances then outstanding to be allocated to each Option and where relevant the interest periods therefore. In the case of electing or converting to the LIBOR Option, such notice shall be given at least three (3) Business Days prior to the commencement of any LIBOR Interest Period. In the case of electing or converting to the Base Rate Option, such notice shall be given at least two (2) Business Days prior to the commencement of any Base Rate Period. If no notice of conversion or renewal is timely received by the Bank, the Borrower shall be deemed to have converted such advance to the Base Rate Option. Any such election shall be provided in writing by such method as the Bank may require.

4. Payment Terms. Interest only shall be due and payable commencing on the first day of the first month after the date hereof, and continuing on the first day of each month thereafter until the Maturity Date, on which date all outstanding principal and accrued interest shall be due and payable in full. In addition to the foregoing, commencing on March 1, 2011 (the "Principal Commencement Date"), and continuing on the first day of each month thereafter, in addition to the interest payment the Borrower shall make monthly principal payments computed as follows: a fixed principal sum based on the Facility amortizing on a 25 year mortgage-style basis at an assumed interest rate of seven (7%) percent per annum.

If any payment under this Note shall become due on a Saturday, Sunday or public holiday under the laws of the State where the Bank's office indicated above is located, such payment shall be made on the next succeeding business day and such extension of time shall be included in computing interest in connection with such payment. Payments received will be applied to charges, fees and expenses (including attorneys' fees), accrued interest and principal in any order the Bank may choose, in its sole discretion.

5. **Late Payments; Default Rate.** If the Borrower fails to make any payment of principal, interest or other amount coming due pursuant to the provisions of this Note within ten (10) calendar days of the date due and payable, the Borrower also shall pay to the Bank a late charge equal to the greater of five percent (5%) of the amount of such payment or \$100.00 (the "**Late Charge**"). Such ten (10) day period shall not be construed in any way to extend the due date of any such payment. Upon maturity, whether by acceleration, demand or otherwise, and at the Bank's option upon the occurrence of any Event of Default (as hereinafter defined) and during the continuance thereof, amounts outstanding under this Note shall bear interest at a rate per annum (based on the actual number of days that principal is outstanding over a year of 360 days) which shall be four percentage points (4%) in excess of the interest rate then in effect until the next succeeding Reset Date, and four percentage points (4%) in excess of the Base Rate at all times thereafter (or in the case of an Event of Default, until such time that such Event of Default has been cured by the Borrower or waived by the Bank), but in any such event not more than the maximum rate allowed by law (the "**Default Rate**"). The Default Rate shall continue to apply whether or not judgment shall be entered on this Note. Both the Late Charge and the Default Rate are imposed as liquidated damages for the purpose of defraying the Bank's expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the Bank's exercise of any rights and remedies hereunder, under the other Loan Documents or under applicable law, and any fees and expenses of any agents or attorneys which the Bank may employ. In addition, the Default Rate reflects the increased credit risk to the Bank of carrying a loan that is in default. The Borrower agrees that the Late Charge and Default Rate are reasonable forecasts of just compensation for anticipated and actual harm incurred by the Bank, and that the actual harm incurred by the Bank cannot be estimated with certainty and without difficulty.

6. **Prepayment.** The Borrower shall have the right to prepay at any time and from time to time, in whole or in part, without penalty, any advance hereunder which is accruing interest under the Base Rate Option. If the Borrower prepays (whether voluntary, on default or otherwise) all or any part of any advance which is accruing interest under the LIBOR Option on a day other than the last day of the applicable LIBOR Interest Period, the Borrower shall pay to the Bank, within 10 days after written demand therefor, all amounts due pursuant to paragraph 7 below, including the Cost of Prepayment, if any.

7. **Yield Protection.** The Borrower shall pay to the Bank, on written demand therefor, together with the written evidence of the justification therefor, all direct costs incurred, losses suffered or payments made by Bank by reason of any change in law or regulation or its interpretation imposing any reserve, deposit, allocation of capital, or similar requirement (including without limitation, Regulation D of the Board of Governors of the Federal Reserve System) on the Bank, its holding company or any of their respective assets. In addition, the Borrower agrees to indemnify the Bank against any liabilities, losses or expenses (including loss of margin, any loss or expense sustained or incurred in liquidating or employing deposits from third parties, and any loss or expense incurred in connection with funds acquired to effect, fund or maintain any advance (or any part thereof) bearing interest under the LIBOR Option) which the Bank sustains or incurs as a consequence of either (i) the Borrower's failure to make a payment on the due date thereof, (ii) the Borrower's revocation (expressly, by later inconsistent notices or otherwise) in whole or in part of any notice given to Bank to request, convert, renew or prepay any advance, or (iii) the Borrower's payment, prepayment or conversion of any advance bearing interest under the LIBOR Option on a day other than the last day of the applicable LIBOR Interest Period, including but not limited to the Cost of Prepayment. "**Cost of Prepayment**" means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period minus (ii) the yield, on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years from the prepayment date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15(519) "**Selected Interest Rates**". For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate. The Cost of Prepayment shall also apply to any payments made after acceleration of the maturity of this Note. The Bank's determination of an amount payable under this paragraph shall, in the absence of manifest error, be conclusive and shall be payable within 10 days after written demand.

8. Other Loan Documents. This Note is the note referred to in a certain building loan leasehold mortgage and security agreement dated May 18, 2006, as modified by mortgage modification agreement dated the date hereof (collectively, the "Mortgage"), and the other agreements and documents executed in connection therewith or referred to therein, the terms of which are incorporated herein by reference (as amended, modified or renewed from time to time, collectively the "Loan Documents"), and is secured by the Mortgage and by such other collateral as previously may have been or may in the future be granted to the Bank to secure this Note.

9. Events of Default. The occurrence of any of the following events will be deemed to be an "Event of Default" under this Note: (i) the nonpayment of any principal, interest or other indebtedness under this Note within five (5) days of when due; (ii) the default under any other covenant or other agreement, under or contained in any Loan Document or any other document now or in the future evidencing or securing any debt, liability or obligation to the Bank of any Obligor not specifically defined as an "Event of Default", unless such default is cured within thirty (30) days of written notice from the Bank; provided, however, if the default is curable but of a nature that it cannot be cured within such initial thirty (30) day period, the Borrower and/or Obligor shall have an additional period to cure the default, not to exceed sixty (60) days, so long as the Borrower and/or Obligor is diligently prosecuting the cure of such default to completion; (iii) the filing by or against any Obligor of any proceeding in bankruptcy, receivership, insolvency, reorganization, liquidation, conservatorship or similar proceeding (and, in the case of any such proceeding instituted against any Obligor, such proceeding is not dismissed or stayed within sixty (60) days of the commencement thereof, provided that the Bank shall not be obligated to advance additional funds during such period); (iv) any assignment by any Obligor for the benefit of creditors, or any levy, garnishment, attachment or similar proceeding is instituted against any property of any Obligor held by or deposited with the Bank; (v) a default with respect to any other indebtedness of any Obligor for borrowed money of \$250,000.00 or more, if the effect of such default is to cause or permit the acceleration of such debt; (vi) the commencement of any foreclosure or forfeiture proceeding, execution or attachment against any collateral securing the obligations of any Obligor to the Bank; (vii) the entry of a final judgment of \$250,000.00 or more against any Obligor and the failure of such Obligor to bond or discharge the judgment within forty (45) days of the entry thereof; (viii) any material adverse change in any Obligor's business, assets, operations, financial condition or results of operations; (ix) any Obligor ceases doing business as a going concern; (x) any representation or warranty made by any Obligor to the Bank in any Loan Document, or any other documents now or in the future evidencing or securing the obligations of any Obligor to the Bank, is false, erroneous or misleading in any material respect; (xi) the revocation or attempted revocation, in whole or in part, of any guarantee by any Obligor; (xii) the death, incarceration, indictment or legal incompetency of any individual Obligor or, if any Obligor is a partnership or limited liability company, the death, incarceration, indictment or legal incompetency of any individual general partner or member, (xiii) a default or early termination of the Master Agreement (as hereinafter defined) or (xiv) in the event that Borrower defaults in the payment of Fixed Annual Rent, Pre-Development Reimbursement Payment, Real Estate Taxes Impositions or Additional Rent or a Major Non-Monetary Default shall occur under the Ground Lease (as such capitalized terms are defined in the Ground Lease). As used herein, the term "Obligor" means any Borrower and any guarantor of or pledgor, mortgagor or other person or entity providing collateral support for the Borrower's obligations to the Bank existing on the date of this Note or arising in the future. As used herein, the term "Ground Lease" shall have the meaning as defined in the Mortgage.

Upon the occurrence of an Event of Default: (a) the Bank shall be under no further obligation to make advances hereunder; (b) if an Event of Default specified in clause (iii) or (iv) above shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder shall be immediately due and payable without demand or notice of any kind; (c) if any other Event of Default shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder, at the Bank's option and without demand or notice of any kind, may be accelerated and become immediately due and payable; (d) at the Bank's option, this Note will bear interest at the Default Rate from the date of the occurrence of the Event of Default; and (e) the Bank may exercise from time to time any of the rights and remedies available under the Loan Documents or under applicable law.

10. Right of Setoff. In addition to all liens upon and rights of setoff against the Borrower's money, securities or other property given to the Bank by law, the Bank shall have, with respect to the Borrower's obligations to the Bank under this Note and to the extent permitted by law, a contractual possessory security interest in and a contractual right of setoff against, and the Borrower hereby assigns, conveys, delivers, pledges and transfers to the Bank all of the Borrower's right, title and interest in and to, all of the Borrower's deposits, moneys, securities and other property now or hereafter in the possession of or on deposit with, or in transit to, the Bank or any other direct or indirect subsidiary of The PNC Financial Services Group, Inc., whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts. Every such security interest and right of setoff may be exercised without demand upon or notice to the Borrower. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action of the Bank, although the Bank may enter such setoff on its books and records at a later time.

11. Miscellaneous. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder ("**Notices**") must be in writing (except as may be agreed otherwise above with respect to borrowing requests) and will be effective upon receipt. Notices may be given in any manner to which the parties may separately agree, including electronic mail. Without limiting the foregoing, first class mail, facsimile transmission and commercial courier service are hereby agreed to as acceptable methods for giving Notices. Regardless of the manner in which provided, Notices may be sent to a party's address as set forth above or to such other address as any party may give to the other for such purpose in accordance with this section. No delay or omission on the Bank's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Bank's action or inaction impair any such right or power. No modification, amendment or waiver of, or consent to any departure by the Borrower from, any provision of this Note will be effective unless made in a writing signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. The Borrower agrees to pay on demand, to the extent permitted by law, all costs and expenses incurred by the Bank in the enforcement of its rights in this Note and in any security therefor, including without limitation reasonable fees and expenses of the Bank's counsel. If any provision of this Note is found to be invalid by a court, all the other provisions of this Note will remain in full force and effect. The Borrower and all other makers and indorsers of this Note hereby forever waive presentment, protest, notice of dishonor and notice of non-payment. The Borrower also waives all defenses based on suretyship or impairment of collateral. If this Note is executed by more than one Borrower, the obligations of such persons or entities hereunder will be joint and several. This Note shall bind the Borrower and its heirs, executors, administrators, successors and assigns, and the benefits hereof shall inure to the benefit of the Bank and its successors and assigns; provided, however, that the Borrower may not as sign this Note in whole or in part without the Bank's written consent and the Bank at any time may assign this Note in whole or in part.

This Note has been delivered to and accepted by the Bank and will be deemed to be made in the State where the Bank's office indicated above is located. **THIS NOTE WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE BANK AND THE BORROWER DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE BANK'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES.** The Borrower hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Bank's office indicated above is located; provided that nothing contained in this Note will prevent the Bank from bringing any action, enforcing any award or judgment or exercising any rights against the Borrower individually, against any security or against any property of the Borrower within any other county, state or other foreign or domestic jurisdiction. The Borrower acknowledges and agrees that the venue provided above is the most convenient forum for both the Bank and the Borrower. The Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Note.

12. WAIVER OF JURY TRIAL. THE BORROWER IRREVOCABLY WAIVES ANY AND ALL RIGHTS THE BORROWER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS NOTE, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS NOTE OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE BORROWER ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

13. Swap Transaction; Additional Interest. On or about the date hereof, the Borrower and the Bank are entering into a "Transaction" pursuant to and as defined in that certain ISDA Master Agreement dated as of July 22, 2009 (the "Master Agreement"). All the liabilities and obligations of the Borrower under the Master Agreement, as supplemented by the Transaction and from time to time existing after the date hereof shall be referred to as the "Additional Interest". The Borrower covenants and agrees to pay to the Bank all Additional Interest payable to the Bank pursuant to the Master Agreement when due thereunder.

14. Amended and Restated Note. This Note is being executed and delivered as a restatement of the outstanding indebtedness evidenced by that certain \$10,450,000 amended and restated mortgage note dated May 18, 2006 from the Borrower to the Bank (as extended or modified to date, the "Prior Note") and secured by the Mortgage. The indebtedness evidenced by this Note constitutes the same indebtedness evidenced by the Prior Note in the reduced current outstanding principal amount due thereunder of \$10,000,000.00. This Note shall not constitute a cancellation or novation with respect to the indebtedness evidenced by the Prior Note. Such indebtedness (as heretofore evidenced by the Prior Note and as hereafter evidenced by this Note) shall continue to be secured by, *inter alia*, the Mortgage without interruption in the lien or priority thereof. Subject to the foregoing provisions, this Note amends, restates and supersedes the Prior Note.

15. Financial Reporting. The Borrower's and Guarantor's submission of financial and related information as set forth in the second mortgage modification agreement between the Bank and the Borrower dated the date hereof shall comply with the requirements of Exhibit A attached hereto and made a part hereof.

16. Interim Debt Service Coverage Requirement. The Borrower covenants and agrees to achieve a DSCR (as previously defined) of not less than 1.00 to 1.00 by December 31, 2010 (the "Interim DSCR"). The Borrower shall provide a compliance certificate for the Interim Debt Service Coverage Requirement no later than 30 days after the test date of December 31, 2010 (the "Test Date"). If a reduction in the Loan is necessary to meet the Interim DSCR requirement, the Borrower shall either, within sixty (60) days of the Test Date (i) make a permanent principal payment, or (ii) post a letter of credit acceptable to the Bank in an amount which will satisfy the Interim DSCR requirement. In the event Borrower elects to post a letter of credit in order to satisfy the above Interim DSCR requirement, the letter of credit shall be released when the Interim DSCR requirement is met and maintained for a period of sixty (60) consecutive days provided no default or Event of Default exists.

17. Closing Fee. The Borrower shall pay to the Bank on the date hereof a closing fee of \$25,000.00.

The Borrower acknowledges that it has read and understood all the provisions of this Note, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

(Remainder of Page Intentionally Left Blank; Signature Page Follows)

SIGNATURE PAGE TO AMENDED AND RESTATED MORTGAGE NOTE

WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

ACADIA – P/A LIBERTY LLC

By: /s/ Robert Masters
Robert Masters, Senior Vice President

STATE OF NEW YORK:

ss.:

COUNTY OF WESTCHESTER:

On the 16th day of September, in the year 2010, before me, the undersigned, personally appeared **ROBERT MASTERS**, personally known to me or proved 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 executed the same in his capacity, and that by his 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 4/20/2014



REAL ESTATE FINANCE

Date
Name
Add1
Add2
City, State, Zip

RE: PNC Loan:

Dear:

In accordance with your loan documents, the Bank may make regular requests for financial information. Please provide the financial statements for your most recent fiscal year end as well as any interim statements, as required per your loan documents.

For your convenience, you may submit your documentation through one of the following four methods:

Email: financials@pncbank.com

Fax: 913-253-9813
(Please use the 'fine' quality setting when faxing)

Regular Mail:
PNC Bank, NA
Attn: Credit Administration
PO Box 25964
Shawnee Mission, KS 66225-5964

Overnight Mail:
PNC Bank, NA
Attn: Credit Administration
10851 Mastin, Suite 300
Overland Park, KS 66210
913-253-9000

Please include your PNC loan number or loan name on all correspondence. You may disregard this notice if you have already submitted these documents to the Bank. Please let us know whom we should contact at PNC to retrieve the statements on your behalf.

VERY IMPORTANT:

Requests for advances (along with all supporting documentation including any reporting required to meet the advance requirements) should be submitted to PNC separately from the above instructions. To ensure prompt funding under existing loan facilities, please continue to submit information using current practices. For questions or assistance in this regard, contact your PNC representative directly.

Sincerely,

PNC Bank, NA

Credit Administration

PNC Bank, NA (Loan #/name)
Attn: Credit Administration
PO Box 25964
Shawnee Mission, KS 66225-5964

A member of The PNC Financial Services Group
PO Box 25964 Shawnee Mission, KS 66225-5964
913-253-9813

Second Amended and Restated Guaranty and Suretyship Agreement



THIS SECOND AMENDED AND RESTATED GUARANTY AND SURETYSHIP AGREEMENT (this “**Guaranty**”) is made and entered into as of this 17 day of September, 2010 (effective as of September 17, 2010), by ACADIA STRATEGIC OPPORTUNITY FUND II, LLC, a Delaware limited liability company with an address at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 (hereinafter referred to as the “**Guarantor**”), in consideration of the extension of credit by PNC BANK, NATIONAL ASSOCIATION (the “**Bank**”), with an address at Two Tower Center Boulevard, 18th Floor, East Brunswick, New Jersey 08816, to ACADIA – P/A LIBERTY LLC, a Delaware limited liability company (the “**Borrower**”), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

1. **Guaranty of Obligations.** The Guarantor hereby unconditionally guarantees, as a primary obligor, and become surety for, the prompt payment and performance of all loans, advances, debts, liabilities, obligations, covenants and duties owing by the Borrower to the Bank or to any other direct or indirect subsidiary of The PNC Financial Services Group, Inc. in connection with a certain second amended and restated mortgage loan made by the Bank to the Borrower in the principal amount of \$10,000,000.00 (the “**Loan**”), which Loan is described in or evidenced by loan documents (the “**Loan Documents**”) including, without limitation, the amended and restated mortgage loan note of the Borrower of even date herewith which evidences the Loan made pursuant to the Loan Agreement (as same may be amended, renewed or replaced from time to time, the “**Note**”), the building loan leasehold mortgage and security agreement dated May 18, 2006 securing the Note (as same may be amended, renewed and replaced from time to time, the “**Mortgage**”) and all costs and expenses associated with the completion of the Improvements (as defined in the Loan Agreement), as more fully set forth herein, the obligations and liabilities arising under or by reason of the Master Agreement (as defined in the Note”) and the payment of Additional Interest (as defined in the Note), or under any other interest or currency swap, future, option or other interest rate protection or similar agreement, foreign currency transaction, forward, option or other similar transaction providing for the purchase of one currency in exchange for the sale of another currency, or in any other manner, whether now existing or hereinafter entered into (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), or arising out of overdrafts on deposit or other accounts or out of electronic funds transfers by the Borrower (whether by wire transfer or through automated clearing houses or otherwise) or out of the return unpaid of, or other failure of the Bank to receive final payment for, any check, item, instrument, payment order or other deposit or credit to a deposit or other account of the Borrower, or out of the Bank’s non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository or other similar arrangements of the Borrower; and any amendments, extensions, renewals or increases and all costs and expenses of the Bank (including reasonable attorneys’ fees and expenses) incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing (collectively, the “**Obligations**”). If the Borrower defaults under any such Obligations and such default continues beyond applicable grace, notice and cure periods, the Guarantor will pay the amount due to the Bank.

2. **Intentionally Omitted.**

3. **Nature of Guaranty; Waivers.** This is a guaranty of payment and not of collection and the Bank shall not be required, as a condition of the Guarantor’s liability, to make any demand upon or to pursue any of its rights against the Borrower, or to pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations.

This is an absolute, unconditional, irrevocable and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full. This Guaranty will remain in full force and effect even if there is no principal balance outstanding under the Obligations at a particular time or from time to time. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by the Bank of any other party, or any other guaranty or any security held by it for any of the Obligations, by any failure of the Bank to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations or any part thereof or any security or other guaranty thereof. The Guarantor’s obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against the Borrower or the Bank, except payment or performance of the Obligations.

Notice of acceptance of this Guaranty, notice of extensions of credit to the Borrower from time to time, notice of default, diligence, presentment, notice of dishonor, protest, demand for payment, and any defense based upon the Bank's failure to comply with the notice requirements under Parts 5 and 6 of the applicable version of the Uniform Commercial Code are hereby waived. The Guarantor waives all defenses based on suretyship or impairment of collateral.

The Bank at any time and from time to time, without notice to or the consent of the Guarantor, and without impairing or releasing, discharging or modifying the Guarantor's liabilities hereunder, may (a) change the manner, place, time or terms of payment or performance of or interest rates on, or other terms relating to, any of the Obligations; (b) renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, any other guaranties, or any security for any Obligations or guaranties; (c) apply any and all payments by whomever paid or however realized including any proceeds of any collateral, to any Obligations of the Borrower in such order, manner and amount as the Bank may determine in its sole discretion; (d) settle, compromise or deal with any other person, including the Borrower or the Guarantor, with respect to any Obligations in such manner as the Bank deems appropriate in its sole discretion; (e) substitute, exchange or release any security or guaranty; or (f) take such actions and exercise such remedies hereunder as provided herein.

4. Repayments or Recovery from the Bank. If any demand is made at any time upon the Bank for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations and if the Bank repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by the Bank. The provisions of this section will be and remain effective notwithstanding any contrary action which may have been taken by the Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to the Bank's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.

5. Financial Statements. The Guarantor covenants and agrees to provide the Bank with financial statements and information relating to the Guarantor in accordance with the requirements set forth in the second mortgage modification agreement between the Bank and the Borrower dated the date hereof. Such financial statements and information (and all requirements relating thereto) are hereby incorporated by reference as if fully set forth at length herein.

In the event that any such information submitted to the Bank has been prepared by an outside accountant, the same shall be accompanied by a statement in writing signed by the accountant disclosing that the accountant is aware that the information prepared by the accountant would be submitted to and relied upon by the Bank in connection with the Bank's determination to grant or continue credit.

6. Enforceability of Obligations. No modification, limitation or discharge of the Obligations arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law will affect, modify, limit or discharge the Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. The Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of the Borrower that may result from any such proceeding.

The Guarantor expressly waives the effect of any statute of limitations or other limitations on any actions under this Guaranty.

7. Events of Default. The occurrence of any of the following shall be an “Event of Default”: (i) any Event of Default (as defined in any of the Obligations); (ii) any default under any of the Obligations that does not have a defined set of “Events of Default” and the lapse of any notice or cure period provided in such Obligations with respect to such default; (iii) demand by the Bank under any of the Obligations that have a demand feature; (iv) the Guarantor’s failure to perform any of its obligations hereunder after notice and the passage of any applicable cure period; (v) the falsity, inaccuracy or material breach by the Guarantor of any written warranty, representation or statement made or furnished to the Bank by or on behalf of the Guarantor; or (vi) the termination or attempted termination of this Guaranty. Upon the occurrence of any Event of Default, (a) the Guarantor shall pay to the Bank the amount of the Obligations; or (b) on demand of the Bank, the Guarantor shall immediately deposit with the Bank, in U.S. dollars, all amounts due or to become due under the Obligations, and the Bank may at any time use such funds to repay the Obligations; or (c) the Bank in its discretion may exercise with respect to any collateral any one or more of the rights and remedies provided a secured party under the applicable version of the Uniform Commercial Code; or (d) the Bank in its discretion may exercise from time to time any other rights and remedies available to it at law, in equity or otherwise.

8. Right of Setoff. In addition to all liens upon and rights of setoff against the Guarantor’s money, securities or other property given to the Bank by law, the Bank shall have, with respect to the Guarantor’s obligations to the Bank under this Guaranty and to the extent permitted by law, a contractual possessory security interest in and a contractual right of setoff against, and the Guarantor hereby assigns, conveys, delivers, pledges and transfers to the Bank all of the Guarantor’s right, title and interest in and to, all of the Guarantor’s deposits, moneys, securities and other property now or hereafter in the possession of or on deposit with, or in transit to, the Bank or any other direct or indirect subsidiary of The PNC Financial Services Group, Inc., whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts. Every such security interest and right of setoff may be exercised without demand upon or notice to the Guarantor. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action of the Bank, although the Bank may enter such setoff on its books and records at a later time.

9. Collateral. This Guaranty is secured by the property described in any collateral security documents, if any, which the Guarantor executes and delivers to the Bank in connection with the Loan and by such other collateral, if any, as previously may have been or may in the future be granted to the Bank to secure any obligations of the Guarantor to the Bank in connection with the Loan.

10. Costs. To the extent that the Bank incurs any costs or expenses in protecting or enforcing its rights under the Obligations or this Guaranty, including reasonable attorneys’ fees and the costs and expenses of litigation, such costs and expenses will be due on demand, will be included in the Obligations and will bear interest from the incurring or payment thereof at the Default Rate (as defined in any of the Obligations).

11. Postponement of Subrogation. Until the Obligations are indefeasibly paid in full, expire, are terminated and are not subject to any right of revocation or rescission, the Guarantor postpones and subordinates in favor of the Bank or its designee (and any assignee or potential assignee of the foregoing), any and all rights which the Guarantor may have to (a) assert any claim against the Borrower based on subrogation, exoneration, reimbursement, or indemnity whatsoever nor any right of recourse to security for the Obligations with respect to payments made hereunder, and (b) any realization on any property of the Borrower, including participation in any marshalling of the Borrower’s assets; provided, however, the Guarantor shall be entitled to distributions from the sale of Units so long as no Event of Default has occurred and is continuing.

12. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder (“Notices”) must be in writing and will be effective upon receipt. Notices may be given in any manner to which the parties may separately agree, including electronic mail. Without limiting the foregoing, first-class mail, facsimile transmission and commercial courier service are hereby agreed to as acceptable methods for giving Notices. Regardless of the manner in which provided, Notices may be sent to a party’s address as set forth above or to such other address as any party may give to the other for such purpose in accordance with this section.

13. Preservation of Rights. No delay or omission on the Bank's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Bank's action or inaction impair any such right or power. The Bank's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Bank may have under other agreements, at law or in equity.

14. Illegality. If any provision contained in this Guaranty should be invalid, illegal or unenforceable in any respect, it shall not affect or impair the validity, legality and enforceability of the remaining provisions of this Guaranty.

15. Changes in Writing. No modification, amendment or waiver of, or consent to any departure by the Guarantor from any provision of this Guaranty will be effective unless made in a writing signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case will entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.

16. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Guarantor and the Bank with respect to the subject matter hereof; provided, however, that this Guaranty is in addition to, and not in substitution for, any other guarantees from the Guarantor to the Bank.

17. Successors and Assigns. This Guaranty will be binding upon and inure to the benefit of the Guarantor and the Bank and their respective heirs, executors, administrators, successors and assigns; provided, however, that the Guarantor may not assign this Guaranty in whole or in part without the Bank's prior written consent and the Bank at any time may assign this Guaranty in whole or in part.

18. Interpretation. In this Guaranty, unless the Bank and the Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Guaranty; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Guaranty. Section headings in this Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose. Unless otherwise specified in this Guaranty, all accounting terms shall be interpreted and all accounting determinations shall be made in accordance with GAAP. If this Guaranty is executed by more than one party as Guarantor, the obligations of such persons or entities will be joint and several.

19. Indemnity. The Guarantor agrees to indemnify each of the Bank, each legal entity, if any, who controls the Bank and each of their respective directors, officers and employees (the "**Indemnified Parties**"), and to hold each Indemnified Party harmless from and against, any and all claims, damages, losses, liabilities and expenses (including all fees and charges of internal or external counsel with whom any Indemnified Party may consult and all expenses of litigation and preparation therefor) which any Indemnified Party may incur, or which may be asserted against any Indemnified Party by any person, entity or governmental authority (including any person or entity claiming derivatively on behalf of the Guarantor), in connection with or arising out of or relating to the matters referred to in this Guaranty or in the other Loan Documents or the use of the proceeds of the Obligations, whether (a) arising from or incurred in connection with any breach of a representation, warranty or covenant by the Guarantor, or (b) arising out of or resulting from any suit, action, claim, proceeding or governmental investigation, pending or threatened, whether based on statute, regulation or order, or tort, or contract or otherwise, before any court or governmental authority; provided, however, that the foregoing indemnity agreement shall not apply to any claims, damages, losses, liabilities and expenses solely attributable to an Indemnified Party's gross negligence or willful misconduct. The indemnity agreement contained in this section shall survive the termination of this Guaranty, payment of any Obligation and assignment of any rights hereunder. The Guarantor may participate at its expense in the defense of any such action or claim.

20. Governing Law and Jurisdiction. This Guaranty has been delivered to and accepted by the Bank and will be deemed to be made in the State where the Bank's office indicated above is located. **THIS GUARANTY WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE BANK AND THE GUARANTOR DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE BANK'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES.** The Guarantor hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Bank's office indicated above is located; provided that nothing contained in this Guaranty will prevent the Bank from bringing any action, enforcing any award or judgment or exercising any rights against the Guarantor individually, against any security or against any property of the Guarantor within any other county, state or other foreign or domestic jurisdiction. The Guarantor acknowledges and agrees that the venue provided above is the most convenient forum for both the Bank and the Guarantor. The Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

21. Equal Credit Opportunity Act. If the Guarantor is not an "applicant for credit" under Section 202.2 (e) of the Equal Credit Opportunity Act of 1974 ("ECOA"), the Guarantor acknowledges that (i) this Guaranty has been executed to provide credit support for the Obligations, and (ii) the Guarantor was not required to execute this Guaranty in violation of Section 202.7(d) of the ECOA.

22. Authorization to Obtain Credit Reports. By signing below, each Guarantor who is an individual provides written authorization to the Bank or its designee (and any assignee or potential assignee hereof) to obtain the Guarantor's personal credit profile from one or more national credit bureaus. Such authorization shall extend to obtaining a credit profile in considering this Guaranty and subsequently for the purposes of update, renewal or extension of such credit or additional credit and for reviewing or collecting the resulting account.

23. WAIVER OF JURY TRIAL. THE GUARANTOR IRREVOCABLY WAIVES ANY AND ALL RIGHT THE GUARANTOR MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE GUARANTOR ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

24. Financial Covenants. The Guarantor hereby covenants and agrees, severally and for itself alone, that, from the date hereof and until the Obligations have been indefeasibly paid in full and all other obligations hereunder shall have been performed and discharged, such Guarantor shall maintain each of the following covenants throughout the term of this Guaranty:

- (i) The Guarantor's aggregate "Net Worth" (as such term is hereinafter defined) shall not be less than \$100,000,000.00; and
- (ii) The "Aggregate Liquidity" (as such term is hereinafter defined) of the Guarantor shall not be less than \$7,500,000.00.

The above-described covenants shall be tested for compliance quarterly, for the periods covered by the financial statements required to be furnished to the Bank as required and set forth in Paragraph 5 of this Guaranty; provided, however, that, together with each requisition to borrow submitted to the Bank, the Borrower shall certify that, to its knowledge, the Guarantor continues to be in compliance with said financial covenants.

For the purposes of this Guaranty, the defined term "Aggregate Liquidity" shall mean the aggregate (without duplication) of the Guarantor's unpledged and unrestricted cash and cash equivalents plus committed but unfunded capital commitments from investors not in default less amounts outstanding under any line(s) of credit secured by such investor commitments, as of any date of determination.

For purposes of this Guaranty, the defined term "Net Worth" shall mean the assets of the Guarantor minus Indebtedness plus committed but unfunded capital commitments from investors of the Guarantor.

For the purposes of this Guaranty, the defined term "Indebtedness" shall mean, at any time, any and all indebtedness, obligations or liabilities of the Guarantor (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint and several), for, or in respect of: (1) borrowed money, (2) amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (3) reimbursement obligations (contingent or otherwise) under any letter of credit, currency swap agreement, interest rate swap, cap, collar or floor agreement or other interest rate management device, (4) any other transaction (including, without limitation forward sale or purchase agreements, capitalized leases and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements (but not including trade payables and accrued expenses incurred in the ordinary course of business which are not represented by a promissory note or other evidence of indebtedness and which are not more than thirty (30) days past due), and/or (5) any guaranty of indebtedness for borrowed money.

25. Limitations on Guarantor's Obligations.

(a) Notwithstanding any foregoing provision to the contrary, the Guarantor's liability hereunder shall be limited to:

(i) the payment when due of one hundred (100%) percent of (1) all regularly scheduled monthly installments of principal and interest due and owing to the Bank under the Note and the Loan Agreement in connection with the Loan and (2) all real estate taxes and assessments, ground lease rent, insurance premiums, utilities, unpaid leasing or brokerage commissions, unpaid tenant improvement expenses, common area maintenance, condominium maintenance, and all other forms of operating expenses due and owing from time to time in connection with the Property which, with respect to the items described in both of the foregoing clauses (1) and (2), accrue and become due and payable prior to the earlier occurrence of either one of the following two (2) events: (A) the occurrence of an Event of Default resulting in (x) the acceleration by the Bank of all amounts due and owing under the Note, the Loan Agreement, and the other Loan Documents, (y) the payment by the Guarantor to the Bank of all amounts due and owing under subparagraphs 25(a)(i) and 25(a)(iii) below, and (z) the execution by the Borrower and the Bank or a nominee of the Bank of an assignment of ground lease agreement in form and substance acceptable to the Bank assigning the Borrower's entire leasehold estate in and to the Property thereby tendering and unconditionally assigning to the Bank or the nominee of the Bank the good and marketable leasehold title to the Borrower in the Property free and clear of any pending or outstanding litigation, liens, and encumbrances other than "Permitted Encumbrances" (as such term is defined in subparagraph 25(d) below) or (B) the occurrence of an Event of Default resulting in (x) the acceleration by the Bank of all amounts due and owing under the Note, the Loan Agreement and the other Loan Documents, (y) the payment by the Guarantor to the Bank of all amounts due and owing under subparagraphs 25(a)(i) and 25(a)(iii) below, and (z) the final entry by a court having appropriate jurisdiction over the Borrower and the Property of a non-appealable foreclosure judgment affecting the Property provided that the Borrower, the Guarantor and the members of the Borrower do not contest at any time the foreclosure action which the Bank may commence at its discretion (whether such contest may be by way of answer or other court pleadings, including, without limitation, any voluntary or involuntary bankruptcy proceedings affecting the Borrower, the Guarantor, and/or the members of the Borrower); and

(ii) the payment when due of an amount equal to forty five (45%) percent of the aggregate principal amount outstanding under the Note on the date the Bank makes written demand on the Guarantor for payment of the Guarantor's obligations described in this subparagraph 25(a)(i); and

(iii) the payment when due of one hundred (100%) percent of the obligations, liabilities and other amounts due and owing by the Borrower to the Bank under and in connection with any ISDA Master Agreement, if any, executed by and between the Bank and the Borrower (including, without limitation, all schedules, documents and other confirming evidence exchanged between said parties in connection with confirming the transactions thereunder), pursuant to which the Borrower and the Bank enter into an interest rate hedge transaction, if any, for the purposes of hedging the interest rate risk in connection with all or any portion of the Loan Facility; and

(iv) the payment when due of one hundred (100%) percent of any and all reasonable out-of-pocket expenses including attorneys fees, which may be paid or incurred by the Bank in collecting or otherwise enforcing the Bank's rights and remedies under this Guaranty,

Such amounts described in subparagraphs (i) through (iv) above, together with the obligations of the Guarantor described in subparagraph (c) below, hereinafter collectively referred to as the "**Guarantor's Obligations**". Irrespective of any obligations of the Borrower under the Loan Documents, the Obligations of the Guarantor under this Guaranty shall not exceed the obligations of the Guarantor described in this Paragraph 25.

(b) The Guarantor agrees that whenever at any time or from time to time they shall make any payment to the Bank hereunder, they shall notify the Bank in writing that such payment is made under this Guaranty for such purpose. No payment or payments made by the Borrower or any other person or entity (other than the Guarantor) or received or collected by the Bank from the Borrower or any other person or entity (other than the Guarantor) by virtue of any guaranty, action or proceeding, including, without limitation, any proceeding to liquidate, foreclose or realize upon any collateral for the Loan, or any set-off or appropriate or application at any time or from time to time in reduction of or in payment of the Guarantor's Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of the Guarantor hereunder who shall, notwithstanding any such payment or payments, remain liable in the amount above stated for Guarantor's Obligations until the Guarantor's Obligations are paid in full.

(c) Notwithstanding anything contained in this Paragraph 25 to the contrary, in addition to the liability which the Guarantor has pursuant to Paragraph 25(a) above, the Guarantor shall have the unconditional, absolute and unlimited liability for the full amount of all actual damages, claims, costs, losses, expenses, liabilities and other obligations, and all actual costs and expenses incurred by the Bank relating to the Loan as a result of the occurrence of any of the following:

- (i) Any fraud or willful material misrepresentation committed by the Borrower and/or any Guarantor in connection with Loan (whether in a written or unwritten agreement or document);
- (ii) Any misapplication by the Borrower and/or any Guarantor of any rental income, security deposits or similar income derived from the Property after the occurrence and during the continuance of an Event of Default and the receipt by the Borrower of a written notice from the Bank instructing the Borrower to "escrow" all such monies with the Bank, to the extent of any such retention;
- (iii) Any unpaid property taxes or assessments with respect to the Property which accrued prior to the Bank taking title to the Property by foreclosure, deed in lieu of foreclosure or otherwise;
- (iv) Removal and failure to replace any furniture, fixtures, equipment and/or other articles of personal property owned by the Borrower and attached to or used in connection with the Property;
- (v) Misapplication by the Borrower and/or any Guarantor of insurance proceeds, construction proceeds and/or condemnation awards affecting the Property;

(vi) The Borrower's failure to maintain hazard and/or liability insurance on the Property in accordance with the terms and conditions of the Loan Documents;

(vii) The presence of any "Regulated Substances" and/or "Contamination" (as such terms are defined in the Mortgage) that are not remediated within the time prescribed by Applicable Environmental Laws or decree, including asbestos on the Property, and any willful material misrepresentation or breach of the covenants with respect to any Regulated Substances and/or Contamination on or affecting the Property;

(viii) Any transfer of title to the Borrower's fee simple interest in and to the Property except for Permitted Transfers, without the Bank's prior express written consent; and/or

(ix) Any subordinate financing placed against the Property without the Bank's prior express written consent.

(d) For purposes of this Guaranty, the defined term "Permitted Encumbrances" shall have the meaning assigned and ascribed to such term as set forth in the Mortgage.

26. **Counterparts.** This Guaranty may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one agreement. It shall not be necessary in making proof of this Agreement or of any document required to be executed and delivered in connection herewith to produce or account for more than one counterpart.

27. **Amendment and Restatement.** This Guaranty amends and restates that certain amended and restated guaranty and suretyship agreement from the Guarantor to the Lender dated as of July 22, 2009, effective as of July 18, 2009 (the "**Prior Guaranty**"). All terms and provisions of the Prior Guaranty are modified and replaced by the terms and provisions of this Guaranty.

The Guarantor acknowledges that it has read and understood all the provisions of this Guaranty, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

SIGNATURE PAGE TO AMENDED AND RESTATED
GUARANTY AND SURETYSHIP AGREEMENT

WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

ACADIA STRATEGIC OPPORTUNITY FUND II, LLC

By: Acadia Realty Acquisition II, LLC, its Managing Member
By: Acadia Realty Limited Partnership, its sole member
By: Acadia Realty Trust, its General Partner

By: /s/ Robert Masters
Robert Masters, Secretary

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) ss:

On the 16th day of September, in the year 2010, before me, the undersigned, personally appeared **ROBERT MASTERS**, personally known to me or proved 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 executed the same in his capacity, and that by his 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
No. 01LE6005994
Qualified in Dutchess County
Commission Expires 4/20/2014

LOAN AGREEMENT

Dated as of December 9, 2005

Between

RD ELMWOOD ASSOCIATES, L.P.,
as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
as Lender

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of December 9, 2005 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (“**Lender**”) and **RD ELMWOOD ASSOCIATES, L.P.**, a Delaware limited partnership, having its principal place of business at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue – Suite 260, White Plains, New York 10605 (R 20;**Borrower**”).

WITNESSETH:

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Acquired Property**” shall have the meaning set forth in Section 5.1.11(g)(i) hereof.

“**Acquired Property Statements**” shall have the meaning set forth in Section 5.1.11(g)(i) hereof.

“**Additional Insolvency Opinion**” shall have the meaning set forth in Section 4.1.30(c) hereof.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Affiliated Loans**” shall mean a loan made by Lender to an Affiliate of Borrower, Principal or Guarantor.

“**Affiliated Manager**” shall mean any Manager in which Borrower, Principal, or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

“**Agent**” shall mean Wells Fargo Bank, N.A., a national banking institution, or any successor Eligible Institution acting as Agent under the Cash Management Agreement.

“**Agreement**” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Annual Budget**” shall mean the operating budget, including all planned Capital Expenditures, for the Property prepared by Borrower in accordance with Section 5.1.11.(e) hereof for the applicable Fiscal Year or other period.

“**Approved Annual Budget**” shall have the meaning set forth in Section 5.1.11(e) hereof.

“**Assignment of Leases**” shall mean that certain first priority Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to MERS, as nominee of Lender as assignee, assigning to Lender all of Borrower’s interest in and to the Leases and Rents of the Property as security for the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which such Person colludes with, or otherwise assists such Person, or causes to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“**Basic Carrying Costs**” shall mean, the sum of the following costs associated with the Property for the relevant Fiscal Year or payment period: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“**BSCMI**” shall mean Bear Stearns Commercial Mortgage, Inc., a New York corporation, and its successors in interest.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York, or the place of business of any Servicer are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions and tenant improvements).

“**Cash Management Account**” shall have the meaning set forth in Section 2.7.2 hereof.

“**Cash Management Agreement**” shall mean that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Agent and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Casualty Consultant**” shall have the meaning set forth in Section 6.4(b)(iii) hereof.

“**Casualty Retainage**” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

“**Condemnation Proceeds**” shall have the meaning set forth in Section 6.4(b).

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “**Controlled**” and “**Controlling**” shall have correlative meanings.

“**Covered Disclosure Information**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon and all other sums (including the Defeasance Payment Amount, any Yield Maintenance Premium and any Yield Maintenance Default Premium) due to Lender in respect of the Loan under the Note, this Agreement, the Mortgage or any other Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal and interest payments due under this Agreement and the Note.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

- (a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, without deduction for (i) actual management fees incurred in connection with the operation of the Property, or (ii) amounts paid to the Reserve Funds, less (A) management fees equal to the greater of (1) assumed management fees of four percent (4%) of Gross Income from Operations or (2) the actual management fees incurred, and (B) Replacement Reserve Fund contributions equal to \$0.15 per square foot of gross leasable area at the Property, (C) Rollover Reserve Fund contributions equal to \$43,000.00 per annum; and
- (b) the denominator is the aggregate amount of principal and interest due and payable on the Note for such period.

“**Debt Service Coverage Ratio Determination Date**” shall mean the date that Lender determines the Debt Service Coverage Ratio in accordance with this Agreement.

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the maximum rate permitted by applicable law or (b) five percent (5%) above the Interest Rate.

“**Defeasance Date**” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

“**Defeasance Deposit**” shall mean an amount equal to the remaining principal amount of the Note, the Defeasance Payment Amount, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of Sections 2.4 and 2.5 hereof (including, without limitation, any fees and expenses of accountants, attorneys and the Rating Agencies incurred in connection therewith).

“**Defeasance Event**” shall have the meaning set forth in [Section 2.5.1\(a\)](#) hereof.

“**Defeasance Expiration Date**” shall mean the date that is earlier to occur of (a) two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust or (b) the third (3rd) anniversary of the first (1st) Payment Date.

“**Defeasance Payment Amount**” shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

“**Disclosure Document**” shall mean a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, or such other information reasonably requested by Lender, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least Fifty Million and 00/100 Dollars (\$50,000,000.00) and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Institution**” shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P, “P-1” by Moody’s and “F-1+” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long-term unsecured debt obligations of which are rated at least “AA” by Fitch and S&P and “Aa2” by Moody’s).

“**Embargoed Person**” shall have the meaning set forth in [Section 5.1.23](#) hereof.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnification Agreement, dated as of the date hereof, executed by Borrower, Principal and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

“**Event of Default**” shall have the meaning set forth in [Section 8.1\(a\)](#) hereof.

“**Exchange Act**” shall have the meaning set forth in [Section 9.2\(a\)](#) hereof.

“**Exchange Act Filing**” shall have the meaning set forth in [Section 5.1.11\(b\)](#) hereof.

“**Extraordinary Expense**” shall have the meaning set forth in [Section 5.1.11\(d\)](#) hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**GAAP**” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

“**Governmental Authority**” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“**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, open for business and paying full contractual rent without right of offset or credit, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking fees, rent concessions or credits, income from vending machines, business interruption or other loss of income or rental insurance proceeds or other required pass-throughs and interest on Reserve Accounts, if any, but excluding Rents from month-to-month tenants, straight line lease adjustments, or 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, 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. Gross income shall not be diminished as a result of the Mortgage or the creation of any intervening estate or interest in the Property or any part thereof.

“**Guarantor**” shall mean Acadia Realty Limited Partnership, a Delaware limited partnership.

“**Guaranty**” shall mean that certain Guaranty Agreement, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Improvements**” shall have the meaning set forth in the granting clause of the Mortgage.

“Indebtedness” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for pay ment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

“Indemnified Person” shall have the meaning set forth in [Section 9.2\(b\)](#) hereof.

“Indemnifying Person” shall mean each of Borrower, Principal and Guarantor.

“Independent Director” shall mean a natural person serving as director of a corporation or manager of a limited liability company who is not at the time of initial appointment, or at any time while serving in such capacity, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director of Borrower or Principal), trustee, officer, employee, partner, member, attorney or counsel of the Borrower or Principal or any Affiliate of either of them; (b) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with the Borrower or Principal or any Affiliate of either of them; (c) a Person or other entity Controlling or under common Control with any Person excluded from serving as Independent Director under subparagraph (a) or (b); or (d) a member of the immediate family of any Person excluded from serving as Independent Director under subparagraph (a) or (b). A natural person who satisfies the foregoing definition other than subparagraph (b) shall not be disqualified from serving as an Independent Director of the Principal if such individual is an independent director provided by a nationally-recognized company that provides professional independent directors and that also provides other corporate services in the ordinary course of its business. A natural person who otherwise satisfies the foregoing definition except for being the independent director of a “special purpose entity” affiliated with Borrower or Principal shall not be disqualified from serving as an Independent Director of Borrower or Principal if such “special purpose entity” does not own a direct or indirect equity interest in Borrower or in any co-borrower and if such individual is provided by a nationally-recognized company that provides professional independent directors. For purposes of this paragraph, a “special purpose entity” is an entity, whose organizational documents contain restrictions on its activities substantially similar to those set forth in the definition of Special Purpose Entity in this Agreement.

“Insolvency Opinion” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Levenfeld Pearlstein, LLC in connection with the Loan.

“Insurance Premiums” shall have the meaning set forth in [Section 6.1\(b\)](#) hereof.

“Insurance Proceeds” shall have the meaning set forth in [Section 6.4\(b\)](#) hereof.

“**Interest Rate**” shall mean a rate of Five and Five Hundred Thirty-One Thousandths percent (5.531%) per annum.

“**Lease**” shall mean 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 by or on behalf of Borrower, and (a) 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 (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“**Legal Requirements**” shall mean, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower, the Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

“**Lender**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“**Liabilities**” shall have the meaning set forth in [Section 9.2\(b\)](#) hereof.

“**Licenses**” shall have the meaning set forth in [Section 4.1.22](#) hereof.

“**Lien**” shall mean, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Mortgage, the Assignment of Leases, the Environmental Indemnity, the O&M Agreement, the Guaranty, the Cash Management Agreement and all other documents executed and/or delivered in connection with the Loan.

“**Lockbox Account**” shall have the meaning set forth in [Section 2.7.1](#) hereof.

“**Lockbox Agreement**” shall mean that certain Lockbox and Blocked Account Agreement dated the date hereof among Borrower, Lender and Lockbox Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to funds deposited in the Lockbox Account.

“**Lockbox Bank**” shall mean Wells Fargo, N.A., or any successor or permitted assigns thereof.

“**Lockbox Trigger Cure**”: shall mean (a) with respect to a Lockbox Trigger Event described in clause (a) of the definition thereof, the acceptance of a cure of the related Event of Default by Lender, (b) with respect to a Lockbox Trigger Event caused by (i) a Material Action relating to Manager, the replacement of such Manager with a Qualified Manager within sixty (60) days of the occurrence of the related Material Action and (ii) a Material Action relating to Pathmark, and or Walgreen, (x) the reletting of at least seventy-five percent (75%) (on a square footage basis) of the space previously occupied by Pathmark and/or Walgreen, as the case may be, as of the Closing Date pursuant to Leases reasonably acceptable to Lender and the tenants th ereunder are in possession, open for business and paying rent as evidenced by estoppel certificates reasonably acceptable to Lender and (y) the Debt Service Coverage Ratio thereafter equaling or exceeding 1.10 to 1.0 for two (2) consecutive calendar quarters, (c) with respect to a Lockbox Trigger Event described in clause (d) of the definition thereof, the Property maintaining a Debt Service Coverage Ratio of 1.05 to 1.0 for one calendar quarter on a trailing six month basis annualized; provided, however, in no event shall there be more than two (2) Lockbox Trigger Cures in any twelve (12) month period or more than four (4) Lockbox Trigger Cures during the term of the Loan.

“**Lockbox Trigger Event**” shall mean, (a) an Event of Default shall have occurred, (b) the insolvency of Borrower, the Manager, Pathmark and/or Walgreen, (c) if Pathmark and/or Walgreen shall cease its respective operations at the Property, or (d) that as of any Debt Service Coverage Ratio Determination Date the Debt Service Coverage Ratio for the trailing twelve (12) month period, as determined by Lender in accordance with the applicable provisions of this Agreement, is less than 1.05 to 1.

“**Lockbox Trigger Event Period**” shall have the meaning set forth in the Cash Management Agreement.

“**Management Agreement**” shall mean any management agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, or, if the context requires, the Replacement Management Agreement.

“**Manager**” shall mean a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Management Agreement or a Replacement Management Agreement, as applicable.

“**Material Action**” means, with respect to any Person, to file any insolvency or reorganization case or proceeding, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against such Person, to file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, to make any assignment for the benefit of creditors of such Person, to admit in writing such Person's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

“**Maturity Date**” shall mean January 1, 2016, or such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**MERS**” shall have the meaning set forth in Section 10.25 hereof.

“**Monthly Debt Service Payment Amount**” shall mean (a) an amount equal to interest in an amount equal to \$5,315.91 per day only on the outstanding principal balance of the Loan, calculated in accordance with the terms hereof, for each Payment Date commencing with the Payment Date occurring in February, 2006 through and including the Payment Date occurring in January, 2010 and (b) a constant monthly payment of \$197,128.49 with respect to each Payment Date thereafter.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Mortgage**” shall mean, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Borrower to MERS, as nominee of Lender, as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Net Cash Flow**” shall mean, for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

“**Net Cash Flow Schedule**” shall have the meaning set forth in [Section 5.1.11\(b\)](#) hereof.

“**Net Operating Income**” shall mean the amount obtained by subtracting Operating Expenses from Gross Income from Operations.

“**Net Proceeds**” shall have the meaning set forth in [Section 6.4\(b\)](#) hereof.

“**Net Proceeds Deficiency**” shall have the meaning set forth in Section 6.4(b)(vi) hereof.

“**Note**” shall mean that certain Promissory Note, dated the date hereof, in the principal amount of Thirty-Four Million Six Hundred Thousand and 00/100 Dollars (\$34,600,000), made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, including any Defeased Note and Undefeased Note that may exist from time to time.

“**O&M Agreement**” shall mean, that certain Operations and Maintenance Agreement, dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of the general partner or managing member of Borrower.

“**Operating Expenses**” shall mean the total of all expenditures, computed in accordance with GAAP, of whatever kind relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments as approved by Lender, and other similar costs, but excluding depreciation, Debt Service, Capital Expenditures and contributions to the Reserve Funds.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall have the meaning as set forth in the Mortgage.

“**Pathmark**” shall mean Parthmark Stores, Inc.

“**Payment Date**” shall mean the first (1st) day of each calendar month during the term of the Loan or, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Investments**” shall have the meaning set forth in the Cash Management Agreement.

“**Permitted Release Date**” shall mean the date that is the third (3rd) anniversary of the first Payment Date.

“**Permitted Transfer**” means any of the following: (a) any transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto and (b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Personal Property**” shall have the meaning set forth in the granting clause of the Mortgage.

“**Physical Conditions Report**” shall mean, a structural engineering report prepared by a company satisfactory to Lender regarding the physical condition of the Property, satisfactory in form and substance to Lender in its sole discretion, which report shall, among other things, (a) confirm that the Property and its use complies, in all material respects, with all applicable Legal Requirements (including, without limitation, zoning, subdivision and building laws) and (b) include a copy of a final certificate of occupancy with respect to all Improvements on the Property.

“**Policies**” shall have the meaning specified in [Section 6.1\(b\)](#) hereof.

“**Policy**” shall have the meaning specified in [Section 6.1\(b\)](#) hereof.

“**Prepayment Rate**” shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date as most recently published in the “Treasury Bonds, Notes and Bills” section in The Wall Street Journal as of such Prepayment Rate Determination Date. If more than one issue of United States Treasury Securities has the same remaining term to the Maturity Date, the “Prepayment Rate” shall be the yield on such United States Treasury Security most recently issued as of the Prepayment Rate Determination Date. The rate so published shall contain no manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

"Prepayment Rate Determination Date" shall mean the date which is five (5) Business Days prior to the date that such prepayment shall be applied in accordance with the terms and provisions of [Section 2.4.1](#) hereof.

"Principal" shall mean the Special Purpose Entity that is the general partner of Borrower, if Borrower is a limited partnership, or member of Borrower, if Borrower is a limited liability company.

"Property" shall mean the parcel of real property, the Improvements thereon and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the Mortgage and referred to therein as the "Property".

"Provided Information" shall mean any and all financial and other information provided at any time prepared by, or on behalf of, any Indemnifying Person with respect to the Property, Borrower, Principal, Guarantor and/or Manager, including, without limitation, any financial data or financial statements required under Section 5.1.11.

"Qualified Manager" shall mean in the reasonable judgment of Lender, a reputable and experienced management organization (which may be an Affiliate of Borrower) possessing experience in managing properties similar in size, scope, use and value as the Property, provided, that Borrower shall have obtained (i) prior written confirmation from the applicable Rating Agencies that management of the Property by such Person will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof and (ii) if such Person is an Affiliate of Borrower, an Additional Insolvency Opinion.

"Rating Agencies" shall mean each of S&P, Moody's and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender.

"Related Entities" shall have the meaning set forth in [Section 5.2.10\(e\)](#) hereof.

"Related Loan" shall mean a loan made to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan.

"Related Parties" shall have the meaning set forth in the definition of Special Purpose Entity.

"Related Party" shall have the meaning set forth in the definition of Special Purpose Entity.

"Related Property" shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is "related", within the meaning of the definition of Significant Obligor, to one or more of the Properties.

"REMIC Trust" shall mean a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code that holds the Note.

"Rents" shall mean, all rents (including percentage rents), rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to the Property, including, without limitation, charges for electricity, oil, gas, water, steam, heat, ventilation, air-conditioning and any other energy, telecommunication, telephone, utility or similar items or time use charges, HVAC equipment charges, sprinkler charges, escalation charges, license fees, maintenance fees, charges for Taxes, Operating Expenses or other reimbursables payable to Borrower (or to the Manager, if any, for the account of Borrower) under any Lease, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property.

"Replacement Management Agreement" shall mean, collectively, (a) either (i) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (ii) a management agreement with a Qualified Manager, which management agreement shall be reasonably acceptable to Lender in form and substance, provided, with respect to this subclause (ii), Lender, at its option, may require that Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that such management agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (b) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or of such other form and substance reasonably acceptable to Lender), executed and delivered to Lender by Borrower and such Qualified Manager at Borrower's expense.

"Replacement Reserve Account" shall have the meaning set forth in [Section 7.3.1](#) hereof.

"Replacement Reserve Fund" shall have the meaning set forth in [Section 7.3.1](#) hereof.

"Replacement Reserve Monthly Deposit" shall have the meaning set forth in [Section 7.3.1](#) hereof.

"Replacements" shall have the meaning set forth in [Section 7.3.1](#) hereof.

"Reserve Funds" shall mean, collectively, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund, the Required Repair Fund, the Rollover Reserve Fund and any other escrow fund established by the Loan Documents.

"Resizing Event" shall have the meaning set forth in [Section 9.1.2](#).

"Restoration" shall mean the repair and restoration of the Property after a Casualty or Condemnation as nearly as possible to the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“**Restricted Party**” shall mean collectively, (a) Borrower, Principal, any Guarantor, and any Affiliated Manager and (b) any shareholder, partner, member, non-member manager, any direct or indirect legal or beneficial owner of, Borrower, Principal, any Guarantor, any Affiliated Manager or any non-member manager.

“**Rollover Reserve Account**” shall have the meaning set forth in Section 7.4.1 hereof.

“**Rollover Reserve Fund**” shall have the meaning set forth in Section 7.4.1 hereof.

“**S&P**” shall mean Standard & Poor’s Ratings Group, a division of the McGraw-Hill Companies.

“**Sale or Pledge**” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

“**Scheduled Defeasance Payments**” shall have the meaning set forth in Section 2.5.1(b) hereof.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Securities Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Securitization**” shall have the meaning set forth in Section 9.1 hereof.

“**Security Agreement**” shall have the meaning set forth in Section 2.5.1(a)(vi) hereof.

“**Servicer**” shall have the meaning set forth in Section 9.5 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.5 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Item 1101(k) of Regulation AB under the Securities Act.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date thereof, has complied with and shall at all times comply with the following requirements unless it has received either prior consent to do otherwise from Lender or a permitted administrative agent thereof, or, while the Loan is securitized, confirmation from each of the applicable Rating Agencies that such noncompliance would not result in the requalification, withdrawal, or downgrade of the ratings of any Securities or any class thereof:

(i) is and shall be organized solely for the purpose of (A) in the case of Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Property, entering into and performing its obligations under the Loan Documents with Lender, refinancing the Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (B) in the case of a Principal, acting as a general partner of the limited partnership that owns the Property or as member of the limited liability company that owns the Property and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) has not engaged and shall not engage in any business unrelated to (A) the acquisition, development, ownership, management or operation of the Property, or (B) in the case of a Principal, acting as general partner of the limited partnership that owns the Property or acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not owned and shall not own any real property other than, in the case of Borrower, the Property;

(iv) does not have, shall not have and at no time had any assets other than (A) in the case of Borrower, the Property and personal property necessary or incidental to its ownership and operation of the Property or (B) in the case of a Principal, its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Property and personal property necessary or incidental to its ownership of such interests;

(v) has not engaged in, sought, consented or permitted to and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger, (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents, or (C) in the case of a Principal, any transfer of its partnership or membership interests;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) if such entity is a limited partnership, has and shall have at least one general partner and has and shall have, as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability company, (B) has one Independent Director, and (C) holds a direct interest as general partner in the limited partnership of not less than 0.5% (or 0.1%, if the limited partnership is a Delaware entity);

(viii) if such entity is a corporation, has and shall have at least one (1) Independent Director, and shall not cause or permit the board of directors of such entity to take any Material Action either with respect to itself or, if the corporation is a Principal, with respect to Borrower or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless one Independent Director shall have participated in such vote and shall have voted in favor of such action;

(ix) if such entity is a limited liability company (other than a limited liability company meeting all of the requirements applicable to a single-member limited liability company set forth in this definition of "Special Purpose Entity"), has and shall have at least one (1) member that is a Special Purpose Entity, that is a corporation, that has at least one (1) Independent Director and that directly owns at least one-half-of-one percent (0.5%) of the equity of the limited liability company (or 0.1% if the limited liability company is a Delaware entity);

(x) if such entity is a single-member limited liability company, (A) is and shall be a Delaware limited liability company, (B) has and shall have at least one (1) Independent Director serving as manager of such company, (C) shall not take any Material Action and shall not cause or permit the members or managers of such entity to take any Material Action, either with respect to itself or, if the company is a Principal, with respect to Borrower, in each case unless one Independent Director then serving as manager of the company shall have participated and consented in writing to such action, and (D) has and shall have either (1) a member which owns no economic interest in the company, has signed the company's limited liability company agreement and has no obligation to make capital contributions to the company, or (2) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(xi) has not and shall not (and, if such entity is (a) a limited liability company, has and shall have a limited liability agreement or an operating agreement, as applicable, (b) a limited partnership, has a limited partnership agreement, or (c) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity shall not) (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets; (3) amend its organizational documents with respect to the matters set forth in this definition without the consent of Lender; or (4) without the affirmative vote of one Independent Director of itself or the consent of a Principal that is a member or general partner in it: (A) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the entity or a substantial portion of its property; (C) make an assignment for the benefit of the creditors of the entity; or (D) take any action in furtherance of any of the foregoing;

(xii) has at all times been and shall at all times remain solvent and has paid and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and has maintained and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xiii) has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) has maintained and shall maintain its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is required by law to file consolidated tax returns and, if it is a corporation, has not filed and shall not file a consolidated federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;

(xv) has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) has held and shall hold its assets in its own name;

(xviii) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially-reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;

(xix) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity;

(xx) has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and shall maintain a sufficient number of employees in light of its contemplated business operations;

(xxi) has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) has not incurred any Indebtedness other than (i) acquisition financing with respect to the Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by the Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property;

(xxiii) has not incurred and shall have no Indebtedness other than (i) the Loan, (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of Borrower, in amounts not to exceed \$690,000 which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to this Agreement;

(xxiv) has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets for the benefit of any other Person, in each case except as permitted pursuant to this Agreement;

(xxv) has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate;

(xxvi) has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing (individually, a "Related Party" and collectively, the "Related Parties"), including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxviii) has not pledged and shall not pledge its assets to or for the benefit of any other Person other than with respect to loans secured by the Property and no such pledge remains outstanding except to Lender to secure the Loan;

(xxix) has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(xxx) has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxi) has not made and shall not make loans to any Person and has not held and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(xxxii) has not identified and shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(xxxiii) other than capital contributions and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's-length transaction with an unrelated third party;

(xxxiv) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;

(xxxv) if such entity is a corporation, has considered and shall consider the interests of its creditors in connection with all corporate actions;

(xxxvi) has not had and shall not have any of its obligations guaranteed by any Affiliate except as provided by the Loan Documents;

- (xxxvii) has not formed, acquired or held and shall not form, acquire or hold any subsidiary, except that a Principal may acquire and hold its interest in Borrower;
- (xxxviii) has complied and shall comply with all of the terms and provisions contained in its organizational documents.
- (xxxix) has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion are true;
- (xl) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;
- (xli) is and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business;
- (xlii) has paid all taxes which it owes and is not currently involved in any dispute with any taxing authority;
- (xliii) is not now party to any lawsuit, arbitration, summons, or legal proceeding that resulted in a judgment against it that has not been paid in full;
- (xliv) has no judgments or Liens of any nature against it except for tax liens not yet due and the Permitted Encumbrances;
- (xlv) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and
- (xlvi) has no material contingent or actual obligations not related to the Property.

“**State**” shall mean, the State or Commonwealth in which the Property or any part thereof is located.

“**Successor Borrower**” shall have the meaning set forth in [Section 2.5.3](#) hereof.

“**Survey**” shall mean a survey of the Property prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in [Section 7.2](#) hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

“**Threshold Amount**” shall have the meaning set forth in Section 5.1.21 hereof.

“**Title Insurance Policy**” shall mean, an ALTA mortgagee title insurance policy in the form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to the Property and insuring the lien of the Mortgage.

“**Transfer**” shall have the meaning set forth in Section 5.2.10(b) hereof.

“**Transferee**” shall have the meaning set forth in Section 5.2.10(e)(iii) hereof.

“**Transferee’s Principals**” shall mean collectively, (A) Transferee’s managing members, general partners or principal shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee..

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, (b) other non-callable “government securities” as defined in Treasury Regulations Section 1.860G-2(a)(8)(i), as amended, which will not result in a downgrade, withdrawal or qualification of the ratings for the Securities or any class thereof issued in connection with a Securitization which are then outstanding (c) issued by an agency of the United States of America only if (i) the Rating Agencies provide confirmation acceptable to Lender in its sole discretion which will not result in a downgrade, withdrawal or qualification of the ratings for the Securities or any class thereof issued in connection with a Securitization which are then outstanding and (ii) a tax opinion provided by Borrower’s counsel in form and substance acceptable to Lender in its sole discretion confirming that, if a Securitization has occurred, the REMIC trust formed pursuant to such Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code or (d) other instruments which, if a Securitization has occurred, the REMIC Trust formed pursuant to such Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code and which will not result in a downgrade, withdrawal or qualification of the ratings for the Securities or any class thereof issued in connection with a Securitization which are then outstanding.

“**Walgreen**” shall mean Walgreen Eastern Co., Inc.

“**Yield Maintenance Default Premium**” shall mean an amount equal to the greater of (a) five percent (5%) of the outstanding principal balance of the Loan to be prepaid or satisfied and (b) the Defeasance Payment Amount that would be required if a Defeasance Event were to occur at such time (whether or not then permitted) in an amount equal to the outstanding principal amount of the Loan to be prepaid or satisfied.

“**Yield Maintenance Premium**” shall mean an amount equal to the greater of (a) one percent (1%) of the outstanding principal of the Loan to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under the Note assuming that all outstanding principal and interest on the Loan is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount being prepaid.

Section 1.2 **Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. **GENERAL TERMS**

Section 2.1 **Loan Commitment; Disbursement to Borrower.**

2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one (1) borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

2.1.3 The Note, Mortgage and Loan Documents. The Loan shall be evidenced by the Note and secured by the Mortgage, the Assignment of Leases and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) acquire the Property or repay and discharge any existing loans relating to the Property, (b) pay all past-due Basic Carrying Costs, if any, with respect to the Property, (c) make deposits into the Reserve Funds on the Closing Date in the amounts provided herein, (d) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (e) fund any working capital requirements of the Property and (f) distribute the balance, if any, to Borrower.

Section 2.2 **Interest Rate.**

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year by (c) the outstanding principal balance.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under 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 Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Loan Payment.

2.3.1 Monthly Debt Service Payments. Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from the Closing Date up to and including December 31, 2005 and (b) on each Payment Date thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender of principal and interest in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to accrued and unpaid interest and the balance to principal.

2.3.2 Payments Generally. The first (1st) interest accrual period hereunder shall commence on and include the Closing Date and shall end on and include December 31, 2005. Each interest accrual period thereafter shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating interest accrual periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided in this Section 2.4.1 and Section 2.4.2, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. 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. Notwithstanding anything to the contrary contained herein, commencing on the Payment Date two (2) months prior to the Maturity Date, or on any Payment Date thereafter (or on after date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole or in part without payment of the Yield Maintenance Premium.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to Section 6.4 hereof, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; provided, however, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a "**Prepayment Date**") provided no Event of Default exists and upon payment of an amount equal to the greater of (a) 0; the Yield Maintenance Premium and (b) one percent (1%) of the outstanding principal balance of the Loan as of the Prepayment Date. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. 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.

Section 2.5 Defeasance.

2.5.1 Voluntary Defeasance. (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntarily prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a "**Defeasance Event**"):

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the "**Defeasance Date**") on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the Payment Date immediately preceding the next Payment Date, provided, however, if the Defeasance Deposit shall include short-term interest computed from the date of such prepayment through to the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

- (iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;
- (iv) Borrower shall pay to Lender the required Defeasance Deposit for the Defeasance Event;
- (v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this Section 2.5 (the "Security Agreement");
- (vi) Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of such Defeasance Event;
- (vii) Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;
- (viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.5.1(a) have been satisfied;
- (ix) Borrower shall deliver a certificate of Borrower's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;
- (x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in Section 2.6 hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Anticipated Repayment Date (the "Scheduled Defeasance Payments"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Lockbox Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this Section 2.5 and satisfy Borrower's other obligations under this Section 2.5 and Section 2.6 shall be remitted to Borrower.

2.5.2 Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 Successor Borrower. In connection with any Defeasance Event, Borrower shall establish a successor entity (the "**Successor Borrower**") designated by Lender in its sole discretion, which shall be a Special Purpose Entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Section 2.5.3, but Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 **Release of Property.** Except as set forth in this Section 2.6, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 **Release of Property.**

(a) If Borrower has elected to defease the entire Loan and the requirements of Section 2.5 and this Section 2.6 have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

2.6.2 **Release on Payment in Full.** Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

Section 2.7 **Lockbox Account/Cash Management.**

2.7.1 **Lockbox Account/Cash Management.** (1) During the term of the Loan, Borrower shall establish and maintain an account (the "**Lockbox Account**") with Lockbox Bank in trust for the benefit of Lender, which Lockbox Account shall be under the sole dominion and control of Lender. The Lockbox Account shall be entitled "RP Elmwood Associates, L.P., as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 9, 2005 – Lockbox Account". Borrower hereby grants to Lender a first-priority security interest in the Lockbox Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Lockbox Account, including, without limitation, executing and filing UCC-1 Financing Statements and continuations thereof. Lender and Servicer shall have the sole right to make withdrawals from the Lockbox Account and all costs and expenses for establishing and maintaining the Lockbox Account shall be paid by Borrower. All monies now or hereafter deposited into the Lockbox Account shall be deemed additional security for the Debt.

- (b) Borrower shall, or shall cause Manager, if any, to, deliver irrevocable written instructions to all tenants under Leases to deliver all Rents payable thereunder directly to the Lockbox Account. Borrower shall, and shall cause Manager, if any, to, deposit all amounts received by Borrower or Manager, if any, constituting Rents into the Lockbox Account within one (1) Business Day after receipt thereof.
- (c) Borrower shall obtain from Lockbox Bank its agreement to transfer to the Cash Management Account in immediately available funds by federal wire transfer all amounts on deposit in the Lockbox Account once every Business Day throughout the term of the Loan.
- (d) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Lockbox Account to the payment of the Debt in any order in its sole discretion.
- (e) The Lockbox Account shall be an Eligible Account and shall not be commingled with other monies held by Borrower or Lockbox Bank.
- (f) Borrower shall not further pledge, assign or grant any security interest in the Lockbox Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.
- (g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Lockbox Account and/or the Lockbox Agreement (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Lockbox Account was established.

2.7.2 Cash Management Account. (2) During the term of the Loan, Borrower shall establish and maintain a segregated Eligible Account (the "**Cash Management Account**") to be held by Agent in trust and for the benefit of Lender, which Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account shall be entitled "RP Elmwood Associates, L.P., as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 9, 2005 - Cash Management Account." Borrower hereby grants to Lender a first priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, executing and filing UCC-1 Financing Statements and continuations thereof. Borrower will not in any way alter or modify the Cash Management Account and will notify Lender of the account number thereof. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower.

(b) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(c) All funds on deposit in the Cash Management Account following the occurrence of an Event of Default may be applied by Lender in such order and priority as Lender shall determine.

(d) Borrower hereby agrees that Lender may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Lender shall provide notice thereof to Borrower.

2.7.3 Payments Received Under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to the Cash Management Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

III. CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent to Closing. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

3.1.1 Representations and Warranties; Compliance with Conditions. The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

3.1.2 Loan Agreement and Note. Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.

(a) **Mortgage, Assignment of Leases.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Mortgage and the Assignment of Leases and evidence that counterparts of the Mortgage and Assignment of Leases have been delivered to the title company for recording, in the reasonable judgment of Lender, so as to effectively create upon such recording valid and enforceable Liens upon the Property, of the requisite priority, in favor of Lender or Lender's nominee (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received the Title Insurance Policy issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Insurance Policy shall (i) provide coverage in amounts satisfactory to Lender, (ii) insure Lender that the Mortgage creates a valid lien on the Property of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Insurance Policy have been paid.

(c) **Survey.** Lender shall have received a current title survey for the Property, certified to the title company and Lender and their successors and assigns, in form and content satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by American Land Title Association, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 1999. The survey shall reflect the same legal description contained in the Title Insurance Policy referred to in clause (b) above and shall include, among other things, a metes and bounds description of the real property comprising part of the Property reasonably satisfactory to Lender. The surveyor's seal shall be affixed to the survey and the surveyor shall provide a certification for the survey in form and substance acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its sole discretion, and evidence of the payment of all premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of the Property, in each case satisfactory in form and substance to Lender.

(f) **Zoning.** Lender shall have received, at Lender's option, (i) letters or other evidence with respect to the Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (ii) either (A) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (B) a zoning opinion letter, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date with respect to the Mortgage, subject only to applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

3.1.4 Related Documents. Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

3.1.5 Delivery of Organizational Documents. On or before the Closing Date, Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, amendments (as requested by Lender), good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

3.1.6 Opinions of Borrower's Counsel. Lender shall have received opinions from Borrower's counsel (a) the Insolvency Opinion, and (b) with respect to due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, all such opinions in form, scope and substance satisfactory to Lender and Lender's counsel in their sole discretion.

3.1.7 Budgets. Borrower shall have delivered, and Lender shall have approved, the Annual Budget for the current Fiscal Year.

3.1.8 Basic Carrying Costs. Borrower shall have paid all Basic Carrying Costs relating to the Property which are in arrears, including without limitation, (a) accrued but unpaid Insurance Premiums due pursuant to the Policies, (b) currently due Taxes (including any in arrears) relating to the Property, and (c) currently due Other Charges relating to the Property, which amounts shall be funded with proceeds of the Loan.

3.1.9 Completion of Proceedings. All organizational and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

3.1.10 Payments. All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

3.1.11 Tenant Estoppels. Lender shall have received an executed tenant estoppel letter, which shall be in form and substance satisfactory to Lender, from (a) each tenant identified by Lender as an "anchor tenant" of the Property, (b) each tenant leasing an entire building at the Property, (c) each tenant paying base rent in an amount equal to or exceeding five percent (5%) of the Gross Income from Operations from the Property occupied by such tenant and (d) disregarding the area leased by those described in clauses (a), (b) and (c), lessees of not less than seventy-five percent (75%) of the remaining gross leasable area of the Property.

3.1.12 Transaction Costs. Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of environmental reports, Physical Conditions Report, appraisals and other reports, the fees and costs of Lender's counsel and all other third party out-of-pocket expenses incurred in connection with the origination and closing of the Loan.

3.1.13 Material Adverse Change. There shall have been no material adverse change in the financial condition or business condition of Borrower, Principal, Guarantor or the Property since the date of the most recent financial statements delivered to Lender. The income and expenses of the Property, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower, Principal, Guarantor nor any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

3.1.14 Leases and Rent Roll. Lender shall have received copies of all tenant leases, which tenant leases shall be certified by Borrower as being true, correct and complete and certified copies of all ground leases affecting the Property, if any. Lender shall have received a current certified rent roll of the Property, reasonably satisfactory in form and substance to Lender.

3.1.15 Subordination and Attornment. Lender shall have received appropriate instruments acceptable to Lender subordinating all of the Leases designated by Lender to the Mortgage. Lender shall have received an agreement to attorn to Lender satisfactory to Lender from any tenant under a Lease that does not provide for such attornment by its terms.

3.1.16 Tax Lot. Lender shall have received evidence that the Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

3.1.17 Physical Conditions Report. Lender shall have received a Physical Conditions Report with respect to the Property, which report shall be issued by an engineer selected by Lender and shall be reasonably satisfactory in form and substance to Lender.

3.1.18 Intentionally Omitted.

3.1.19 Appraisal. Lender shall have received an appraisal of the Property, from an appraiser selected by Lender, which appraisal shall be satisfactory in form and substance to Lender.

3.1.20 Financial Statements. Lender shall have received a balance sheet with respect to the Property for the two (2) most recent Fiscal Years and statements of income and statements of cash flows with respect to the Property for the three (3) most recent Fiscal Years, each in form and substance satisfactory to Lender.

3.1.21 Further Documents. Lender or its counsel shall have received such other documents and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

IV. **REPRESENTATIONS AND WARRANTIES**

Section 4.1 **Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date that:

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Property. The ownership interests in Borrower are as set forth on the organizational chart attached hereto as Schedule III.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or threatened against or affecting Borrower, Guarantor, Principal or the Property, which actions, suits or proceedings, if determined against Borrower, Guarantor, Principal or the Property, might materially adversely affect the condition (financial or otherwise) or business of Borrower, Guarantor, Principal or the condition or ownership of the Property.

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property as permitted pursuant to clause (xxiii) of the definition of "Special Purpose Entity" set forth in Section 1.1 hereof and (b) obligations under the Loan Documents.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or Borrower's ability to repay the Loan. The Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into this transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower or any constituent Person in the last seven (7) years, and neither Borrower nor any constituent Person in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any of its constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

4.1.8 Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which adversely affects, nor as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.9 No Plan Assets. Borrower does not sponsor, is not obligated to contribute to, and is not itself an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state or other statute, regulation or other restriction regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement, including but not limited to the exercise by Lender of any of its rights under the Loan Documents.

4.1.10 Compliance. Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents.

4.1.11 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Borrower and the Property, as applicable, as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof as a shopping center, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower from that set forth in said financial statements.

4.1.12 Condemnation. No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

4.1.15 Not a Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

4.1.16 Separate Lots. The Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

4.1.17 Assessments. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.18 Enforceability. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and neither Borrower nor Guarantor have asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.19 No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

4.1.20 Insurance. Borrower has obtained and has delivered to Lender certified copies of the Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policy, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policy.

4.1.21 Use of Property. The Property is used exclusively for retail shopping center purposes and other appurtenant and related uses.

4.1.22 Certificate of Occupancy; Licenses. All certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Property as a retail shopping center (collectively, the "Licenses"), have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses necessary for the operation of the Property as a retail shopping center with related retail uses. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property.

4.1.23 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to Section 6.1(a)(i) is in full force and effect with respect to the Property.

4.1.24 Physical Condition. The Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.25 Boundaries. All of the improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy.

4.1.26 Leases. The Property is not subject to any leases other than the Leases described in the rent roll attached hereto as Schedule I and made a part hereof. Borrower is the owner and lessor of landlord's interest in the Leases. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and there are no 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. No Rent (including security deposits) has been paid more than one (1) month in advance of its due date. All work to be performed by Borrower under each Lease has been performed as required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein. No tenant listed on Schedule I has assigned its Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any Lease has any right or option for additional space in the Improvements. No hazardous wastes or toxic substances, as defined by applicable federal, state or local statutes, rules and regulations, have been disposed, stored or treated by any tenant under any Lease on or about the leased premises nor does Borrower have any knowledge of any tenant's intention to use its leased premises for any activity which, directly or indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum product or any toxic or hazardous chemical, material, substance or waste.

4.1.27 Survey. The Survey for the Property delivered to Lender in connection with this Agreement has been prepared in accordance with the provisions of Section 3.1.3(c) hereof, and does not fail to reflect any material matter affecting the Property or the title thereto.

4.1.28 Inventory. Borrower is the owner of all of the Equipment, Fixtures and Personal Property (as such terms are defined in the Mortgage) located on or at the Property and shall not lease any Equipment, Fixtures or Personal Property other than as permitted hereunder. All of the Equipment, Fixtures and Personal Property are sufficient to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

4.1.29 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid, and, under current Legal Requirements, the Mortgage is enforceable in accordance with its terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

4.1.30 Special Purpose Entity/Separateness. (3) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that (i) Borrower is, shall be and shall continue to be a Special Purpose Entity and (ii) Principal is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the facts stated and all of the assumptions made in the Insolvency Opinion, including, but not limited to, in any exhibits attached thereto, are true and correct in all respects and all facts stated and all assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "**Additional Insolvency Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all respects. Borrower has complied and will comply with, and Principal has complied and Borrower will cause Principal to comply with, all of the assumptions made with respect to Borrower and Principal in the Insolvency Opinion. Borrower will have complied and will comply with all of the assumptions made with respect to Borrower and Principal in any Additional Insolvency Opinion. Each entity other than Borrower and Principal with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

4.1.31 Property Management. As of the Closing Date, there is no Management Agreement in effect with respect to, and no property management fee is or will be owed or payable to any Person in connection with the management of, the Property. The Property is managed solely by at will employees of Borrower's affiliate (presently the Guarantor), and no Manager shall be retained or appointed without the prior written consent of Lender. If such consent is granted, (a) the Property will be managed at all times by such Manager pursuant to a Management Agreement approved by Lender (unless terminated as herein provided), and (b) Borrower shall (i) diligently perform all terms and covenants of such Management Agreement, (ii) not surrender, terminate, cancel, or materially modify such Management Agreement, (iii) not enter into any other agreement relating to the management or operation of the Property with any other Person, (iv) not consent to the assignment by such Manager of its interest under such Management Agreement, or (v) not waive or release any of its rights and remedies under such Management Agreement, in each case, without the consent of Lender, which consent shall not be unreasonably withheld or delayed. If at any time Lender consents to the appointment of a Manager, such Manager and Borrower shall, as a condition to Lender's consent, execute a subordination of management agreement in form and substance reasonably satisfactory to Lender.

4.1.32 Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

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

4.1.34 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.35 Embargoed Person. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

4.1.36 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. The Borrower is organized under the laws of the State of Delaware.

4.1.37 Loan to Value. The maximum principal amount of the Loan does not exceed eighty percent (80%) of the fair market value of the Property.

4.1.38 Mortgage Taxes. As of the date hereof, Borrower represents that it has paid all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

4.1.39 Cash Management Account. Borrower hereby represents and warrants to Lender that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code of the State of New York) in the Lockbox Account and Cash Management Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold, pledged, transferred or otherwise conveyed the Lockbox Account and Cash Management Account;

(b) Each of the Lockbox Account and Cash Management Account constitute "deposit accounts" and/or "securities accounts" within the meaning of the Uniform Commercial Code of the State of New York);

(c) Pursuant and subject to the terms hereof and the other applicable Loan Documents, the Lockbox Bank and Agent have agreed to comply with all instructions originated by Lender, without further consent by Borrower, directing disposition of the Lockbox Account and Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities; and

(d) The Lockbox Account and Cash Management Account are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to the Lockbox Bank and Agent complying with instructions with respect to the Lockbox Account and Cash Management Account from any Person other than Lender.

Section 4.2 **Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in **Section 4.1** hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

V. BORROWER COVENANTS

Section 5.1 **Affirmative Covenants.** From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall never permit any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Mortgage. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. Borrower shall operate the Property in accordance with the terms and provisions of the O&M Agreement in all material respects. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (vi) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (vi) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower and/or Guarantor which might materially adversely affect Borrower's or Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any material adverse change in Borrower's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.6 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.8 Award and Insurance Benefits. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) out of such Insurance Proceeds.

5.1.9 Further Assurances. Borrower shall, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

5.1.10 Principal Place of Business, State of Organization. Borrower will not cause or permit any change to be made in its name, identity (including its trade name or names), place of organization or formation (as set forth in Section 4.1.36 hereof) or Borrower's corporate or partnership structure unless Borrower shall have first notified Lender 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 Lender for the purpose of perfecting or protecting the lien and security interests of Lender pursuant to this Agreement, the Cash Management Agreement and the other Loan Documents and, in the case of a change in Borrower's structure, without first obtaining the prior consent of Lender. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in the introductory paragraph of this Agreement. Borrower shall promptly notify Lender of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Lender of such organizational identification number.

5.1.11 Financial Reporting. (4) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's reasonable request, Borrower shall deliver to Lender such other information necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete internal copy of Borrower's annual (unaudited) financial statements covering the Property for such Fiscal Year and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include, but not be limited to, amounts representing annual Net Cash Flow, Net Operating Income, Gross Income from Operations and Operating Expenses. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year and (ii) an Officer's Certificate stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Property being reported upon and has been prepared in accordance with GAAP. Together with Borrower's annual financial statements, Borrower shall furnish to Lender an Officer's Certificate certifying as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end March, June, September and December throughout the term of the Loan the following items, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable: (i) monthly and year-to-date operating statements (including Capital Expenditures) prepared for each calendar month, noting Net Operating Income, Gross Income from Operations, and Operating Expenses (not including any contributions to the Replacement Reserve Fund and the Required Repair Fund), and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar month, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods for an individual items in excess of \$5,000, all in form satisfactory to Lender; (ii) a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month accompanied by an Officers' Certificate with respect thereto; and (iii) a Net Cash Flow Schedule. In addition, such Officer's Certificate shall also state the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than sixty (60) days.

(d) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end March, June, September and December throughout the term of the Loan, a occupancy report for the subject month, including an average daily rate, accompanied by an Officer's Certificate stating that such report is true, correct, accurate, and complete and fairly presents the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable.

(e) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval (each such Annual Budget, an "**Approved Annual Budget**"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, the most recently Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges. Notwithstanding anything to the contrary contained herein, Lender hereby approves Borrower's 2006 Annual Budget attached hereto as Schedule 5.1.11(e).

(f) In the event that, Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an “**Extraordinary Expense**”), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender’s approval, except in the case of emergency (provided that Borrower will notify Lender promptly after such emergency).

(g) Reserved.

(h) Reserved.

(i) Reserved.

(j) Reserved.

(k) Reserved.

(l) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a diskette, and (iii) if requested by Lender and within the capabilities of Borrower’s data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this [Section 5.1.11\(k\)](#) in connection with the Securitization to such parties requesting such information in connection with such Securitization.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower will qualify to do business and will remain in good standing under the laws of the jurisdiction of its formation as and to the extent the same are required for the ownership, maintenance, management and operation of the Property. Borrower shall at all times during the term of the Loan, continue to own all of Equipment, Fixtures and Personal Property which are necessary to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Mortgage and the Assignment of Leases on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Mortgage encumbering the Property is foreclosed in whole or in part or that the Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage encumbering the Property prior to or subsequent to the Mortgage in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement. (5) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Agreement, the Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall deliver to Lender upon request, tenant estoppel certificates from each commercial tenant leasing space at the Property in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

5.1.16 Loan Proceeds. Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in [Section 2.1.4](#) hereof.

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.18 Confirmation of Representations. Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower, Principal and Guarantor as of the date of the Securitization.

5.1.19 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property, and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 Leasing Matters. Any Leases with respect to the Property written after the date hereof, for more than 10,000 square feet shall be approved by Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Upon request, Borrower shall furnish Lender with executed copies of all Leases. All renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates. All proposed Leases shall be on commercially reasonable terms and shall not contain any terms which would materially affect Lender's rights under the Loan Documents. All Leases executed after the date hereof shall provide that they are subordinate to the Mortgage and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale. Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Property involved except that no termination by Borrower or acceptance of surrender by a tenant of any Leases shall be permitted unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Property; provided, however, that no such termination or surrender of any Lease covering more than 10,000 square feet will be permitted without the written consent of Lender; (iii) shall not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, Borrower shall not enter into a lease of all or substantially all of the Property without Lender's prior written consent. Further notwithstanding anything to the contrary contained herein, Borrower shall provide Lender at least fifteen (15) days prior notice for the approval or rejection of any proposed Lease demising over 10,000 (each a "Material Lease"). In the event that Lender fails to respond within the required time period, such failure shall be deemed to be the consent and approval of the Material Lease by Lender if (I) Borrower has delivered to Lender all required documents and information necessary to adequately and completely evaluate the Material Lease, (II) Borrower has resubmitted the Material Lease with the notation "IMMEDIATE RESPONSE REQUIRED, FAILURE TO RESPOND TO THIS LEASE APPROVAL REQUEST WITHIN FIFTEEN (15) BUSINESS DAYS FROM RECEIPT SHALL BE DEEMED TO BE LENDER'S APPROVAL OF THE LEASE" prominently displayed in bold, all caps and fourteen (14) point or larger font at the top of each page of the Material Lease and the envelope containing such Material Lease and (III) Lender does not approve or reject the proposed Material Lease within fifteen (15) Business Days from the date Lender receives the resubmitted request; provided, however, in no event shall Lender's consent be deemed given without the written approval of Lender if the Lease is for 10,000 square feet or greater.

5.1.21 Alterations. Borrower shall obtain Lender's prior written consent to any alterations to any Improvements, which consent shall not be unreasonably withheld or delayed except with respect to alterations that may have a material adverse effect on Borrower's financial condition, the value of the Property or the Net Operating Income. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any alterations that will not have a material adverse effect on Borrower's financial condition, the value of the Property or the Net Operating Income, provided that such alterations are made in connection with (a) tenant improvement work performed pursuant to the terms of any Lease executed on or before the date hereof, (b) tenant improvement work performed pursuant to the terms and provisions of a Lease and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (c) alterations performed in connection with the Restoration of the Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement. If the total unpaid amounts due and payable with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) shall at any time exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "Threshold Amount"), Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization or (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by a financial institution having a rating by S&P of not less than "A-1+" if the term of such bond or letter of credit is no longer than three (3) months or, if such term is in excess of three (3) months, issued by a financial institution having a rating that is acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or class thereof in connection with any Securitization. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and Lender may apply such security from time to time at the option of Lender to pay for such alterations.

5.1.22 Operation of Property. (1) Borrower shall cause the Property to be maintained in a good and safe condition and repair. (2) To the extent a Management Agreement is in effect, Borrower shall cause the Property to be operated, in all material respects, in accordance with the Management Agreement (or Replacement Management Agreement) as applicable. In the event that the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Management Agreement with Manager or another Qualified Manager, as applicable.

(c) Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Management Agreement, if any, and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement; and (iv) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner.

5.1.23 Embargoed Person. Borrower has performed and shall perform reasonable due diligence to insure that at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA PATRIOT Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Principal or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property. (3) Borrower shall not, without Lender’s prior written consent (which consent shall not be unreasonably withheld): (i) surrender, terminate, cancel, amend or modify the Management Agreement; provided, that Borrower may, without Lender’s consent, replace the Manager so long as the replacement manager is a Qualified Manager pursuant to a Replacement Management Agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect.

(b) Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

5.2.2 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except:

- (i) Permitted Encumbrances;
- (ii) Liens created by or permitted pursuant to the Loan Documents; and
- (iii) Liens for Taxes or Other Charges not yet due.

5.2.3 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause the Principal to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which the Principal would be dissolved, wound up or liquidated in whole or in part, or (ii) amend, modify, waive or terminate the certificate of incorporation or bylaws of the Principal, in each case, without obtaining the prior written consent of Lender or Lender's designee.

5.2.4 Change In Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Nothing contained in this Section 5.2.4 is intended to expand the rights of Borrower contained in Section 5.2.10(d) hereof.

5.2.5 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.6 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

5.2.7 Intentionally Omitted.

5.2.8 Intentionally Omitted.

5.2.9 ERISA. (4) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (A) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) Borrower is not subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2);

or

(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.2.10 Transfers. (5) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its stockholders, general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender, and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any Restricted Party do any of the following (collectively, a "Transfer"): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or (ii) permit a Sale or Pledge of an interest in any Restricted Party, other than (A) pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 5.1.20 and (B) Permitted Transfers.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of the managing agent (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.1.22 hereof.

(d) Notwithstanding the provisions of this Section 5.2.10, Lender's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) of the stock, the limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such Transfer shall result in the change of Control in a Restricted Party, and as a condition to each such Transfer, Lender shall receive not less than thirty (30) days prior notice of such proposed Transfer. If after giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in a Restricted Party are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) direct or indirect interest in such Restricted Party as of the Closing Date, Borrower shall, no less than thirty (30) days prior to the effective date of any such Transfer, deliver to Lender an Additional Insolvency Opinion acceptable to Lender and the Rating Agencies. In addition, at all times, Acadia Realty Trust must continue to Control Borrower, Guarantor and Manager, if any, and own, directly or indirectly, at least a 51% legal and beneficial interest in Borrower, Guarantor and Manager. Notwithstanding anything to the contrary contained herein, provided the conditions set forth in this subsection (d) are satisfied, Lender's consent shall not be required in connection the Transfer publicly traded shares in Acadia Realty Trust.

(e) No consent to any assumption of the Loan shall occur on or before the first (1st) anniversary of the first (1st) Payment Date. Thereafter, Lender's consent to a one (1) time Transfer of the Property and assumption of the Loan shall not be unreasonably withheld provided that Lender receives sixty (60) days prior written notice of such Transfer and no Event of Default has occurred and is continuing, and further provided that the following additional requirements are satisfied:

- (i) Borrower shall pay Lender a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan at the time of such transfer;
- (ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Lender's counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (x) below);
- (iii) The proposed transferee (the "Transferee") or Transferee's Principals must have demonstrated expertise in owning and operating properties similar in location, size, class and operation to the Property, which expertise shall be reasonably determined by Lender;
- (iv) Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;
- (v) Transferee, Transferee's Principals and all other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("Related Entities") must not have been party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;
- (vi) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;
- (vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;
- (viii) Transferee, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Lender;
- (ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in Sections 4.1.30, 4.1.35, 5.1.23 and 5.2.9 of this Agreement, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and (B) all certificates, agreements and covenants reasonably required by Lender;

(x) Transferee shall be approved by the Rating Agencies selected by Lender, which approval, if required by Lender, shall take the form of a confirmation in writing from such Rating Agencies to the effect that such Transfer will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such assumption or transfer for the Securities or any class thereof issued in connection with a Securitization which are then outstanding;

(xi) Borrower or Transferee, at its sole cost and expense, shall deliver to Lender an Additional Insolvency Opinion reflecting such Transfer satisfactory in form and substance to Lender;

(xii) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty and Environmental Indemnity executed by Guarantor or execute a replacement guaranty and environmental indemnity reasonably satisfactory to Lender;

(xiii) Borrower shall deliver, at its sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the Title Policy issued on the date hereof and the Permitted Encumbrances; and

(xiv) The Property shall be managed by a Qualified Manager pursuant to a Replacement Management Agreement.

Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the Mortgage and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower.

(f) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

VI. INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

Section 6.1

Insurance. (6) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance ("Special Form") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Ten Thousand and 00/100 Dollars (\$10,000.00) for all such insurance coverage excluding windstorm and earthquake and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require and (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity;

(ii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property (as reduced to reflect expenses not incurred during a period of Restoration) for a period of at least twenty-four (24) months after the date of the Casualty; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross revenues from the Property for the succeeding twenty-four (24) month period. Notwithstanding the provisions of Section 2.7.1 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance, otherwise known as Owner Contractor's Protective Liability, covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate and One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all written contracts and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million Dollars and 00/100 Dollars (\$1,000,000.00);

(vii) worker's compensation and employee's liability subject to the worker's compensation laws of the applicable state;

(viii) umbrella and excess liability insurance in an amount not less than Fifty Million and 00/100 Dollars (\$50,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including, but not limited to, supplemental coverage for employer liability and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(ix) the insurance required under this Section 6.1(a) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a) above at all times during the term of the Loan; and

(x) upon sixty (60) days written notice, such other reasonable insurance, including, but not limited to, sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) hereof, shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "AA" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the Securities (one (1) of which shall be S&P if they are rating the Securities and one (1) of which will be Moody's if they are rating the Securities), or if only one (1) Rating Agency is rating the Securities, then only by such Rating Agency. The Policies described in Section 6.1 hereof (other than those strictly limited to liability protection) shall designate Lender as loss payee. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Borrower to Lender.

(c) Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 6.1(a) hereof.

(d) All Policies provided for or contemplated by Section 6.1(a) hereof, except for the Policy referenced in Section 6.1(a)(vii) of this Agreement, shall name Borrower as the insured and Lender as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies shall contain clauses or endorsements to the effect that:

- (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;
- (ii) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days written notice to Lender and any other party named therein as an additional insured;
- (iii) the issuers thereof shall give written notice to Lender if the Policy has not been renewed thirty (30) days prior to its expiration; and
- (iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate after three (3) Business Days notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Lender deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Mortgage and shall bear interest at the Default Rate.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the Restoration of the Property pursuant to Section 6.4 hereof as nearly as possible to the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 hereof. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any portion of the Property is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property pursuant to Section 6.4 hereof and otherwise comply with the provisions of Section 6.4 hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4 **Restoration.** The following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds shall be less than One Million and 00/100 Dollars (\$1,000,000.00) and the costs of completing the Restoration shall be less than One Million and 00/100 Dollars (\$1,000,000.00), the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) hereof are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) or the costs of completing the Restoration is equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 6.4. The term "Net Proceeds" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (ix) and (x) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("Insurance Proceeds"), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("Condemnation Proceeds"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements on the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is located on such land;

(C) Leases demising in the aggregate a percentage amount equal to or greater than the Rentable Space Percentage of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Tenant, as applicable under the respective Lease, will make all necessary repairs and restorations thereto at their sole cost and expense. The term "Rentable Space Percentage" shall mean (1) in the event the Net Proceeds are Insurance Proceeds, a percentage amount equal to ninety percent (90%) and (2) in the event the Net Proceeds are Condemnation Proceeds, a percentage amount equal to ninety percent (90%);

(D) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

(E) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 6.1(a)(ii) hereof, if applicable, or (3) by other funds of Borrower;

(F) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(ii) hereof;

- (G) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;
- (H) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;
- (I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Property or the Improvements;
- (J) the Debt Service Coverage Ratio for the Property, after giving effect to the Restoration, shall be equal to or greater than 1.05 to 1.0;
- (K) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be acceptable to Lender; and
- (L) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration.

(ii) The Net Proceeds shall be held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and Other Obligations under the Loan Documents. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "Casualty Consultant"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "Casualty Retainage" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and Other Obligations under the Loan Documents.

(vii) The excess, if any, of the Net Proceeds (and the remaining balance, if any, of the Net Proceeds Deficiency) deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be deposited in the Cash Management Account to be disbursed in accordance with the Cash Management Agreement, provided no Event of Default shall have occurred and shall be continuing under the Note, this Agreement or any of the other Loan Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii) hereof may be retained and applied by Lender toward the payment of the Debt in accordance with Section 2.4.2 hereof, whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its discretion.

(d) In the event of foreclosure of the Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

VII. RESERVE FUNDS

Section 7.1 Required Repairs.

7.1.1 Deposits. Borrower shall perform the repairs at the Property, as more particularly set forth on Schedule II hereto (such repairs hereinafter referred to as "Required Repairs"). Borrower shall complete the Required Repairs on or before the required deadline for each repair as set forth on Schedule II. It shall be an Event of Default under this Agreement if (a) Borrower does not complete the Required Repairs at the Property by the required deadline for each repair as set forth on Schedule II, or (b) Borrower does not satisfy each condition contained in Section 7.1.2 hereof. Upon the occurrence of such an Event of Default, Lender, at its option, may withdraw all Required Repair Funds from the Required Repair Account and Lender may apply such funds either to completion of the Required Repairs at the Property or toward payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply Required Repair Funds shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents. On the Closing Date, Borrower shall deposit with Lender the amount for the Property set forth on such Schedule II hereto to perform the Required Repairs for the Property. Amounts so deposited with Lender shall be held by Lender in accordance with Section 7.5 hereof. Amounts so deposited shall hereinafter be referred to as Borrower's "Required Repair Fund" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "Required Repair Account".

7.1.2 Release of Required Repair Funds. Lender shall disburse to Borrower the Required Repair Funds from the Required Repair Account from time to time upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Required Repairs to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured, (c) Lender shall have received an Officers' Certificate (i) stating that all Required Repairs to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete the Required Repairs, (ii) identifying each Person that supplied materials or labor in connection with the Required Repairs to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such Officers' Certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender's option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (e) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to make disbursements from the Required Repair Account with respect to the Property unless such requested disbursement is in an amount greater than Twenty-five Thousand and 00/100 Dollars (\$25,000.00) (or a lesser amount if the total amount in the Required Repair Account is less than Twenty-five Thousand and 00/100 Dollars (\$25,000.00), in which case only one disbursement of the amount remaining in the account shall be made) and such disbursement shall be made only upon satisfaction of each condition contained in this Section 7.1.2.

Section 7.2 Tax and Insurance Escrow Fund. Borrower shall pay to Lender on each Payment 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"). The Tax and Insurance Escrow Fund and the Monthly Debt Service Payment Amount, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to Section 5.1.2 hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. Any amount remaining in the Tax and Insurance Escrow Fund after the Debt has been paid in full shall be returned to Borrower. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes, Other Charges and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and Other Charges and/or thirty (30) days prior to expiration of the Policies, as the case may be. Notwithstanding anything contained in this Section 7.2 to the contrary, Borrower shall not be required to make monthly escrow payments to Tax and Insurance Escrow Fund for Insurance Premiums so long as (i) no Event of Default exists hereunder (or under any of the other Loan Documents), (ii) Borrower maintains a blanket insurance policy including the Property and (iii) Borrower provides evidence reasonably acceptable to Lender that such Insurance Premiums due under said blanket policy have been paid on or before the due date therefore.

7.3.1 Replacement Reserve Fund. Borrower shall pay to Lender on each Payment Date one-twelfth (1/12) of \$22,576.00 [\$0.15 psf] (the "Replacement Reserve Monthly Deposit") reasonably estimated by Lender in its sole discretion to be due for replacements and repairs required to be made to the Property during the calendar year (collectively, the "Replacements"). Amounts so deposited shall hereinafter be referred to as Borrower's "Replacement Reserve Fund" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "Replacement Reserve Account". Lender may reassess its estimate of the amount necessary for the Replacement Reserve Fund from time to time, and may increase the monthly amounts required to be deposited into the Replacement Reserve Fund upon thirty (30) days notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain the proper maintenance and operation of the Property.

7.3.2 Disbursements from Replacement Reserve Account. (7) Lender shall make disbursements from the Replacement Reserve Account to pay Borrower only for the costs of the Replacements. Lender shall not be obligated to make disbursements from the Replacement Reserve Account to reimburse Borrower for the costs of routine maintenance to the Property, replacements of inventory or for costs which are to be reimbursed from the Required Repair Fund or Rollover Reserve Fund.

(b) Lender shall, upon written request from Borrower and satisfaction of the requirements set forth in this Section 7.3.2, disburse to Borrower amounts from the Replacement Reserve Account necessary to pay for the actual approved costs of Replacements or to reimburse Borrower therefor, upon completion of such Replacements (or, upon partial completion in the case of Replacements made pursuant to Section 7.3.2(e) hereof) as determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve Account if a Default or an Event of Default exists.

(c) Each request for disbursement from the Replacement Reserve Account shall be in a form specified or approved by Lender and shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request Borrower shall certify that all Replacements have been made in accordance with all applicable Legal Requirements of any Governmental Authority having jurisdiction over the Property. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided and, unless Lender has agreed to issue joint checks as described below in connection with a particular Replacement, each request shall include evidence satisfactory to Lender of payment of all such amounts. Except as provided in Section 7.3.2(e) hereof, each request for disbursement from the Replacement Reserve Account shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide Lender evidence of completion of the subject Replacement satisfactory to Lender in its reasonable judgment.

(d) Borrower shall pay all invoices in connection with the Replacements with respect to which a disbursement is requested prior to submitting such request for disbursement from the Replacement Reserve Account or, at the request of Borrower, Lender will issue joint checks, payable to Borrower and the contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with a Replacement. In the case of payments made by joint check, Lender may require a waiver of lien from each Person receiving payment prior to Lender's disbursement from the Replacement Reserve Account. In addition, as a condition to any disbursement, Lender may require Borrower to obtain lien waivers from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than Twenty-five Thousand and 00/100 Dollars (\$25,000.00) for completion of its work or delivery of its materials. Any lien waiver delivered hereunder shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current reimbursement request (or, in the event that payment to such contractor, supplier, subcontractor, mechanic or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).

(e) If (i) the cost of a Replacement exceeds Twenty-five Thousand and 00/100 Dollars (\$25,000.00), (ii) the contractor performing such Replacement requires periodic payments pursuant to terms of a written contract, and (iii) Lender has approved in writing in advance such periodic payments, a request for reimbursement from the Replacement Reserve Account may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of the work, (B) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, (C) all other conditions in this Agreement for disbursement have been satisfied, (D) funds remaining in the Replacement Reserve Account are, in Lender's judgment, sufficient to complete such Replacement and other Replacements when required, and (E) if required by Lender, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than Twenty-five Thousand and 00/100 Dollars (\$25,000.00).

7.3.3 Performance of Replacements. (8) Borrower shall make Replacements when required in order to keep the Property in condition and repair consistent with other first class, full service shopping centers in the same market segment in the metropolitan area in which the Property is located, and to keep the Property or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Lender reserves the right, at its option, to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender.

(c) In the event Lender determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner, Lender shall have the option to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve Fund toward the labor and materials necessary to complete such Replacement, without providing any prior notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder.

(d) In order to facilitate Lender's completion or making of such Replacements pursuant to Section 7.3.3(c) above, Borrower grants Lender the right to enter onto the Property and perform any and all work and labor necessary to complete or make such Replacements and/or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to use any funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary or desirable to complete such Replacements; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Replacements, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

(e) Nothing in this Section 7.3.3 shall: (i) make Lender responsible for making or completing any Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Lender to proceed with any Replacements; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(f) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties making Replacements pursuant to this Section 7.3.3 to enter onto the Property during normal business hours (subject to the rights of tenants under their Leases) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Property, and to complete any Replacements made pursuant to this Section 7.3.3. Borrower shall cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 7.3.3(f) or the completion of Replacements pursuant to this Section 7.3.3.

(g) Lender may require an inspection of the Property at Borrower's expense prior to making a monthly disbursement from the Replacement Reserve Account in order to verify completion of the Replacements for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and/or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amounts from the Replacement Reserve Account. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

(h) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for those Liens existing on the date of this Agreement which have been approved in writing by Lender).

(i) Before each disbursement from the Replacement Reserve Account, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Property since the date of recordation of the related Mortgage and that title to the Property is free and clear of all Liens (other than the lien of the related Mortgage and any other Liens previously approved in writing by Lender, if any).

(j) All Replacements shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(k) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Lender.

7.3.4 Failure to Make Replacements. (9) It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this Section 7.3 and such failure is not cured within thirty (30) days after notice from Lender. Upon the occurrence of such an Event of Default, Lender may use the Replacement Reserve Fund (or any portion thereof) for any purpose, including but not limited to completion of the Replacements as provided in Section 7.3.3, or for any other repair or replacement to the Property or toward payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Replacement Reserve Fund shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

(b) Nothing in this Agreement shall obligate Lender to apply all or any portion of the Replacement Reserve Fund on account of an Event of Default to payment of the Debt or in any specific order or priority.

7.3.5 Balance in the Replacement Reserve Account. The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

Section 7.4 Rollover Reserve.

7.4.1 Deposits to Rollover Reserve Fund. Borrower shall pay to Lender on each Payment Date the sum of \$3,583.33, which amounts shall be deposited with and held by Lender for tenant improvement and leasing commission obligations incurred following the date hereof. Amounts so deposited shall hereinafter be referred to as the "Rollover Reserve Fund" and the account to which such amounts are held shall hereinafter be referred to as the "Rollover Reserve Account".

7.4.2 Withdrawal of Rollover Reserve Funds. Lender shall make disbursements from the Rollover Escrow Fund for tenant improvement and leasing commission obligations incurred by Borrower. All such expenses shall be approved by Lender in its sole discretion. Lender shall make disbursements as requested by Borrower on a quarterly basis in increments of no less than \$5,000.00 upon delivery by Borrower of Lender's standard form of draw request accompanied by copies of paid invoices for the amounts requested and, if required by Lender, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Lender may require an inspection of the Property at Borrower's expense prior to making a quarterly disbursement in order to verify completion of improvements for which reimbursement is sought. All earnings or interest on the Rollover Escrow Fund shall be and become part of such Rollover Escrow Fund and shall be disbursed as provided in this Section 7.4.

Section 7.5 **Reserve Funds, Generally.** Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds shall be held in an Eligible Account in Permitted Investments in accordance with the terms and provisions of the Cash Management Agreement. All interest on a Reserve Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender, except the Rollover Escrow Fund. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

VIII. DEFAULTS

Section 8.1 **Event of Default.** (10) Each of the following events shall constitute an event of default hereunder (an "Event of Default"):

- (i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);
- (ii) if any of the Taxes (other than Taxes being contested pursuant to Section 5.1.2 of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after the date that the same are due and payable;

- (iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;
- (iv) if Borrower Transfers or otherwise encumbers any portion of the Property without Lender's prior written consent in violation of the provisions of this Agreement and Article 6 of the Mortgage;
- (v) if any material representation or warranty made by Borrower herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;
- (vi) if Borrower, Principal, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;
- (vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Principal, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Principal, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Principal, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Principal, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Principal, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;
- (viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;
- (ix) if Borrower breaches any covenant contained in Section 4.1.30 hereof;
- (x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;
- (xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xiii) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of Section 9.1 hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of Section 9.1 hereof, for three (3) days after notice to Borrower from Lender;

(xiv) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xii) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days; or

(xv) if there shall be default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower or the Property, or if any other such event shall occur or condition shall exist, if the effect of such default, event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2

Remedies. (11) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been for closed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "Severed Loan Documents") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

IX. SPECIAL PROVISIONS

Section 9.1 Securitization.

9.1.1 Sale of Notes and Securitization. Borrower acknowledges and agrees that Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a "Securitization"). At the request of Lender, and to the extent not already required to be provided by or on behalf of Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender or take other actions reasonably required by Lender, in each case in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender, prospective investors and/or the Rating Agencies;

(b) assist in preparing descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower and approved by Lender, Principal and their respective affiliates to obtain, collect, and deliver information requested or required by Lender, prospective investors and/or the Rating Agencies;

(c) deliver (i) an Additional Insolvency Opinion and an opinion with respect to, due execution and enforceability with respect to the Property, Borrower, Principal, Guarantor and their respective Affiliates and the Loan Documents, including, without limitation, a so called "10b-5" opinion, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

(d) if required by any prospective investor and/or any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect the Property, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

(e) make such representations and warranties as of the closing date of the Securitization with respect to the Property, Borrower, Principal, Guarantor and the Loan Documents as may be reasonably requested by Lender, prospective investors and/or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents;

(f) execute such amendments to the Loan Documents as may be requested by Lender, prospective investors and/or the Rating Agencies to effect the Securitization;

(g) if requested by Lender, review any information regarding the Property, Borrower, Principal, Guarantor, Manager and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(h) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws.

9.1.2 Loan Components. Borrower covenants and agrees that in connection with any Securitization of the Loan, upon Lender's request Borrower shall deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan or create one or more mezzanine loans (including amending Borrower's organizational structure to provide for one or more mezzanine borrowers) [or re-size the Components of the Loan] (each a "**Resizing Event**"). Lender agrees that such new notes or modified note or mezzanine notes [or re-sized Components] shall immediately after the Resizing Event have the same initial weighted average coupon as the original note prior to such Resizing Event, notwithstanding that such new notes or modified note or mezzanine notes [or re-sized Component] may, in connection with the application of principal to such new notes or modified note or mezzanine notes [or re-sized Components], subsequently cause the weighted average spread of such new notes or modified note or mezzanine notes [or re-sized Components] to change (but not increase, except that the weighted average spread may subsequently increase due to involuntary prepayments or if an Event of Default shall occur) and apply principal, interest rates and amortization of the Loan between such new components and/or mezzanine loans in a manner specified by Lender in its sole discretion such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum bond execution for the Loan. In connection with any Resizing Event, Borrower covenants and agrees to modify the Cash Management Agreement with respect to the newly created components and/or mezzanine loans.

9.1.3 Securitization Costs. All reasonable third party costs and expenses incurred by Borrower and Guarantor in connection with Borrower's complying with requests made under this Section 9.1 (including, without limitation, the fees and expenses of the Rating Agencies) shall be paid by Lender.

Section 9.2 Securitization Indemnification. (12) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) The Indemnifying Persons agree to provide, in connection with the Securitization, an indemnification agreement (A) certifying that (i) the Indemnifying Persons have carefully examined the Disclosure Documents, including without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Mortgages," "Description of the Mortgage Loans and Mortgaged Property," "The Manager," "The Borrower" and "Certain Legal Aspects of the Mortgage Loan," and (ii) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Manager and/or the Loan) (collectively with the Provided Information, the "Covered Disclosure Information") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) jointly and severally indemnifying Lender, BSCMI (whether or not it is the Lender), any Affiliate of BSCMI that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of BSCMI that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Indemnified Persons"), for any losses, claims, damages, liabilities, costs or expenses (including without limitation legal fees and expenses for enforcement of these obligations (collectively, the "Liabilities") to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities. This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification and reimbursement obligations provided for in clauses (B) and (C) above shall be effective, valid and binding obligations of the Indemnifying Persons whether or not an indemnification agreement described in clause (A) above is provided.

(c) In connection with Exchange Act Filings, the Indemnifying Persons jointly and severally agree to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against any Indemnifying Person, notify such Indemnifying Person in writing of the claim or the commencement of that action; provided, however, that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify any Indemnifying Person thereof, such Indemnifying Person shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Indemnifying Person to the Indemnified Person of its election to assume the defense of such claim or action, such Indemnifying Person shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both an Indemnifying Person, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to the Indemnifying Person, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which the Indemnifying Person is required hereunder to indemnify such Indemnified Person. No Indemnifying Person shall be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior written consent of BSCMI (which consent shall not be unreasonably withheld or delayed), no Indemnifying Person shall settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless the Indemnifying Person shall have given BSCMI reasonable prior written notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as an Indemnifying Person has complied with its obligations to defend and indemnify hereunder, such Indemnifying Person shall not be liable for any settlement made by any Indemnified Person without the consent of such Indemnifying Person (which consent shall not be unreasonably withheld or delayed).

(f) The Indemnifying Persons agree that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of the Indemnifying Persons, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) the Indemnifying Persons agree that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees actually received by the Indemnified Persons in connection with the closing of the Loan.

(g) The Indemnifying Persons agree that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. The Indemnifying Persons further agree that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and the Indemnifying Persons under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

Section 9.3 **Exculpation.** Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgage or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgage and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (c) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of any of the Assignment of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Mortgage or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower or Principal or Guarantor in connection with the Loan;

(ii) the gross negligence or willful misconduct of Borrower;

(iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement or in the Mortgage concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

- (iv) the removal or disposal of any portion of the Property after an Event of Default;
- (v) the misapplication or conversion by Borrower of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards received in connection with a Condemnation of all or a portion of the Property, (C) any Rents following an Event of Default, or (D) any Rents paid more than one month in advance;
- (vi) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Property; and
- (vii) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by the Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower (i) in the event of: (a) Borrower filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which Borrower colludes with, or otherwise assists such Person, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (c) Borrower filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) Borrower consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property; (e) Borrower making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (ii) if the first full monthly payment of principal and interest on the Note is not paid when due; (iii) if Borrower fails to permit on-site inspections of the Property, fails to provide financial information, fails to maintain its status as a Single Purpose Entity or fails to appoint a new property manager upon the request of Lender as permitted under this Agreement, each as required by, and in accordance with, the terms and provisions of this Agreement or the Mortgage; (iv) if Borrower fails to obtain Lender's prior written consent to any Indebtedness or voluntary Lien encumbering the Property; or (v) if Borrower fails to obtain Lender's prior written consent to any Transfer as required by this Agreement or the Mortgage.

Section 9.4 **Matters Concerning Manager.** If (a) an Event of Default occurs, (b) Manager shall become bankrupt or insolvent or (c) a default occurs under the Management Agreement, Borrower shall, at the request of Lender, terminate the Management Agreement and replace the Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

Section 9.5 Service. At the option of Lender, the Loan may be serviced by a servicer/trustee (any such servicer/trustee, together with its agents, nominees or designees, are collectively referred to as "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a servicing agreement (the "Servicing Agreement") between Lender and Servicer. Borrower shall be responsible for any reasonable set-up fees or any other initial costs relating to or arising under the Servicing Agreement; provided, however, that Borrower shall not be responsible for payment of the monthly servicing fee due to Servicer under the Servicing Agreement.

X. MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 Lender's Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 10.4 **Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 **Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

with a copy to: Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Paul A. Keenan, Esq.
Facsimile No.: (212) 808-7897

If to Borrower: c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Mr. Michael Nelsen, Chief Financial Officer
Facsimile No.: (914) 288.2162

With a copy to: Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq., General Counsel
Facsimile No.: (914) 288.2162

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

Section 10.7 **Trial by Jury.**

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 **Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 **Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11 **Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.12 **Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 **Expenses; Indemnity.** (13) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Lockbox Account or Cash Management Account, as applicable.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (i i) the use or intended use of the proceeds of the Loan (collectively, the "Indemnified Liabilities"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any Rating Agency review of the Loan, the Loan Documents or any transaction contemplated thereby or any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 Schedules Incorporated. The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries. (14) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

Section 10.18 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Application Letter dated October 28, 2005 (as amended) between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Joint and Several Liability. If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

Section 10.24 Certain Additional Rights of Lender (VCOC). Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property).

The rights described above in this Section 10.24 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 MERS. Mortgage Electronic Registration Systems, Inc., a Delaware corporation ("MERS"), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Security Instruments and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to "Mortgagee" shall include Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

RD ELMWOOD ASSOCIATES, L.P.,
a Delaware limited partnership

BY: Acadia Elmwood Park LLC,
Its general partner

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
a New York corporation

By: /s/ Michael A. Forastiere
Name: Michael A. Forastiere
Title: Managing Director

JOINDER

By executing this Joinder (the "Joinder"), the undersigned ("Joinder Parties") hereby covenant, warrant and agree to comply with all of the terms and conditions set forth in Section 9.2 hereof.

1. **Waivers.** With respect to the obligations of the Joinder Parties pursuant to Section 9.2 hereof, to the fullest extent permitted by applicable law, each Joinder Party waives all rights and defenses of sureties, guarantors, accommodation parties and/or co-makers and agrees that its obligations under this Joinder shall be primary, absolute and unconditional, and that its obligations under this Joinder shall be unaffected by any of such rights or defenses, including:

(a) the unenforceability of any Loan Document against Borrower and/or any guarantor or other Joinder Party;

(b) any release or other action or inaction taken by Lender with respect to the collateral, the Loan, Borrower, any guarantor and/or other Joinder Party, whether or not the same may impair or destroy any subrogation rights of any Joinder Party, or constitute a legal or equitable discharge of any surety or indemnitor;

(c) the existence of any collateral or other security for the Loan, and any requirement that Lender pursue any of such collateral or other security, or pursue any remedies it may have against Borrower, any guarantor and/or any other Joinder Party;

(d) any requirement that Lender provide notice to or obtain a Joinder Party's consent to any modification, increase, extension or other amendment of the Loan, including the guaranteed obligations;

(e) any right of subrogation (until payment in full of the Loan, including the guaranteed obligations, and the expiration of any applicable preference period and statute of limitations for fraudulent conveyance claims);

(f) any defense based on any statute of limitations;

(g) any payment by Borrower to Lender if such payment is held to be a preference or fraudulent conveyance under bankruptcy laws or Lender is otherwise required to refund such payment to Borrower or any other party; and

(h) any voluntary or involuntary bankruptcy, receivership, insolvency, reorganization or similar proceeding affecting Borrower or any of its assets.

2. **Agreements.** With respect to the obligations of the Joinder Parties pursuant to Section 9.2 hereof, each Joinder Party further represents, warrants and agrees that:

(a) The obligations under this Joinder are enforceable against each such party and are not subject to any defenses, offsets or counterclaims;

(b) The provisions of this Joinder are for the benefit of Lender and its successors and assigns;

(c) Lender shall have the right to (i) renew, modify, extend or accelerate the Loan, (ii) pursue some or all of its remedies against Borrower, any guarantor or any Joinder Party, (iii) add, release or substitute any collateral for the Loan or party obligated thereunder, and (iv) release Borrower, any guarantor or any Joinder Party from liability, all without notice to or consent of any Joinder Party (or other Joinder Party) and without affecting the obligations of any Joinder Party (or other Joinder Party) hereunder;

(d) To the maximum extent permitted by law, each Joinder Party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury in respect of any litigation based hereon. This waiver is a material inducement to Lender to enter into this Agreement.

This Joinder shall be governed by the laws of the State of New York.

Executed as of December 9, 2005.

ACADIA REALTY LIMITED PARTNERSHIP
a Delaware limited partnership

By: Acadia Realty Trust,
its general partner

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

SCHEDULE I

(Rent Roll)

Database: AKR_PROD		Rent Roll								Page: 1			
Bldg Status: Active only		Elmwood Park Shopping Center								Date: 11/10/2005			
		11/10/2005								Time: 02:35 PM			
Bldg Id-Suit Id	Occupant Name	Rent Start	Expiration	GLA Sqft	Monthly Base Rent	Annual Rate PSF	Monthly Cost Recovery	Expense Stop	Monthly Other Income	----- Future Rent Increases -----			
										Cat	Date	Monthly Amount	PSF

Leased and Unoccupied Suites

0004	-04010	EAGLE ROCK APPAREL INCLAROCA/31/2002	6/31/2012	3,168 v	8,783.28		1,733.31						
		Stop Bill Date: 3/31/2005											
0004	-04018	UPS LETTER CENTER	1/1/1995 12/31/2030	0					25.00				
		Stop Bill Date: 2/28/2005											

Occupied Suites

0004	-04001	A & E STORES INC.	4/21/2001 1/31/2008	4,200	8,911.00	25.46	975.19			FMR	2/1/2006	9,177.00	26.22
										FMR	2/1/2007	9,453.50	27.01
0004	-04002	DIME SAVINGS BANK OF NY FSB	10/1/1984 1/31/2007	10,320	21,120.30	24.56	1,668.90						
0004	-04003	ROCKAWAY BEDDING INC.,ST#182	6/30/2002 6/30/2007	3,076	6,408.33	25.00	1,692.72						
0004	-04004	BROADVIEW CAP. CORP./BLIMPIES,9/1/1982	8/31/2007	1,500	4,745.24	37.96	190.06			FMR	9/1/2006	4,935.05	39.48
0004	-04005	ELITE WEAR INC.	4/1/1992 9/30/2008	5,069	13,399.88	31.72	1,123.05			FMR	10/1/2006	13,935.88	32.99
										FMR	10/1/2007	14,493.31	34.31
0004	-04006	DOLLAR PARADISE INC.	5/23/2000 5/31/2015	9,592	17,001.82	21.27	5,375.26			FMR	6/1/2006	17,425.47	21.80
										FMR	6/1/2007	17,857.11	22.34
										FMR	6/1/2008	18,304.73	22.90
										FMR	6/1/2009	18,760.35	23.47
										FMR	6/1/2010	19,215.97	24.04
										FMR	6/1/2011	19,711.56	24.66
										FMR	6/1/2012	20,207.15	25.28
										FMR	6/1/2013	20,710.73	25.91
										FMR	6/1/2014	21,230.29	26.56
0004	-04007	DOTS INC., ST# 508	8/5/2002 8/31/2007	4,041	8,418.75	25.00	2,264.54						
0004	-04008	GENERAL NUTRITION CORP.,#5414	11/6/1993 12/31/2008	1,316	3,783.50	34.50	139.20						
0004	-04009	KAY BEE TOY & HOBBY SHOPS	3/15/1997 12/31/2007	7,325	12,208.33	20.00	3,762.29						
0004	-04010	BUY RITE LIQUORS	9/26/2005 9/30/2015	3,168	9,358.80	35.45	1,831.52			FMR	10/1/2006	8,268.48	23.82
										FMR	10/1/2007	8,552.48	24.82
										FMR	10/1/2008	8,750.48	25.57
										FMR	10/1/2009	8,953.76	26.34
										FMR	10/1/2010	7,162.32	27.13
										FMR	10/1/2011	7,378.16	27.94
										FMR	10/1/2012	7,597.92	28.78
										FMR	10/1/2013	7,824.96	29.64
										FMR	10/1/2014	8,059.92	30.53
0004	-04011	LOBEL'S YOUTH CENTER INC	2/1/2003 1/31/2013	3,373	8,092.39	28.79	1,890.21		457.33	FMR	2/1/2006	8,358.77	29.88

v = Excluded from totals, space occupied by another tenant

Bldg Id-Suit Id	Occupant Name	Rent Start	Expiration	GLA Sqft	Monthly Base Rent	Annual Rate PSF	Monthly Cost Recovery	Expense Stop	Monthly Other Income	Future Rent Increases			
										Cat	Date	Monthly Amount	PSF
										FMR	2/1/2007	8,424.07	29.97
										FMR	2/1/2008	9,517.48	33.86
0004 -04012	PATHMARK STORES INC, #181	11/10/2002	11/30/2017	47,773	79,621.67	20.00				FMR	12/1/2009	87,583.83	22.00
										FMR	12/1/2012	95,546.00	24.00
										FMR	12/1/2015	103,906.27	26.10
0004 -04013	PAYLESS SHOE #3849 INC.	9/27/1991	10/31/2006	4,434	8,867.26	24.00	969.78						
0004 -04014	RADIOSHACK CORPORATION-ST#0	2/28/2003	2/28/2008	3,142	6,545.63	25.00	1,724.86						
0004 -04015	GREEN WOOD TRADING INC	2/3/2003	2/28/2008	3,034	8,126.06	32.14	1,790.22			FMR	3/1/2006	8,411.77	33.27
										FMR	3/1/2007	8,707.58	34.44
0004 -04016	UNITED RETAIL INC/SIZES #503.	5/1/1995	1/31/2008	6,240	11,180.00	21.50	3,125.81						
0004 -04017	UPDATED INC	9/15/2003	9/30/2013	4,895	9,382.08	23.00	2,743.11			FMR	10/1/2006	10,320.29	25.30
0004 -04021	VALLEY NATIONAL BANK	4/25/1989	5/31/2014	11,750	8,984.38	9.16				FMR	6/1/2009	10,084.97	10.30
0004 -04022	WALGREENS EASTERN CO., ST#61054	2/2/2002	5/31/2022	14,837	36,290.00	29.32	2,556.42						
Totals:	Occupied Sqft:	100.00%	19 Units	149,085	282,385.62		33,533.14		457.33				
	Leased/Unoccupied Sqft:		0 Units	0			1,733.31		25.00				
	Vacant Sqft:		0 Units	0									
	Total Sqft:		19 Units	149,085	282,385.62								
Total Elmwood Park Shopping Center:	Occupied Sqft:	100.00%	19 Units	149,085	282,385.62		33,533.14		457.33				
	Leased/Unoccupied Sqft:		0 Units	0			1,733.31		25.00				
	Vacant Sqft:		0 Units	0									
	Total Sqft:		19 Units	149,085	282,385.62								
Grand Total:	Occupied Sqft:	100.00%	19 Units	149,085	282,385.62		33,533.14		457.33				
	Leased/Unoccupied Sqft:		0 Units	0			1,733.31		25.00				
	Vacant Sqft:		0 Units	0									
	Total Sqft:		19 Units	149,085	282,385.62								

v = Excluded from totals, space occupied by another tenant

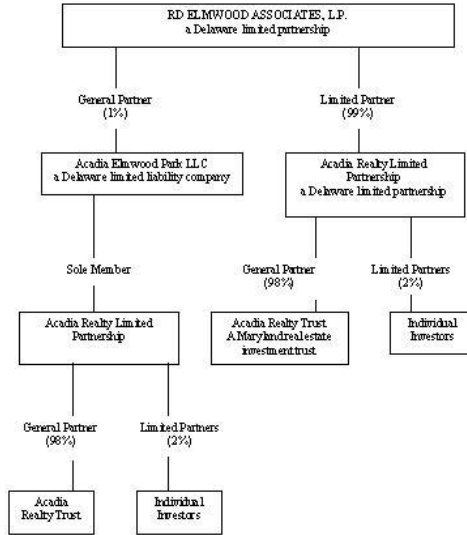
SCHEDULE II

(Required Repairs - Deadlines For Completion)

Item	Quantity	Unit Cost	Immediate Cost	Repair Deadline for Completion

SCHEDULE III

(Organizational Chart of Borrower)



Accrual

Budget amounts from 01/06 to 12/06

	01/06	02/06	03/06	04/06	05/06	06/06	07/06	08/06	09/06	10/06	11/06	12/06	Total
-DOTS INC., ST# 508 (RTM) 0004-04007	1,366	1,366	1,366	1,366	1,366	1,366	1,366	1,366	1,366	1,366	1,366	1,366	16,393
-DOTS INC., ST# 508 (RTM) 0004-04007	0	0	0	0	0	0	0	0	0	0	0	0	0
-ELITE WEAR INC. (RTM) 0004-04005	4,053	0	0	4,053	0	0	4,053	0	0	4,053	0	0	16,211
-GENERAL NUTRITION CORP. #5414 (RTM) 000	1,334	0	0	1,334	0	0	1,334	0	0	1,334	0	0	5,336
-GREEN WOOD TRADING INC. (RTM) 000	1,026	1,026	1,026	1,026	1,026	1,026	1,026	1,026	1,026	1,026	1,026	1,026	12,306
-KAY BEE TOY & HOBBY SHOPS (RTM) 0	2,476	2,476	2,476	2,476	2,476	2,476	2,476	2,476	2,476	2,476	2,476	2,476	26,715
-LOBEL'S YOUTH CENTER INC (RTM) 001	1,140	1,140	1,140	1,140	1,140	1,140	1,140	1,140	1,140	1,140	1,140	1,140	13,683
-PATHMARK STORES INC. #181 (BTM) 00	51,938	0	0	51,938	0	0	51,938	0	0	51,938	0	0	207,752
-PATHMARK STORES INC. #181 (LTM) 00	5,190	0	0	5,190	0	0	5,190	0	0	5,190	0	0	20,762
-PAYLESS SHOE #3849 INC. (RTM) 0004-	1,499	1,499	1,499	1,499	1,499	1,499	1,499	1,499	1,499	1,499	1,499	1,499	14,989
-PAYLESS SHOE #3849 INC. (RTM) 0004-	0	0	0	0	0	0	0	0	0	0	1,499	1,499	2,998
-RADIOSHACK CORPORATION-ST#01-28	1,062	1,062	1,062	1,062	1,062	1,062	1,062	1,062	1,062	1,062	1,062	1,062	12,739
-Spec-Old Rockaway Bedding (RTM) 0004-	0	0	0	0	1,040	1,040	1,040	1,040	1,040	1,040	1,040	1,040	8,319
-UNITED RETAIL INC/SIZES #903. (RTM) I	2,109	2,109	2,109	2,109	2,109	2,109	2,109	2,109	2,109	2,109	2,109	2,109	25,313
-UPDATED INC (RTM) 0004-04017	1,655	1,655	1,655	1,655	1,655	1,655	1,655	1,655	1,655	1,655	1,655	1,655	19,857
-VALLEY NATIONAL BANK (BTM) 0004-04	8,867	0	0	8,867	0	0	8,867	0	0	8,867	0	0	35,467
-WALGREENS EASTERN CO., ST#9161 0	15,047	0	0	15,047	0	0	15,047	0	0	15,047	0	0	60,189
3041-0000 CAM Recovery	17,170	17,170	17,170	17,170	17,839	17,839	17,839	17,839	17,839	17,839	17,839	17,839	211,393
-A & E STORES INC. (CAM) 0004-04001	956	956	956	956	956	956	956	956	956	956	956	956	11,474
-BROADVIEW CAP. CORP./BLIMPIES, (CJ)	0	0	0	0	0	0	0	0	0	0	0	0	0
-BROADVIEW CAP. CORP./BLIMPIES, (CJ)	189	189	189	189	189	189	189	189	189	189	189	189	2,271
-BUY RITE LIQUORS (CAM) 0004-04010	722	722	722	722	722	722	722	722	722	722	722	722	8,659
-DIME SAVINGS BANK OF NY FSB (CAM)	0	0	0	0	0	0	0	0	0	0	0	0	0
-DIME SAVINGS BANK OF NY FSB (CAM)	1,662	1,662	1,662	1,662	1,662	1,662	1,662	1,662	1,662	1,662	1,662	1,662	19,943
-DOLLAR PARADISE INC. (CAM) 0004-040	2,184	2,184	2,184	2,184	2,184	2,184	2,184	2,184	2,184	2,184	2,184	2,184	26,204
-DOTS INC., ST# 508 (CAM) 0004-04007	920	920	920	920	920	920	920	920	920	920	920	920	11,039
-DOTS INC., ST# 508 (CAM) 0004-04007	0	0	0	0	0	0	0	0	0	0	0	0	0
-ELITE WEAR INC. (CAM) 0004-04005	1,118	1,118	1,118	1,118	1,118	1,118	1,118	1,118	1,118	1,118	1,118	1,118	13,420
-GENERAL NUTRITION CORP. #5414 (CA	188	188	188	188	188	188	188	188	188	188	188	188	2,260
-GREEN WOOD TRADING INC (CAM) 000	691	691	691	691	691	691	691	691	691	691	691	691	8,285
-KAY BEE TOY & HOBBY SHOPS (CAM) C	1,481	1,481	1,481	1,481	1,481	1,481	1,481	1,481	1,481	1,481	1,481	1,481	17,778
-LOBEL'S YOUTH CENTER INC (CAM) 001	768	768	768	768	768	768	768	768	768	768	768	768	9,215
-PAYLESS SHOE #3849 INC. (CAM) 0004-	964	964	964	964	964	964	964	964	964	964	964	964	9,841
-PAYLESS SHOE #3849 INC. (CAM) 0004-	0	0	0	0	0	0	0	0	0	0	964	964	1,928
-RADIOSHACK CORPORATION-ST#01-28	609	609	609	609	609	609	609	609	609	609	609	609	7,311
-Spec-Old Rockaway Bedding (CAM) 0004-	0	0	0	0	670	670	670	670	670	670	670	670	5,359
-UNITED RETAIL INC/SIZES #903. (CAM) I	1,057	1,057	1,057	1,057	1,057	1,057	1,057	1,057	1,057	1,057	1,057	1,057	12,681
-UPDATED INC (CAM) 0004-04017	1,114	1,114	1,114	1,114	1,114	1,114	1,114	1,114	1,114	1,114	1,114	1,114	13,372
-WALGREENS EASTERN CO., ST#9161 (I	2,546	2,546	2,546	2,546	2,546	2,546	2,546	2,546	2,546	2,546	2,546	2,546	30,549
3051-0000 Other Utility Recovery	0	0	575	0	0	575	0	0	575	0	0	575	2,300

Accrual

Budget amounts from 01/06 to 12/06

	01/06	02/06	03/06	04/06	05/06	06/06	07/06	08/06	09/06	10/06	11/06	12/06	Total
Total Expense Recoveries	135,567	33,816	34,391	135,567	35,526	36,101	137,277	35,526	36,101	137,277	35,526	36,101	828,774
3101-0000 Storage Income	457	457	457	457	457	457	457	457	457	457	457	457	5,468
-LOBEL'S YOUTH CENTER INC (STO) 000	457	457	457	457	457	457	457	457	457	457	457	457	5,468
Total Other Income	457	457	457	457	457	457	457	457	457	457	457	457	5,468
Total Revenue	410,498	309,320	310,181	411,356	318,493	319,491	420,667	318,915	319,491	421,653	320,377	320,652	4,201,425
OPERATING EXPENSES													
COMMON AREA MAINTENANCE													
PAYROLL & RELATED COSTS													
Payroll													
3310-0000 On-Site Manager	605	605	605	605	605	605	605	605	605	605	605	605	7,268
Total Payroll	605	605	605	605	605	605	605	605	605	605	605	605	7,268
Payroll Taxes and Benefits													
3350-0000 FICA	46	46	46	46	46	46	46	46	46	46	46	46	556
3380-0000 Health and Life Insurance	17	17	17	17	17	17	17	17	17	17	17	17	201
Total Payroll Taxes and Benefits	63	63	63	63	63	63	63	63	63	63	63	63	757
Total Payroll and Related Costs	669	669	669	669	669	669	669	669	669	669	669	669	8,023
CONTRACT SERVICES													
Indoor Contract Services													
3404-0000 Fire System Contract(I)	80	80	80	80	80	80	80	80	80	80	80	80	960
Total Indoor Contract Services	80	80	80	80	80	80	80	80	80	80	80	80	960
Outdoor Contract Services													
3452-0000 Exterminating Contract (O)	375	375	375	375	375	375	375	375	375	375	375	375	4,500
3453-0000 Fire System Contract (O)	0	0	0	800	0	0	0	0	0	800	0	0	1,600
3455-0000 Landscaping Contract (O)	0	0	1,000	450	450	450	450	450	450	450	800	0	4,950
3456-0000 PLOT/Sidewalk Swp Cont(O)	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	16,800
3457-0000 Security Contract (O)	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	42,000
3460-0000 Snow Removal	10,000	15,000	5,000	0	0	0	0	0	0	0	0	10,000	40,000

Accrual

Budget amounts from 01/06 to 12/06

	01/06	02/06	03/06	04/06	05/06	06/06	07/06	08/06	09/06	10/06	11/06	12/06	Total
Net Income (Loss)	246,487	140,134	145,195	249,898	161,582	157,380	263,708	163,855	162,080	258,798	183,666	155,191	2,268,571

PREPARED BY AND UPON RECORDATION
RETURN TO:

Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202-4003
Attention: Timothy W. Gilbert, Esq.

Loan No.: 50-2858925

239 Greenwich Avenue

239 GREENWICH ASSOCIATES LIMITED PARTNERSHIP,
as Borrower

to

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Lender

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

Dated as of January 25, 2007

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MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (as the same may be from time to time amended, consolidated, renewed or replaced, this "Mortgage") is made as of January 25, 2007 by 239 GREENWICH ASSOCIATES LIMITED PARTNERSHIP, a Connecticut limited partnership, as grantor ("Borrower"), whose address is c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, White Plains, New York 10605, to WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, as beneficiary (together with its successors and assigns, "Lender"), whose address is Commercial Real Estate Services, 8739 Research Drive URP – 4, NC 1075, Charlotte, North Carolina 28262.

WITNESSETH:

THAT FOR AND IN CONSIDERATION OF THE SUM OF TEN AND NO/100 DOLLARS (\$10.00), AND OTHER VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, BORROWER HEREBY IRREVOCABLY MORTGAGES, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, with power of sale, all of Borrower's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired by Borrower (collectively, the "Property"):

(A) All that certain real property situated in the County of Fairfield, State of Connecticut, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Premises (the "Improvements");

(C) All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Borrower and now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Borrower as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Premises or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

(D) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, and other emblements now or hereafter located on the Premises or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(E) All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Premises or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

(F) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Premises;

(G) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Mortgage or any other of the Loan Documents (as hereinafter defined), including, without limitation, all funds now or hereafter on deposit in the Reserves (as hereinafter defined);

(H) All leases (including, without limitation, oil, gas and mineral leases), licenses, concessions and occupancy agreements of all or any part of the Premises or the Improvements (each, a "Lease" and collectively, "Leases"), whether written or oral, now or hereafter entered into and all rents, royalties, issues, profits, bonus money, revenue, income, rights and other benefits (collectively, the "Rents and Profits") of the Premises or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future Lease or other agreement pertaining thereto or arising from any of the Leases or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees or licensees (each, a "Tenant" and collectively, "Tenants"), as applicable, of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject, however, to the provisions contained in Section 2.7 hereinbelow;

(I) All contracts and agreements now or hereafter entered into covering any part of the Premises or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Premises or the Improvements (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Premises or the Improvements;

(J) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Premises or the Improvements;

(K) All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including, without limitation, trademarks, trade names, service marks and symbols now or hereafter used in connection with any part of the Premises or the Improvements, all names by which the Premises or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Premises or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Premises or the Improvements (collectively, the "General Intangibles");

(L) All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Premises or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Premises or the Improvements;

(M) All building materials, supplies and equipment now or hereafter placed on the Premises or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Premises or the Improvements;

(N) All right, title and interest of Borrower in any insurance policies or binders now or hereafter relating to the Property, including any unearned premiums thereon;

(O) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

(P) All other or greater rights and interests of every nature in the Premises or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower.

FOR THE PURPOSE OF SECURING:

(1) The loan (the "Loan") evidenced by that certain Promissory Note (such Promissory Note, together with any and all renewals, amendments, modifications, consolidations and extensions thereof, is hereinafter referred to as the "Note") of even date with this Mortgage, made by Borrower payable to the order of Lender in the principal face amount of Twenty-Six Million and No/100 Dollars (\$26,000,000.00), together with interest as therein provided;

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the Debt (as hereinafter defined) including, but not limited to, the Environmental Indemnity Agreement (as hereinafter defined) and the Indemnity and Guaranty Agreement (as hereinafter defined) (the Note, this Mortgage, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the “Loan Documents”) and the payment of all other sums herein or therein covenanted to be paid;

(3) Any and all additional advances made by Lender to protect or preserve the Property or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower’s obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Property at the time of such advances); and

(4) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, including, without limitation, all prepayment fees, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof, it being contemplated by Borrower and Lender that Borrower may hereafter become so indebted to Lender.

(All of the sums referred to in Paragraphs (1) through (4) above are herein referred to as the “Debt”).

TO HAVE AND TO HOLD the Property unto Lender, its successors and assigns forever, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property, subject to the Permitted Encumbrances (as hereinafter defined), to Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof;

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note or under the other Loan Documents, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and the Debt shall have been paid and all other covenants contained in the Loan Documents shall have been performed, then, in such case, the liens, security interests, estates and rights granted by this Mortgage shall be satisfied and the estate, right, title and interest of Lender in the Property shall cease, and upon payment to Lender of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Lender shall promptly satisfy and release this Mortgage of record and the lien hereof by proper instrument.

ARTICLE I

REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Lender, its successors and assigns, that:

Section 1.1 Organization; Special Purpose. Borrower and its general partner have been duly organized and are each validly existing and in good standing under the laws of the state of its formation, with requisite power and authority, and all rights, licenses, permits and authorizations, governmental or otherwise, necessary to own its properties and to transact the business in which it is now engaged. Borrower and its general partner are each duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, business and operations. Borrower possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits necessary for the conduct of its business substantially as now conducted. Borrower and its general partner are each a Single-Purpose Entity in compliance with the provisions of Section 2.29 hereof.

Section 1.2 Title. Borrower has good, marketable and indefeasible fee simple title to the Property, subject only to those matters expressly set forth as exceptions to or subordinate matters in the title insurance policy insuring the lien of this Mortgage delivered as of the date hereof which Lender has agreed to accept, excepting therefrom all preprinted and/or standard exceptions (such items being the "Permitted Encumbrances"), and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer, encumber and mortgage its interest in the Property in the manner and form hereby done or intended. Borrower will preserve its interest in and title to the Property and will forever warrant and defend the same to Lender against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Encumbrances. This Mortgage creates (i) a valid, perfected lien on the Premises, subject only to Permitted Encumbrances and the liens created by the Loan Documents and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. There are no security agreements or financing statements affecting all or any portion of the Property other than (i) as disclosed in writing by Borrower to Lender prior to the date hereof and (ii) the security agreements and financing statements created in favor of Lender. There are no claims for payment for work, labor or materials affecting the Premises which are or may become a lien prior to, or of equal priority with, the liens created by the Loan Documents. None of the Permitted Encumbrances, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Mortgage, materially and adversely affect the value of the Premises, impair the use or operations of the Premises or impair Borrower's ability to pay its obligations in a timely manner. The foregoing warranty of title shall survive the foreclosure of this Mortgage and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Property pursuant to any foreclosure.

Section 1.3 No Bankruptcy Filing. No bankruptcy, insolvency proceedings or liquidation of all or a substantial portion of the Property is pending or contemplated by Borrower or, to the best knowledge of Borrower, against Borrower or by or against any endorser or cosigner of the Note or of any portion of the Debt, or any guarantor or indemnitor under any guaranty or indemnity agreement, including, without limitation, that certain Indemnity and Guaranty Agreement, dated the date hereof, executed by Acadia Realty Limited Partnership, a Delaware limited partnership, in favor of Lender (the "Indemnity and Guaranty Agreement"), executed in connection with the Note or the loan evidenced thereby and secured hereby (an "Indemnitor"). No petition in bankruptcy has been filed against Borrower or any general partner, manager, sole member, managing member or majority shareholder of Borrower, as applicable (collectively, the "Borrower Parties", each a "Borrower Party"), and neither Borrower Party or any principal of a Borrower Party has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors.

Section 1.4 Full and Accurate Disclosure. No statement of fact made by Borrower in any Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein not misleading. There is no material fact presently known to Borrower that has not been disclosed to Lender which adversely affects, or, as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of Borrower and the Property (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Borrower and the Property as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered, except as disclosed therein. Borrower has no contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, unrealized or anticipated losses from any unfavorable commitments or any liabilities or obligations not expressly permitted by this Mortgage. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower or the Property from that set forth in said financial statements.

Section 1.5 Proceedings; Enforceability. The execution, delivery and performance of this Mortgage, the Note and all of the other Loan Documents have been duly authorized by all necessary action to be, and are, binding and enforceable against Borrower in accordance with the respective terms thereof and do not contravene, result in a breach of or constitute a default (nor upon the giving of notice or the passage of time or both will same constitute a default) under the partnership agreement, articles of incorporation, operating agreement or other organizational documents of Borrower or any contract or agreement of any nature to which Borrower is a party or by which Borrower or any of its property may be bound and do not violate or contravene any law, order, decree, rule or regulation to which Borrower is subject. The Loan Documents are not subject to, and Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

Section 1.6 No Conflicts. Borrower is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any governmental

authority or agency in connection with or as a condition to the execution, delivery or performance of this Mortgage, the Note or the other Loan Documents which has not been so obtained or filed. Borrower has obtained or made all necessary (i) consents, approvals and authorizations and registrations and filings of or with all governmental authorities or agencies and (ii) consents, approvals, waivers and notifications of partners, stockholders, members, creditors, lessors and other non-governmental persons and/or entities, in each case, which are required to be obtained or made by Borrower in connection with the execution and delivery of, and the performance by Borrower of its obligations under, the Loan Documents.

Section 1.7 Federal Reserve Regulations; Investment Company Act. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation T, U or X or any other regulation of such Board of Governors, or for any purpose prohibited by law or any Loan Document. Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 1.8 Taxes. Borrower and any general partner or managing member of Borrower, if any, has filed all federal, state and local tax returns required to be filed as of the date hereof and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and any general partner or managing member, if any, as of the date hereof. Borrower and any general partner or managing member, if any, believe that their respective tax returns properly reflect the income and taxes of Borrower and said general partner or managing member, if any, for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit. Borrower and the Property are free from any past due obligations for sales and payroll taxes.

Section 1.9 ERISA. Borrower (i) has no knowledge of any material liability that has been incurred or is expected to be incurred by Borrower that is or remains unsatisfied for any taxes or penalties with respect to any "employee benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or any "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code") or any other benefit plan (other than a multi-employer plan) maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under the common control with Borrower within the meaning of ERISA Section 4001(a)(14) (collectively, a "Plan") or any plan that would be a Plan but for the fact that it is a multi-employer plan within the meaning of ERISA Section 3(37) and (ii) has made and shall continue to make when due all required contributions to all such Plans, if any. Each such Plan, if any, has been and will be administered in compliance with its terms and the applicable provisions of ERISA, the Code and any other applicable Federal or state law and no action shall be taken or fail to be taken that would result in the disqualification or loss of the tax-exempt status of any such Plan, if any, intended to be

qualified or tax-exempt. The assets of Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

Section 1.10 Property Compliance. The Premises and the Improvements and the current intended use thereof by Borrower comply in all material respects with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to the knowledge of Borrower, threatened with respect to the zoning of the Premises. Neither the zoning nor any other right to construct, use or operate the Premises is in any way dependent upon or related to any property other than the Premises. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Premises have been obtained and are in full force and effect. The Premises and Improvements constitute one or more separate tax parcels for purposes of ad valorem taxation. The Premises and Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements.

Section 1.11 Utilities. All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Premises and the Improvements for their intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or perpetual private easements approved by Lender. The Property is free from delinquent water charges, sewer rents, taxes and assessments.

Section 1.12 Public Access. All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Premises and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Premises and the Improvements without further condition or cost to Borrower. All curb cuts, driveways and traffic signals shown on the survey delivered to Lender prior to the execution and delivery of this Mortgage are existing and have been fully approved by the appropriate governmental authority.

Section 1.13 Litigation; Agreements. There are no judicial, administrative, mediation or arbitration actions, suits or proceedings pending or threatened against or affecting Borrower (or, if Borrower is a partnership or a limited liability company, any of its general partners or members) or the Property which, if adversely determined, would materially impair either the Property or Borrower's ability to perform the covenants or obligations required to be performed under the Loan Documents. Borrower is not a party to any agreement or instrument or subject to any restriction which might adversely affect Borrower or the Property, or Borrower's business, properties, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the

obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Property is bound.

Section 1.14 Physical Condition. As of the date of this Mortgage, (i) the Property is free from unrepaired damage caused by fire, flood, accident or other casualty, (ii) no part of the Premises or the Improvements has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending or, to Borrower's knowledge and belief, threatened or contemplated, (iii) except as may otherwise be disclosed in that certain Property Condition Report (the "Property Condition Report") dated January 4, 2007 and prepared by IVI Due Diligence Services, Inc., the Improvements are structurally sound, in good repair and free of defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto, and (iv) all major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition.

Section 1.15 Contracts. Borrower has delivered to Lender true, correct and complete copies of all Contracts and all amendments thereto or modifications thereof. Each Contract constitutes the legal, valid and binding obligation of Borrower and, to the best of Borrower's knowledge and belief, is enforceable against any other party thereto. No default exists, or with the passing of time or the giving of notice or both would exist, under any Contract which would, in the aggregate, have a material adverse effect on Borrower or the Property. No Contract provides any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Mortgage. All Contracts affecting the Property have been entered into at arms-length in the ordinary course of Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

Section 1.16 Leases. Borrower has delivered (i) a true, correct and complete schedule (the "Rent Roll") of all Leases affecting the Property as of the date hereof, which accurately and completely sets forth in all material respects for each such Lease, the following: the name of the Tenant, the Lease expiration date, extension and renewal provisions, the base rent payable, the security deposit held thereunder and any other material provisions of such Lease and (ii) true, correct and complete copies of all Leases described in the Rent Roll. Each Lease constitutes the legal, valid and binding obligation of Borrower and, to the best of Borrower's knowledge and belief, is enforceable against the Tenant thereof. No default exists, or with the passing of time or the giving of notice or both would exist, under any Lease which would, in the aggregate, have a material adverse effect on Borrower or the Property. No Tenant under any Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, and the rents under such Leases have not been waived, released, or otherwise discharged or compromised. All security deposits required under such Leases have been fully funded and are held by Borrower in a separate segregated account or as otherwise required by applicable law. All work to be performed by Borrower under the Leases has been substantially performed, all contributions to be made by Borrower to the Tenants thereunder have been made and all other conditions precedent to each such Tenant's obligations thereunder have been satisfied. Each Tenant under a Lease has entered into occupancy of the demised premises. To the best of Borrower's knowledge and belief, each Tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors. No Lease provides

any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Mortgage.

Section 1.17 Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code, and the related Treasury Department regulations, including temporary regulations.

Section 1.18 Management Agreement. The property management agreement relating to the Premises (the "Management Agreement") is in full force and effect and to the best of Borrower's knowledge, there is no default, breach or violation existing thereunder by any party thereto beyond the expiration of applicable notice and grace periods thereunder and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation by any party thereunder. The fee due under the Management Agreement, and the terms and provisions of the Management Agreement, are subordinate to this Mortgage.

Section 1.19 Fraudulent Transfer. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Borrower).

Section 1.20 Backward Representations.

(a) Borrower. Borrower hereby represents that Borrower:

- (i) is and always has been duly formed, validly existing, and in good standing in the state of its formation and in all other jurisdictions where it is qualified to do business;
- (ii) has no judgments or liens of any nature against it except for tax liens not yet due;
- (iii) is in compliance with all laws, regulations, and orders applicable to it and, except as otherwise disclosed in this Mortgage, has received all permits necessary for it to operate;
- (iv) is not involved in any dispute with any taxing authority;

- (v) has paid all taxes which it owes;
- (vi) has never owned any real property other than the Property and personal property necessary or incidental to its ownership or operation of the Property and has never engaged in any business other than the ownership and operation of the Property;
- (vii) is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that is still pending or that resulted in a judgment against it that has not been paid in full;
- (viii) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and
- (ix) has no material contingent or actual obligations not related to the Property.

(b) Separateness. Borrower hereby represents that, from the date of Borrower's formation to the date of this Mortgage, Borrower:

- (i) has not entered into any contract or agreement with any of its Affiliates, constituents, or owners, or any guarantors of any of its obligations or any Affiliate of any of the foregoing (individually, a "Related Party," and collectively, the "Related Parties"), except upon terms and conditions that are commercially reasonable and substantially similar to those available in an arm's-length transaction with an unrelated party;
- (ii) has paid all of its debts and liabilities from its assets;
- (iii) has done or caused to be done all things necessary to observe all organizational formalities applicable to it and to preserve its existence;
- (iv) has maintained all of its books, records, financial statements and bank accounts separate from those of any other Person;
- (v) has not had its assets listed as assets on the financial statement of any other Person;
- (vi) has filed its own tax returns (except to the extent that it has been a tax-disregarded entity not required to file tax returns under applicable law) and, if it is a corporation, has not filed a consolidated federal income tax return with any other Person;
- (vii) has been, and at all times has held itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate or other Related Party);
- (viii) has corrected any known misunderstanding regarding its status as a separate entity;

- (ix) has conducted all of its business and held all of its assets in its own name;
- (x) has not identified itself or any of its Affiliates as a division or part of the other;
- (xi) has maintained and utilized separate invoices and checks bearing its own name;
- (xii) has not commingled its assets with those of any other Person and has held all of its assets in its own name;
- (xiii) has not guaranteed or become obligated for the debts of any other Person;
- (xiv) has not held itself out as being responsible for the debts or obligations of any other Person;
- (xv) has allocated fairly and reasonably any overhead expenses that have been shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate or Related Party;
- (xvi) has not pledged its assets to secure the obligations of any other Person and no such pledge remains outstanding except in connection with the loan secured hereby;
- (xvii) has maintained adequate capital in light of its contemplated business operations;
- (xviii) has maintained a sufficient number of employees in light of its contemplated business operations and has paid the salaries of its own employees from its own funds;
- (xix) has not owned any subsidiary or any equity interest in any other entity;
- (xx) has not incurred any indebtedness that is still outstanding other than indebtedness that is permitted under the Loan Documents; and
- (xxi) has not had any of its obligations guaranteed by an Affiliate, except for guarantees that have been either released or discharged (or that will be discharged as a result of the closing of the loan secured hereby) or guarantees that are expressly contemplated by the Loan Documents.

(c) Tenants . None of the tenants holding leasehold interests with respect to the Property are affiliated with the Borrower.

For purposes of this Section 1.20 , "Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

For purposes of this Section 1.20, "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

For purposes of this Section 1.20, "Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

All of the representations and warranties in this Article I and elsewhere in the Loan Documents (i) shall survive for so long as any portion of the Debt remains owing to Lender and (ii) shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE II

COVENANTS OF BORROWER

For the purposes of further securing the Debt and for the protection of the security of this Mortgage, for so long as the Debt or any part thereof remains unpaid, Borrower covenants and agrees as follows:

Section 2.1 Defense of Title. If, while this Mortgage is in force, the title to the Property or the interest of Lender therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Borrower, at Borrower's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel approved by Lender, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Lender determines that Borrower is not adequately performing its obligations under this Section, Lender may, without limiting or waiving any other rights or remedies of Lender hereunder, take such steps with respect thereto as Lender shall deem necessary or proper and any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

Section 2.2 Performance of Obligations. Borrower shall pay when due the principal of and the interest on the Debt in accordance with the terms of the Note. Borrower shall also pay all charges, fees and other sums required to be paid by Borrower as provided in the Loan Documents, in accordance with the terms of the Loan Documents, and shall observe, perform and discharge all obligations, covenants and agreements to be observed, performed or discharged by Borrower set forth in the Loan Documents in accordance with their terms.

Further, Borrower shall promptly and strictly perform and comply with all covenants, conditions, obligations and prohibitions required of Borrower in connection with any other document or instrument affecting title to the Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Mortgage.

Section 2.3 Insurance. Borrower shall, at Borrower's expense, maintain in force and effect on the Property at all times while this Mortgage continues in effect the following insurance:

(a) Insurance against loss or damage to the Property by fire, lightning, windstorm, tornado, hail, terrorism, riot and civil commotion, vandalism, malicious mischief, burglary and theft and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by a "special causes of loss" type of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost (insurable value) of the Improvements (as established by a Member of the Appraisal Institute appraisal), without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Lender's election, by reference to such indices, appraisals or information as Lender determines in its reasonable discretion in order to reflect increased value due to inflation. Absent such annual adjustment, each policy shall contain inflation guard coverage insuring that the policy limit will be increased over time to reflect the effect of inflation. "Full replacement cost," as used herein and elsewhere in this Section 2.3, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor. Borrower shall also maintain insurance against loss or damage to furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Borrower from time to time to the extent applicable. Each policy shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Lender's approval. The maximum deductible shall be \$25,000.00.

(b) If the "special causes of loss" policy required in subsection (a) above excludes coverage for wind damage, Borrower shall maintain separate coverage for such risk. Furthermore, if the Property is located in the State of Florida, or within twenty five (25) miles of the ocean coast of the states of Texas, Louisiana, Mississippi, Alabama, Georgia, North Carolina, Hawaii or South Carolina, windstorm insurance must be maintained in an amount equal to the lesser of (i) the full replacement cost of the Property or (ii) the maximum limit of coverage available with respect to the Improvements and Equipment. If available, a minimum of eighteen (18) months general business income coverage specifically relating to wind damage shall be required. The maximum deductible shall be \$25,000.00.

(c) Ordinance and law insurance is required if the Property is "non-conforming" with respect to any zoning requirements. Borrower shall maintain "Coverage A" against loss on value to the undamaged portion of the Improvements for the full replacement cost of the Improvements. Borrower shall also maintain "Coverage B" against the cost of demolition in an amount equal to ten percent (10%) of the total value of the Improvements and "Coverage

C” against increased cost of reconstruction in an amount equal to twenty percent (20%) of the total value of the Improvements. The maximum deductible shall be \$25,000.00.

(d) Commercial General Liability Insurance against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Premises or the Improvements in amounts not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate plus umbrella coverage in an amount not less than \$25,000,000. Lender hereby retains the right to periodically review the amount of said liability insurance being maintained by Borrower and to require an increase in the amount of said liability insurance should Lender deem an increase to be reasonably prudent under then existing circumstances. The maximum deductible shall be \$25,000.00.

(e) Equipment breakdown (also known as boiler and machinery) insurance is required if steam boilers or other pressure-fired vessels are in operation at the Premises. Minimum liability coverage per accident must equal the greater of the replacement cost (insurable value) of the Improvements housing such boiler or pressure-fired machinery or \$2,000,000.00. If one or more large HVAC units is in operation at the Premises, “Systems Breakdowns” coverage shall be required, as determined by Lender. Minimum liability coverage per accident must equal the value of such unit(s). If available, a minimum of eighteen (18) months general business income coverage specifically relating to boiler and machinery damage shall be required. The maximum deductible shall be \$25,000.00. Co-insurance is prohibited.

(f) If the Improvements or any part thereof is situated in an area designated by the Federal Emergency Management Agency (“FEMA”) as a special flood hazard area (Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Debt if replacement cost coverage is not available for the type of building insured), or (ii) the maximum insurance available under the appropriate National Flood Insurance Administration program. If available, a minimum of eighteen (18) months general business income coverage specifically relating to flood damage shall be required. The maximum deductible shall be \$3,000.00 per building or a higher minimum amount as required by FEMA or other applicable law.

(g) If the Property is situated in an area designated by FEMA as a high probability earthquake area (Zone 2b or greater), Lender may require a Probable Maximum Loss (“PML”) study to be conducted at the Property. If the PML study reveals a PML equal to or exceeding twenty percent (20%) of the full replacement cost of the Improvements, Borrower shall be required to maintain earthquake insurance in an amount equal to the PML percentage of full replacement cost of the Improvements. If available, a minimum of eighteen (18) months Business Income coverage specifically relating to earthquake damage shall be required. The maximum deductible shall be no more than five percent (5%) of the value at risk or the lowest deductible available in the State in which the Property is located.

(h) During the period of any construction, renovation or alteration of the existing Improvements which exceeds the lesser of 10% of the principal amount of the Note or \$750,000, at Lender’s request, a completed value, “All Risk” Builder’s Risk form or “Course of Construction” insurance policy in non-reporting form, in an amount approved by Lender, may be

required. During the period of any construction of any addition to the existing Improvements, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Lender, shall be required. The maximum deductible shall be \$25,000.00.

(i) When required by applicable law, ordinance or other regulation, Worker's Compensation and Employer's Liability Insurance covering all persons subject to the worker's compensation laws of the state in which the Property is located. Additionally, if Borrower has direct employees, Hired and Non-Owned Auto Insurance is required in an amount equal to \$1,000,000 per occurrence. The maximum deductible shall be \$25,000.00.

(j) In addition to the specific risk coverages required herein, general business income (loss of rents) insurance in amounts sufficient to compensate Borrower for all Rents and Profits or income during a period of not less than eighteen (18) months. The "actual loss" amount of coverage shall be adjusted annually to reflect the greater of (i) estimated Rents and Profits or income payable during the succeeding eighteen (18) month period or (ii) the projected operating expenses, capital expenses and debt service for the Property as approved by Lender in its sole discretion. Additionally, Lender, in its sole discretion, may require an "Extended Period of Indemnity" endorsement for an additional six (6) months to allow for re-leasing of the Property. The maximum deductible shall be \$25,000.00.

(k) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, Sinkhole, Mine Subsidence and Environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be with insurers fully licensed and authorized to do business in the state within which the Premises is located and who have and maintain a rating of at least (A) A or higher from Standard & Poors and (B) AIX or higher from A.M. Best, (ii) contain the complete address of the Premises (or a complete legal description), (iii) be for terms of at least one year, with premium prepaid, and (iv) be subject to the approval of Lender as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates, and (v) include a standard, non-contributory, mortgagee clause naming EXACTLY:

Wachovia Bank, National Association,
its Successors and Assigns ATIMA
c/o Wachovia Bank, National Association, as Servicer
P.O. Box 563956
Charlotte, North Carolina 28256-3956

(A) as an additional insured under all liability insurance policies, (B) as the first mortgagee on all property insurance policies and (C) as the loss payee on all loss of rents or loss of business income insurance policies.

Borrower shall, as of the date hereof, deliver to Lender evidence that said insurance policies have been prepaid as required above and certified copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance satisfactory to Lender. Borrower shall renew all such insurance and deliver to Lender an Acord 28 certificate for proof of commercial property insurance and an Acord 25 certificate for proof of liability insurance, together with such other certificates reasonably requested by Lender. Borrower further agrees that each such insurance policy: (i) shall provide for at least thirty (30) days' prior written notice to Lender prior to any policy reduction or cancellation for any reason other than non-payment of premium and at least ten (10) days' prior written notice to Lender prior to any cancellation due to non-payment of premium; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of subrogation against Lender; and (iv) may be in the form of a blanket policy provided that, in the event that any such coverage is provided in the form of a blanket policy, Borrower hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Property or by any other action not relating to the Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the Property as if a separate policy were issued for 100% of Replacement Cost at the time of loss and otherwise meet all of Lender's applicable insurance requirements set forth in this Section 2.3. The delivery to Lender of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies relating to the Property by Borrower to Lender as further security for the Debt. In the event of foreclosure of this Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Lender or other transferee in the event of such other transfer of title. Approval of any insurance by Lender shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Lender may, but shall not be obligated to, procure such insurance and Borrower shall pay all amounts advanced by Lender therefor, together with interest thereon at the Default Interest Rate from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender. Any amounts so advanced by Lender, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Lender shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Lender has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance. Borrower shall not obtain insurance for the Property in addition to that required by Lender without the prior written consent of Lender, which consent will not be unreasonably withheld provided that (i) Lender is a named insured on such insurance, (ii) Lender receives complete copies of all policies evidencing such insurance, and (iii) such insurance complies with all of the applicable requirements set forth herein.

Section 2.4 Payment of Taxes. Borrower shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 3.3 of this Mortgage, all taxes and assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Borrower shall furnish Lender with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such taxes and assessments at least fifteen (15) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Borrower may, in good faith, by appropriate proceedings and upon notice to Lender, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, (b) Lender determines, in its subjective opinion, that such contest suspends the obligation to pay the tax and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Lender therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax or assessment, Borrower deposits in the Impound Account (as hereinafter defined) an amount determined by Lender to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Borrower shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

Section 2.5 Casualty and Condemnation. Borrower shall give Lender prompt written notice of (i) the occurrence of any casualty affecting the Property or any portion thereof, (ii) the institution of any proceedings for eminent domain or for the condemnation of the Property or any portion thereof or (iii) any written notification threatening the institution of any proceedings for eminent domain or for the condemnation of the Property or any portion thereof or any written request to execute a deed in lieu of condemnation affecting the Property or any portion thereof. All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking, or any deed in lieu of condemnation, affecting all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Lender. Lender may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries, and Lender is hereby authorized, in its own name or in Borrower's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Borrower shall from time to time deliver to Lender any instruments required to permit such participation; provided, however, that, so long as no Event of Default has occurred, and no event has occurred or failed to occur which with the passage of time, the giving of notice, or both would constitute an Event of Default (a "Default"), Lender shall not have the right to participate in the adjustment of any loss which is not in excess of the lesser of (i) five percent (5%) of the then outstanding principal balance of the Note and (ii) \$100,000. Lender shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, reasonable legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

(a) In the event that less than (x) fifteen percent (15%), in the case of condemnation, or thirty percent (30%), in the case of casualty, of the fair market value or net rentable square footage of the Improvements located on the Premises have been taken or destroyed and (y) Leases covering in the aggregate at least sixty-five percent (65%) of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such casualty or condemnation, whichever the case may be, and each Major Lease (as hereinafter defined) in effect as of such date shall remain in full force and effect during and after the completion of the restoration without abatement of rent beyond the time required for restoration, then if and so long as:

(1) no Default or Event of Default has occurred hereunder or under any of the other Loan Documents, and

(2) the Property can, in Lender's judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage within the earlier to occur of (A) nine (9) months after the initial receipt of any insurance proceeds or condemnation awards by either Borrower or Lender but in any event prior to the expiration or lapse of rent loss or general business income necessary to satisfy current obligations of the Loan, and (B) six (6) months prior to the stated maturity date of the Note, and

(3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property as described in Section (a)(2) above, and

(4) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Borrower, the full amount of which shall, at Lender's option, have been deposited with Lender) for such restoration or repair (including, without limitation, for any costs and expenses of Lender to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and

(5) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Property and debt service on the Debt in full with the same coverage ratio considered by Lender in its determination to make the loan secured hereby, and

(6) in the event that the insurance proceeds or condemnation awards received as a result of such casualty or partial taking exceed the lesser of (i) five percent (5%) of the then outstanding principal balance of the Note and (ii) \$150,000, Borrower shall have delivered to Lender, at Borrower's sole cost and expense, an appraisal report in form and substance satisfactory to Lender appraising the value of the Property as proposed to be restored or repaired to be not less than the appraised value of the Property considered by Lender in its determination to make the loan secured hereby, and

(7) Borrower so elects by written notice delivered to Lender within five (5) days after settlement of the aforesaid insurance or condemnation claim.

Lender shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required for such restoration or repair, and any funds deposited by Borrower therefor, to Borrower in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Lender in its discretion, with any remainder being applied by Lender for payment of the Debt in whatever order Lender directs in its absolute sole discretion, or at the discretion of Lender, the same may be paid, either in whole or in part, to, or for the benefit of, Borrower for such purposes as Lender shall designate in its discretion.

(b) In all other cases, namely, in the event that (x) more than fifteen percent (15%), in the case of condemnation, or thirty percent (30%), in the case of casualty, of the fair market value or net rentable square footage of the Improvements located on the Premises have been taken or destroyed, (y) Leases covering in the aggregate at least sixty-five percent (65%) of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such casualty or condemnation, whichever the case may be, and each Major Lease (as hereinafter defined) in effect as of such date will not remain in full force and effect during and after the completion of the restoration without abatement of rent beyond the time required for restoration, or (z) Borrower does not elect to restore or repair the Property pursuant to clause (a) above or otherwise fails to meet the requirements of clause (a) above, then, in any of such events, Lender shall elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security to do either of the following: (1) accelerate the maturity date of the Note and declare any and all of the Debt to be immediately due and payable and apply the remainder of such sums received pursuant to this Section to the payment of the Debt in whatever order Lender directs in its absolute discretion, with any remainder being paid to Borrower, or (2) notwithstanding that Borrower may have elected not to restore or repair the Property pursuant to the provisions of Section 0:2.5(a)(7) above, so long as the proceeds of any such award with respect to any casualty or condemnation are made available to the Borrower for restoration, require Borrower to restore or repair the Property in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the deposit by Borrower with Lender, within thirty (30) days after demand therefor, of any deficiency reasonably determined by Lender to be necessary in order to assure the availability of sufficient funds to pay for such restoration or repair, including Lender's costs and expenses to be incurred in connection therewith, the prior approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Lender in its discretion, and apply the remainder of such sums toward such restoration and repair, with any balance thereafter remaining being applied by Lender for payment of the Debt in whatever order Lender directs in its absolute sole discretion, or at the discretion of Lender, the same may be paid, either in whole or in part, to, or for the benefit of, Borrower for such purposes as Lender shall designate in its discretion.

Any reduction in the Debt resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and elects to apply such sums to the Debt and, in any event, the unpaid portion of the Debt shall remain in full force and effect and Borrower shall not be excused in the payment thereof. Partial payments received by Lender, as described in the preceding sentence, shall be applied first to the final payment due under the Note and thereafter to installments due under the Note in the inverse order of their due date. If Borrower elects or Lender directs Borrower to restore or repair the Property after the occurrence of a casualty or partial taking of the Property as provided above, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Borrower shall pay to Lender all costs and expenses of Lender incurred in administering said rebuilding, restoration or repair, provided that Lender makes such proceeds or award available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any award, damage, insurance proceeds, payment or other compensation. Lender is hereby irrevocably constituted and appointed the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any portion of the Debt is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

Section 2.6 Construction Liens. Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Premises or the Improvements; provided, however, that, Borrower shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Lender and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Borrower shall contest any such claim or demand, Borrower shall promptly notify Lender of such contest and thereafter shall, upon Lender's request, promptly provide a bond, cash deposit or other security satisfactory to Lender to protect Lender's interest and security should the contest be unsuccessful. If Borrower shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Lender may do so and any and all expenses incurred by Lender, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt.

Section 2.7 Rents and Profits. As additional and collateral security for the payment of the Debt and cumulative of any and all rights and remedies herein provided for, Borrower hereby absolutely and presently assigns to Lender all existing and future Rents and Profits. Borrower hereby grants to Lender the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give

valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Borrower does hereby irrevocably make, constitute and appoint Lender its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any portion of the Debt is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof). Lender shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of an Event of Default under this Mortgage or under any other of the Loan Documents, Borrower shall have a license to collect, receive, use and enjoy the Rents and Profits when due and prepayments thereof for not more than one (1) month prior to due date thereof. Upon the occurrence of an Event of Default, Borrower's license shall automatically terminate without notice to Borrower and Lender may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Borrower shall be the agent of Lender in collection of the Rents and Profits, and all of the Rents and Profits so collected by Borrower shall be held in trust by Borrower for the sole and exclusive benefit of Lender, and Borrower shall, within one (1) business day after receipt of any Rents and Profits, pay the same to Lender to be applied by Lender as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Lender shall constitute any assumption by Lender of any obligations under any agreement relating thereto. Lender is obligated to account only for such Rents and Profits as are actually collected or received by Lender. Borrower irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Lender of an Event of Default, pay said Rents and Profits to Lender without liability to determine the actual existence of any Event of Default claimed by Lender. Borrower hereby waives any right, claim or demand which Borrower may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Lender, and any such payment shall discharge such payor's obligation to make such payment to Borrower. All Rents collected or received by Lender may be applied against all expenses of collection, including, without limitation, reasonable attorneys' fees, against costs of operation and management of the Property and against the Debt, in whatever order or priority as to any of the items so mentioned as Lender directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Lender of any rights under this Section nor the application of any Rents to the Debt shall cure or be deemed a waiver of any Event of Default. The assignment of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property. Borrower has executed an Assignment of Leases and Rents dated of even date herewith (the "Lease Assignment") in favor of Lender covering all of the right, title and interest of Borrower, as landlord, lessor or licensor, in and to any Leases. All rights and remedies granted to Lender under the Lease Assignment shall be in addition to and cumulative of all rights and remedies granted to Lender hereunder.

Section 2.8 Leases.

(a) Borrower covenants and agrees that it shall not enter into any retail Lease (i) affecting 5,000 square feet or more of the Property or (ii) having a term of ten (10) years or more (inclusive of any renewals or extensions) (each, a "Major Lease") without the prior written approval of Lender, which approval shall not be unreasonably withheld. The request for

approval of each such proposed new Lease shall be made to Lender in writing and shall state that, pursuant to the terms of this Mortgage, failure to approve or disapprove such proposed Lease within fifteen (15) business days is deemed approval and Borrower shall furnish to Lender (and any loan servicer specified from time to time by Lender): (i) such biographical and financial information about the proposed Tenant as Lender may require in conjunction with its review, (ii) a copy of the proposed form of Lease, and (iii) a summary of the material terms of such proposed Lease (including, without limitation, rental terms and the term of the proposed lease and any options). It is acknowledged that Lender intends to include among its criteria for approval of any such proposed Lease the following: (i) such Lease shall be with a bona-fide arm's-length Tenant; (ii) such Lease shall not contain any rental or other concessions which are not then customary and reasonable for similar properties and Leases in the market area of the Premises; (iii) such Lease shall provide that the Tenant pays for its expenses; (iv) the rental shall be at least at the market rate then prevailing for similar properties and leases in the market areas of the Premises; and (v) such Lease shall contain subordination and attornment provisions in form and content acceptable to Lender. Failure of Lender to approve or disapprove any such proposed Lease within fifteen (15) business days after receipt of such written request and all the documents and information required to be furnished to Lender with such request shall be deemed approval, provided that the written request for approval specifically mentioned the same.

(b) Prior to execution of any Leases of space in the Improvements after the date hereof, Borrower shall submit to Lender, for Lender's prior approval, which approval shall not be unreasonably withheld, a copy of the form Lease Borrower plans to use in leasing space in the Improvements or at the Property in a form for commercial/retail leases as set forth on Exhibit B-1 and for residential leases as set forth in Exhibit B-2, both attached hereto. All such Leases of space in the Improvements or at the Property shall be on terms consistent with the terms for similar leases in the market area of the Premises, shall provide for free rent on ly if the same is consistent with prevailing market conditions and shall provide for market rents then prevailing in the market area of the Premises. Such Leases shall also provide for security deposits in reasonable amounts consistent with prevailing market conditions. Borrower shall also submit to Lender for Lender's approval, which approval shall not be unreasonably withheld, prior to the execution thereof, any proposed Lease of the Improvements or any portion thereof that differs materially and adversely from the aforementioned form Lease. Borrower shall not execute any Lease for all or a substantial portion of the Property, except for an actual occupancy by the Tenant, lessee or licensee thereunder, and shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all Leases with respect to the Property, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so, but in any event by January 1 of each year, a current Rent Roll, certified by Borrower as being true and correct, containing the names of all Tenants with respect to the Property, the terms of their respective Leases, the spaces occupied and the rentals or fees payable thereunder and the amount of each Tenant's security deposit. Upon the request of Lender, Borrower shall deliver to Lender a copy of each such Lease. Borrower shall not do or suffer to be done any act, or omit to take any action, that might result in a default by the landlord, lessor or licensor under any such Lease or allow the Tenant thereunder to withhold payment of rent or cancel or terminate same and shall not further assign any such Lease or any such Rents and Profits. Borrower, at no cost or expense to Lender, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each

of the parties under such Leases and Borrower shall not anticipate, discount, release, waive, compromise or otherwise discharge any rent payable under any of the Leases. Borrower shall not, without the prior written consent of Lender, modify any of the Leases, terminate or accept the surrender of any Leases, waive or release any other party from the performance or observance of any obligation or condition under such Leases except, with respect only to Leases which are not Major Leases, in the normal course of business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Property is located. Lender reserves the right to condition its consent to any termination or surrender of any Lease upon the payment to Lender of any lease termination or other payment due from the applicable tenant in connection with such termination or surrender. Borrower and Lender agree that all such sums paid to Lender shall be held by Lender as a tenant improvement and leasing commission reserve and shall be considered a "Reserve" as described in Section 3.1 hereof and all such amounts shall be held, maintained, applied and disbursed in accordance with Lender's standard procedures relating to similar reserves. Borrower shall not permit the prepayment of any rents under any of the Leases for more than one (1) month prior to the due date thereof.

(c) Each Lease executed after the date hereof affecting any of the Premises or the Improvements must provide, in a manner approved by Lender, that the Tenant will recognize as its landlord, lessor or licensor, as applicable, and attorn to any person succeeding to the interest of Borrower upon any foreclosure of this Mortgage or deed in lieu of foreclosure. Each such Lease shall also provide that, upon request of said successor-in-interest, the Tenant shall execute and deliver an instrument or instruments confirming its attornment as provided for in this Section; provided, however, that neither Lender nor any successor-in-interest shall be bound by any payment of rent for more than one (1) month in advance, or any amendment or modification of said Lease made without the express written consent of Lender or said successor-in-interest.

(d) Upon the occurrence of an Event of Default under this Mortgage, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Mortgage, forthwith, upon demand of Lender, Borrower shall surrender to Lender, and Lender shall be entitled to take actual possession of, the Property or any part thereof personally, or by its agent or attorneys. In such event, Lender shall have, and Borrower hereby gives and grants to Lender, the right, power and authority to make and enter into Leases with respect to the Property or portions thereof for such rents and for such periods of occupancy and upon conditions and provisions as Lender may deem desirable in its sole discretion, and Borrower expressly acknowledges and agrees that the term of any such Lease may extend beyond the date of any foreclosure sale of the Property, it being the intention of Borrower that in such event Lender shall be deemed to be and shall be the attorney-in-fact of Borrower for the purpose of making and entering into Leases of parts or portions of the Property for the rents and upon the terms, conditions and provisions deemed desirable to Lender in its sole discretion and with like effect as if such Leases had been made by Borrower as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Mortgage. The power and authority hereby given and granted by Borrower to Lender shall be deemed to be coupled with an interest, shall not be revocable by Borrower so long as any portion of the Debt is outstanding, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof. In connection with any action taken by

Lender pursuant to this Section, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease covering the Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Borrower shall, and does hereby, indemnify Lender for, and hold Lender harmless from, any and all claims, actions, demands, liabilities, loss or damage which may or might be incurred by Lender under any such Lease or under this Mortgage or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such Lease other than those finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of Lender. Should Lender incur any such liability, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the Debt. Nothing in this Section shall impose on Lender any duty, obligation or responsibility for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such Lease, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Borrower hereby assents to, ratifies and confirms any and all actions of Lender with respect to the Property taken under this Section.

(e) If requested by Lender, Borrower shall furnish, or shall cause the applicable tenant to furnish, to Lender financial data and/or financial statements in accordance with Regulation AB (as defined herein) for any tenant of any Property if, in connection with a securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the mortgage loans included or expected to be included, as applicable, in such securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor (as defined herein); provided, however, that in the event the related lease does not require the related tenant to provide the foregoing information, Borrower shall use commercially reasonable efforts to cause the applicable tenant to furnish such information.

Section 2.9 Alienation and Further Encumbrances.

(a) Borrower acknowledges that Lender has relied upon the principals of Borrower and their experience in owning and operating the Property and properties similar to the Property in connection with the closing of the loan evidenced by the Note. Accordingly, except as specifically allowed hereinbelow in this Section and notwithstanding anything to the contrary contained in Section 6.6 hereof, in the event that the Property or any part thereof or direct or indirect interest therein or direct or indirect interest in Borrower shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to Tenants of space in the Improvements in accordance with the provisions of Section 2.8 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Borrower shall be divested of its title to the Property or

any direct or indirect interest therein, in any manner or way, whether voluntarily or involuntarily (each, a “Transfer”), without the prior written consent of Lender being first obtained, which consent may be withheld in Lender’s sole discretion, then the same shall constitute an Event of Default and Lender shall have the right, at its option, to declare any or all of the Debt, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article V hereof.

(b) A Transfer within the meaning of this Section 2.9 shall be deemed to include, among other things: (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; and (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to any Leases or any Rents and Profits.

(c) Notwithstanding the foregoing, the following Transfers shall be permitted under this Section 2.9 without the prior consent of Lender: (i) a Transfer of corporate stock, partnership interests (other than the general partner’s direct interests in Borrower owned by any SPE Equity Owner) and/or membership interests (other than the managing member’s direct interests in Borrower owned by any SPE Equity Owner) in Borrower, or in any partner or member of Borrower, or any direct or indirect legal or beneficial owner of Borrower, so long as following such Transfer (whether in one or a series of transactions) or, with respect to any creation or issuance of new limited partnership interests or membership interests, not more than 49% of the beneficial economic interest in Borrower (whether directly or indirectly) has been transferred in the aggregate and there is no Change of Control and the persons responsible for the day to day management of the Property and Borrower remain unchanged following such Transfer, (ii) any involuntary Transfer caused by the death of Borrower, or any partner, shareholder, joint venturer, member or beneficial owner of a trust, or any direct or indirect legal or beneficial owner of Borrower, so long as Borrower is promptly reconstituted, if required, following such death and so long as there is no Change of Control and those persons responsible for the day to day management of the Property and Borrower remain unchanged as a result of such death or any replacement management or controlling parties are approved by Lender, (iii) a Transfer comprised of gifts for estate planning purposes of any individual’s interests in Borrower, or in any of Borrower’s partners, members, shareholders, beneficial owners of a trust or joint venturers, or any direct or indirect legal or beneficial owner of Borrower, to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower is reconstituted promptly, if required, following such gift and so long as there is no Change of Control and those persons responsible for the day to day management of the Property and Borrower remain unchanged following such gift, (iv) transfers of stock in Acadia Realty Trust as traded on the New York Stock Exchange, (v) a Transfer of 100% of the membership interests of Acadia Realty Limited Partnership in Borrower and Acadia 239 Greenwich Avenue, LLC, the sole general partner of Borrower (“Sole General Partner”), to Aberdeen-239, LLC, a Connecticut limited liability company (“Aberdeen”), provided prior to the consummation of such Transfer Lender has obtained satisfactory legal due diligence searches on James Cummings, including, but not limited to, credit, bankruptcy, litigation, tax lien, judgment and UCC searches at Borrower’s expense, which searches must be satisfactory to Lender in all respects before any such Transfer under this Section 2.9(c)(v) may be consummated and provided further that after such Transfer James

Cummings owns 50% or more of the membership interests in Aberdeen and controls the management of Aberdeen, (vi) a Transfer by Aberdeen of 100% of its partnership interest in Borrower to General Partner or a related subsidiary or parent of General Partner, (vii) a transfer by General Partner of 100% of its partnership interest in Borrower to Aberdeen provided prior to the consummation of such Transfer Lender has obtained satisfactory legal due diligence searches on James Cummings, including, but not limited to, credit, bankruptcy, litigation, tax lien, judgment and UCC searches at Borrower's expense, which searches must be satisfactory to Lender in all respects before any such Transfer under this Section 2.9(c)(vii) may be consummated and provided further that after such Transfer James Cummings owns 50% or more of the membership interests in Aberdeen and controls the management of Aberdeen and (viii) one or more Transfers of the membership interests in Aberdeen provided after each such Transfer James Cummings owns 50% or more of the membership interests in Aberdeen and controls the management of Aberdeen. Notwithstanding any provision of this Mortgage to the contrary, and except as provided in Section 2.9(c), (iv), (v), (vi), (vii) and (viii) above, no person or entity may become an owner of a direct or indirect interest in Borrower, which interest exceeds forty-nine (49%) percent, without Lender's prior written consent unless Borrower has complied with the provisions set forth in Section 2.9(d) below. For purposes of this Section 2.9(c), "Change of Control" shall mean a change in the identity of the individual or entities or group of individuals or entities who have the right, by virtue of any partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement or any other agreement, with or without taking any formative action, to cause Borrower to take some action or to prevent, restrict or impede Borrower from taking some action which, in either case, Borrower could take or could refrain from taking were it not for the rights of such individuals. "Control" shall mean the right, by virtue of any partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement or any other agreement, with or without taking any formative action, to cause Borrower to take some action or to prevent, restrict or impede Borrower from taking some action which, in either case, Borrower could take or could refrain from taking were it not for the rights of such individuals. No fees, legal opinions or No-Downgrade Confirmations (as hereinafter defined) shall be required for any of the permitted transfers in this Section 2.9(c).

(d) Notwithstanding the foregoing provisions of this Section, Lender shall consent to (x) one or more Transfers of the Property in its entirety, or (y) one or more Transfers of direct or indirect interests in the Borrower for which consent is required under this Section 2.9 (any such hereinafter, a "Sale") to any person or entity provided that, for each Sale, each of the following terms and conditions are satisfied:

(1) No Default and no Event of Default is then continuing hereunder or under any of the other Loan Documents;

(2) Borrower gives Lender written notice of the terms of such prospective Sale not less than sixty (60) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Lender all such information concerning the proposed transferee of the Property or the proposed owner of the direct or indirect interest in the Borrower for which consent is required under this Section 2.9, as applicable (hereinafter, "Buyer") as Lender would require in evaluating an initial extension of credit to a borrower (it being acknowledged and agreed that (x) such information required to be

delivered with respect to the related Buyer shall not be materially more extensive than the corresponding information provided by the initial Borrower and initial Indemnitator and (y) the initial Borrower and initial Indemnitator shall not be required to deliver any additional information with respect to such initial Borrower, Indemnitator or their respective members or partners which are not then currently required to be delivered by the initial Borrower and initial Indemnitator pursuant to the terms hereof or of any other Loan Document), including, without limitation, information evidencing the Buyer's compliance with the provisions of Section 2.30 and Section 2.31 hereof and pays to Lender a non-refundable application fee in the amount of \$5,000. Lender shall have the right to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Lender shall consider the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, that, notwithstanding Lender's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Lender determines to be commercially reasonable in Lender's sole discretion and, if given, may be given subject to such conditions as Lender may deem appropriate For Loans of less than \$50,000,000: provided, further, however, notwithstanding the foregoing, Lender shall evaluate the proposed Buyer and any replacement Indemnitator pursuant to this clause (d) as if it were evaluating an initial extension of credit to a borrower pursuant to permanent market underwriting standards and without regard to the financial or other condition of the Borrower or any current Indemnitator and without regard to the impact on the trust which owns the Loan in connection with any Secondary Market Transaction or any class of Securities issued thereunder;

(3) Borrower pays Lender, concurrently with the closing of such Sale, a non-refundable assumption fee in an amount equal to one percent (1.0%) of the then outstanding principal balance of the Note plus an amount equal to all out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees and Rating Agency fees, incurred by Lender in connection with the Sale;

(4) In the event that such Sale is a Transfer of the Property in its entirety, the Buyer assumes and agrees to pay the Debt subject to the provisions of Section 6.27 hereof and, in all cases (whether such Sale is a Transfer of the Property in its entirety or a Transfer of direct or indirect interests in the Borrower for which consent is required under this Section 2.9), prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions (including, without limitation, a REMIC opinion) as Lender may require;

(5) A party associated with the Buyer approved by Lender in its sole discretion assumes the obligations of the current Indemnitator under its guaranty or indemnity agreement and environmental indemnity agreement and such party associated with the Buyer executes, without any cost or expense to Lender, a substitution agreement

or a new guaranty or indemnity agreement or environmental indemnity agreement in form and substance satisfactory to Lender and delivers such legal opinions as Lender may require; provided, however, in connection with an assumption of the Loan, (x) the Buyer shall not be required to post any additional collateral with Lender or deposit any additional reserves with Lender beyond that in effect immediately prior to the related assumption and (y) the party associated with the Buyer which enters into such substitution agreement or new guaranty or indemnity agreement or environmental indemnity shall not be required to maintain evidence of credit worthiness greater than that required by permanent market underwriting standards;

(6) Borrower and the Buyer execute, without any cost or expense to Lender, new financing statements or financing statement amendments (and new financing statements as may be necessary) and any additional documents reasonably requested by Lender;

(7) Borrower delivers to Lender, without any cost or expense to Lender, such replacement policy or endorsements to Lender's title insurance policy, hazard insurance policy endorsements or certificates and other similar materials as Lender may deem necessary at the time of the Sale, all in form and substance satisfactory to Lender, including, without limitation, a replacement policy or an endorsement or endorsements to Lender's title insurance policy insuring the lien of this Mortgage, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in subparagraph (4) of this Section, with no additional exceptions added to such policy, and, in the event that such Sale is a Transfer of the Property in its entirety, insuring that fee simple title to the Property is vested in the Buyer;

(8) Borrower and any current Indemnitor execute and deliver to Lender, without any cost or expense to Lender, a release of Lender, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents, through and including the date of the closing of the Sale, which agreement shall be in form and substance satisfactory to Lender and shall be binding upon the Buyer and any new Indemnitor;

(9) Subject to the provisions of Section 6.27 hereof, such Sale is not construed so as to relieve Borrower of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale, whether or not same is discovered prior or subsequent to the closing of such Sale, and Borrower executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of said personal liability. In the event that such Transfer is a Sale of the Property in its entirety, Borrower shall be released from and relieved of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising after the closing of such Sale which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale;

(10) Such Sale is not construed so as to relieve any current Indemnitor of its obligations under any guaranty or indemnity agreement for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale, and each such current Indemnitor executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of each such guaranty and indemnity agreement. In the event that such Sale is a Transfer of the Property in its entirety, each such current Indemnitor shall be released from and relieved of any of its obligations under any guaranty or indemnity agreement executed in connection with the loan secured hereby for any acts or events occurring or obligations arising after the closing of such Sale which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale;

(11) The Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all appropriate papers evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the Debt, which papers shall include certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners of the Buyer. In the event that such Sale is a Transfer of the Property in its entirety, the Buyer shall be a Single Purpose Entity whose formation documents shall be approved by counsel to Lender, and who shall comply with the requirements set forth in Section 2.29 hereof;

(12) Borrower delivers to Lender confirmation in writing (a "No-Downgrade Confirmation") from each Rating Agency that such Sale will not result in a qualification, downgrade or withdrawal of any ratings issued in connection with any Secondary Market Transaction (as hereinafter defined) or, in the event the Secondary Market Transaction has not yet occurred, Lender shall, in its sole discretion, have approved the Sale;

(13) The applicable transfer will not result in an increase in the real property taxes for the Premises and Improvements that would cause the debt service coverage ratio of the Debt with respect to the immediately succeeding twelve (12) month period to be less than the debt service coverage ratio of the Debt for the twelve (12) month period immediately preceding such transfer, in each case as determined by Lender; and

(14) Borrower delivers to Lender an opinion with respect to substantive non-consolidation opinion after giving effect to such transfer in form and substance and from a law firm acceptable to Lender and the Rating Agencies.

Section 2.10 Payment of Utilities, Assessments, Charges, Etc. Borrower shall pay when due all utility charges which are incurred by Borrower or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Premises and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Premises and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

Section 2.11 Access Privileges and Inspections. Lender and the agents, representatives and employees of Lender shall, subject to the rights of Tenants, have full and free access to the Premises and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times and, except in the event of an emergency, upon not less than 24 hours prior notice (which notice may be telephonic) for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Borrower relating to the Property. Borrower shall lend assistance to all such agents, representatives and employees of Lender.

Section 2.12 Waste; Alteration of Improvements. Borrower shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Borrower shall maintain the Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Lender other than in connection with non-structural day to day maintenance and except for tenant improvements under Leases. Without the prior written consent of Lender, Borrower shall not commence construction of any improvements on the Premises other than improvements required for the maintenance or repair of the Property. Lender reserves the right to condition its consent to any material alteration, removal, demolition or new construction on the following: (i) such conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender of plans and specifications, construction budgets, contractors and form of construction contracts and the furnishing to Lender of evidence regarding funds, permits, approvals bonds, insurance, lien waivers, title endorsements, appraisals, surveys, certificates of occupancy, certificates regarding completion, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Lender in its discretion, (ii) the delivery of an opinion from counsel satisfactory to Lender in its discretion and in form and substance satisfactory to Lender in its discretion opining as to such matters as Lender may reasonably require, including, without limitation, an opinion that such alteration, removal, demolition or new construction will not have an adverse effect on the status of any trust formed in connection with a Secondary Market Transaction a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code ("REMIC"), and (iii) Borrower's agreement to pay all fees, costs and expenses incurred by Lender in granting such consent, including, without limitation, reasonable attorneys' fees and expenses.

Section 2.13 Zoning. Without the prior written consent of Lender, Borrower shall not seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Premises or the Improvements. Borrower shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Premises or the Improvements. Borrower shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. Borrower shall keep all licenses, permits, franchises and other approvals necessary for the operation of the Property in full force and effect. Borrower shall operate the Property as a mixed retail/residential project for so long as the Debt is outstanding. If, under applicable zoning provisions, the use of all or any part of the Premises or the Improvements is or becomes a nonconforming use, Borrower shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Further, without Lender's prior written consent, Borrower shall not file or subject any part of the Premises or the Improvements to any declaration of condominium or co-operative or convert any

part of the Premises or the Improvements to a condominium, co-operative or other form of multiple ownership and governance.

Section 2.14 Financial Statements and Books and Records. Borrower shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender and its duly authorized representatives shall have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. So long as this Mortgage continues in effect, Borrower shall provide to Lender, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified to Lender as being true and correct by Borrower or the person or entity to which they pertain, as applicable, and, with respect to the financial statements and information set forth in subsection (d) hereof, compiled by an independent certified public accountant, be prepared in accordance with the income tax basis of accounting consistently applied and be in form and substance acceptable to Lender:

(a) copies of all tax returns filed by Borrower, within thirty (30) days after the date of filing, including extensions;

(b) monthly operating statements (net operating income on an accrual basis) for the Property, within thirty (30) days after the end of each of the first (1st) twelve (12) calendar months following the date hereof; and

(c) quarterly operating statements for the Property on the same basis as the monthly operating statements described above, and a Rent Roll, within forty-five (45) days after the end of each March, June, September and December commencing with the first (1st) of such months to occur following the first (1st) anniversary of the date hereof;

(d) annual balance sheet and statement of operations for the Property and annual financial statements for Borrower, and each Indemnitee, within ninety (90) days after the end of each calendar year; and

(e) such other information with respect to the Property, Borrower, the principals or general partners in Borrower and each Indemnitee, which may be reasonably requested from time to time by Lender, within a reasonable time after the applicable request.

If, at the time one or more Disclosure Documents are being prepared for a securitization, Lender expects that Borrower alone or Borrower and one or more affiliates of Borrower collectively, or the Property alone or the Property and any other parcel(s) of real property, together with improvements thereon and personal property related thereto, that is "related", within the meaning of the definition of Significant Obligor, to the Property (a "Related Property," collectively, will be a Significant Obligor, Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB and meeting the requirements thereof, if Lender expects that the principal amount of the Loan, together with any loans made to an affiliate of Borrower or secured by a Related Property that is included in a securitization with the Loan (a "Related Loan"), as of the cut-off date for such

securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such securitization and at any time during which the Loan and any Related Loans are included in a securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB and meeting the requirements thereof, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such securitization and at any time during which the Loan and any Related Loans are included in a securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after notice from Lender in connection with the preparation of Disclosure Documents for the securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than seventy-five (75) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Securities Exchange Act of 1934 in connection with or relating to the securitization (an "Exchange Act Filing") is not required. As used herein, "Regulation AB" shall mean Regulation AB under the Securities Act of 1933 and the Securities Exchange Act of 1934 (as amended). As used herein, "Disclosure Document" shall mean a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, in each case in preliminary or final form, used to offer securities in connection with a securitization. As used herein, "Significant Obligor" shall have the meaning set forth in Item 1101(k) of Regulation AB.

If any of the aforementioned materials are not furnished to Lender within the applicable time periods, are not prepared in accordance with generally accepted accounting principles or Lender is dissatisfied with the form of any of the foregoing and has notified Borrower of its dissatisfaction, in addition to any other rights and remedies of Lender contained herein and provided Lender has given Borrower at least ten (10) days notice of such failure and opportunity to cure, (i) Borrower shall pay to Lender upon demand, at Lender's option and in its sole discretion, an amount equal to \$2,500 per reporting period, and (ii) Lender shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Lender, in which event Borrower agrees to pay, or to reimburse Lender for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit.

Section 2.15 Further Assurances. Borrower shall, on the request of Lender and at the expense of Borrower: (a) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the contents of any of the other Loan Documents; (b) promptly execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly 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 and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and

thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (c) promptly execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically, without limitation, any financing statement) deemed advisable by Lender to protect, continue or perfect the liens or the security interests hereunder against the rights or interests of third persons; and (d) promptly furnish to Lender, upon Lender's request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Lender and in form and substance supplied by Lender, setting forth all amounts due under the Note, stating whether any Default or Event of Default has occurred hereunder, stating whether any offsets or defenses exist against the Debt and containing such other matters as Lender may reasonably require.

Section 2.16 Payment of Costs; Reimbursement to Lender. Borrower shall pay all costs and expenses of every character reasonably incurred in connection with the closing of the loan evidenced by the Note and secured hereby, attributable or chargeable to Borrower as the owner of the Property or otherwise attributable to any consent requested of Lender or any Rating Agency under the terms hereof or any other Loan Document, including, without limitation, customary servicing and consent fees, appraisal fees, recording fees, documentary, stamp, mortgage or intangible taxes, brokerage fees and commissions, title policy premiums and title search fees, uniform commercial code/tax lien/litigation search fees, escrow fees, consultants' fees, No-Downgrade Confirmations and reasonable attorneys' fees. If Borrower defaults in any such payment, which default is not cured within any applicable grace or cure period, Lender may pay the same and Borrower shall reimburse Lender on demand for all such costs and expenses incurred or paid by Lender, together with such interest thereon at the Default Interest Rate from and after the date of Lender's making such payment until reimbursement thereof by Borrower. Any such sums disbursed by Lender, together with such interest thereon, shall be additional indebtedness of Borrower secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Further, Borrower shall promptly notify Lender in writing of any litigation or threatened litigation affecting the Property, or any other demand or claim which, if enforced, could impair or threaten to impair Lender's security hereunder. Without limiting or waiving any other rights and remedies of Lender hereunder, if Borrower fails to perform any of its covenants or agreements contained in this Mortgage or in any of the other Loan Documents and such failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Lender's interest in the Property or Lender's right to enforce its security, then Lender may, at its option, with or without notice to Borrower, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage or to remedy the failure of Borrower to perform its covenants and agreements (without, however, waiving any default of Borrower). Borrower agrees to pay on demand all expenses of Lender incurred with respect to the foregoing (including, but not limited to, reasonable fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Lender incurs such expenses until reimbursement thereof by Borrower. Any such expenses so incurred by Lender, together with interest thereon as provided above, shall be additional indebtedness of Borrower secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. The necessity for any such actions and of the amounts to be paid shall be determined by Lender in its discretion. Lender is hereby empowered

to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Borrower hereby acknowledges and agrees that the remedies set forth in this Section 2.16 shall be exercisable by Lender, and any and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower with interest thereon at the Default Interest Rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Lender after the filing by Borrower of a voluntary case or the filing against Borrower of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended, Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Borrower, Lender, any Indemnitee, the Debt or any of the Loan Documents. Borrower hereby indemnifies and holds Lender harmless from and against all loss, cost and expenses with respect to any Event of Default hereof, any liens (i.e., judgments, mechanics' and materialmen's liens, or otherwise), charges and encumbrances filed against the Property, and from any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Premises or the Improvements or any nuisance made or suffered thereon, except those that are due to Lender's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction, including, without limitation, in any case, reasonable attorneys' fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level, and such indemnity shall survive payment in full of the Debt. This Section shall not be construed to require Lender to incur any expenses, make any appearances or take any actions.

Section 2.17 Security Interest. This Mortgage is also intended to encumber and create a security interest in, and Borrower hereby grants to Lender a security interest in, all sums on deposit with Lender pursuant to the provisions of Article III hereof or any other Section hereof or of any other Loan Document and all fixtures, chattels, accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Premises or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Premises and the Improvements. The foregoing security interest shall also cover Borrower's leasehold interest in any of the foregoing property which is leased by Borrower. Notwithstanding the foregoing, all of the foregoing property shall be owned by Borrower and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Lender. Borrower shall, from time to time upon the request of Lender, supply Lender with a current inventory of all of the property in which Lender is granted a security interest hereunder, in such detail as Lender may reasonably require. Borrower shall promptly replace all of the Collateral subject to the lien or security interest of this Mortgage when worn or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Lender, remove from the Premises or the Improvements any of the Collateral subject to the lien or security interest of this Mortgage except such as is replaced by an article of equal suitability and value as above provided, owned

by Borrower free and clear of any lien or security interest except that created by this Mortgage and the other Loan Documents. All of the Collateral shall be kept at the location of the Premises except as otherwise required by the terms of the Loan Documents. Borrower shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

Section 2.18 Security Agreement. This Mortgage constitutes a security agreement between Borrower and Lender with respect to the Collateral in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower to execute and deliver and, if appropriate, to file with the appropriate filing officer or office, such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. To the extent specifically provided herein, Lender shall have the right of possession of all cash, securities, instruments, negotiable instruments, documents, certificates and any other evidences of cash or other property or evidences of rights to cash rather than property, which are now or hereafter a part of the Property, and Borrower shall promptly deliver the same to Lender, endorsed to Lender, without further notice from Lender. Borrower agrees to furnish Lender with notice of any change in the name, identity, organizational structure, residence, or principal place of business or mailing address of Borrower within ten (10) days of the effective date of any such change. Upon the occurrence of any Event of Default, Lender shall have the rights and remedies as prescribed in this Mortgage, or as prescribed by general law, or as prescribed by any applicable Uniform Commercial Code, all at Lender's election. Any disposition of the Collateral may be conducted by an employee or agent of Lender. Any person, including both Borrower and Lender, shall be eligible to purchase any part or all of the Collateral at any such disposition. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Lender's reasonable attorneys' fees and legal expenses), together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Lender shall have the right to enter upon the Premises and the Improvements or any real property where any of the property which is the subject of the security interest granted herein is located to take possession of, assemble and collect the same or to render it unusable, or Borrower, upon demand of Lender, shall assemble such property and make it available to Lender at the Premises, or at a place which is mutually agreed upon or, if no such place is agreed upon, at a place reasonably designated by Lender to be reasonably convenient to Lender and Borrower. If notice is required by law, Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale of such property, or adjournments thereof, or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with a foreclosure sale as provided in Section 5.1(e) hereof upon giving the same notice with respect to the sale of the Property

hereunder as is required under said Section 5.1(c). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Lender pursuant to any applicable Uniform Commercial Code:

(a) In the event of a foreclosure sale, the Property may, at the option of Lender, be sold as a whole; and

(b) It shall not be necessary that Lender take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

(c) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender. The name and address of Borrower (as Debtor under any applicable Uniform Commercial Code) are as set forth on the first page hereof. The name and address of Lender (as Secured Party under any applicable Uniform Commercial Code) are as set forth on the first page hereof.

Section 2.19 Easements and Rights-of-Way. Borrower shall not grant any easement or right-of-way with respect to all or any portion of the Premises or the Improvements without the prior written consent of Lender. Borrower shall comply with all easements affecting the Property. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Mortgage and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Lender consents to the grant of an easement or right-of-way, Lender agrees to grant such consent without charge to Borrower other than expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in the review of Borrower's request and in the preparation of documents effecting the subordination.

Section 2.20 Compliance with Laws. Borrower shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; provided, however, that, Borrower may, upon providing Lender with security satisfactory to Lender, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Borrower shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any Lease or any other agreement applicable to the Property or any applicable law, rule, regulation or order 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.

Section 2.21 Additional Taxes. In the event of the enactment after the date hereof of any law of the state in which the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxing any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of deeds of trust, mortgages or security agreements or debts secured by deeds of trust, mortgages or security agreements or the interest of the Lender, mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Mortgage or the Debt or Lender, then, and in any such event, Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Lender may elect, by notice in writing given to Borrower, to declare all of the Debt to be and become due and payable in full thirty (30) days from the giving of such notice, and, in connection with the payment of such Debt, no prepayment premium or fee shall be due unless, at the time of such payment, an Event of Default or a Default shall have occurred, which Default or Event of Default is unrelated to the provisions of this Section 2.21, in which event any applicable prepayment premium or fee in accordance with the terms of the Note shall be due and payable.

Section 2.22 Secured Indebtedness. It is understood and agreed that this Mortgage shall secure payment of not only the indebtedness evidenced by the Note but also any and all substitutions, replacements, renewals and extensions of the Note, any and all indebtedness and obligations arising pursuant to the terms hereof and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents, all of which indebtedness is equally secured with and has the same priority as any amounts advanced as of the date hereof. It is agreed that any future advances made by Lender to or for the benefit of Borrower from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, or otherwise, made for any purpose, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage.

Section 2.23 Borrower's Waivers. To the full extent permitted by law, Borrower agrees that Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the Debt prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Borrower, for Borrower and Borrower's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the Debt (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes

and forever forgoes all right to a marshaling of the assets of Borrower, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; and (c) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under applicable law. To the full extent permitted by law, Borrower shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or otherwise in matters whatever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Property, for the collection of the Debt without any prior or different resort for collection, or the right of Lender under the terms of this Mortgage to the payment of the Debt out of the proceeds of sale of the Property in preference to every other claimant whatever. Furthermore, Borrower hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any of the Debt to the fullest extent permitted by law. Borrower covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Borrower shall not seek a supplemental stay or otherwise shall not seek pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

Section 2.24 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) **BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE IN WHICH THE PREMISES IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN THE COUNTY IN WHICH THE PREMISES IS LOCATED, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (iv) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM).**

(b) **BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR**

PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE DEBT OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

Section 2.25 Attorney-in-Fact Provisions. With respect to any provision of this Mortgage or any other Loan Document whereby Borrower grants to Lender a power-of-attorney, provided no Default or Event of Default has occurred under this Mortgage, Lender shall first give Borrower written notice at least three (3) days prior to acting under such power, which notice shall demand that Borrower first take the proposed action within such period and advising Borrower that if it fails to do so, Lender will so act under the power; provided, however, that, in the event that a Default or an Event of Default has occurred, or if necessary to prevent imminent death, serious injury, damage, loss, forfeiture or diminution in value to the Property or any surrounding property or to prevent any adverse affect on Lender's interest in the Property, Lender may act immediately and without first giving such notice. In such event, Lender will give Borrower notice of such action as soon thereafter as reasonably practical.

Section 2.26 Management. The management of the Property shall be by either: (a) Borrower or Acadia Realty Trust (" Acadia ") or any of Acadia's subsidiaries for so long as Borrower or Acadia or Acadia's subsidiary is managing the Property in a first class manner; or (b) a professional property management company approved by Lender. Aberdeen Properties, Inc., a Delaware corporation, is approved by Lender as property manager under the property management agreement submitted to Lender. Any property management other than by Borrower shall be pursuant to a written agreement approved by Lender. In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Lender which approval may be conditioned upon, among other things, receipt by Lender of a No-Downgrade Confirmation from each Rating Agency. After an Event of Default or a default under any management contract then in effect, which default is not cured within any applicable grace or cure period or if at any time during the term of the Loan the debt service coverage ratio of the Property is ever less than 1.20:1.00, as determined by Lender, Lender shall have the right to terminate, or to direct Borrower to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new management agent approved by Lender which approval may be conditioned upon, among other things, receipt by Lender of a No-Downgrade Confirmation from each Rating Agency. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to this Mortgage and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Borrower and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied.

(a) Borrower hereby represents and warrants to Lender that, as of the date hereof to the best of Borrower's knowledge, information and belief and other than as set forth in that certain Phase I Environmental Site Assessment dated January 4, 2007 prepared by IVI Due Diligence Services, Inc.: (i) none of Borrower nor the Property nor any Tenant at the Premises nor the operations conducted thereon is in direct or indirect violation of or otherwise exposed to any liability under any local, state or federal law, rule or regulation or common law duty pertaining to human health, natural resources or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.) ("CERCLA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Emergency Planning and Community-Right-to-Know Act (42 U.S.C. §11001 et seq.), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.) and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), regulations promulgated pursuant to said laws, all as amended from time to time (collectively, "Environmental Laws") or otherwise exposed to any liability under any Environmental Law relating to or affecting the Property, whether or not used by or within the control of Borrower; (ii) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos or asbestos-containing materials, lead based paint, Toxic Mold (as hereinafter defined), polychlorinated biphenyls, petroleum or petroleum products or byproducts, flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on, in or under or have been handled, generated, stored, processed or disposed of on or released or discharged from the Property (including underground contamination), except for those substances used by Borrower or any Tenant in the ordinary course of their respective businesses and in compliance with all Environmental Laws and where such Hazardous Substances could not reasonably be expected to give rise to liability under Environmental Laws; (iii) radon is not present at the Property in excess or in violation of any applicable thresholds or standards or in amounts that require disclosure under applicable law to any tenant or occupant of or invitee to the Property or to any governmental agency or the general public; (iv) the Property is not subject to any private or governmental lien or judicial or administrative notice or action arising under Environmental Laws; (v) there is no pending, nor, to Borrower's knowledge, information or belief, threatened litigation arising under Environmental Laws affecting Borrower or the Property; (vi) there are no and have been no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances or landfills or dumps on the Property; (vii) Borrower has received no notice of, and to the best of Borrower's knowledge and belief, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Borrower know of any basis for such an investigation, action, proceeding or claim; and (viii) Borrower has received no notice of and, to the best of Borrower's knowledge and belief, there has been no claim by any party that any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property, nor does Borrower know of any basis for such an investigation.

action, proceeding or claim. For the purposes hereof, "Toxic Mold" shall mean any mold or fungus at the Property which is of a type (i) that might pose a significant risk to human health or the environment or (ii) that would negatively impact the value of the Property.

(b) Borrower has not received nor to the best of Borrower's knowledge, information and belief has there been issued, any notice, notification, demand, request for information, citation, summons, or order in any way relating to any actual, alleged or potential violation or liability arising under Environmental Laws.

(c) Neither the Property, nor to the best of Borrower's knowledge, information and belief, any property to which Borrower has, in connection with the maintenance or operation of the Property, directly or indirectly transported or arranged for the transportation of any Hazardous Substances is listed or, to the best of Borrower's knowledge, information and belief, proposed for listing on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or on any similar federal or state list of sites requiring environmental investigation or clean-up.

(d) Borrower shall comply with all applicable Environmental Laws. Borrower shall keep the Property or cause the Property to be kept free from Hazardous Substances (except those substances used by Borrower or any Tenant in the ordinary course of their respective businesses and except in compliance with all Environmental Laws and where such Hazardous Substances could not reasonably be expected to give rise to liability under Environmental Laws) and in compliance with all Environmental Laws, Borrower shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all Tenants in quantities or conditions that would violate or give rise to any obligation to take remedial or other action under any applicable Environmental Laws. Without limiting the generality of the foregoing, during the term of this Mortgage, Borrower shall not install in the Improvements or permit to be installed in the Improvements any asbestos or asbestos-containing materials.

(e) Borrower shall promptly notify Lender if Borrower shall become aware of (i) the actual or potential existence of any Hazardous Substances on the Property other than those occurring in the ordinary course of Borrower's business and which do not violate, or would not otherwise give rise to liability under Environmental Laws, (ii) any direct or indirect violation of, or other exposure to liability under, any Environmental Laws, (iii) any lien, action or notice affecting the Property or Borrower resulting from any violation or alleged violation of or liability or alleged liability under any Environmental Laws, (iv) the institution of any investigation, inquiry or proceeding concerning Borrower or the Property pursuant to any Environmental Laws or otherwise relating to Hazardous Substances, or (v) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Mortgage incorrect in any respect if made at the time of such discovery. Immediately upon receipt of same, Borrower, shall deliver to Lender copies of any and all requests for information, complaints, citations, summonses, orders, notices, reports or other communications, documents or instruments in any way relating to any actual, alleged or potential violation or liability of any nature whatsoever arising under Environmental Laws and relating to the Property or to Borrower. Borrower shall remedy or cause to be remedied in a timely manner (and in any event within the time period permitted by applicable Environmental Laws) any violation of

Environmental Laws or any condition that could give rise to liability under Environmental Laws. Without limiting the foregoing, Borrower shall, promptly and regardless of the source of the contamination or threat to the environment or human health, at its own expense, take all actions as shall be necessary or prudent, for the clean-up of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Lender) and shall further pay or cause to be paid, at no expense to Lender, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Borrower fails to do so, Lender may, but shall not be obligated to, cause the Property or other affected property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Borrower hereby grants to Lender and its agents and employees access to the Property and a license to remove any items deemed by Lender to be Hazardous Substances and to do all things Lender shall deem necessary to bring the Property into conformance with Environmental Laws.

(f) Borrower covenants and agrees, at Borrower's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Lender), and hold Lender harmless from and against any and all liens, damages (including without limitation, punitive or exemplary damages), losses, liabilities (including, without limitation, strict liability), obligations, settlement payments, penalties, fines, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or the Property, and arising directly or indirectly from or out of: (i) any violation or alleged violation of, or liability or alleged liability under, any Environmental Law; (ii) the presence, release or threat of release of or exposure to any Hazardous Substances or radon on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Borrower; (iii) any transport, treatment, recycling, storage, disposal or arrangement therefor of Hazardous Substances whether on the Property, originating from the Property, or otherwise associated with Borrower or any operations conducted on the Property at any time; (iv) the failure by Borrower to comply fully with the terms and conditions of this [Section 2.27](#); (v) the breach of any representation or warranty contained in this [Section 2.27](#); or (vi) the enforcement of this [Section 2.27](#), including, without limitation, the cost of assessment, investigation, containment, removal and/or remediation of any and all Hazardous Substances from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with Environmental Laws in connection with

all or any portion of the Property or any surrounding areas. The indemnity set forth in this Section 2.27 shall also include any diminution in the value of the security afforded by the Property or any future reduction in the sales price of the Property by reason of any matter set forth in this Section 2.27. The foregoing indemnity shall specifically not include any such costs relating to Hazardous Substances which are initially placed on, in or under the Property after foreclosure or other taking of title to the Property by Lender or its successor or assigns. Lender's rights under this Section shall survive payment in full of the Debt and shall be in addition to all other rights of Lender under this Mortgage, the Note and the other Loan Documents.

(g) Upon Lender's request, at any time after the occurrence of an Event of Default or at such other time as Lender has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on the Property, or on property contiguous with the Property, or that the Property may be in violation of the Environmental Laws, Borrower shall perform or cause to be performed, at Borrower's sole cost and expense and in scope, form and substance satisfactory to Lender, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Lender indicating the presence or absence of Hazardous Substances on the Property, the compliance or non-compliance status of the Property and the operations conducted thereon with applicable Environmental Laws, or an inspection or audit of the Property prepared by an engineering or consulting firm approved by Lender indicating the presence or absence of friable asbestos or substances containing asbestos or lead or substances containing lead or lead based paint (" Lead Based Paint ") on the Property. If Borrower fails to provide reports of such inspection or audit within thirty (30) days after such request, Lender may order the same, and Borrower hereby grants to Lender and its employees and agents access to the Property and an irrevocable license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt.

(h) Reference is made to that certain Environmental Indemnity Agreement of even date herewith by and among Borrower and any other principal signatory named therein in favor of Lender (the "Environmental Indemnity Agreement"). The provisions of this Mortgage and the Environmental Indemnity Agreement shall be read together to maximize the coverage with respect to the subject matter thereof, as determined by Lender.

(i) If prior to the date hereof, it was determined that the Property contains asbestos-containing materials ("ACM's"), Borrower covenants and agrees to institute, within thirty (30) days after the date hereof, an operations and maintenance program (the "Maintenance Program") designed by an environmental consultant, satisfactory to Lender, with respect to ACM's, consistent with "Guidelines for Controlling Asbestos-Containing Materials in Buildings" (USEPA, 1985) and other relevant guidelines, and such Maintenance Program will hereafter continuously remain in effect until the Debt secured here by is repaid in full. In furtherance of the foregoing, Borrower shall inspect and maintain all ACM's on a regular basis and ensure that all ACM's shall be maintained in a condition that prevents exposure of residents to ACM's at all times. Without limiting the generality of the preceding sentence, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as

Lender may specify, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) at Borrower's sole expense, supplemental examination of the Property by consultants specified by Lender, and (iv) variation of the operations and maintenance program in response to the reports provided by any such consultants.

(j) If, prior to the date hereof, it was determined that the Property contains Lead Based Paint, Borrower had prepared an assessment report describing the location and condition of the Lead Based Paint (a "Lead Based Paint Report"). If, at any time hereafter, Lead Based Paint is suspected of being present on the Property, Borrower agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, acceptable to Lender. Borrower agrees that if it has been, or if at any time hereafter it is, determined that the Property contains Lead Based Paint, on or before thirty (30) days following (i) the date hereof, if such determination was made prior to the date hereof or (ii) such determination, if such determination is hereafter made, as applicable, Borrower shall, at its sole cost and expenses, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an operations, abatement and maintenance plan for the Lead Based Paint on the Property, which plan shall be prepared by an expert, and be in form, scope and substance, acceptable to Lender (together with any Lead Based Paint Report, the "O&M Plan"). If an O&M Plan has been prepared prior to the date hereof, Borrower agrees to diligently and continually carry out (or cause to be carried out) the provisions thereof. Compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Laws.

Section 2.28 Indemnification; Subrogation.

(a) Borrower shall indemnify, defend and hold Lender harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Property or the Debt, and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Lender's reasonable attorneys' fees) of whatever kind or nature which may be asserted against, imposed on or incurred by Lender in connection with the Debt, this Mortgage, the Property, or any part thereof, or the exercise by Lender of any rights or remedies granted to it under this Mortgage or arise from the information provided in accordance with the terms hereof; provided, however, that nothing herein shall be construed to obligate Borrower to indemnify, defend and hold harmless Lender from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Lender by reason of Lender's willful misconduct or gross negligence.

(b) If Lender is made a party defendant to any litigation or any claim is threatened or brought against Lender concerning the Debt, this Mortgage, the Property, or any part thereof, or any interest therein, or the construction, maintenance, operation or occupancy or use thereof, then Borrower shall indemnify, defend and hold Lender harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees and expenses incurred by Lender in any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. If Lender commences an action against Borrower to enforce

any of the terms hereof or to prosecute any breach by Borrower of any of the terms hereof or to recover any sum secured hereby, Borrower shall pay to Lender its reasonable attorneys' fees and expenses. The right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Borrower breaches any term of this Mortgage, Lender may engage the services of an attorney or attorneys to protect its rights hereunder, and in the event of such engagement following any breach by Borrower, Borrower shall pay Lender reasonable attorneys' fees and expenses incurred by Lender, whether or not an action is actually commenced against Borrower by reason of such breach. All references to "attorneys" in this Subsection and elsewhere in this Mortgage shall include, without limitation, any attorney or law firm engaged by Lender and Lender's in-house counsel, and all references to "fees and expenses" in this Subsection and elsewhere in this Mortgage shall include, without limitation, any fees of such attorney or law firm, any appellate counsel fees, if applicable, and any allocation charges and allocation costs of Lender's in-house counsel.

(c) A waiver of subrogation shall be obtained by Borrower from its insurance carrier and, consequently, Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

Section 2.29 Covenants with Respect to Existence, Indebtedness, Operations, Fundamental Changes of Borrower.

(a) Borrower, and any general partner or managing member of Borrower, as applicable, have each done since the date of their formation and shall do or cause to be done all things necessary to (i) preserve, renew and keep in full force and effect its existence, rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all licenses, and (iv) qualify to do business and remain in good standing under the laws of each jurisdiction, in each case as and to the extent required for the ownership, maintenance, management and operation of the Property. Borrower hereby represents, warrants and covenants as of the date hereof and until such time as the Debt is paid in full, that Borrower has been, since the date of its formation, is and shall remain a Single-Purpose Entity (as hereinafter defined). Each general partner or the SPE Member (as hereinafter defined) of Borrower (each, an "SPE Equity Owner"), has since the date of its formation complied and will at all times comply, with each of the representations, warranties and covenants contained in this Section 2.29 as if such representation, warranty or covenant was made directly by such SPE Equity Owner. A "Single-Purpose Entity," or "SPE" means a corporation, limited partnership or limited liability company that:

(1) if a corporation, must have at least one Independent Director (as hereinafter defined), or if requested by Lender (which request Borrower shall comply with within five (5) business days) in connection with a Secondary Market Transaction, two Independent Directors, and must not take any action that, under the terms of any certificate or articles of incorporation, by-laws, or any voting trust agreement with respect to such entity's common stock, requires the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including, without

limitation, all Independent Directors, shall have participated in such vote (“SPE Corporation”);

(2) if a limited partnership, must have each general partner be an SPE Corporation;

(3) if a limited liability company, must have one managing member (the “SPE Member”) and such managing member must be an SPE Corporation. Only the SPE Member may be designated as a manager under Borrower’s operating agreement and pursuant to the law where Borrower is organized. Borrower may be a single member Delaware limited liability company without an SPE Corporation managing member so long as Borrower complies with the provisions set forth in Sections 2.29(b) and (c) below;

(4) was and will be organized solely for the purpose of (i) owning an interest in the Property, (ii) acting as a general partner of a limited partnership that owns an interest in the Property, or (iii) acting as the managing member of a limited liability company that owns an interest in the Property;

(5) will not, nor will any partner, limited or general, member or shareholder thereof, as applicable, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation, by-laws, operating agreement, articles of organization, or other formation agreement or document, as applicable, in any material term or manner, or in a manner which adversely affects Borrower’s existence as a Single Purpose Entity;

(6) will not liquidate or dissolve (or suffer any liquidation or dissolution), or enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any entity;

(7) will not, nor will any partner, limited or general, member or shareholder thereof, as applicable, violate the terms of its partnership certificate, partnership agreement, articles of incorporation, by-laws, operating agreement, articles of organization, or other formation agreement or document, as applicable;

(8) has not and will not guarantee, pledge its assets for the benefit of, or otherwise become liable on or in connection with, any obligation of any other person or entity;

(9) does not own and will not own any asset other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;

(10) is not engaged and will not engage, either directly or indirectly, in any business other than the ownership, management and operation of the Property;

(11) will not enter into any contract or agreement with any general partner, principal, affiliate or member of Borrower, as applicable, or any affiliate of any general

partner, principal or member of Borrower, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than an affiliate;

(12) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Debt, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Property customarily satisfied within thirty (30) days not evidenced by a note and in an aggregate amount not to exceed two percent (2.0%) of the existing principal balance of the Note, and no other debt will be secured (senior, subordinate or pari passu) by the Property;

(13) has not made and will not make any loans or advances to any third party (including any affiliate);

(14) is and will be solvent and pay its debts from its assets as the same shall become due;

(15) has done or caused to be done and will do all things necessary to preserve its existence, and will observe all formalities applicable to it;

(16) will conduct and operate its business in its own name and as presently conducted and operated;

(17) will maintain financial statements, books and records and bank accounts separate from those of its affiliates, including, without limitation, its general partners or members, as applicable;

(18) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including, without limitation, any affiliate, general partner, or member, as applicable, or any affiliate of any general partner or member of Borrower, as applicable) and will correct any known misunderstanding concerning its separate identity;

(19) will file its own tax returns;

(20) will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(21) will establish and maintain an office through which its business will be conducted separate and apart from those of its affiliates or shall allocate fairly and reasonably any overhead and expense for shared office space;

(22) will not commingle the funds and other assets of Borrower with those of any general partner, member, affiliate, principal or any other person;

(23) has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person;

(24) does not and will not hold itself out to be responsible for the debts or obligations of any other person;

(25) will pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(26) will pay any liabilities out of its own funds, including salaries of its employees, not funds of any affiliate; and

(27) will use stationery, invoices, and checks separate from its affiliates.

(b) In the event Borrower is a single-member Delaware limited liability company, the limited liability company agreement of Borrower (the "LLC Agreement") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower ("Member") to cease to be the member of Borrower (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower and the admission of the transferee, or (B) the resignation of Member and the admission of an additional member in either case in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as a special or springing member of Borrower shall without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower, automatically be admitted to Borrower ("Special Member") and shall continue Borrower without dissolution and (ii) Special Member may not resign from Borrower or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as a Special Member. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower upon the admission to Borrower of a substitute Member, (ii) Special Member shall be a member of Borrower that has no interest in the profits, losses and capital of Borrower and has no right to receive any distributions of Borrower assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "Act"), Special Member shall not be required to make any capital contributions to Borrower and shall not receive a limited liability company interest in Borrower, (iv) Special Member, in its capacity as Special Member, may not bind Borrower, and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower, including, without limitation, the merger, consolidation or conversion of Borrower. In order to implement the admission to Borrower of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower as Special Member, Special Member shall not be a member of Borrower.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of Borrower, to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the

continued membership of Member in Borrower, agree in writing (i) to continue Borrower and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of Member of Borrower in Borrower. Any action initiated by or brought against Member or Special Member under any creditors rights laws shall not cause Member or Special Member to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower upon the occurrence of any action initiated by or brought against Member or Special Member under any creditors rights laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower.

As used in this Section 2.29, “Independent Director” shall mean a duly appointed member of the board of directors of any SPE Corporation or board of managers or of a single member Delaware limited liability company which is an SPE who is provided by a nationally-recognized company that provides professional independent directors who shall not have been at the time of initial appointment or at any time while serving as an Independent Director, and may not have been at any time during the preceding five years (i) a stockholder, director, officer, employee, partner, attorney or counsel of such SPE Corporation, single member Delaware limited liability company which is an SPE, Borrower or any affiliate of any of them, (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with such SPE Corporation, single member Delaware limited liability company which is an SPE, Borrower or any affiliate of any of them, (iii) a Person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other Person, or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. As used herein, the term “affiliate” shall mean: (1) any person or entity directly or indirectly owning, controlling or holding with power to vote ten percent (10%) or more of the outstanding voting securities or interests of such other person or entity; (2) any person or entity ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such other person or entity; (3) any person or entity directly or indirectly controlling, controlled by or under common control with such other person or entity; (4) any officer, director or partner of such other person or entity; (5) if such other person or entity is an officer, director or partner, any company for which such person or entity acts in any such capacity; and (6) any close relative or spouse of the specified person.

Section 2.30 Embargoed Person. At all times throughout the term of the Loan, including after giving effect to any Sale hereunder, (a) none of the funds or assets of Indemnitee that are used to repay the Loan or of Borrower shall constitute property of, or shall be beneficially owned directly or, to Borrower’s best knowledge, indirectly, by any person subject to sanctions or trade restrictions under United States law (“Embargoed Person” or “Embargoed Persons”) that are identified on (1) the “List of Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury, and/or to Borrower’s best knowledge, as of the date thereof, based upon reasonable

inquiry by Borrower, on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or regulation promulgated thereunder, with the result that the investment in Borrower or any Indemnitator, as applicable (whether directly or indirectly), is prohibited by law, or the Loan made by Lender would be in violation of law, or (2) Executive Order 13224 (September 23, 2001) issued by the President of the United States ("Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), any related enabling legislation or any other similar Executive Orders, and (b) no Embargoed Person shall have any direct interest, and to Borrower's best knowledge, as of the date hereof, based upon reasonable inquiry by Borrower, indirect interest, of any nature whatsoever in Borrower or any Indemnitator, as applicable, with the result that the investment in Borrower or any Indemnitator, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

Section 2.31 Anti-Money Laundering. At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, none of the funds of Borrower or any Indemnitator, as applicable, that are used to repay the Loan shall be derived from any unlawful activity, with the result that the investment in Borrower or any Indemnitator, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

Section 2.32 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Mortgage or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to Federal or state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

- (1) Equity interests in Borrower are publicly offered securities within the meaning of 29 C.F.R. Section 2510.3-101(b)(2);
- (2) Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); or
- (3) Borrower qualifies as an "operating company" within the meaning of 29 C.F.R. Section 2510.3-101 or an investment company registered under the Investment Company Act of 1940.

(c) Borrower shall indemnify Lender and defend and hold Lender harmless from and against all civil penalties, excise taxes, or other loss, cost damage and expense (including, without limitation, reasonable attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under this Section. This indemnity shall survive any termination, satisfaction or foreclosure of this Mortgage.

Section 2.33 Opinion Assumptions. Borrower shall at all times conduct its business so that the assumptions made with respect to Borrower in the Non-Consolidation Opinion shall be true and correct in all respects.

ARTICLE III

RESERVES AND CASH MANAGEMENT

Section 3.1 Reserves Generally.

(a) As additional security for the payment and performance by Borrower of all duties, responsibilities and obligations under the Note and the other Loan Documents, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over and confirms unto Lender, and hereby grants to Lender a security interest in, (i) the Payment Reserve, the Impound Account, the Immediate Repair Reserve, the Replacement Reserve, as applicable (each as hereinafter defined) and any other reserve or escrow account established pursuant to the terms hereof or of any other Loan Document (collectively, the "Reserves"), (ii) the accounts into which the Reserves have been deposited, (iii) all insurance on said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Reserves or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Borrower hereby authorizes and consents to the account into which the Reserves have been deposited being held in Lender's name or the name of any entity servicing the Note for Lender and hereby acknowledges and agrees that Lender, or at Lender's election, such servicing agent, shall have exclusive control over said account. Notice of the assignment and security interest granted to Lender herein may be delivered by Lender at any time to the financial institution wherein the Reserves have been established, and Lender, or such servicing entity, shall have possession of all passbooks or other evidences of such accounts. Borrower hereby assumes all risk of loss with respect to amounts on deposit in the Reserves. Funds on deposit in the Replacement Reserve shall bear interest at a rate equal to the then prevailing commercial money market rate. All amounts deemed earned on funds contributed to the Replacement Reserve at the rate referenced in the immediately preceding sentence shall be retained by Lender and accumulated for the benefit of Borrower and added to the balance in the Replacement Reserve and shall be disbursed for payment of the items for which other funds in the Replacement Reserve are to be disbursed. Borrower shall not be entitled to earn any interest with respect to funds on deposit in the

Payment Reserve, the Impound Account and the Immediate Repairs Reserve. Borrower hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the advancement of the funds from the Reserves as set forth herein is at Borrower's direction and is not the exercise by Lender of any right of set-off or other remedy upon a Default or an Event of Default. Borrower hereby waives all right to withdraw funds from the Reserves except as provided for in this Mortgage. If an Event of Default shall occur hereunder or under any other of the Loan Documents Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, reasonable attorneys' fees, costs and expenses) to the Debt or any other obligations of Borrower under the other Loan Documents in such manner as Lender shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Borrower, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any Default or Event of Default.

(b) The Reserves shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Lender's option and in Lender's discretion, may either be held in a separate account or be commingled by Lender with the general funds of Lender. The Reserves are solely for the protection of Lender and entail no responsibility on Lender's part beyond the payment of the respective items for which they are held following receipt of bills, invoices or statements therefor in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. Upon assignment of this Mortgage by Lender, any funds in the Reserves shall be turned over to the assignee and any responsibility of Lender, as assignor, with respect thereto shall terminate. If the funds in the applicable Reserve shall exceed the amount of payments actually applied by Lender for the purposes and items for which the applicable Reserve is held, such excess may be credited by Lender on subsequent payments to be made hereunder or, at the option of Lender, refunded to Borrower. If, however, the applicable Reserve shall not contain sufficient funds to pay the sums required by the dates on which such sums are required to be on deposit in such account, Borrower shall, within ten (10) days after receipt of written notice thereof, deposit with Lender the full amount of any such deficiency. If Borrower shall fail to deposit with Lender the full amount of such deficiency as provided above, Lender shall have the option, but not the obligation, to make such deposit, and all amounts so deposited by Lender, together with interest thereon at the Default Interest Rate from the date so deposited by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. If there is an Event of Default under this Mortgage, Lender may, but shall not be obligated to, apply at any time the balance then remaining in any or all of the Reserves against the Debt in whatever order Lender shall subjectively determine. No such application of any or all of the Reserves shall be deemed to cure any Event of Default. Upon full payment of the Debt in accordance with its terms or at such earlier time as Lender may elect, the balance of any or all of the Reserves then in Lender's possession shall be paid over to Borrower and no other party shall have any right or claim thereto.

Section 3.2 [Reserved].

Section 3.3 Impound Account. Borrower shall establish and maintain at all times while this Mortgage continues in effect an impound account (the "Impound Account") with Lender for payment of real estate taxes and assessments and insurance on the Property and as additional security for the Debt. Simultaneously with the execution hereof, Borrower shall deposit in the Impound Account an amount determined by Lender to be necessary to ensure that there will be on deposit with Lender an amount which, when added to the monthly payments subsequently required to be deposited with Lender hereunder on account of real estate taxes, assessments and insurance premiums, will result in there being on deposit with Lender in the Impound Account an amount sufficient to pay the next due installment of real estate taxes and assessments on the Property at least one (1) month prior to the earlier of (a) the due date thereof or (b) any such date by which Borrower or Lender is required by law to pay same and the next due annual insurance premiums with respect to the Property at least one (1) month prior to the due date thereof. Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Debt is fully paid and performed, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Borrower is required to maintain hereunder, each as

estimated and determined by Lender. So long as no Default or Event of Default has occurred, and no event has occurred or failed to occur which with the passage of time, the giving of notice, or both would constitute an Event of Default (a "Default"), all sums in the Impound Account shall be held by Lender in the Impound Account to pay said taxes, assessments and insurance premiums before the same become delinquent. Borrower shall be responsible for ensuring the receipt by Lender, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and so long as no Event of Default has occurred, Lender shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. In making any payment from the Impound Account, Lender shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof.

Section 3.4 Immediate Repair Reserve. Prior to the execution of this Mortgage, Lender has caused the Property to be inspected and such inspection has revealed that the Property is in need of certain maintenance, repairs and/or remedial or corrective work. Contemporaneously with the execution hereof, Borrower has established with Lender a reserve in the amount of \$5,250.00 (the "Immediate Repair Reserve") by depositing such amount with Lender. Borrower shall cause each of the items described in that certain Property Condition Report (the "Deferred Maintenance R 21;) to be completed, performed, remediated and corrected to the satisfaction of Lender and as necessary to bring the Property into compliance with all applicable laws, ordinances, rules and regulations on or before the expiration of six (6) months after the effective date hereof, as such time period may be extended by Lender in its sole discretion. So long as no Event of Default has occurred, all sums in the Immediate Repair Reserve shall be held by Lender in the Immediate Repair Reserve to pay the costs and expenses of completing the Deferred Maintenance. So long as no Default or Event of Default has occurred, Lender shall, to the extent funds are available for such purpose in the Immediate Repair Reserve, disburse to Borrower the amount paid or incurred by Borrower in completing, performing, remediating or correcting the Deferred Maintenance upon (a) the receipt by Lender of a written request from Borrower for disbursement from the Immediate Repair Reserve and a certification by Borrower in a form as may be required by Lender that the applicable item of Deferred Maintenance has been completed in accordance with the terms of this Mortgage, (b) delivery to Lender of invoices, receipts or other evidence satisfactory to Lender verifying the costs of the Deferred Maintenance to be reimbursed, (c) delivery to Lender of a certification from an inspecting architect, engineer or other consultant reasonably acceptable to Lender describing the completed work, verifying the completion of the work and the value of the completed work and, if applicable, certifying that the Property is, as a result of such work, in compliance with all applicable laws, ordinances, rules and regulations relating to the Deferred Maintenance so performed, and (d) delivery to Lender of affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished materials or labor to the Property have been paid all amounts due for such labor and materials furnished to the Property. Lender shall not be required to make advances from the Immediate Repair Reserve more frequently than once in any thirty

(30) day period. In making any payment from the Immediate Repair Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of any such amount. Borrower hereby grants to Lender a power-of-attorney, coupled with an interest, to cause the Deferred Maintenance to be completed, performed, remediated and corrected to the satisfaction of Lender upon Borrower's failure to do so in accordance with the terms and conditions of this Section 3.4, and to apply the amounts on deposit in the Immediate Repair Reserve to the costs associated therewith, all as Lender may determine in its sole and absolute discretion but without obligation to do so.

Section 3.5 Replacement Reserve. As additional security for the Debt, Borrower shall establish and maintain at all times while this Mortgage continues in effect a repair reserve (the "Replacement Reserve") with Lender for payment of costs and expenses incurred by Borrower in connection with the performance of work to the roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, exterior walls, exterior doors and doorways, windows, elevators and mechanical and HVAC equipment (collectively, the "Repairs"). Commencing on the first monthly Payment Date under the Note and continuing thereafter on each monthly Payment Date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Debt is fully paid and performed, a deposit to the Replacement Reserve in an amount equal to \$647.93 per month. So long as no Event of Default has occurred, all sums in the Replacement Reserve shall be held by Lender in the Replacement Reserve to pay the costs and expenses of Repairs. So long as no Default or Event of Default has occurred, Lender shall, to the extent funds are available for such purpose in the Replacement Reserve, disburse to Borrower the amount paid or incurred by Borrower in performing such Repairs within ten (10) days following: (a) the receipt by Lender of a written request from Borrower for disbursement from the Replacement Reserve and a certification by Borrower in a form approved in writing by Lender that the applicable item of Repair has been completed; (b) the delivery to Lender of invoices, receipts or other evidence satisfactory to Lender, verifying the cost of performing the Repairs; (c) for disbursement requests in excess of \$25,000.00, the delivery to Lender of affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Property have been paid all amounts due for labor and materials furnished to the Property; (d) for disbursement requests in excess of \$25,000.00, delivery to Lender of a certification from an inspecting architect or other third party acceptable to Lender describing the completed Repairs and verifying the completion of the Repairs and the value of the completed Repairs; and (e) for disbursement requests in excess of \$25,000.00, delivery to Lender of a new certificate of occupancy for the portion of the Improvements covered by such Repairs, if said new certificate of occupancy is required by law, or a certification by Borrower that no new certificate of occupancy is required. Lender shall not be required to make advances from the Replacement Reserve more frequently than once in any thirty (30) day period. In making any payment from the Replacement Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of any such amount. Lender may, at Borrower's expense, make or cause to be made during the term of this Mortgage an annual inspection of the Property to determine the need, as determined by Lender in its reasonable judgment, for further Repairs of the Property. In the event that such inspection reveals that further Repairs of the Property are required, Lender shall provide Borrower with a written description of the required Repairs and Borrower shall

complete such Repairs to the reasonable satisfaction of Lender within ninety (90) days after the receipt of such description from Lender, or such later date as may be approved by Lender in its sole discretion.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1 Events of Default. The occurrence of any of the following events shall be an Event of Default hereunder:

(a) Borrower (x) fails to pay any payments due under the Note or to the Reserves on the date when the same is due and payable, or (y) fails to pay any money to Lender required hereunder at the time or within any applicable grace period set forth herein, or if no grace period is set forth herein, then within seven (7) days of the date such payment is due (except those regarding payments to be made under the Note or to the Reserves, which failure is not subject to any grace or cure period).

(b) Borrower fails to provide insurance as required by Section 2.3 hereof or fails to perform any covenant, agreement, obligation, term or condition set forth in Section 2.27 or Section 2.29 hereof.

(c) Borrower fails to perform any other covenant, agreement, obligation, term or condition set forth herein, other than those otherwise described in this Section 4.1, and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Lender to Borrower; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Lender, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.

(d) Any representation or warranty made herein, in or in connection with any application or commitment relating to the loan evidenced by the Note, or in any of the other Loan Documents to Lender by Borrower, by any principal, general partner, manager or member in Borrower, or by any Indemnitee is determined by Lender to have been false or misleading in any material respect at the time made.

(e) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrance of the Property, Borrower or its general partners or managing members, or any portion thereof or any interest therein, in violation of Section 2.9 hereof.

(f) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

(g) Borrower, general partner or managing member in Borrower or any Indemnitor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or files a petition in bankruptcy, or is voluntarily adjudicated insolvent or bankrupt or admits in writing the inability to pay its debts as they mature, or petitions or applies to any tribunal for or consents to or fails to contest the appointment of a receiver, trustee, custodian or similar officer for Borrower, for any such general partner or managing member of Borrower or for any Indemnitor or for a substantial part of the assets of Borrower, of any such general partner or managing member of Borrower or of any Indemnitor, or commences any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(h) A petition is filed or any case, proceeding or other action is commenced against Borrower, against any general partner or managing member of Borrower or against any Indemnitor seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Borrower, against any general partner or managing member of Borrower or against any Indemnitor, as debtor, or an order, judgment or decree is entered appointing, with or without the consent of Borrower, of any such general partner or managing member of Borrower or of any Indemnitor, a receiver, trustee, custodian or similar officer for Borrower, for any such general partner or managing member of Borrower or for any Indemnitor, or for any substantial part of any of the properties of Borrower, of any such general partner or managing member of Borrower or of any Indemnitor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree is not dismissed within sixty (60) days after being commenced.

(i) The Property or any part thereof is taken on execution or other process of law in any action against Borrower.

(j) Borrower abandons all or a portion of the Property.

(k) The holder of any lien or security interest on the Property (without implying the consent of Lender to the existence or creation of any such lien or security interest), whether superior or subordinate to this Mortgage or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) The Property, or any part thereof, is subjected to waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Lender determines that it is not adequately protected from any loss, damage or risk associated therewith.

(m) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower, any general partner or any managing member, or any Indemnitor.

ARTICLE V

REMEDIES

Section 5.1 Remedies Available. If there shall occur an Event of Default under this Mortgage, then this Mortgage is subject to foreclosure as provided by law and Lender may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the Debt to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.

(b) Entry on the Property. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law, unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Lender's judgment to complete any unfinished construction on the Premises, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof, and all sums expended by Lender therefor, together with interest thereon at the Default Interest Rate, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the Debt.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue or otherwise collect the Rents and Profits, including those past due and unpaid.

(d) Appointment of Receiver. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Property for the repayment of the Debt or the solvency of Borrower or any person or persons liable for the payment of the Debt, and Borrower does hereby irrevocably consent to such appointment, waive any and all notices of and defenses to such appointment and agree not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not

impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 5.3 below. Such receivership shall, at the option of Lender, continue until full payment of all of the Debt or until title to the Property shall have passed by foreclosure sale under this Mortgage or deed in lieu of foreclosure.

(e) Foreclosure . Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions with respect to any of the Debt, pursuant to the statutes in such case made and provided, and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Lender. In the event foreclosure proceedings are instituted by Lender, all expenses incident to such proceedings, including, but not limited to, reasonable attorneys' fees and costs, shall be paid by Borrower and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. The Debt and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Lender or its assigns may become the purchaser of the Property or any part thereof.

(f) Judicial Remedies . Proceed by suit or suits, at law or in equity, instituted by or on behalf of Lender, to enforce the payment of the Debt or the other obligations of Borrower hereunder or pursuant to the Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Lender with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Lender.

(g) Other . Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

Section 5.2 Application of Proceeds. To the fullest extent permitted by law, the proceeds of any sale under this Mortgage shall be applied, to the extent funds are so available, to the following items in such order as Lender in its discretion may determine:

(a) To payment of the reasonable costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Lender's rights and remedies hereunder and under the other Loan Documents, including, but not limited to,

receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(b) To payment of all sums expended by Lender under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Interest Rate.

(c) To payment of the Debt and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Lender chooses in its sole discretion.

(d) The remainder, if any, of such funds shall be disbursed to Borrower or to the person or persons legally entitled thereto.

Section 5.3 Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney. Upon the occurrence of an Event of Default, and entry upon the Property pursuant to Section 5.1(b) hereof or appointment of a receiver pursuant to Section 5.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Lender's or the receiver's sole discretion, all at Borrower's expense, Lender or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Borrower and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Lender may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Lender's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Lender as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) initiate a cause of action for unpaid Rents and Profits, payments, income or proceeds in the name of Borrower or Lender; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign

any and all rights and powers given to Lender by this Mortgage; and (r) do any acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Lender, at the request of Lender, to pay all amounts owing under any Lease, contract, concession, license or other agreement to Lender without proof of the Event of Default relied upon. Any such lessee or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Lender for the payment to Lender of any Rents and Profits or other sums which may be or thereafter become due under its Lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such Lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any Event of Default under this Mortgage or under any of the other Loan Documents has actually occurred or is then existing. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Borrower's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any portion of the Debt is outstanding. Any money advanced by Lender in connection with any action taken under this Section 5.3, together with interest thereon at the Default Interest Rate from the date of making such advancement by Lender until actually paid by Borrower, shall be a demand obligation owing by Borrower to Lender and shall be secured by this Mortgage and by every other instrument securing all or any portion of the Debt.

Section 5.4 Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Borrower or Borrower's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Borrower (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Premises is located.

Section 5.5 Notice to Account Debtors. Lender may, at any time after an Event of Default, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Borrower included in the Property to pay Lender directly. Borrower shall at any time or from time to time upon the request of Lender provide to Lender a current list of all such account debtors and obligors and their addresses.

Section 5.6 Cumulative Remedies. All remedies contained in this Mortgage are cumulative and Lender shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Lender and may be exercised in any order and as often as occasion therefor shall arise. No act of Lender shall be construed as an election to proceed under any particular provisions of this Mortgage to the exclusion of any other provision of this Mortgage or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Lender. No delay or failure by Lender to exercise any right or remedy under this Mortgage shall be construed to be a waiver of that right or remedy or of any Event of Default. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

Section 5.7 Payment of Expenses. Borrower shall pay on demand all of Lender's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, fees of any Rating Agency, fees related to any No-Downgrade Confirmation, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Lender until actually paid by Borrower at the Default Interest Rate, and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt.

ARTICLE VI

MISCELLANEOUS TERMS AND CONDITIONS

Section 6.1 Time of Essence. Time is of the essence with respect to all provisions of this Mortgage.

Section 6.2 Release of Mortgage. If all of the Debt be paid, then and in that event only, all rights under this Mortgage, except for those provisions hereof which by their terms survive, shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be promptly released of record by Lender in due form at Borrower's cost. No release of this Mortgage or the lien hereof shall be valid unless executed by Lender.

Section 6.3 Certain Rights of Lender. Without affecting Borrower's liability for the payment of any of the Debt, Lender may from time to time and without notice to Borrower: (a) release any person liable for the payment of the Debt; (b) extend or modify the terms of payment of the Debt; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the Debt; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Mortgage or any agreement subordinating the lien hereof.

Section 6.4 Waiver of Certain Defenses. No action for the enforcement of the lien hereof or of any provision hereof shall be subject to any defense which would not be good

and available to the party interposing the same in an action at law upon the Note or any of the other Loan Documents.

Section 6.5 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page of this Mortgage or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 6.6 Successors and Assigns; Joint and Several Liability. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Borrower and the successors and assigns of Borrower, including all successors in interest of Borrower in and to all or any part of the Property, and shall inure to the benefit of Lender, its directors, officers, shareholders, employees and agents and their respective successors and assigns and shall constitute covenants running with the land. All references in this Mortgage to Borrower or Lender shall be deemed to include all such parties' successors and assigns, and the term "Lender" as used herein shall also mean and refer to any lawful holder or owner, including pledgees and participants, of any of the Debt. If Borrower consists of more than one person or entity, each is jointly and severally liable to perform the obligations of Borrower hereunder and all representations, warranties, covenants and agreements made by Borrower hereunder are joint and several.

Section 6.7 Severability. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any 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 any other persons or circumstances.

Section 6.8 Gender. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

Section 6.9 Waiver; Discontinuance of Proceedings. Lender may waive any single Event of Default by Borrower hereunder without waiving any other prior or subsequent Event of Default. Lender may remedy any Event of Default by Borrower hereunder without

waiving the Event of Default remedied. Neither the failure by Lender to exercise, nor the delay by Lender in exercising, any right, power or remedy upon any Event of Default by Borrower hereunder shall be construed as a waiver of such Event of 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 Lender 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 Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Lender of any payment in an amount less than the amount then due on any of the Debt shall be deemed an acceptance on account only and shall not in any way affect the existence of an Event of Default. In case Lender shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right to do so and, in such an event, Borrower and Lender shall be restored to their former positions with respect to the Debt, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if the same had never been invoked.

Section 6.10 Section Headings. The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

Section 6.11 GOVERNING LAW. THIS MORTGAGE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED, **PROVIDED** THAT TO THE EXTENT THAT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING, AND **PROVIDED FURTHER** THAT THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED SHALL GOVERN AS TO THE CREATION, PRIORITY AND ENFORCEMENT OF LIENS AND SECURITY INTERESTS IN THE PROPERTY LOCATED IN SUCH STATE.

Section 6.12 Counting of Days. The term “days” when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Premises is located, the period shall be deemed to end on the next succeeding business day. The term “business day.” when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

Section 6.13 Relationship of the Parties. The relationship between Borrower and Lender is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

Section 6.14 Application of the Proceeds of the Note. 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 Lender at Borrower's request and Lender shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

Section 6.15 Unsecured Portion of Indebtedness. If any part of the Debt 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 unsecured by this Mortgage.

Section 6.16 Cross Default. An Event of Default hereunder which has not been cured within any applicable grace or cure period shall be a default under each of the other Loan Documents.

Section 6.17 Interest After Sale. In the event the Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by law, the sum for which the same shall have been sold shall, for purposes of redemption (pursuant to the laws of the state in which the Premises is located), bear interest at the Default Interest Rate.

Section 6.18 Inconsistency with Other Loan Documents. In the event of any inconsistency between the provisions hereof and the provisions in any of the other Loan Documents, it is intended that the provisions of the Note shall control over the provisions of this Mortgage, and that the provisions of this Mortgage shall control over the provisions of the Lease Assignment, the Indemnity and Guaranty Agreement, the Environmental Indemnity Agreement, and the other Loan Documents.

Section 6.19 Construction of this Document. This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

Section 6.20 No Merger. It is the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Property. It is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in such other or additional interests in or to the Property, toward the end that this Mortgage may be foreclosed as if owned by a stranger to said other or additional interests.

Section 6.21 Rights With Respect to Junior Encumbrances. Any person or entity purporting to have or to take a junior mortgage or other lien upon the Property or any interest therein shall be subject to the rights of Lender to amend, modify, increase, vary, alter or

supplement this Mortgage, the Note or any of the other Loan Documents, and to extend the maturity date of the Debt, and to increase the amount of the Debt, and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the Debt, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Mortgage losing its priority over the rights of any such junior lien.

Section 6.22 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or the principals, general partners or managing members in Borrower, or their respective creditors or property, Lender, 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 the claims of Lender allowed in such proceedings for the entire Debt at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

Section 6.23 Fixture Filing. This Mortgage shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures. This Mortgage shall also be effective as a financing statement covering minerals or the like (including oil and gas) and is to be filed for record in the real estate records of the county where the Premises is situated. The mailing address of Borrower and the address of Lender from which information concerning the security interests may be obtained are set forth in Section 2.18 above.

Section 6.24 After-Acquired Property. All property acquired by Borrower after the date of this Mortgage which by the terms of this Mortgage shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Mortgage. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further mortgages, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Mortgage.

Section 6.25 No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Lender.

Section 6.26 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Mortgage may be detached from any counterpart of this Mortgage without impairing the legal effect of any

signatures thereon and may be attached to another counterpart of this Mortgage identical in form hereto but having attached to it one or more additional signature pages.

Section 6.27 Personal Liability. Notwithstanding anything to the contrary contained in this Mortgage, the liability of Borrower and its officers, directors, general partners, managers, members and principals for the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in the Note.

Section 6.28 Recording and Filing. Borrower will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Lender shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Borrower shall reimburse Lender, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of taxes and assessments on the Property.

Section 6.29 Entire Agreement and Modifications. This Mortgage and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated. This Mortgage and the other Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

Section 6.30 Intentionally Reserved.

Section 6.31 Secondary Market. Lender may sell, transfer and deliver the Note and the Loan Documents to one or more investors in the secondary mortgage market (a "Secondary Market Transaction"). In connection with such sale, Lender may retain or assign responsibility for servicing the loan evidenced by the Note or may delegate some or all of such responsibility and/or obligations to a servicer, including, but not limited to, any subservicer or master servicer, on behalf of the Investors (as hereinafter defined). All references to Lender herein shall refer to and include, without limitation, any such servicer, to the extent applicable.

Section 6.32 Dissemination of Information. If Lender determines at any time to sell, transfer or assign the Note, this Mortgage and the other Loan Documents, and any or all servicing rights with respect thereto, or to grant participations therein (the "Participations") or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"), Lender may forward to each purchaser, transferee, Lender, servicer, participant, investor, or their respective successors in such Participations and/or Securities (collectively, the "Investors") or any rating agency rating such Securities (each a "Rating Agency"), each prospective Investor and each of the foregoing's respective counsel, all documents and information which Lender now has or may hereafter acquire relating to the Debt, to Borrower, any guarantor, any indemnitor, and the Property, which

shall have been furnished by Borrower and any Indemnitator, as Lender determines necessary or desirable.

Section 6.33 Certain Matters Relating to Property Located in the State of Connecticut . With respect to the Property which is located in the State of Connecticut, notwithstanding anything contained herein to the contrary.

(a) This Mortgage secures and Debt includes: (i) all advances made by Lender with respect to any of the Property for the payment of taxes, maintenance charges, insurance premiums or costs incurred for the protection of any of the Property or the lien of this Mortgage and (ii) all expenses incurred by Lender by reason of an Event of Default hereunder. This Mortgage shall constitute a lien on Borrower's fee interest in the Property from the time this Mortgage is left of record (or, if this is a purchase money mortgage, from the time of delivery hereof to Lender) for, among other things, all such advances and expenses, plus interest thereon, regardless of the time when such advances are made or such expenses are incurred.

(c) Borrower represents and warrants to Lender that Borrower is organized for a profit and is engaged primarily in commercial, manufacturing, industrial or other non-consumer pursuits (within the meaning of Section 37-9 of the Connecticut General Statutes).

(d) Borrower represents and warrants to Lender that no part of the Premises has, at any time during the period of three (3) years immediately preceding the date of this Mortgage, been included in the "property description" of any real estate contiguous with the Property (within the meaning of Section 22a-452a(c) of the Connecticut General Statutes).

(e) BORROWER ACKNOWLEDGES THAT IT HAS THE RIGHT UNDER SECTION 52-278a ET SEQ. OF THE CONNECTICUT GENERAL STATUTES, SUBJECT TO CERTAIN LIMITATIONS, TO NOTICE OF AND HEARING ON THE RIGHT OF LENDER TO OBTAIN A PREJUDGMENT REMEDY, SUCH AS ATTACHMENT, GARNISHMENT OR REPLEVIN, UPON COMMENCING ANY LITIGATION AGAINST BORROWER. NOTWITHSTANDING SUCH RIGHT, BORROWER HEREBY WAIVES ALL RIGHTS TO NOTICE, JUDICIAL HEARING OR PRIOR COURT ORDER TO WHICH IT MIGHT OTHERWISE HAVE THE RIGHT UNDER SAID STATUTE OR UNDER ANY OTHER STATE OR FEDERAL STATUTE OR CONSTITUTION IN CONNECTION WITH THE OBTAINING BY LENDER OF ANY PREJUDGMENT REMEDY IN CONNECTION WITH THIS MORTGAGE. BORROWER FURTHER CONSENTS TO THE ISSUANCE OF ANY PREJUDGMENT REMEDIES WITHOUT A BOND AND AGREES NOT TO REQUEST OR FILE MOTIONS SEEKING TO REQUIRE THE POSTING OF A BOND UNDER PUBLIC ACT 93-431 IN CONNECTION WITH LENDER'S EXERCISE OF ANY PREJUDGMENT REMEDY. BORROWER ALSO WAIVES ANY AND ALL OBJECTION THAT IT MIGHT OTHERWISE ASSERT, NOW OR IN THE FUTURE, TO THE EXERCISE OR USE BY LENDER OF ANY RIGHT OF SETOFF, REPOSSESSION OR SELF HELP AS MAY PRESENTLY

EXIST UNDER STATUTE OR COMMON LAW, AND TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISEMENT, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.

(f) Borrower hereby waives, for itself or any of its assigns who assume this Mortgage, any right it may have under Section 49-2(c)(7) of the Connecticut General Statutes, as amended, or otherwise, to terminate the right to make "optional future advances" as defined under said statute, including, without limitation, advances by Lender pursuant to this Mortgage.

Section 6.34 REMIC Opinions. In the event Borrower requests Lender's consent with respect to any proposed action or Borrower proposes to take any action not otherwise requiring Lender's specific consent under the Loan Documents, which Lender determines, in its discretion, may affect (i) the "REMIC" status of Lender, its successors or assigns, or (ii) the status of this Mortgage as a "qualified mortgage" as defined in Section 860G of the Internal Revenue Code of 1986 (or any succeeding provision of such law), Lender reserves the right to require Borrower, at Borrower's sole expense, to obtain, from counsel satisfactory to Lender in its discretion, an opinion, in form and substance satisfactory to Lender in its discretion, that no adverse tax consequences will arise as a result of the proposed course of action.

Section 6.35 Splitting the Loan. Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages, deeds of trust and other security documents (the "Severed Loan Documents") in such denominations and priorities as Lender shall determine in its sole discretion, provided, however, that the terms, provisions and clauses of the Severed Loan Documents shall be no more adverse to Borrower than those contained in the Note, this Mortgage and the other Loan Documents. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, that Lender shall not make or execute any such documents under such power until not less than three (3) days has passed after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power.

[THE BALANCE OF THIS PAGE WAS LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, Borrower has executed this Mortgage on the day and year first written above.

BORROWER:

239 GREENWICH ASSOCIATES LIMITED
PARTNERSHIP, a Connecticut limited partnership

By: Acadia 239 Greenwich Avenue, LLC,
a Delaware limited liability company,
its general partner

By: Acadia Realty Limited Partnership,
a Delaware limited partnership,
its sole member

By: Acadia Realty Trust,
its general partner

By: /s/ Robert Masters

Robert Masters
Senior Vice President

EXHIBIT A

Legal Description

Schedule A-4

Policy No: SC032810

ALL THAT CERTAIN tract, piece or parcel of land situate, lying and being in the Town of Greenwich, County of Fairfield and State of Connecticut, said parcel of land being more particularly bounded and described as follows:

Beginning at a point formed by the intersection of the Easterly street line of Greenwich Avenue with the Southerly street line of East Elm Street, then running along said Southerly street line of East Elm Street

South 87°33'00" East, a distance of 100.00 feet

to land of the Town of Greenwich, now or formerly; then turning and running along land of said Town of Greenwich, the following courses:

South 1°25'00" West, a distance of 78.51 feet;

South 86°58'00" East, a distance of 7.86 feet;

South 2°02'00" West, a distance of 31.41 feet

to land of Nancy P. Blaygs, now or formerly; then turning and running along land of said Blaygs

North 87°33'00" West, a distance of 107.51 feet

to the Easterly street line of Greenwich Avenue; then turning and running along said Easterly street line of Greenwich Avenue

North 1°25'00" East, a distance of 110.00 feet

to the point or place of beginning, containing 11,240 square feet, more or less.

TOGETHER WITH reservations set forth in deed from Reginald A. Higgons, Stanley C. Higgins and Donald R. Higgins, dated April 25, 1966 and recorded Volume 742, Page 528 of the Greenwich Land Records.

LOAN AGREEMENT

Dated as of July 2, 2007

Between

ACADIA MERRILLVILLE REALTY, L.P.,

as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
AS LENDER

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of July 2, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement"), between BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 ("Lender") and ACADIA MERRILLVILLE REALTY, L.P., an Indiana limited partnership, having its principal place of business c/o Acadia Realty Trust, 1311 Mamaroneck Avenue - Suite 260, White Plains, New York 10605 ("Borrower").

WITNESSETH:

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 **Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"Additional Insolvency Opinion" shall have the meaning set forth in Section 4.1.30(c) hereof.

"Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

"Affiliated Manager" shall mean any Manager in which Borrower, Principal, or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

"Agent" shall mean The Bank of New York Trust Company, N.A., a national banking association, or any successor Eligible Institution acting as Agent under the Cash Management Agreement.

"Agreement" shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"ALTA" shall mean American Land Title Association, or any successor thereto.

"Anchor Tenant" shall mean J.C. Penney and T.J. Maxx.

"Annual Budget" shall mean the operating budget, including all planned Capital Expenditures, for the Property prepared by Borrower in accordance with Section 5.1.11(e) hereof for the applicable Fiscal Year or other period.

“**Approved Annual Budget**” shall have the meaning set forth in Section 5.1.11(e) hereof.

“**Assignment of Leases**” shall mean that certain first priority Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to MERS, as nominee of Lender as assignee, assigning to Lender all of Borrower’s interest in and to the Leases and Rents of the Property as security for the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Assignment of Management Agreement**” shall mean that certain Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which such Person colludes with, or otherwise assists such Person, or causes to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“**Basic Carrying Costs**” shall mean, the sum of the following costs associated with the Property for the relevant Fiscal Year or payment period: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“**BSCMI**” shall mean Bear Stearns Commercial Mortgage, Inc., a New York corporation, and its successors in interest.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York, or the place of business of any Servicer are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions and tenant improvements).

“**Cash Management Account**” shall have the meaning set forth in [Section 2.7.2](#) hereof.

“**Cash Management Agreement**” shall mean that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Agent, Manager and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Casualty**” shall have the meaning set forth in [Section 6.2](#) hereof.

“**Casualty Consultant**” shall have the meaning set forth in [Section 6.4\(b\)\(iii\)](#) hereof.

“**Casualty Retainage**” shall have the meaning set forth in [Section 6.4\(b\)\(ix\)](#) hereof.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

“**Condemnation Proceeds**” shall have the meaning set forth in [Section 6.4\(b\)](#).

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “**Controlled**” and “**Controlling**” shall have correlative meanings.

“**Covered Disclosure Information**” shall have the meaning set forth in [Section 9.2\(b\)](#) hereof.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon and all other sums (including the Defeasance Payment Amount, any Yield Maintenance Premium and any Yield Maintenance Default Premium) due to Lender in respect of the Loan under the Note, this Agreement, the Mortgage or any other Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled interest payments due under this Agreement and the Note.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

- (a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, without deduction for (i) actual management fees incurred in connection with the operation of the Property, or (ii) amounts paid to the Reserve Funds, less (A) management fees equal to the greater of (1) assumed management fees of four percent (4 %) of Gross Income from Operations or (2) the actual management fees incurred, (B) Replacement Reserve Fund contributions equal to \$0.18 per square foot per annum of gross leasable area at the Property, and (C) tenant improvement and leasing commission expenditures equal to \$0.49 per square foot of gross leasable area at the Property; and
- (b) the denominator is the aggregate amount of principal and interest due and payable on the Note for such period utilizing an assumed thirty (30) year amortization.

“**Debt Service Coverage Ratio Determination Date**” shall mean the date that Lender determines the Debt Service Coverage Ratio in accordance with this Agreement.

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the maximum rate permitted by applicable law or (b) five percent (5%) above the Interest Rate.

“**Defeasance Date**” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

“**Defeasance Deposit**” shall mean an amount equal to the remaining principal amount of the Note, the Defeasance Payment Amount, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of Sections 2.4 and 2.5 hereof (including, without limitation, any fees and expenses of accountants, attorneys and the Rating Agencies incurred in connection therewith).

“**Defeasance Event**” shall have the meaning set forth in Section 2.5.1(a) hereof.

“**Defeasance Expiration Date**” shall mean the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust.

“**Defeasance Payment Amount**” shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

“**Disclosure Document**” shall mean a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, or such other information reasonably requested by Lender, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

“**Effective Gross Income**” shall have the meaning set forth in the definition of the term “Lockbox Trigger Event”.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least Fifty Million and 00/100 Dollars (\$50,000,000.00) and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Institution**” shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P, “P-1” by Moody’s and “F-1+” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long-term unsecured debt obligations of which are rated at least “AA” by Fitch and S&P and “Aa2” by Moody’s).

“**Embargoed Person**” shall have the meaning set forth in [Section 5.1.23](#) hereof.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnification Agreement, dated as of the date hereof, executed by Borrower, Principal and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

“**Event of Default**” shall have the meaning set forth in [Section 8.1\(a\)](#) hereof.

“**Exchange Act**” shall have the meaning set forth in [Section 9.2\(a\)](#) hereof.

“**Exchange Act Filing**” shall mean a filing pursuant to the Exchange Act in connection with or relating to the Securitization.

“**Extraordinary Expense**” shall have the meaning set forth in [Section 5.1.11\(e\)](#) hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**GAAP**” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

“Go Dark Cure” shall mean the applicable Anchor Tenant is in occupancy, open for business for one hundred twenty (120) consecutive days (subject to isolated closings due to force majeure) and paying full contractual rent with no free rent, credit or right of offset, as evidenced by an estoppel delivered by the applicable Anchor Tenant in a form reasonably acceptable to Lender.

“Go Dark Trigger” shall mean if any Anchor Tenant ceases to continuously occupy and operate its business at its respective premises at the Property in a manner similar to the manner in which it operates its respective business as of the date hereof; provided that, a Go Dark Trigger shall not occur if the Anchor Tenant goes dark in connection with rebuilding following a Casualty or Condemnation, for store remodeling or inventory or for tenant improvements or isolated closings due to force majeure.

“Go Dark Trigger Event Period” shall mean the period of time commencing upon the occurrence of a Go Dark Trigger and expiring upon the occurrence of a Go Dark Cure.

“Governmental Authority” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“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, open for business and paying full contractual rent without right of offset or credit, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking fees, rent concessions or credits, income from vending machines business interruption or other loss of income or rental insurance proceeds or other required pass-throughs and interest on Reserve Accounts, if any, but excluding Rents from month-to-month tenants, straight line lease adjustments or tenants that are included in any Bankruptcy Action (unless such Lease has been affirmed by a non-appealable order of the bankruptcy court), sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, 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. Gross income shall not be diminished as a result of the Mortgage or the creation of any intervening estate or interest in the Property or any part thereof. Notwithstanding the foregoing, Rent from Tenants having a long term credit rating of “BBB” or its equivalent from each of the Rating Agencies that Go Dark but are paying full contractual rent shall be included in Gross Income from Operations.

“Guarantor” shall mean Acadia Realty Limited Partnership, a Delaware limited partnership.

“Guaranty” shall mean that certain Guaranty Agreement, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Improvements” shall have the meaning set forth in the granting clause of the Mortgage.

“Indebtedness” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

“Indemnified Person” shall have the meaning set forth in [Section 9.2\(b\)](#) hereof.

“Indemnifying Person” shall mean each of Borrower, Principal and Guarantor.

“Independent Director” shall mean a natural person serving as director of a corporation or manager of a limited liability company who is not at the time of initial appointment, or at any time while serving in such capacity, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director of Borrower or Principal), trustee, officer, employee, partner, member, attorney or counsel of the Borrower or Principal or any Affiliate of either of them; (b) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with the Borrower or Principal or any Affiliate of either of them; (c) a Person or other entity Controlling or under common Control with any Person excluded from serving as Independent Director under subparagraph (a) or (b); or (d) a member of the immediate family of any Person excluded from serving as Independent Director under subparagraph (a) or (b). A natural person who satisfies the foregoing definition other than subparagraph (b) shall not be disqualified from serving as an Independent Director of the Principal if such individual is an independent director provided by a nationally-recognized company that provides professional independent directors and that also provides other corporate services in the ordinary course of its business. A natural person who otherwise satisfies the foregoing definition except for being the independent director of a “special purpose entity” affiliated with Borrower or Principal shall not be disqualified from serving as an Independent Director of Borrower or Principal if such “special purpose entity” does not own a direct or indirect equity interest in Borrower or in any co-borrower and if such individual is provided by a nationally-recognized company that provides professional independent directors. For purposes of this paragraph, a “special purpose entity” is an entity, whose organizational documents contain restrictions on its activities substantially similar to those set forth in the definition of Special Purpose Entity in this Agreement.

“Initial Rollover Reserve Deposit” shall have the meaning set forth in [Section 7.4.1](#) hereof.

“Insolvency Opinion” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Levenfeld Pearlstein, LLC in connection with the Loan.

“Insurance Premiums” shall have the meaning set forth in [Section 6.1\(b\)](#) hereof.

“Insurance Proceeds” shall have the meaning set forth in [Section 6.4\(b\)](#) hereof.

“**Interest Period**” shall mean, in connection with the calculation of interest accrued with respect to any specified Payment Date including the Maturity Date, the period commencing on the first day of the prior calendar month and ending on the last day of the prior calendar month.

“**Interest Rate**” shall mean a rate of five and eight hundred seventy-seven thousandths of one percent (5.877%) per annum.

“**J.C. Penney**” shall mean the tenant under that certain Lease dated January 27, 1997 between RD Merrillville Associates, L.P., predecessor-in-interest to Acadia Merrillville Realty, L.P., as Landlord, and J.C. Penney Corporation, Inc., formerly known as J.C. Penney Company, Inc., as Tenant.

“**Lease**” shall mean 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, by or on behalf of Borrower and (a) 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 (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“**Legal Requirements**” shall mean, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower, the Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

“**Lender**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“**Liabilities**” shall have the meaning set forth in [Section 9.2\(b\)](#) hereof.

“**Licenses**” shall have the meaning set forth in [Section 4.1.22](#) hereof.

“**Lien**” shall mean, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Mortgage, the Assignment of Leases, the Environmental Indemnity, the Assignment of Management Agreement, the Guaranty, the Cash Management Agreement, and all other documents executed and/or delivered in connection with the Loan.

“**Lockbox Account**” shall have the meaning set forth in [Section 2.7.1](#) hereof.

“**Lockbox Agreement**” shall mean that certain Clearing Account Agreement dated the date hereof among Borrower, Lender and Lockbox Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to funds deposited in the Lockbox Account.

“**Lockbox Bank**” shall mean Bank of America, N.A., or any successor or permitted assigns thereof.

“**Lockbox Trigger Event**” shall mean, (a) an Event of Default shall have occurred, (b) a Material Action related to Borrower and/or the Manager, (c) a Go Dark Trigger Event Period exists, or (d) that the ratio of (i) Net Cash Flow of the Property for the preceding twelve (12) months to (ii) the annual Debt Service payable under the Loan falls below 1.05 to 1.0, as determined by Lender. For the purposes hereof, “**Net Cash Flow**” shall mean sustainable, underwritten rent and other revenues using a maximum occupancy equal to the lesser of ninety-five percent (95%) or actual occupancy (“**Effective Gross Income**”) less operating expenses including a management fee of not less than four percent (4.0%) of Effective Gross Income, annualized real estate taxes and insurance premiums, structural reserves of \$35,362 per annum and leasing commissions and tenant improvements of \$111,000 per annum.

“**Management Agreement**” shall mean, the management agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, or, if the context requires, the Replacement Management Agreement.

“**Manager**” shall mean Acadia Realty Limited Partnership, or, if the context requires a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

“**Material Action**” means, with respect to any Person, to file any insolvency or reorganization case or proceeding, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against such Person, to file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, to make any assignment for the benefit of creditors of such Person, to admit in writing such Person's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

“**Maturity Date**” shall mean August 1, 2017, or such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“MERS” shall have the meaning set forth in Section 10.25 hereof.

“Monthly Debt Service Payment Amount” shall mean an amount equal to the interest accrued on the Loan for the related Interest Period for payments 1-60, and a constant monthly payment of \$155,312.22 thereafter.

“Monthly Rollover Reserve Deposit” shall have the meaning set forth in Section 7.4.1 hereof.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Mortgage” shall mean, that certain first priority Mortgage (or Deed of Trust or Deed to Secure Debt) and Security Agreement, dated the date hereof, executed and delivered by Borrower to MERS, as nominee of Lender, as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Net Cash Flow” shall mean, for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

“Net Cash Flow Schedule” shall have the meaning set forth in Section 5.1.11(b) hereof.

“Net Operating Income” shall mean the amount obtained by subtracting Operating Expenses from Gross Income from Operations.

“Net Proceeds” shall have the meaning set forth in Section 6.4(b) hereof.

“Net Proceeds Deficiency” shall have the meaning set forth in Section 6.4(b)(vi) hereof.

“Note” shall mean that certain Promissory Note, dated the date hereof, in the principal amount of Twenty-Six Million Two Hundred Fifty Thousand and 00/100 Dollars (\$26,250,000.00), made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“O&M Agreement” shall mean that certain Operations and Maintenance Agreement, dated as of the date hereof, between Borrower and Lender given in connection with the Loan, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“Officer’s Certificate” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of the general partner or managing member of Borrower.

“Operating Expenses” shall mean the total of all expenditures, computed in accordance with GAAP, of whatever kind relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments as approved by Lender, and other similar costs, but excluding depreciation, Debt Service, Capital Expenditures and contributions to the Reserve Funds.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall have the meaning as set forth in the Mortgage.

“**Payment Date**” shall mean the first (1st) day of each calendar month during the term of the Loan or, if such day is not a Business Day, the immediately preceding Business Day.

“**Permitted Encumbrances**” shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to repay the Loan.

“**Permitted Investments**” shall have the meaning set forth in the Cash Management Agreement.

“**Permitted Release Date**” shall mean the earlier of (i) the Defeasance Expiration Date or (ii) the date that is the third (3rd) anniversary of the first Payment Date.

“**Permitted Transfer**” means any of the following: (a) any transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto, (b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto and (c) transfers permitted pursuant to Section 5.2.10(d) of this Agreement.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Personal Property**” shall have the meaning set forth in the granting clause of the Mortgage.

“**Physical Conditions Report**” shall mean, a structural engineering report prepared by a company satisfactory to Lender regarding the physical condition of the Property, satisfactory in form and substance to Lender in its sole discretion, which report shall, among other things, (a) confirm that the Property and its use complies, in all material respects, with all applicable Legal Requirements (including, without limitation, zoning, subdivision and building laws) and (b) include a copy of a final certificate of occupancy with respect to all Improvements on the Property.

“**Policies**” shall have the meaning specified in Section 6.1(b) hereof.

“**Policy**” shall have the meaning specified in [Section 6.1\(b\)](#) hereof.

“**Prepayment Rate**” shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date as most recently published in the “Treasury Bonds, Notes and Bills” section in The Wall Street Journal as of such Prepayment Rate Determination Date. If more than one issue of United States Treasury Securities has the same remaining term to the Maturity Date, the “Prepayment Rate” shall be the yield on such United States Treasury Security most recently issued as of the Prepayment Rate Determination Date. The rate so published shall control absent manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

“**Prepayment Rate Determination Date**” shall mean the date which is five (5) Business Days prior to the date that such prepayment shall be applied in accordance with the terms and provisions of [Section 2.4.1](#) hereof.

“**Principal**” shall mean the entity that is the general partner of Borrower, if Borrower is a limited partnership, or member of Borrower, if Borrower is a limited liability company (unless Borrower is a limited liability company meeting all of the requirements applicable to a single member limited liability company set forth in the definition of “Special Purpose Entity”).

“**Property**” shall mean the parcel of real property, the Improvements thereon and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the Mortgage and referred to therein as the “Property”.

“**Provided Information**” shall mean any and all financial and other information provided at any time prepared by, or on behalf of, any Indemnifying Person with respect to the Property, Borrower, Principal, Guarantor and/or Manager, including, without limitation, any financial data or financial statements required under Section 5.1.11.

“**Qualified Manager**” shall mean in the reasonable judgment of Lender, a reputable and experienced management organization (which may be an Affiliate of Borrower) possessing experience in managing properties similar in size, scope, use and value as the Property, provided, that Borrower shall have obtained (i) prior written confirmation from the applicable Rating Agencies that management of the Property by such Person will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof and (ii) if such Person is an Affiliate of Borrower, an Additional Insolvency Opinion.

“**Rating Agencies**” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender.

“**Related Entities**” shall have the meaning set forth in [Section 5.2.10\(e\)](#) hereof.

“**Related Parties**” shall have the meaning set forth in the definition of Special Purpose Entity.

“**Related Party**” shall have the meaning set forth in the definition of Special Purpose Entity.

“**REMIC Trust**” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds the Note.

“**Rents**” shall mean, all rents (including percentage rents), rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to the Property, including, without limitation, charges for electricity, oil, gas, water, steam, heat, ventilation, air-conditioning and any other energy, telecommunication, telephone, utility or similar items or time use charges, HVAC equipment charges, sprinkler charges, escalation charges, license fees, maintenance fees, charges for Taxes, Operating Expenses or other reimbursables payable to Borrower (or to the Manager, for the account of Borrower) under any Lease, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property.

“**Replacement Management Agreement**” shall mean, collectively, (a) either (i) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (ii) a management agreement with a Qualified Manager, which management agreement shall be reasonably acceptable to Lender in form and substance, provided, with respect to this subclause (ii), Lender, at its option, may require that Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that such management agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (b) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or of such other form and substance reasonably acceptable to Lender), executed and delivered to Lender by Borrower and such Qualified Manager at Borrower’s expense.

“**Replacement Reserve Account**” shall have the meaning set forth in [Section 7.3.1](#) hereof.

“**Replacement Reserve Fund**” shall have the meaning set forth in [Section 7.3.1](#) hereof.

“**Replacement Reserve Monthly Deposit**” shall have the meaning set forth in [Section 7.3.1](#) hereof.

“**Replacements**” shall have the meaning set forth in [Section 7.3.1](#) hereof.

“**Required Repair Account**” shall have the meaning set forth in [Section 7.1.1](#) hereof.

“**Required Repair Fund**” shall have the meaning set forth in [Section 7.1.1](#) hereof.

“**Required Repair**” shall have the meaning set forth in [Section 7.1.1](#) hereof.

“Reserve Funds” shall mean, collectively, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund, the Required Repair Fund, and any other escrow fund established by the Loan Documents.

“Resizing Event” shall have the meaning set forth in [Section 9.1.2](#).

“Restoration” shall mean the repair and restoration of the Property after a Casualty or Condemnation as nearly as possible to the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“Restricted Party” shall mean collectively, (a) Borrower, Principal, any Guarantor, and any Affiliated Manager and (b) any shareholder, partner, member, non-member manager, any direct or indirect legal or beneficial owner of, Borrower, Principal, any Guarantor, any Affiliated Manager or any non-member manager (excluding existing limited partners of Borrower and/or Guarantor as of the date hereof).

“Rollover Reserve Account” shall have the meaning set forth in Section 7.4.1 hereof.

“Rollover Reserve Fund” shall have the meaning set forth in Section 7.4.1 hereof.

“S&P” shall mean Standard & Poor’s Ratings Group, a division of the McGraw-Hill Companies.

“Sale or Pledge” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

“Scheduled Defeasance Payments” shall have the meaning set forth in Section 2.5.1(b) hereof.

“Securities” shall have the meaning set forth in [Section 9.1](#) hereof.

“Securities Act” shall have the meaning set forth in [Section 9.2\(a\)](#) hereof.

“Securitization” shall have the meaning set forth in [Section 9.1](#) hereof.

“Security Agreement” shall have the meaning set forth in [Section 2.5.1\(a\)\(vi\)](#) hereof.

“Servicer” shall have the meaning set forth in Section 9.5 hereof.

“Servicing Agreement” shall have the meaning set forth in Section 9.5 hereof.

“Severed Loan Documents” shall have the meaning set forth in Section 8.2(c) hereof.

“Special Purpose Entity” shall mean a corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date thereof, has complied with and shall at all times comply with the following requirements unless it has received either prior consent to do otherwise from Lender or a permitted administrative agent thereof, or, while the Loan is securitized, confirmation from each of the applicable Rating Agencies that such noncompliance would not result in the requalification, withdrawal, or downgrade of the ratings of any Securities or any class thereof:

(i) is and shall be organized solely for the purpose of (A) in the case of Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Property, entering into and performing its obligations under the Loan Documents with Lender, refinancing the Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (B) in the case of a Principal, acting as a general partner of the limited partnership that owns the Property or as member of the limited liability company that owns the Property and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) has not engaged and shall not engage in any business unrelated to (A) the acquisition, development, ownership, management or operation of the Property, or (B) in the case of a Principal, acting as general partner of the limited partnership that owns the Property or acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not owned and shall not own any real property other than, in the case of Borrower, the Property;

(iv) does not have, shall not have and at no time had any assets other than (A) in the case of Borrower, the Property and personal property necessary or incidental to its ownership and operation of the Property or (B) in the case of a Principal, its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Property and personal property necessary or incidental to its ownership of such interests;

(v) has not engaged in, sought, consented or permitted to and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger; (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents, or (C) in the case of a Principal, any transfer of its partnership or membership interests;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) if such entity is a limited partnership, has and shall have at least one general partner and has and shall have, as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability company, (B) has one Independent Director, and (C) holds a direct interest as general partner in the limited partnership of not less than 0.5% (or 0.1%, if the limited partnership is a Delaware entity);

(viii) if such entity is a corporation, has and shall have at least one (1) Independent Director, and shall not cause or permit the board of directors of such entity to take any Material Action either with respect to itself or, if the corporation is a Principal, with respect to Borrower or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two Independent Directors shall have participated in such vote and shall have voted in favor of such action;

(ix) if such entity is a limited liability company (other than limited liability company meeting all of the requirements applicable to a single-member limited liability company set forth in this definition of "Special Purpose Entity"), has and shall have at least one (1) member that is a Special Purpose Entity, that is a corporation, that has at least one (1) Independent Director and that directly owns at least one-half-of-one percent (0.5%) of the equity of the limited liability company (or 0.1% if the limited liability company is a Delaware entity);

(x) if such entity is a single-member limited liability company, (A) is and shall be a Delaware limited liability company, (B) has and shall have at least one (1) Independent Director serving as a manager of such company, (C) shall not take any Material Action and shall not cause or permit the members or managers of such entity to take any Material Action, either with respect to itself or, if the company is a Principal, with respect to Borrower, in each case unless one Independent Director then serving as a manager of the company shall have participated and consented in writing to such action, and (D) has and shall have either (1) a member which owns no economic interest in the company, has signed the company's limited liability company agreement and has no obligation to make capital contributions to the company, or (2) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(xi) has not and shall not (and, if such entity is (a) a limited liability company, has and shall have a limited liability agreement or an operating agreement, as applicable, (b) a limited partnership, has a limited partnership agreement, or (c) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity shall not) (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets; (3) amend its organizational documents with respect to the matters set forth in this definition without the consent of Lender; or (4) without the affirmative vote of one Independent Director of itself or the consent of a Principal that is a member or general partner in it: (A) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the entity or a substantial portion of its property; (C) make an assignment for the benefit of the creditors of the entity; or (D) take any action in furtherance of any of the foregoing;

(xii) has at all times been and shall at all times remain solvent and has paid and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and has maintained and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xiii) has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) has maintained and shall maintain its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is required by law to file consolidated tax returns and, if it is a corporation, has not filed and shall not file a consolidated federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;

(xv) has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) has held and shall hold its assets in its own name;

(xviii) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially-reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;

(xix) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity;

(xx) has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and shall maintain a sufficient number of employees in light of its contemplated business operations;

(xxi) has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) has not incurred any Indebtedness other than (i) acquisition financing with respect to the Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by the Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property;

(xxiii) shall have no Indebtedness other than (i) the Loan, (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of Borrower, in amounts not to exceed \$525,000 which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to this Agreement;

(xxiv) has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets for the benefit of any other Person, in each case except as permitted pursuant to this Agreement;

(xxv) has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate;

(xxvi) has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing (individually, a "Related Party" and collectively, the "Related Parties"), including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxviii) has not pledged and shall not pledge its assets to or for the benefit of any other Person other than with respect to loans secured by the Property and no such pledge remains outstanding except to Lender to secure the Loan;

(xxix) has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(xxx) has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxi) has not made and shall not make loans to any Person and has not held and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(xxxii) has not identified and shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(xxxiii) other than capital contributions and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's-length transaction with an unrelated third party;

(xxxiv) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;

(xxxv) if such entity is a corporation, has considered and shall consider the interests of its creditors in connection with all corporate actions;

(xxxvi) has not had and shall not have any of its obligations guaranteed by any Affiliate except as provided by the Loan Documents;

- (xxxvii) has not formed, acquired or held and shall not form, acquire or hold any subsidiary, except that a Principal may acquire and hold its interest in Borrower;
- (xxxviii) has complied and shall comply with all of the terms and provisions contained in its organizational documents.
- (xxxix) has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion are true;
- (xl) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;
- (xli) is, has always been and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business;
- (xlii) has paid all taxes which it owes and is not currently involved in any dispute with any taxing authority;
- (xliii) is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that resulted in a judgment against it that has not been paid in full;
- (xliv) has no judgments or Liens of any nature against it except for tax liens not yet due and the Permitted Encumbrances;
- (xlv) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and
- (xlvi) has no material contingent or actual obligations not related to the Property.

“**State**” shall mean, the State or Commonwealth in which the Property or any part thereof is located.

“**Successor Borrower**” shall have the meaning set forth in Section 2.5.3 hereof.

“**Survey**” shall mean a survey of the Property prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in Section 7.2 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

“**Threshold Amount**” shall have the meaning set forth in Section 5.1.21 hereof.

“**Title Insurance Policy**” shall mean, an ALTA mortgagee title insurance policy in the form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to the Property and insuring the lien of the Mortgage.

“**T.J. Maxx**” shall mean the tenant under that certain Lease dated August 12, 1987 between Merrillville Plaza Associates, predecessor-in-interest to Acadia Merrillville Realty, L.P., as Landlord, and The TJX Companies, Inc., as Tenant.

“**Transfer**” shall have the meaning set forth in Section 5.2.10(b) hereof.

“**Transferee**” shall have the meaning set forth in Section 5.2.10(e)(iii) hereof.

“**Transferee’s Principals**” shall mean collectively, (A) Transferee’s managing members, general partners or principal shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee..

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, (b) other non-callable “government securities” as defined in Treasury Regulations Section 1.860G-2(a)(8)(i), as amended, which will not result in a downgrade, withdrawal or qualification of the ratings for the Securities or any class thereof issued in connection with a Securitization which are then outstanding (c) issued by an agency of the United States of America only if (i) the Rating Agencies provide confirmation acceptable to Lender in its sole discretion which will not result in a downgrade, withdrawal or qualification of the ratings for the Securities or any class thereof issued in connection with a Securitization which are then outstanding and (ii) a tax opinion provided by Borrower’s counsel in form and substance acceptable to Lender in its sole discretion confirming that, if a Securitization has occurred, the REMIC trust formed pursuant to such Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code or (d) other instruments which, if a Securitization has occurred, the REMIC Trust formed pursuant to such Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code and which will not result in a downgrade, withdrawal or qualification of the ratings for the Securities or any class thereof issued in connection with a Securitization which are then outstanding.

“**Yield Maintenance Default Premium**” shall mean an amount equal to the greater of (a) five percent (5%) of the outstanding principal balance of the Loan to be prepaid or satisfied and (b) the Defeasance Payment Amount that would be required if a Defeasance Event were to occur at such time (whether or not then permitted) in an amount equal to the outstanding principal amount of the Loan to be prepaid or satisfied.

“**Yield Maintenance Premium**” shall mean an amount equal to the greater of (a) one percent (1%) of the outstanding principal of the Loan to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under the Note assuming that all outstanding principal and interest on the Loan is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount being prepaid.

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. **GENERAL TERMS**

Section 2.1 Loan Commitment; Disbursement to Borrower.

2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one (1) borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

2.1.3 The Note, Mortgage and Loan Documents. The Loan shall be evidenced by the Note and secured by the Mortgage, the Assignment of Leases and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) acquire the Property or repay and discharge any existing loans relating to the Property, (b) pay all past-due Basic Carrying Costs, if any, with respect to the Property, (c) make deposits into the Reserve Funds on the Closing Date in the amounts provided herein, (d) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (e) fund any working capital requirements of the Property and (f) distribute the balance, if any, to Borrower.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate calculated as set forth in Section 2.2.2 below. Borrower shall pay to Lender on each Payment Date the interest accrued on the Loan for the related Interest Period.

2.2.2 Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the Interest Period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year by (c) the outstanding principal balance as of the beginning of the Interest Period.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under 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 Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Loan Payment.

2.3.1 Monthly Debt Service Payments. Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from the Closing Date up to and including July 31, 2007, which interest shall be calculated in accordance with the provisions of Section 2.2 hereof and (b) on each Payment Date commencing on the Payment Date occurring in September, 2007 and thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount.

2.3.2 Payments Generally. The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include July 31, 2007. Thereafter each Interest Period shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided in this Section 2.4.1 and Section 2.4.2, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. 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. Notwithstanding anything to the contrary contained herein, commencing after the Payment Date two (2) months prior to the Maturity Date, or on any Payment Date thereafter (or on any date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole, but not in part without payment of the Yield Maintenance Premium.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to Section 6.4 hereof, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest through the end of the related Interest Period and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; provided, however, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments After Default. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a "Prepayment Date") provided no Event of Default exists and upon payment of an amount equal to the Yield Maintenance Premium. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. 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.

Section 2.5 Defeasance.

2.5.1 Voluntary Defeasance. (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntarily prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a "Defeasance Event"):

- (i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the "Defeasance Date") on which the Defeasance Event is to occur;
 - (ii) [intentionally omitted];
 - (iii) Borrower shall pay to Lender all sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;
 - (iv) Borrower shall use the Defeasance Deposit to purchase U.S. Obligations in accordance with Section 2.5.1(b) below;
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(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this Section 2.5 (the "Security Agreement");

(vi) Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of such Defeasance Event;

(vii) Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;

(viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.5.1(a) have been satisfied;

(ix) Borrower shall deliver a certificate of Borrower's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in Section 2.6 hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and/or principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Anticipated Repayment Date (the "Scheduled Defeasance Payments"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Lockbox Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this Section 2.5 and satisfy Borrower's other obligations under this Section 2.5 and Section 2.6 shall be remitted to Borrower.

2.5.2 Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 Successor Borrower. In connection with any Defeasance Event, Borrower shall establish a successor entity (the "**Successor Borrower**") which is acceptable to the Rating Agencies. Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. 60; Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Section 2.5.3, but Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 Release of Property. Except as set forth in this Section 2.6, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 Release of Property.

(a) If Borrower has elected to defease the entire Loan and the requirements of Section 2.5 and this Section 2.6 have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

2.6.2 Release on Payment in Full. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

Section 2.7 Lockbox Account/Cash Management.

2.7.1 Lockbox Account. (a) During the term of the Loan, Borrower shall establish and maintain an account (the "**Lockbox Account**") with Lockbox Bank in trust for the benefit of Lender, which Lockbox Account shall be under the sole dominion and control of Lender. The Lockbox Account shall be entitled "Acadia Merrillville Realty, L.P., as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of July 2, 2007 – Lockbox Account". Borrower hereby grants to Lender a first-priority security interest in the Lockbox Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Lockbox Account, including, without limitation, executing and filing UCC-1 Financing Statements and continuations thereof. Subject to Sections 2.7.1(c) and 2.7.2(a) hereof, Lender and Servicer shall have the right to make withdrawals from the Lockbox Account and all costs and expenses for establishing and maintaining the Lockbox Account shall be paid by Borrower. All monies now or hereafter deposited into the Lockbox Account shall be deemed additional security for the Debt.

(b) Borrower shall, or shall cause Manager, to, deliver written instructions (which shall be irrevocable for so long as the Loan is outstanding) to all tenants under Leases to deliver all Rents payable thereunder directly to the Lockbox Account. Borrower shall, and shall cause Manager, to, deposit all amounts received by Borrower or Manager, constituting Rents into the Lockbox Account within one (1) Business Day after receipt thereof.

(c) Borrower shall or shall cause Manager to, obtain from Lockbox Bank its agreement to transfer to the Cash Management Account upon the occurrence and during the continuance of a Lockbox Trigger Event, in immediately available funds by federal wire transfer all amounts on deposit in the Lockbox Account once every Business Day. If no Lockbox Trigger Event exists, all amounts on deposit in the Lockbox Account shall be disbursed to or at the direction of Borrower.

(d) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Lockbox Account to the payment of the Debt in any order in its sole discretion.

(e) The Lockbox Account shall be an Eligible Account and shall not be commingled with other monies held by Borrower or Lockbox Bank.

(f) Borrower shall not further pledge, assign or grant any security interest in the Lockbox Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Lockbox Account and/or the Lockbox Agreement (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Lockbox Account was established.

2.7.2 Cash Management Account. (a) During the term of the Loan, Borrower shall establish and maintain a segregated Eligible Account (the "**Cash Management Account**") to be held by Agent in trust and for the benefit of Lender, which Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account shall be entitled "Acadia Merrillville Realty, L.P., as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated a s of July 2, 2007 - Cash Management Account." Borrower hereby grants to Lender a first priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, executing and filing UCC-1 Financing Statements and continuations thereof. Borrower will not in any way alter or modify the Cash Management Account and will notify Lender of the account number thereof. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower.

(b) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(c) All funds on deposit in the Cash Management Account following the occurrence of an Event of Default may be applied by Lender in such order and priority as Lender shall determine.

(d) Borrower hereby agrees that Lender may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Lender shall provide notice thereof to Borrower.

2.7.3 **Payments Received Under the Cash Management Agreement.** Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to the Cash Management Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

III. CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent to Closing. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

3.1.1 **Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

3.1.2 **Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

3.1.3 **Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Mortgage, Assignment of Leases.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Mortgage and the Assignment of Leases and evidence that counterparts of the Mortgage and Assignment of Leases have been delivered to the title company for recording, in the reasonable judgment of Lender, so as to effectively create upon such recording valid and enforceable Liens upon the Property, of the requisite priority, in favor of Lender or Lender's nominee (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received the Title Insurance Policy issued by a title company acceptable to Lender and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Insurance Policy shall (i) provide coverage in amounts satisfactory to Lender, (ii) insure Lender that the Mortgage creates a valid lien on the Property of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Insurance Policy have been paid.

(c) **Survey.** Lender shall have received a title survey for the Property, certified to the title company and Lender and their successors and assigns, in form and content satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by American Land Title Association, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 1999. The survey shall reflect the same legal description contained in the Title Insurance Policy referred to in clause (b) above and shall include, among other things, a metes and bounds description of the real property comprising part of the Property reasonably satisfactory to Lender. The surveyor's seal shall be affixed to the survey and the surveyor shall provide a certification for the survey in form and substance acceptable to Lender.

(d) **Insurance.** Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its sole discretion, and evidence of the payment of all premiums payable for the existing policy period.

(e) **Environmental Reports.** Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of the Property, in each case satisfactory in form and substance to Lender.

(f) **Zoning.** Lender shall have received, at Lender's option, (i) letters or other evidence with respect to the Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws, and (ii) either (A) an ALTA 3.1 zoning endorsement for the applicable Title Insurance Policy or (B) a zoning opinion letter, in each case in substance reasonably satisfactory to Lender.

(g) **Encumbrances.** Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date with respect to the Mortgage, subject only to applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

3.1.4 Related Documents. Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

3.1.5 Delivery of Organizational Documents. On or before the Closing Date, Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, amendments (as requested by Lender), good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

3.1.6 Opinions of Borrower's Counsel. Lender shall have received opinions from Borrower's counsel (a) the Insolvency Opinion, and (b) with respect to due execution, authority, enforceability of the Loan Documents and such other matters as Lender may require, all such opinions in form, scope and substance satisfactory to Lender and Lender's counsel in their sole discretion.

3.1.7 Budgets. Borrower shall have delivered, and Lender shall have approved, the Annual Budget for the current Fiscal Year.

3.1.8 Basic Carrying Costs. Borrower shall have paid all Basic Carrying Costs relating to the Property which are in arrears, including without limitation, (a) accrued but unpaid Insurance Premiums due pursuant to the Policies, (b) currently due Taxes (including any in arrears) relating to the Property, and (c) currently due Other Charges relating to the Property, which amounts shall be funded with proceeds of the Loan.

3.1.9 Completion of Proceedings. All organizational and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

3.1.10 Payments. All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

3.1.11 Tenant Estoppels. Lender shall have received an executed tenant estoppel letter, which shall be in form and substance satisfactory to Lender, from (a) each Anchor Tenant, (b) each tenant leasing an entire building at the Property, (c) each tenant paying base rent in an amount equal to or exceeding five percent (5%) of the Gross Income from Operations from the Property occupied by such tenant and (d) disregarding the area leased by those described in clauses (a), (b) and (c), lessees of not less than seventy-five percent (75%) of the remaining gross leasable area of the Property.

3.1.12 Transaction Costs. Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of environmental reports, Physical Conditions Report, appraisals and other reports, the fees and costs of Lender's counsel and all other third party out-of-pocket expenses incurred in connection with the origination and closing of the Loan.

3.1.13 Material Adverse Change. There shall have been no material adverse change in the financial condition or business condition of Borrower, Principal, Guarantor or the Property since the date of the most recent financial statements delivered to Lender. The income and expenses of the Property, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower, Principal, Guarantor nor any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

3.1.14 Leases and Rent Roll. Lender shall have received copies of all tenant leases, which tenant leases shall be certified by Borrower as being true, correct and complete and certified copies of all ground leases affecting the Property, if any. Lender shall have received a current certified rent roll of the Property, reasonably satisfactory in form and substance to Lender.

3.1.15 Subordination and Attornment. Lender shall have received appropriate instruments acceptable to Lender subordinating all of the Leases designated by Lender to the Mortgage. Lender shall have received an agreement to attorn to Lender satisfactory to Lender from any tenant under a Lease that does not provide for such attornment by its terms.

3.1.16 Tax Lot. Lender shall have received evidence that the Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

3.1.17 Physical Conditions Report. Lender shall have received a Physical Conditions Report with respect to the Property, which report shall be issued by an engineer selected by Lender and shall be reasonably satisfactory in form and substance to Lender.

3.1.18 Management Agreement. Lender shall have received a certified copy of the Management Agreement with respect to the Property which shall be satisfactory in form and substance to Lender.

3.1.19 Appraisal. Lender shall have received an appraisal of the Property, from an appraiser selected by Lender, which appraisal shall be satisfactory in form and substance to Lender.

3.1.20 Financial Statements. Lender shall have received a balance sheet with respect to the Property for the two (2) most recent Fiscal Years and statements of income and statements of cash flows with respect to the Property for the three (3) most recent Fiscal Years, each in form and substance satisfactory to Lender.

3.1.21 Equity Contribution. Lender shall have received evidence of the required contribution of cash equity by Borrower, which evidence shall be satisfactory in form and substance to Lender.

3.1.22 Further Documents. Lender or its counsel shall have received such other documents and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. Borrower represents and warrants as of the date hereof and as of the Closing Date that:

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Property. The ownership interests in Borrower are as set forth on the organizational chart attached hereto as Schedule III.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or threatened against or affecting Borrower, Guarantor, Principal or the Property, which actions, suits or proceedings, if determined against Borrower, Guarantor, Principal or the Property, might materially adversely affect the condition (financial or otherwise) or business of Borrower, Guarantor, Principal or the condition or ownership of the Property.

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property as permitted pursuant to clause (xxiii) of the definition of "Special Purpose Entity" set forth in Section 1.1 hereof and (b) obligations under the Loan Documents.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or Borrower's ability to repay the Loan. The Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into this transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower or any constituent Person in the last seven (7) years, and neither Borrower nor any constituent Person in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any of its constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

4.1.8 Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which adversely affects, nor as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.9 No Plan Assets. Borrower does not sponsor, is not obligated to contribute to, and is not itself an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state or other statute, regulation or other restriction regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement, including but not limited to the exercise by Lender of any of its rights under the Loan Documents.

4.1.10 Compliance. To the best of Borrower's knowledge, Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. To the best of Borrower's knowledge, Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.11 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Borrower and the Property, as applicable, as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof as a retail shopping center, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower from that set forth in said financial statements.

4.1.12 Condemnation. No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

4.1.15 Not a Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

4.1.16 Separate Lots. The Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

4.1.17 Assessments. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.18 Enforceability. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and neither Borrower nor Guarantor have asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.19 No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

4.1.20 Insurance. Borrower has obtained and has delivered to Lender certified copies of the Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policy, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policy.

4.1.21 Use of Property. The Property is used exclusively for retail shopping center purposes and ancillary office uses (to the extent currently utilized therefore) and other appurtenant and related uses.

4.1.22 Certificate of Occupancy; Licenses. All certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Property as a retail shopping center (collectively, the "Licenses"), have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses necessary for the operation of the Property as a retail shopping center. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property.

4.1.23 Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to Section 6.1(a)(i) is in full force and effect with respect to the Property.

4.1.24 Physical Condition. The Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.25 Boundaries. All of the improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy.

4.1.26 Leases. The Property is not subject to any leases other than the Leases described in the rent roll attached hereto as Schedule I and made a part hereof. Borrower is the owner and lessor of landlord's interest in the Leases. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and to the best of Borrower's knowledge, there are no 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. No Rent (including security deposits) has been paid more than one (1) month in advance of its due date. To the best of Borrower's knowledge, all work to be completed by Borrower prior to the date hereof under each Lease has been performed as required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein. To the best of Borrower's knowledge, no tenant listed on Schedule I has assigned its Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No tenant under any Lease has any right or option for additional space in the Improvements. Except as otherwise disclosed by the Environmental Report (as defined in the Mortgage), no hazardous wastes or toxic substances, as defined by applicable federal, state or local statutes, rules and regulations, have been disposed, stored or treated by any tenant under any Lease on or about the leased premises nor does Borrower have any knowledge of any tenant's intention to use its leased premises for any activity which, directly or indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum product or any toxic or hazardous chemical, material, substance or waste.

4.1.27 Survey. The Survey for the Property delivered to Lender in connection with this Agreement has been prepared in accordance with the provisions of Section 3.1.3(c) hereof, and does not fail to reflect any material matter affecting the Property or the title thereto.

4.1.28 Inventory. Borrower is the owner of all of the Equipment, Fixtures and Personal Property (as such terms are defined in the Mortgage) located on or at the Property and shall not lease any Equipment, Fixtures or Personal Property other than as permitted hereunder. All of the Equipment, Fixtures and Personal Property are sufficient to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

4.1.29 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid, and, under current Legal Requirements, the Mortgage is enforceable in accordance with its terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

4.1.30 Special Purpose Entity/Separateness. (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the facts stated and all of the assumptions made in the Insolvency Opinion, including, but not limited to, in any exhibits attached thereto, are true and correct in all respects and all facts stated and all assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "**Additional Insolvency Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all respects. Borrower has complied and will comply with, and Principal has complied with, all of the assumptions made with respect to Borrower in the Insolvency Opinion. Borrower will have complied and will comply with all of the assumptions made with respect to Borrower in any Additional Insolvency Opinion. Each entity other than Borrower and Principal with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

4.1.31 Property Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

4.1.32 Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

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

4.1.34 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.35 Embargoed Person. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable have been derived from any unlawful activity with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

4.1.36 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. The Borrower is organized under the laws of the State of Indiana.

4.1.37 Loan to Value. The maximum principal amount of the Loan does not exceed eighty percent (80%) of the fair market value of the Property.

4.1.38 Mortgage Taxes. As of the date hereof, Borrower represents that it has paid all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

4.1.39 Cash Management Account. Borrower hereby represents and warrants to Lender that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code of the State of New York) in the Lockbox Account and Cash Management Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold, pledged, transferred or otherwise conveyed the Lockbox Account and Cash Management Account;

(b) Each of the Lockbox Account and Cash Management Account constitute "deposit accounts" and/or "securities accounts" within the meaning of the Uniform Commercial Code of the State of New York);

(c) Pursuant and subject to the terms hereof and the other applicable Loan Documents, the Lockbox Bank and Agent have agreed to comply with all instructions originated by Lender, without further consent by Borrower, directing disposition of the Lockbox Account and Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities; and

(d) The Lockbox Account and Cash Management Account are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to the Lockbox Bank and Agent complying with instructions with respect to the Lockbox Account and Cash Management Account from any Person other than Lender.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

V. **BORROWER COVENANTS**

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall never permit any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Mortgage. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. Borrower shall operate the Property in accordance with the terms and provisions of the O&M Agreement in all material respects. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (vi) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (vi) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower and/or Guarantor which might materially adversely affect Borrower's or Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any material adverse change in Borrower's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.6 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.8 Award and Insurance Benefits. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) out of such Insurance Proceeds.

5.1.9 Further Assurances. Borrower shall, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

5.1.10 Principal Place of Business, State of Organization. Borrower will not cause or permit any change to be made in its name, identity (including its trade name or names), place of organization or formation (as set forth in Section 4.1.36 hereof) or Borrower's corporate or partnership structure unless Borrower shall have first notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all reasonable action required by Lender for the purpose of perfecting or protecting the lien and security interests of Lender pursuant to this Agreement, the Cash Management Agreement and the other Loan Documents and, in the case of a change in Borrower's structure, without first obtaining the prior consent of Lender. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in the introductory paragraph of this Agreement. Borrower shall promptly notify Lender of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Lender of such organizational identification number.

5.1.11 Financial Reporting. (1) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire at Lender's expense unless an Event of Default shall have occurred. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's reasonable request, Borrower shall deliver to Lender such other information necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete internal copy of Borrower's annual (unaudited) financial statements covering the Property for such Fiscal Year and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include, but not be limited to, amounts representing annual Net Cash Flow, Net Operating Income, Gross Income from Operations and Operating Expenses. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year and (ii) an Officer's Certificate stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Property being reported upon and has been prepared in accordance with GAAP. Together with Borrower's annual financial statements, Borrower shall furnish to Lender an Officer's Certificate certifying as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish, or cause to be furnished, to Lender on or before forty-five (45) days after the end of March, June, September and December throughout the term of the Loan the following items, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable: (i) monthly, quarterly upon securitization and year-to-date operating statements (including Capital Expenditures) prepared for each calendar month, noting Net Operating Income, Gross Income from Operations, and Operating Expenses (not including any contributions to the Replacement Reserve Fund and the Required Repair Fund), and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar month, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods for any individual items in excess of \$10,000, all in form satisfactory to Lender; (ii) a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month accompanied by an Officers' Certificate with respect thereto; and (iii) a Net Cash Flow Schedule. In addition, such Officer's Certificate shall also state the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than sixty (60) days.

(d) Borrower will furnish, or cause to be furnished, to Lender on or before forty-five (45) days after the end March, June, September and December throughout the term of the Loan, an occupancy report for the subject month, accompanied by an Officer's Certificate stating that such report is true, correct, accurate, and complete and fairly presents the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable.

(e) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval (each such Annual Budget, an "**Approved Annual Budget**"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, the most recently Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges Notwithstanding anything to the contrary contained herein, Lender hereby approves Borrower's 2006 Annual Budget attached hereto as Schedule 5.1.11(e).

(f) In the event that, Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an "Extraordinary Expense"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval, except in the case of emergency (provided that Borrower will notify Lender promptly after such emergency).

(g) Reserved.

(h) Reserved.

(i) Reserved.

(j) Reserved.

(k) Reserved.

(l) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a diskette, and (iii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with the Securitization to such parties requesting such information in connection with such Securitization.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower will qualify to do business and will remain in good standing under the laws of the jurisdiction of its formation as and to the extent the same are required for the ownership, maintenance, management and operation of the Property. Borrower shall at all times during the term of the Loan, continue to own and/or maintain all of the Equipment, Fixtures and Personal Property which are necessary to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Mortgage and the Assignment of Leases on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Mortgage encumbering the Property is foreclosed in whole or in part or that the Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage encumbering the Property prior to or subsequent to the Mortgage in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement. (1) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Agreement, the Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall deliver to Lender upon request, tenant estoppel certificates from (i) each Anchor Tenant, (ii) each tenant leasing an entire building at the Property, (iii) each tenant paying base rent in an amount equal to or exceeding five percent (5%) of the Gross Income from Operations from the Property occupied by such tenant in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

5.1.16 Loan Proceeds. Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in [Section 2.1.4](#) hereof.

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.18 Confirmation of Representations. Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower, Principal and Guarantor as of the date of the Securitization.

5.1.19 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property, and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 Leasing Matters. Any Material Lease (except for expansions of existing Tenants pursuant to the terms of their respective Leases) with respect to the Property written after the date hereof, shall be approved by Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Upon request, Borrower shall furnish Lender with executed copies of all Leases. All renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates. All proposed Leases shall be on commercially reasonable terms and shall not contain any terms which would materially affect Lender's rights under the Loan Documents. All Leases executed after the date hereof shall provide that they are subordinate to the Mortgage and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale. Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Property involved except that no termination by Borrower or acceptance of surrender by a tenant of any Leases shall be permitted unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Property; provided, however, that no such termination or surrender of any Material Lease will be permitted without the written consent of Lender; (iii) shall not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents without Lender's prior written consent which shall not be unreasonably withheld; and (vi) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, Borrower shall not enter into a lease of all or substantially all of the Property without Lender's prior written consent. Further notwithstanding anything to the contrary contained herein, Borrower shall provide Lender at least fifteen (15) days prior notice for the approval or rejection of any proposed Lease demising over 10,000 square feet (each a "**Material Lease**"). In the event that Lender fails to respond within the required time period, such failure shall be deemed to be the consent and approval of the Material Lease by Lender if (I) Borrower has delivered to Lender all required documents and information necessary to adequately and completely evaluate the Material Lease, (II) Borrower has resubmitted the Material Lease with the notation "**IMMEDIATE RESPONSE REQUIRED, FAILURE TO RESPOND TO THIS LEASE APPROVAL REQUEST WITHIN FIFTEEN (15) BUSINESS DAYS FROM RECEIPT SHALL BE DEEMED TO BE LENDER'S APPROVAL OF THE LEASE**" prominently displayed in bold, all caps and fourteen (14) point or larger font at the top of each page of the Material Lease and the envelope containing such Material Lease and (III) Lender does not approve or reject the proposed Material Lease within fifteen (15) Business Days from the date Lender receives the resubmitted request; provided, however, in no event shall Lender's consent be deemed given without the written approval of Lender if the Lease is for 15,000 square feet or greater.

5.1.21 Alterations. Borrower shall obtain Lender's prior written consent to any alterations to any Improvements, which consent shall not be unreasonably withheld or delayed except with respect to alterations that may have a material adverse effect on Borrower's financial condition, the value of the Property or the Net Operating Income. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any alterations that will not have a material adverse effect on Borrower's financial condition, the value of the Property or the Net Operating Income, provided that such alterations are made in connection with (a) tenant improvement work performed pursuant to the terms of any Lease executed on or before the date hereof, (b) tenant improvement work performed pursuant to the terms and provisions of a Lease and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (c) alterations performed in connection with the Restoration of the Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement. If the total unpaid amounts due and payable with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) shall at any time exceed Seven Hundred Eighty Seven Thousand Five Hundred and 00/100 Dollars (\$787,500.00) (the "**Threshold Amount**"), Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization or (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by a financial institution having a rating by S&P of not less than "A-1+" if the term of such bond or letter of credit is no longer than three (3) months or, if such term is in excess of three (3) months, issued by a financial institution having a rating that is acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or class thereof in connection with any Securitization. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and Lender may apply such security from time to time at the option of Lender to pay for such alterations.

5.1.22 Operation of Property. (1) Borrower shall cause the Property to be maintained in good and safe condition and operated, in all material respects, in accordance with the Management Agreement (or Replacement Management Agreement) as applicable. In the event that the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Management Agreement with Manager or another Qualified Manager, as applicable.

(b) Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Management Agreement, and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement; and (iv) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner.

5.1.23 Embargoed Person. Borrower has performed and shall perform reasonable due diligence to insure that at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA PATRIOT Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law ("**Embargoed Person**"); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Principal or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property. (1) Borrower shall not, without Lender's prior written consent (which consent shall not be unreasonably withheld): (i) surrender, terminate, cancel, amend or modify the Management Agreement; provided, that Borrower may, without Lender's consent, replace the Manager so long as the replacement manager is a Qualified Manager pursuant to a Replacement Management Agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect.

(b) Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

5.2.2 **Liens.** Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except:

- (i) Permitted Encumbrances;
- (ii) Liens created by or permitted pursuant to the Loan Documents; and
- (iii) Liens for Taxes or Other Charges not yet due.

5.2.3 **Dissolution.** Borrower shall not (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause the Principal to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which the Principal would be dissolved, wound up or liquidated in whole or in part, or (ii) amend, modify, waive or terminate the certificate of incorporation or bylaws of the Principal, in each case, without obtaining the prior written consent of Lender or Lender's designee.

5.2.4 **Change In Business.** Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Nothing contained in this Section 5.2.4 is intended to expand the rights of Borrower contained in Section 5.2.10(d) hereof.

5.2.5 **Debt Cancellation.** Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith and for claims of less than \$20,000) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.6 **Zoning.** Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

5.2.7 **Intentionally Omitted.**

5.2.8 **Intentionally Omitted.**

5.2.9 **ERISA.** (1) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (A) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) Borrower is not subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

or

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2);

(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.2.10 Transfers. (1) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its stockholders, general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender, and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any Restricted Party do any of the following (collectively, a "Transfer"): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or (ii) permit a Sale or Pledge of an interest in any Restricted Party, other than (A) pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 5.1.20 and (B) Permitted Transfers.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of the managing agent (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.1.22 hereof.

(d) Notwithstanding the provisions of this Section 5.2.10, Lender's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) of the stock, the limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such Transfer shall result in the change of Control in a Restricted Party, and as a condition to each such Transfer, Lender shall receive not less than thirty (30) days prior notice of such proposed Transfer. If after giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in a Restricted Party are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) direct or indirect interest in such Restricted Party as of the Closing Date, Borrower shall, no less than thirty (30) days prior to the effective date of any such Transfer, deliver to Lender an Additional Insolvency Opinion acceptable to Lender and the Rating Agencies. In addition, at all times, (a) Acadia Realty Trust or their respective Permitted Transferees must continue to Control Borrower, Guarantor and Manager, if any, and, own, directly or indirectly, in the aggregate, at least a 51% legal and beneficial interest in, Borrower, and (b) Acadia Realty Trust or its Permitted Transferees must continue to Control, and own, directly or indirectly, at least a 20% legal and beneficial interest in, each of Borrower, Guarantor and Manager. Notwithstanding anything to the contrary contained herein, the following shall not be deemed to be a Transfer as defined above: (i) the transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the person(s) lawfully entitled thereto, (ii) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the person(s) lawfully entitled thereto, (iii) a sale, transfer or hypothecation of a partnership, shareholder or membership interest in Borrower (or any entity with an interest in Borrower), whichever the case may be, by the current partner(s), shareholder(s) or member(s), as applicable, to an immediate family member (i.e., parent, spouses, siblings, children or grandchildren) of such partner, or shareholder or member or Principal (or a trust to the benefit of any such person) and (iv) Transfers with respect to any Person whose stocks or certificates are traded on a nationally recognized stock exchange.

(e) No consent to any assumption of the Loan shall occur on or before the first (1st) anniversary of the first (1st) Payment Date. Thereafter, Lender's consent to a one (1) time Transfer of the Property and assumption of the Loan shall not be unreasonably withheld provided that Lender receives sixty (60) days prior written notice of such Transfer and no Event of Default has occurred and is continuing, and further provided that the following additional requirements are satisfied for all Transfers other than those described in subsection (d) above:

- (i) Borrower shall pay Lender a transfer fee equal to one-half of one percent (0.50%) of the outstanding principal balance of the Loan at the time of such transfer;
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(ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Lender's counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (x) below);

(iii) The proposed transferee (the "Transferee") or Transferee's Principals must have demonstrated expertise in owning and operating properties similar in location, size, class and operation to the Property, which expertise shall be reasonably determined by Lender;

(iv) Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;

(v) Transferee, Transferee's Principals and all other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("Related Entities") must not have been party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(vi) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;

(viii) Transferee, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Lender;

(ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in Sections 4.1.30, 4.1.35, 5.1.23 and 5.2.9 of this Agreement, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and (B) all certificates, agreements and covenants reasonably required by Lender;

(x) Transferee shall be approved by the Rating Agencies selected by Lender, which approval, if required by Lender, shall take the form of a confirmation in writing from such Rating Agencies to the effect that such Transfer will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such assumption or transfer for the Securities or any class thereof issued in connection with a Securitization which are then outstanding;

(xi) Borrower or Transferee, at its sole cost and expense, shall deliver to Lender an Additional Insolvency Opinion reflecting such Transfer satisfactory in form and substance to Lender;

(xii) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty and Environmental Indemnity executed by Guarantor or execute a replacement guaranty and environmental indemnity reasonably satisfactory to Lender;

(xiii) Borrower shall deliver, at its sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the Title Policy issued on the date hereof and the Permitted Encumbrances; and

(xiv) The Property shall be managed by a Qualified Manager pursuant to a Replacement Management Agreement.

Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the Mortgage and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower.

(f) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

VI. INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

Section 6.1 **Insurance.** (1) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance ("Special Form") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for all such insurance coverage excluding windstorm and earthquake and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require and (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity;

(ii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property (as reduced to reflect expenses not incurred during a period of Restoration) for a period of at least eighteen (18) months after the date of the Casualty; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross revenues from the Property for the succeeding eighteen (18) month period. Notwithstanding the provisions of Section 2.7.1 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance, otherwise known as Owner Contractor's Protective Liability, covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate and One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all written contracts and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million Dollars and 00/100 Dollars (\$1,000,000.00);

(vii) worker's compensation and employee's liability subject to the worker's compensation laws of the applicable state;

(viii) umbrella and excess liability insurance in an amount not less than Fifty Million and 00/100 Dollars (\$50,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including, but not limited to, supplemental coverage for employer liability and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(ix) the insurance required under this Section 6.1(a) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a) above at all times during the term of the Loan; and

(x) upon sixty (60) days written notice, such other reasonable insurance, including, but not limited to, sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) hereof, shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "AA" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the Securities (one (1) of which shall be S&P if they are rating the Securities and one (1) of which will be Moody's if they are rating the Securities), or if only one (1) Rating Agency is rating the Securities, then only by such Rating Agency. The Policies described in Section 6.1 hereof (other than those strictly limited to liability protection) shall designate Lender as loss payee. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Borrower to Lender.

(c) Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 6.1(a) hereof.

(d) All Policies provided for or contemplated by Section 6.1(a) hereof, except for the Policy referenced in Section 6.1(a)(vii) of this Agreement, shall name Borrower as the insured and Lender as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days written notice to Lender and any other party named therein as an additional insured;

(iii) the issuers thereof shall give written notice to Lender if the Policy has not been renewed thirty (30) days prior to its expiration; and

(iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate after three (3) Business Days notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Lender deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Mortgage and shall bear interest at the Default Rate.

Section 6.2 **Casualty.** If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the Restoration of the Property pursuant to Section 6.4 hereof as nearly as possible to the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 hereof. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 **Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any portion of the Property is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property pursuant to Section 6.4 hereof and otherwise comply with the provisions of Section 6.4 hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 6.4

Restoration. The following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds shall be less than One Million and 00/100 Dollars (\$1,000,000.00) and the costs of completing the Restoration shall be less than One Million and 00/100 Dollars (\$1,000,000.00), the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) hereof are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) or the costs of completing the Restoration is equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 6.4. The term "Net Proceeds" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (ix) and (x) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than thirty-five percent (35%) of the total floor area of the Improvements on the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is located on such land;

(C) Leases demising in the aggregate a percentage amount equal to or greater than the Rentable Space Percentage of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Tenant, as applicable under the respective Lease, will make all necessary repairs and restorations thereto at their sole cost and expense. The term "Rentable Space Percentage" shall mean (1) in the event the Net Proceeds are Insurance Proceeds, a percentage amount equal to ninety percent (90%) and (2) in the event the Net Proceeds are Condemnation Proceeds, a percentage amount equal to ninety percent (90%);

(D) Borrower shall diligently proceed with the Restoration efforts as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

(E) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 6.1(a)(ii) hereof, if applicable, or (3) by other funds of Borrower;

(F) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Anchor Tenant Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(ii) hereof;

(G) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(H) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Property or the Improvements;

(J) the Debt Service Coverage Ratio for the Property, after giving effect to the Restoration, shall be equal to or greater than 1.20 to 1.0 (assuming a Debt Service Constant of 7.27% based upon payments of interest only);

(K) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be acceptable to Lender; and

(L) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration.

(ii) The Net Proceeds shall be held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and Other Obligations under the Loan Documents. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "Casualty Consultant"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "Casualty Retainage" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and Other Obligations under the Loan Documents.

(vii) The excess, if any, of the Net Proceeds (and the remaining balance, if any, of the Net Proceeds Deficiency) deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be deposited in the Lockbox Account to be disbursed in accordance with the Lockbox Agreement, provided no Event of Default shall have occurred and shall be continuing under the Note, this Agreement or any of the other Loan Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii) hereof may be retained and applied by Lender toward the payment of the Debt in accordance with Section 2.4.2 hereof, whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its discretion.

(d) In the event of foreclosure of the Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

VII. RESERVE FUNDS

Section 7.1 Required Repairs.

7.1.1 Deposits. Borrower shall perform the repairs at the Property, as more particularly set forth on Schedule II hereto (such repairs hereinafter referred to as "**Required Repairs**"). Borrower shall complete the Required Repairs on or before the required deadline for each repair as set forth on Schedule II. It shall be an Event of Default under this Agreement if (a) Borrower does not complete the Required Repairs at the Property by the required deadline for each repair as set forth on Schedule II, or (b) Borrower does not satisfy each condition contained in Section 7.1.2 hereof. Upon the occurrence of such an Event of Default, Lender, at its option, may withdraw all Required Repair Funds from the Required Repair Account and Lender may apply such funds either to completion of the Required Repairs at the Property or toward payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply Required Repair Funds shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents. On the Closing Date, Borrower shall deposit with Lender the amount for the Property set forth on such Schedule II hereto to perform the Required Repairs for the Property. Amounts so deposited with Lender shall be held by Lender in accordance with Section 7.5 hereof. Amounts so deposited shall hereinafter be referred to as the "**Required Repair Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**Required Repair Account**".

7.1.2 Release of Required Repair Funds. Lender shall disburse to Borrower the Required Repair Funds from the Required Repair Account from time to time upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender at least fifteen (15) days prior to the date on which Borrower requests such payment be made and specifies the Required Repairs to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured, (c) Lender shall have received an Officers' Certificate (i) stating that all Required Repairs to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete the Required Repairs, (ii) identifying each Person that supplied materials or labor in connection with the Required Repairs to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such Officers' Certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender's option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (e) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to make disbursements from the Required Repair Account with respect to the Property unless such requested disbursement is in an amount greater than Ten Thousand and 00/100 Dollars (\$10,000.00) (or a lesser amount if the total amount in the Required Repair Account is less than Ten Thousand and 00/100 Dollars (\$10,000.00), in which case only one disbursement of the amount remaining in the account shall be made) and such disbursement shall be made only upon satisfaction of each condition contained in this Section 7.1.2.

Section 7.2 Tax and Insurance Escrow Fund. Borrower shall pay to Lender on each Payment 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"). The Tax and Insurance Escrow Fund and the Monthly Debt Service Payment Amount, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgage. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to Section 5.1.2 hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. Any amount remaining in the Tax and Insurance Escrow Fund after the Debt has been paid in full shall be returned to Borrower. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes, Other Charges and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and Other Charges and/or thirty (30) days prior to expiration of the Policies, as the case may be. Notwithstanding the foregoing, Borrower's obligation to make monthly deposits with Lender for Insurance Premiums shall be suspended for so long as no Event of Default has occurred and is continuing and Borrower provides Lender with written evidence reasonably satisfactory to Lender that all insurance coverages required to be maintained by Borrower pursuant to the terms of this Agreement are being maintained in full force and effect through one or more blanket insurance policies (provided that any such blanket insurance policies provide the same level of coverage which would otherwise be provided by a stand-alone policy). Borrower shall provide evidence reasonably acceptable to Lender on an annual basis thirty (30) days prior to the expiration of the existing insurance that the insurance has been renewed and will provide notice of cancellation for non-payment. In the event Borrower fails to provide such evidence or an Event of Default occurs, however, Borrower will thereafter be required to make deposits with Lender for Insurance Premiums as provided herein.

Section 7.3

Replacements and Replacement Reserve.

7.3.1 **Replacement Reserve Fund.** On the Closing Date and on each Payment Date thereafter, Borrower shall pay to Lender \$3,535.19 (the "Replacement Reserve Monthly Deposit") for replacements and repairs required to be made to the Property (collectively, the "Replacements"). Amounts so deposited shall hereinafter be referred to as Borrower's "Replacement Reserve Fund" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "Replacement Reserve Account". Lender may reassess its estimate of the amount necessary for the Replacement Reserve Fund from time to time, and may increase the monthly amounts required to be deposited into the Replacement Reserve Fund upon thirty (30) days notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain the proper maintenance and operation of the Property.

7.3.2 **Disbursements from Replacement Reserve Account.** (1) Lender shall make disbursements from the Replacement Reserve Account to pay Borrower only for the costs of the Replacements. Lender shall not be obligated to make disbursements from the Replacement Reserve Account to reimburse Borrower for the costs of routine maintenance to the Property, replacements of inventory or for costs which are to be reimbursed from the Required Repair Fund.

(b) Lender shall, upon written request from Borrower and satisfaction of the requirements set forth in this Section 7.3.2, disburse to Borrower amounts from the Replacement Reserve Account necessary to pay for the actual approved costs of Replacements or to reimburse Borrower therefor, upon completion of such Replacements (or, upon partial completion in the case of Replacements made pursuant to Section 7.3.2(e) hereof) as determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve Account if a Default or an Event of Default exists.

(c) Each request for disbursement from the Replacement Reserve Account shall be in a form specified or approved by Lender and shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request Borrower shall certify that all Replacements have been made in accordance with all applicable Legal Requirements of any Governmental Authority having jurisdiction over the Property. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided and, unless Lender has agreed to issue joint checks as described below in connection with a particular Replacement, each request shall include evidence satisfactory to Lender of payment of all such amounts. Except as provided in Section 7.3.2(e) hereof, each request for disbursement from the Replacement Reserve Account shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide Lender evidence of completion of the subject Replacement satisfactory to Lender in its reasonable judgment.

(d) Borrower shall pay all invoices in connection with the Replacements with respect to which a disbursement is requested prior to submitting such request for disbursement from the Replacement Reserve Account or, at the request of Borrower, Lender will issue joint checks, payable to Borrower and the contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with a Replacement. In the case of payments made by joint check, Lender may require a waiver of lien from each Person receiving payment prior to Lender's disbursement from the Replacement Reserve Account. In addition, as a condition to any disbursement, Lender may require Borrower to obtain lien waivers from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than Twenty-five Thousand and 00/100 Dollars (\$25,000.00) for completion of its work or delivery of its materials. Any lien waiver delivered hereunder shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current reimbursement request (or, in the event that payment to such contractor, supplier, subcontractor, mechanic or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).

(e) If (i) the cost of a Replacement exceeds Twenty-five Thousand and 00/100 Dollars (\$25,000.00), (ii) the contractor performing such Replacement requires periodic payments pursuant to terms of a written contract, and (iii) Lender has approved in writing in advance such periodic payments, a request for reimbursement from the Replacement Reserve Account may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of the work, (B) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, (C) all other conditions in this Agreement for disbursement have been satisfied, (D) funds remaining in the Replacement Reserve Account are, in Lender's judgment, sufficient to complete such Replacement and other Replacements when required, and (E) if required by Lender, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than Ten Thousand and 00/100 Dollars (\$10,000.00).

7.3.3 Performance of Replacements. (1) Borrower shall make Replacements when required in order to keep the Property in condition and repair consistent with other first class, full service retail shopping centers in the same market segment in the metropolitan area in which the Property is located, and to keep the Property or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Lender reserves the right, at its option, to approve all contracts or work orders over Twenty-five Thousand and 00/100 Dollars (\$25,000.00) with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender.

(c) In the event Lender determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner, after notice and reasonable period to cure, Lender shall have the option to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve Fund toward the labor and materials necessary to complete such Replacement, upon reasonable prior notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder.

(d) In order to facilitate Lender's completion or making of such Replacements pursuant to Section 7.3.3(c) above, Borrower grants Lender the right to enter onto the Property and perform any and all work and labor necessary to complete or make such Replacements and/or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to use any funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary or desirable to complete such Replacements; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Replacements, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

(e) Nothing in this Section 7.3.3 shall: (i) make Lender responsible for making or completing any Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Lender to proceed with any Replacements; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(f) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties making Replacements pursuant to this Section 7.3.3 to enter onto the Property during normal business hours (subject to the rights of tenants under their Leases) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Property, and to complete any Replacements made pursuant to this Section 7.3.3. Borrower shall cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 7.3.3(f) or the completion of Replacements pursuant to this Section 7.3.3.

(g) Lender may require an inspection of the Property at Borrower's expense prior to making a monthly disbursement from the Replacement Reserve Account in order to verify completion of the Replacements for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and/or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amounts from the Replacement Reserve Account. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

(h) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for those Liens existing on the date of this Agreement which have been approved in writing by Lender).

(i) Before each disbursement from the Replacement Reserve Account, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Property since the date of recordation of the related Mortgage and that title to the Property is free and clear of all Liens (other than the lien of the related Mortgage and any other Liens previously approved in writing by Lender, if any).

(j) All Replacements shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(k) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Lender.

7.3.4 Failure to Make Replacements. (1) It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this Section 7.3 and such failure is not cured within thirty (30) days after notice from Lender. Upon the occurrence of such an Event of Default, Lender may use the Replacement Reserve Fund (or any portion thereof) for any purpose, including but not limited to completion of the Replacements as provided in Section 7.3.3, or for any other repair or replacement to the Property or toward payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Replacement Reserve Fund shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

(b) Nothing in this Agreement shall obligate Lender to apply all or any portion of the Replacement Reserve Fund on account of an Event of Default to payment of the Debt or in any specific order or priority.

7.3.5 Balance in the Replacement Reserve Account. The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

Section 7.4 Rollover Reserve.

7.4.1 Deposits to Rollover Reserve Fund. On the Closing Date, Borrower shall pay to Lender the sum of \$1,500,000.00 (the "**Initial Rollover Reserve Deposit**"), and then Borrower shall pay to Lender on each Payment Date the sum of \$9,250.00 (the "**Monthly Rollover Reserve Deposit**"), which amounts shall be deposited with and held by Lender for tenant improvement and leasing commission obligations incurred following the date hereof. The Initial Rollover Reserve Deposit, the Monthly Rollover Reserve Deposits and all other amounts so deposited shall hereinafter be referred to as the "**Rollover Reserve Fund**" and the account to which such amounts are held shall hereinafter be referred to as the "**Rollover Reserve Account**".

7.4.2 Withdrawal of Rollover Reserve Funds. Lender shall make disbursements from the Rollover Reserve Fund for tenant improvement and leasing commission obligations incurred by Borrower. All such expenses shall be approved by Lender in its sole discretion. Lender shall make disbursements as requested by Borrower on a quarterly basis in increments of no less than \$5,000.00 upon delivery by Borrower of Lender's standard form of draw request accompanied by copies of paid invoices for the amounts requested and, if required by Lender, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Lender may require an inspection of the Property at Borrower's expense prior to making a quarterly disbursement in order to verify completion of improvements for which reimbursement is sought.

7.4.3 Release of Rollover Reserve Funds. Upon evidence reasonably acceptable to Lender that Borrower has entered into lease extensions for terms of not less than five (5) years with both J.C. Penney and T.J. Maxx, Lender shall make a disbursement from the Rollover Reserve Fund of \$1,100,000 of the Initial Rollover Reserve Deposit.

Section 7.5 Reserve Funds, Generally. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds shall be held in an Eligible Account in Permitted Investments in accordance with the terms and provisions of the Cash Management Agreement. Interest earned on the Replacement Reserve Funds and Rollover 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. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

VIII. DEFAULTS

Section 8.1 **Event of Default.** (1) Each of the following events shall constitute an event of default hereunder (an "Event of Default"):

- (i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);
 - (ii) if any of the Taxes (other than Taxes being contested pursuant to Section 5.1.2 of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after Borrower receives notice of same;
 - (iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;
 - (iv) if Borrower Transfers or otherwise encumbers any portion of the Property without Lender's prior written consent in violation of the provisions of this Agreement and Article 6 of the Mortgage;
 - (v) if any material representation or warranty made by Borrower herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;
 - (vi) if Borrower, Principal, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;
 - (vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Principal, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Principal, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Principal, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Principal, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Principal, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;
 - (viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;
 - (ix) if Borrower breaches any covenant contained in Section 4.1.30 hereof;
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(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xiii) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of Section 9.1 hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of Section 9.1 hereof, for three (3) days after notice to Borrower from Lender;

(xiv) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xii) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days; or

(xv) if there shall be default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower or the Property, or if any other such event shall occur or condition shall exist, if the effect of such default, event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 Remedies. (a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "Severed Loan Documents") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

IX. SPECIAL PROVISIONS

Section 9.1 Securitization.

9.1.1 Sale of Notes and Securitization. Borrower acknowledges and agrees that Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a "Securitization"). At the request of Lender, and to the extent not already required to be provided by or on behalf of Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender or take other actions reasonably required by Lender, in each case in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

- (a) provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender, prospective investors and/or the Rating Agencies;
 - (b) assist in preparing descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower and approved by Lender, Principal and their respective affiliates to obtain, collect, and deliver information requested or required by Lender, prospective investors and/or the Rating Agencies;
 - (c) deliver (i) an Additional Insolvency Opinion and an opinion with respect to, due execution and enforceability with respect to the Property, Borrower, Principal, Guarantor and their respective Affiliates and the Loan Documents, including, without limitation, a so called "10b-5" opinion, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;
 - (d) if required by any prospective investor and/or any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect the Property, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;
 - (e) make such representations and warranties as of the closing date of the Securitization with respect to the Property, Borrower, Principal, Guarantor and the Loan Documents as may be reasonably requested by Lender, prospective investors and/or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents;
 - (f) execute such amendments to the Loan Documents as may be requested by Lender, prospective investors and/or the Rating Agencies to effect the Securitization;
 - (g) if requested by Lender, review any information regarding the Property, Borrower, Principal, Guarantor, Manager and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and
 - (h) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws.
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9.1.2 Loan Components. Borrower covenants and agrees that in connection with any Securitization of the Loan, upon Lender's request Borrower shall deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan or create one or more mezzanine loans (including amending Borrower's organizational structure to provide for one or more mezzanine borrowers) (each a "**Resizing Event**"). Lender agrees that such new notes or modified note or mezzanine notes shall immediately after the Resizing Event have the same initial weighted average coupon as the original note prior to such Resizing Event, notwithstanding that such new notes or modified note or mezzanine notes or may, in connection with the application of principal to such new notes or modified note or mezzanine notes, subsequently cause the weighted average spread of such new notes or modified note or mezzanine notes to change (but not increase, except that the weighted average spread may subsequently increase due to involuntary prepayments or if an Event of Default shall occur) and apply principal, interest rates and amortization of the Loan between such new components and/or mezzanine loans in a manner specified by Lender in its sole discretion such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum bond execution for the Loan. In connection with any Resizing Event, Borrower covenants and agrees to modify the Cash Management Agreement with respect to the newly created components and/or mezzanine loans.

9.1.3 Securitization Costs. All reasonable third party costs and expenses incurred by Borrower and Guarantor in connection with Borrower's complying with requests made under this Section 9.1 (including, without limitation, the fees and expenses of the Rating Agencies) shall be paid by Lender. Lender shall structure any Resizing Event in such a way as to not adversely impact any 1031 tax exchange made in connection with Borrower's acquisition of the Property.

Section 9.2 Securitization Indemnification. (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) The Indemnifying Persons agree to provide, in connection with the Securitization, an indemnification agreement (A) certifying that (i) the Indemnifying Persons have carefully examined the Disclosure Documents, including without limitation, the sections entitled “Risk Factors,” “Special Considerations,” “Description of the Mortgages,” “Description of the Mortgage Loans and Mortgaged Property,” “The Manager,” “The Borrower” and “Certain Legal Aspects of the Mortgage Loan,” and (ii) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Manager and/or the Loan) (collectively with the Provided Information, the “Covered Disclosure Information”) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) jointly and severally indemnifying Lender, BSCMI (whether or not it is the Lender), any Affiliate of BSCMI that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of BSCMI that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “Indemnified Persons”), for any losses, claims, damages, liabilities, costs or expenses (including without limitation legal fees and expenses for enforcement of these obligations (collectively, the “Liabilities”) to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities. This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification and reimbursement obligations provided for in clauses (B) and (C) above shall be effective, valid and binding obligations of the Indemnifying Persons whether or not an indemnification agreement described in clause (A) above is provided.

(c) In connection with Exchange Act Filings, the Indemnifying Persons jointly and severally agree to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against any Indemnifying Person, notify such Indemnifying Person in writing of the claim or the commencement of that action; provided, however, that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify any Indemnifying Person thereof, such Indemnifying Person shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Indemnifying Person to the Indemnified Person of its election to assume the defense of such claim or action, such Indemnifying Person shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both an Indemnifying Person, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to the Indemnifying Person, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which the Indemnifying Person is required hereunder to indemnify such Indemnified Person. No Indemnifying Person shall be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior written consent of BSCMI (which consent shall not be unreasonably withheld or delayed), no Indemnifying Person shall settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless the Indemnifying Person shall have given BSCMI reasonable prior written notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as an Indemnifying Person has complied with its obligations to defend and indemnify hereunder, such Indemnifying Person shall not be liable for any settlement made by any Indemnified Person without the consent of such Indemnifying Person (which consent shall not be unreasonably withheld or delayed).

(f) The Indemnifying Persons agree that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of the Indemnifying Persons, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) the Indemnifying Persons agree that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees actually received by the Indemnified Persons in connection with the closing of the Loan.

(g) The Indemnifying Persons agree that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. The Indemnifying Persons further agree that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and the Indemnifying Persons under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

Section 9.3 **Exculpation.** Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgage or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Pro perty, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgage and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (c) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of any of the Assignment of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Mortgage or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

- (i) fraud or intentional misrepresentation by Borrower or Principal or Guarantor in connection with the Loan;
- (ii) the gross negligence or willful misconduct of Borrower;
- (iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement or in the Mortgage concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;
- (iv) the removal or disposal of any portion of the Property after an Event of Default;
- (v) the misapplication or conversion by Borrower of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards received in connection with a Condemnation of all or a portion of the Property, (C) any Rents following an Event of Default, or (D) any Rents paid more than one month in advance;
- (vi) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Property; and
- (vii) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by the Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower (i) in the event of: (a) Borrower filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which Borrower colludes with, or otherwise assists such Person, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (c) Borrower filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) Borrower consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property; (e) Borrower making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (ii) if the first full monthly payment of principal and interest on the Note is not paid when due; (iii) if Borrower fails to maintain its status as a Single Purpose Entity, after the Guaranty Notice (as defined in the Guaranty) if Borrower fails to permit on-site inspections of the Property, fails to provide financial information, or fails to appoint a new property manager upon the request of Lender as permitted under this Agreement, each as required by, and in accordance with, the terms and provisions of this Agreement or the Mortgage; (iv) if Borrower fails to obtain Lender's prior written consent to any Indebtedness or voluntary Lien encumbering the Property; or (v) if Borrower fails to obtain Lender's prior written consent to any Transfer as required by this Agreement or the Mortgage.

Section 9.4 **Matters Concerning Manager.** If (a) an Event of Default occurs, (b) Manager shall become bankrupt or insolvent or (c) a default occurs under the Management Agreement, Borrower shall, at the request of Lender, terminate the Management Agreement and replace the Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

Section 9.5 **Servicer.** At the option of Lender, the Loan may be serviced by a servicer/trustee (any such servicer/trustee, together with its agents, nominees or designees, are collectively referred to as "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a servicing agreement (the "Servicing Agreement") between Lender and Servicer. Borrower shall not be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement or the monthly servicing fee due to Servicer under the Servicing Agreement; provided, however, that Borrower shall be responsible for expenses incurred by Lender or Servicer as set forth in Section 10.13 hereof.

X. MISCELLANEOUS

Section 10.1 **Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 **Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

National Registered Agents, Inc.,
320 North Meridian Street
Indianapolis, IN 46204

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

with a copy to: Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Paul A. Keenan, Esq.
Facsimile No.: (212) 808-7897

If to Borrower: Acadia Merrillville Realty, L.P.
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq., General Counsel
Facsimile No.: (914) 288-2139

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

Section 10.7 Trial by Jury.

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11 Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.12 Remedies of Borrower. In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 Expenses; Indemnity. (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Lockbox Account or Cash Management Account, as applicable.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (i i) the use or intended use of the proceeds of the Loan (collectively, the "Indemnified Liabilities"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 Schedules Incorporated. The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 **No Joint Venture or Partnership; No Third Party Beneficiaries.** (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 **Publicity.** All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

Section 10.18 **Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 **Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 **Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 **Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated hereunder. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 **Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Application Letter dated August 22, 2006 (as amended) between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 **Joint and Several Liability.** If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

Section 10.24 **Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property).

The rights described above in this Section 10.24 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 MERS. Mortgage Electronic Registration Systems, Inc., a Delaware corporation ("MERS"), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Security Instruments and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to "Mortgagee" shall include Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

Preparer affirmation: I affirm, under penalty of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

ACADIA MERRILLVILLE REALTY, L.P., an
Indiana limited partnership

By: Acadia Merrillville Realty, Inc., its
General Partner

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

BEAR STEARNS COMMERCIAL
MORTGAGE, INC., a New York corporation

By: /s/ Adam Ansaldi
Name: Adam Ansaldi
Title: Managing Director/Principal

JOINDER

By executing this Joinder (the "Joinder"), the undersigned ("Joinder Parties") hereby covenant, warrant and agree to comply with all of the terms and conditions set forth in Section 9.2 hereof.

1. **Waivers.** With respect to the obligations of the Joinder Parties pursuant to Section 9.2 hereof, to the fullest extent permitted by applicable law, each Joinder Party waives all rights and defenses of sureties, guarantors, accommodation parties and/or co-makers and agrees that its obligations under this Joinder shall be primary, absolute and unconditional, and that its obligations under this Joinder shall be unaffected by any of such rights or defenses, including:

(a) the unenforceability of any Loan Document against Borrower and/or any guarantor or other Joinder Party;

(b) any release or other action or inaction taken by Lender with respect to the collateral, the Loan, Borrower, any guarantor and/or other Joinder Party, whether or not the same may impair or destroy any subrogation rights of any Joinder Party, or constitute a legal or equitable discharge of any surety or indemnitor;

(c) the existence of any collateral or other security for the Loan, and any requirement that Lender pursue any of such collateral or other security, or pursue any remedies it may have against Borrower, any guarantor and/or any other Joinder Party;

(d) any requirement that Lender provide notice to or obtain a Joinder Party's consent to any modification, increase, extension or other amendment of the Loan, including the guaranteed obligations;

(e) any right of subrogation (until payment in full of the Loan, including the guaranteed obligations, and the expiration of any applicable preference period and statute of limitations for fraudulent conveyance claims);

(f) any defense based on any statute of limitations;

(g) any payment by Borrower to Lender if such payment is held to be a preference or fraudulent conveyance under bankruptcy laws or Lender is otherwise required to refund such payment to Borrower or any other party; and

(h) any voluntary or involuntary bankruptcy, receivership, insolvency, reorganization or similar proceeding affecting Borrower or any of its assets.

2. **Agreements.** With respect to the obligations of the Joinder Parties pursuant to Section 9.2 hereof, each Joinder Party further represents, warrants and agrees that:

(a) The obligations under this Joinder are enforceable against each such party and are not subject to any defenses, offsets or counterclaims;

(b) The provisions of this Joinder are for the benefit of Lender and its successors and assigns;

(c) Lender shall have the right to (i) renew, modify, extend or accelerate the Loan, (ii) pursue some or all of its remedies against Borrower, any guarantor or any Joinder Party, (iii) add, release or substitute any collateral for the Loan or party obligated thereunder, and (iv) release Borrower, any guarantor or any Joinder Party from liability, all without notice to or consent of any Joinder Party (or other Joinder Party) and without affecting the obligations of any Joinder Party (or other Joinder Party) hereunder;

(d) To the maximum extent permitted by law, each Joinder Party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury in respect of any litigation based hereon. This waiver is a material inducement to Lender to enter into this Agreement.

This Joinder shall be governed by the laws of the State of New York.

Executed as of July 2, 2007.

**ACADIA REALTY LIMITED
PARTNERSHIP**, a Delaware limited
partnership

By: Acadia Realty Trust, its General Partner

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

SCHEDULE I

(Rent Roll)

Database:	AKR_PROD	Rent Roll	Page:	1
Bldg Status:	Active only	Merrillville Plaza	Date:	6/5/2007
		6/5/2007	Time:	02:24 PM

BldgId-	Suit Id	Occupant Name	Rent Start	Expiration	GLA Sqft	Monthly Base Rent	Annual Rate PSF	Monthly Cost Recovery	Expense Stop	Monthly Other Income	Future Rent Increases		
											Cat	Date	Monthly Amount
New Leases													
0005	-05024	Sprint	12/1/2007	11/30/2012	2,956								
0005	-05014	JC Penny Co.#1433-2	2/1/2008	1/31/2013	50,000								
Vacant Suites													
0005	-05011	Vacant			3,620								
0005	-050265	Vacant			3,139								
0005	-05030	Vacant			2,413								
Occupied Suites													
0005	-05002	C&B Optical	4/4/1990	4/30/2009	8,009	9,298.93	18.57	2,126.99					
0005	-05004	DAVID'S BRIDAL	11/20/2000	11/19/2010	13,256	15,897.09	14.38	3,695.73					
0005	-05005	DISC REPLAY	8/8/1999	7/31/2009	1,984	3,224.00	19.50	748.36		FMR	8/1/2007	3,306.67	20.00
										FMR	8/1/2008	3,389.33	20.50
0005	-05006	DOTS INC. #262	11/13/1993	1/31/2009	4,026	4,278.69	12.75	1,262.16					
0005	-05009	GAMESTOP INC. ST#597	9/1/2002	8/31/2007	1,058	1,340.13	15.20	348.02					
0005	-05010	GINGISS INTERNATIONAL INC.#660	10/12/1999	11/30/2008	1,090	2,059.20	22.67	313.40		FMR	12/1/2007	2,120.96	23.35
0005	-05012	HEAVENLY HAMS	7/1/1994	6/30/2010	2,277	4,250.40	22.40	803.44					
0005	-05014	JC Penny Co.#1433-2	1/16/1998	1/31/2008	50,000	41,250.00	9.90	14,476.94					
0005	-05016	TOY'S 'R' US INC (#1199)	7/20/1988	1/31/2014	21,500	7,291.67	4.07	2,092.57		FMR	2/1/2009	7,708.33	4.30
0005	-05019	OFFICEMAX INC. ST#218	8/1/1993	7/31/2008	25,157	18,527.88	8.50	2,989.57					
0005	-05020	PIER 1 IMPORTS U.S. (#357)	11/1/1988	1/31/2009	9,143	10,686.83	14.00	1,029.55					
0005	-05021	CATHERINES STORES #5764	3/16/1989	3/31/2009	3,620	5,203.75	17.25	1,000.28					
0005	-05022	ROSS HEARING CENTER	9/1/1999	7/31/2007	1,468	2,550.84	20.85	553.95					
0005	-05023	SALLY BEAUTY CO INC #369	8/1/1988	7/31/2008	2,015	3,334.83	19.85	711.01					
0005	-05024	Sprint	11/14/2002	11/30/2007	2,958	4,434.00	18.00	1,065.99					
0005	-05025	JIMMY JOHN'S SUBS	4/29/2003	4/30/2008	2,015	3,536.33	21.06	711.01					

SCHEDULE II

(Required Repairs - Deadlines For Completion)

TABLE I - IMMEDIATE REPAIRS & SHORT TERM REPAIRS



Meriville Plaza

1942 East 9th Street

Indian, Indiana

IBI Project # 1186434

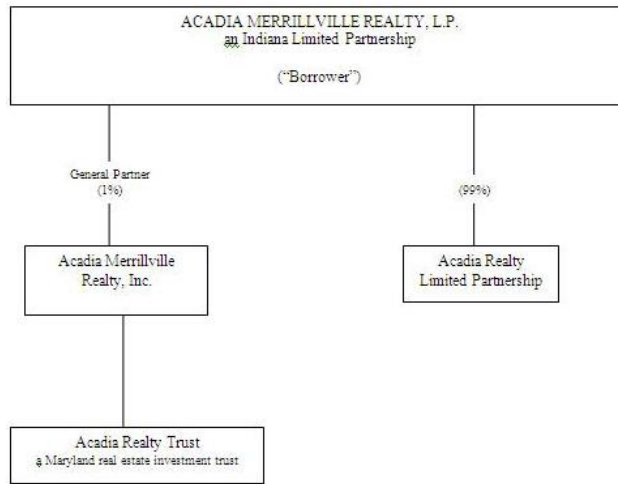
SECTION NUMBER	SECTION NAME	QUANTITY	UNIT COST	UNIT DESCRIPTION	ESTIMATED PROJECT COST	Short Term Repair?	ESTIMATED POINT TO DATE COST	COMMENTS OR ADDITIONAL DESCRIPTION
RECOMMENDED WORK								
ITE CONDITIONS								
2.1	Roof							
2.2	Roof							
2.3	Roof	5201	\$0.00	per sq ft		✓	\$7,361	Large patches, cracking, settlement, sagging and staining in the parished area noted a number of locations including the recessed areas and along the West South Wing end including the Per II repair sheet areas. Short Term Repairs are recommended for full deck replacement and overlay.
2.4	Roof	24	\$100.00	each	\$1,600			Sections of the concrete soffits appear to have been cast with original form to replace or correct previous deterioration. Discrepancies, various concrete textures throughout the site were currently observed to be existing. Immediate Repairs are recommended to repair the issues as part of other.
2.5	Roof							
MECHANICAL SYSTEMS								
3.1	Roof							
3.2	Roof							
3.3	Roof							
3.4	Roof	1	\$0.00	each	\$0			Block of roof paneling, organic growth and debris from nearby trees were observed above the roof. HVAC units at the South Wing end building and gutter along the South Wing end building. Short Term Repairs are recommended for the removal of organic growth and debris as part of routine maintenance.
3.5	Roof	1	\$1,000,000	each	\$1,000,000			Block of previously damaged roof paneling in the North Wing end building was observed during the survey. In addition, open top roof panels were observed. Immediate Repairs are recommended for the investigation and repair as recommended.
3.6	Roof	4,000	\$1.30	per sq ft	\$5,200	✓	\$6,344	Major portions of the asphalt roof covering is recommended for repair as indicated during the survey for a Short Term Repair.
3.7	Roof							
MECHANICAL SYSTEMS & COMPONENTS								
3.8	Roof							
MECHANICAL SYSTEMS								
4.1	Roof							
4.2	Roof							
4.3	Roof							
4.4	Roof							
4.5	Roof							
MECHANICAL SYSTEMS								
4.6	Roof							
TOTAL								
TOTAL PROJECT COST					\$6,486		\$12,705	
TOTAL SHORT TERM REPAIRS					\$1,600		\$7,105	
TOTAL LONG TERM REPAIRS							\$5,100	
PROPERTY AND LOAN INFORMATION								
Building Area			215,442			Report Date	20/01/2024	1/1/2024
Tract or Parcels			11			Report Type	Final	2/ Report Date

IBI Group

IBI Group

SCHEDULE III

(Organizational Chart of Borrower)



Signature Block:
Acadia Merrillville Realty, L.P., an Indiana limited partnership
By: Acadia Merrillville Realty, Inc., its general partner
By: Robert Masters, Senior Vice President

**ACQUISITION AND PROJECT LOAN
AGREEMENT**

among

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
as Lead Borrower

and

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
FORDHAM PLACE OFFICE, LLC
a Delaware limited liability company
as Borrower,

and

The LENDERS Party Hereto,
as Lenders

and

EUROHYPO AG, NEW YORK BRANCH
as Administrative Agent

Date: As of October 5, 2007

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ACQUISITION AND PROJECT LOAN AGREEMENT

ACQUISITION AND PROJECT LOAN AGREEMENT is entered into as of October 5, 2007 among ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("Lead Borrower"). FORDHAM PLACE OFFICE, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("Fordham Office", hereinafter, jointly and severally with Lead Borrower, and singly and collectively, "Borrower"); each of the lenders that is a signatory hereto identified under the caption "LENDERS" on the signature pages hereof and each lender that becomes a "Lender" after the date hereof pursuant to Section 12.23(1) (individually, a "Lender" and, collectively, the "Lenders"); and EUROHYPO AG, NEW YORK BRANCH, as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the "Administrative Agent").

R E C I T A L S

- A. Lead Borrower is the fee owner of that certain tract of land located in the County of Bronx, State of New York and being more fully described in Exhibit A attached hereto (the "Land") and the improvements currently located thereon.
- B. Borrower proposes to renovate, alter, improve, install and construct the Improvements (as hereinafter defined) on the Land and, in connection therewith has requested and applied to the Lenders for a loan in the amount of \$75,339,243.00 (the "Total Building Loan Commitment") for the purposes of paying certain of the Cost of Improvement pertaining to the Project (as hereinafter defined) including certain costs with respect to the construction and equipping of the Improvements. The Lenders have agreed to make such loan pursuant to the Building Loan Agreement, of even date herewith, entered into by Borrower, the Lenders and Administrative Agent (as the same may be modified, amended and/or supplemented and in effect from time to time, the "Building Loan Agreement")
- C. Borrower has also requested and applied to the Lenders for a loan in the amount of \$1,930,757.00 (the "Total Project Loan Commitment") for the purpose of paying certain costs pertaining to the Project, which costs do not constitute a Cost of Improvement. The Lenders are willing to make such loan on and subject to the terms and conditions hereinafter set forth.
- D. Borrower has also requested and applied to the Lenders for a loan in the amount of \$18,000,000.00 (the "Total Acquisition Loan Commitment") for the purpose of re-financing Borrower's acquisition of the Land and the improvements located thereon. The Lenders are willing to make such loan on and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

CERTAIN DEFINITIONS

Section 1.1 Certain Definitions»

. As used herein, the following terms have the meanings indicated:

(1) “**Access Laws**” has the meaning assigned to such term in Section 9.17(1).

(2) “**Acquisition Loan**” and “**Acquisition Loans**” have the respective meanings assigned in Section 2.1(1)(b).

(3) “**Acquisition Loan Commitment**” means, as to each Lender, the obligation of such Lender to make Acquisition Loans in a principal amount up to but not exceeding the amount set opposite the name of such Lender on Schedule 1 under the caption “Acquisition Loan Commitment” or, in the case of a Person that becomes a Lender pursuant to an assignment permitted under Section 12.23(1), as specified in the respective instrument of assignment pursuant to which such assignment is effected.

(4) “**Acquisition Loan Mortgage**” shall mean the Acquisition Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing in the amount of the Total Acquisition Loan Commitment and executed, dated and delivered by Borrower to Administrative Agent (on behalf of the Lenders) on the Closing Date, securing the Acquisition Loan Notes, as the same may be modified, amended and/or supplemented and in effect from time to time.

(5) “**Acquisition Loan Notes**” shall mean, collectively, the promissory note given to each of the Lenders, each note in principal amount equal to such Lender’s Acquisition Loan Commitment and substantially in the form of Exhibit C-3 attached hereto, to be executed, dated and delivered by Borrower to each of the Lenders as of the Closing Date, secured by the Acquisition Loan Mortgage, as the same may be modified, amended and/or supplemented and in effect from time to time.

(6) “**Additional Interest**” means any and all amounts which may become due and payable by Borrower in accordance with the terms and provisions of any Hedge Agreement provided by a Eurohypo Counterparty which is secured by the Mortgages in accordance with Section 9.15, which amounts shall be evidenced by and payable pursuant to the Notes in favor of Eurohypo and/or such Affiliate; provided, however, that Additional Interest shall not include any amounts which may become due and payable pursuant to any Hedge Agreement which is not secured by the Mortgages.

(7) “**Adjusted Libor Rate**” means, for any Interest Period for any LIBOR-based Loan, a rate per annum (rounded upwards, if necessary, to the nearest 1/32 of 1%) determined by Administrative Agent to be equal to (a) the Libor Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

(8) “**Administrative Agent**” has the meaning assigned to such term in the Preamble.

- (9) “**Advance Date**” has the meaning assigned to such term in Section 2.6(5).
- (10) “**Advanced Amount**” has the meaning assigned to such term in Section 14.12(2).
- (11) “**Affiliate**” means with respect to any Person, another Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse, children and siblings) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is controlled by any such member or trust. As used in this definition, “**control**” (including, with its correlative meanings, “**controlled by**” and “**under common control with**”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), provided that, in any event, any Person that owns directly or indirectly securities having 10% or more of the voting power for the election of directors or other governing body of a corporation or 10% or more of the partnership, membership or other ownership interests of any other Person (other than as a limited partner of such other Person) will be deemed to control such corporation or other Person. Notwithstanding the foregoing, no individual shall be an Affiliate of a Person solely by reason of his or her being a director, officer, trustee or employee of such Person or one of its Affiliates.
- (12) “**Agency Fee**” means the agency fee agreed to by Borrower and Administrative Agent pursuant to the Fee Letter.
- (13) “**Agreement**” means this Acquisition and Project Loan Agreement, as the same may be modified, amended and/or supplemented and in effect from time to time.
- (14) “**Annual Budget**” has the meaning assigned to such term in Section 9.23(1).
- (15) “**Applicable Law**” means any statute, law (including Environmental Laws), regulation, ordinance, rule, judgment, rule of common law, order, decree, Government Approval, approval, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereinafter in effect and, in each case, as amended (including any thereof pertaining to land use, zoning and building ordinances and codes).
- (16) “**Applicable Lending Office**” means, for each Lender and for each Type of Loan, the “Lending Office” of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan on the respective signature pages hereof 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 its Loans of such Type are to be made and maintained.
- (17) “**Applicable Margin**” shall mean, for LIBOR-based Loans, 1.75% per annum.

- (18) “**Appraisal**” means an appraisal of the Project prepared by an MAI appraiser satisfactory to Administrative Agent, which appraisal must also (a) satisfy the requirements of Title XI of the Federal Institution Reform, Recovery and Enforcement Act of 1989 and the regulations promulgated thereunder (including the appraiser with respect thereto) and (b) be otherwise in form and substance satisfactory to Administrative Agent.
- (19) “**Appraised Value**” means that certain appraised value of the Project as determined by the Appraisal.
- (20) “**Approved Annual Budget**” shall have the meaning assigned in [Section 9.23\(1\)](#).
- (21) “**Approved Fund**” shall mean any Person (other than a natural person), including, without limitation, any collateralized debt obligation, that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender, or (d) an Eligible Assignee.
- (22) “**Approved Lease**” means (a) each lease with each Existing Tenant and (b) each lease entered into after the Closing Date in accordance with the terms and conditions contained in [Section 6.2](#) as such leases and related documents may be modified or amended pursuant to the terms of this Agreement.
- (23) “**Approved Mezzanine Lender**” means Eurohypo or its subsidiary.
- (24) “**Approved Mezzanine Loan**” means a loan (i) from the Approved Mezzanine Lender to the Mezzanine Borrower and secured solely by a pledge of the direct or indirect ownership interests in the Borrower, (ii) which is evidenced and secured by the Approved Mezzanine Loan Documents, (iii) which has a term expiring on or after the Maturity Date, and (iv) which is the subject of an intercreditor agreement between Administrative Agent and Approved Mezzanine Lender, which shall be in form and content acceptable to Administrative Agent.
- (25) “**Approved Mezzanine Loan Documents**” means the documents which will evidence or secure the Approved Mezzanine Loan which shall be subject to the approval of Administrative Agent.
- (26) “**Approved Mezzanine Loan Liens**” means liens in favor of Approved Mezzanine Lender created pursuant to the Approved Mezzanine Loan Documents as security for the Approved Mezzanine Loan and approved by Administrative Agent pursuant to the terms of the subordination and intercreditor agreement to be entered into between Administrative Agent and Approved Mezzanine Lender.
- (27) “**Assignment and Assumption**” means an Assignment and Assumption duly executed by the parties thereto, in substantially the form of [Exhibit D](#) hereto and consented to by Administrative Agent in accordance with [Section 12.23\(1\)](#).

- (28) "**Authorized Officer**" means with respect to Borrower, the President or Senior Vice President of Borrower whose names appear on a certificate of incumbency executed by the Secretary of the Borrower and delivered concurrently with the execution of this Agreement, as such certificate of incumbency may be amended from time to time to identify the names of the individuals then holding such offices and certified by the Secretary of the Borrower.
- (29) "**Base Rate**" means, for any day, a rate per annum equal to the higher of (a) the Federal Funds Rate for such day plus 1/2 of 1% or (b) the Prime Rate for such day. Each change in any interest rate provided for herein based upon the Base Rate resulting from a change in the Base Rate shall take effect at the time of such change in the Base Rate.
- (30) "**Base Rate Loans**" means Loans that bear interest at rates based upon the Base Rate.
- (31) "**Best Buy Lease**" means that certain Lease, dated June 29, 2007, between Borrower and Best Buy Stores, L.P., a Virginia limited partnership.
- (32) "**Bifurcation**" has the meaning assigned to such term in Section 12.28.
- (33) "**Bond**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (34) "**Borrower**" has the meaning assigned to such term in the Preamble. With respect to the definition of "Borrower", except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.
- (35) "**Borrower Party**" means Borrower, any Guarantor or Managing Member.
- (36) "**Borrower's Architect**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (37) "**Borrower's Architect's Agreement**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (38) "**Borrower's Project Interest**" means, from and after the establishment of the Condominium, collectively, Borrower's right, title and interest in and to: (a) all Units; (b) the Improvements; (c) the Project Amenities; (d) Borrower's rights, powers, privileges and obligations (including, without limitation, maintenance obligations and rights to reimbursement with respect to the Units and Project Amenities), whether as the Declarant or otherwise, under the Condominium Declaration; and (e) all other right, title and interest of Borrower in and to the Project, together with rights and appurtenances to the interests described in clause (a) through (d) above.

(39) “**Budget**” means the budget attached as Exhibit B hereto as the same may be modified from time to time in accordance with the provisions of this Agreement.

(40) “**Budget Line Items**” has the meaning assigned to such term in Section 4.5.

(41) “**Building Loan**” and “**Building Loans**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(42) “**Building Loan Agreement**” has the meaning assigned to such term in the Recitals.

(43) “**Building Loan Commitment**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(44) “**Building Loan Mortgage**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(45) “**Building Loan Notes**” shall mean, collectively, the promissory note given to each of the Lenders, each note in principal amount equal to such Lender’s Building Loan Commitment and substantially in the form of Exhibit C-2 attached hereto, to be executed, dated and delivered by Borrower to each of the Lenders as of the Closing Date, secured by the Building Loan Mortgage, as the same may be modified, amended and/or supplemented and in effect from time to time.

(46) “**Business Day**” means (a) any day other than a Saturday, a Sunday, or other day on which commercial banks located in New York City are authorized or required by law to remain closed and (b) in connection with a borrowing of, a payment or prepayment of principal of or interest on, a Conversion of or into, or an Interest Period for, a LIBOR-based Loan or a notice by Lead Borrower with respect to any such borrowing, payment, prepayment or Conversion, the term “Business Day” shall also exclude a day on which banks are not open for dealings in Dollar deposits in the London interbank market.

(47) “**Cash Management Agreement**” means that certain Cash Management and Security Agreement which may be executed and delivered by Borrower, Administrative Agent (on behalf of the Lenders) and the Depository Bank in accordance with the terms and provisions of Section 15.1, as the same may be modified, amended and/or supplemented and in effect from time to time.

(48) “**Change in Law**” means, to the extent that the Administrative Agent, the Lenders, the Borrower or the Project is subject thereto or required to comply therewith, the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

(49) **“Change of Control”** shall mean any transaction, transfer, admission, redemption, withdrawal, change in organizational documents or structure, or otherwise, whether directly or indirectly, as a result of which (a)(i) Sponsor, whether directly or indirectly, owns less than 18% of the membership interests in and rights to distributions from Borrower, or (ii) any Person other than Managing Member has the responsibility for managing and administering the day-to day business and affairs of Borrower or (iii) in any other respects, any Person other than Sponsor directly or indirectly Control Borrower, (b) (i) Sponsor no longer directly or indirectly owns at least 18% of the membership interests in and rights to distributions from the Managing Member, or (ii) Sponsor no longer directly or indirectly has responsibility for managing and administering the day-to day business and affairs of the Managing Member or (iii) in any other respects, any Person other than Sponsor directly or indirectly Controls the Managing Member, (c)(i) anyone other than Acadia Realty Trust, whether directly or indirectly, owns less than 75% of the partnership interests in Sponsor, or (ii) any Person other than Acadia Realty Trust has the responsibility for managing and administering the day-to day business and affairs of Sponsor or (iii) in any other respects, any Person other than Acadia Realty Trust directly or indirectly Controls Sponsor, or (d) a change in the management control of Acadia Realty Trust such that Kenneth F. Bernstein is no longer the Chief Executive Officer of Acadia Realty Trust or Kenneth F. Bernstein fails to devote a substantial amount of his business time and attention in any consecutive six (6) month period to the affairs of Acadia Realty Trust; provided, however, such occurrence shall not be an Event of Default if within sixty (60) days of the occurrence thereof the Administrative Agent approves, in the exercise of its reasonable judgment, the replacement or successor management of Acadia Realty Trust. As used in this definition, **“Control”** of one Person (the “controlled Person”) by another Person (the **“controlling Person”**) shall mean the possession, directly or indirectly, by the controlling Person of the power or ability to direct or cause the direction of the management or policies of the controlled Person, whether through the ability to exercise voting power, by contract or otherwise (**“Controlled”** and **“Controlling”** each have the meanings correlative thereto).

(50) **“Change Order”** has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(51) **“Closing Date”** means the date of this Agreement.

(52) **“Co-Borrower Documents”** means collectively, the Contribution Agreement, the Co-Borrower Guaranty (Acquisitions) and the Co-Borrower Guaranty (Office).

(53) **“Co-Borrower Guaranty (Acquisitions)”** means the Co-Borrower Guaranty by Lead Borrower in favor of Administrative Agent on the Closing Date, as the same may be modified, supplemented or amended from time to time.

(54) **“Co-Borrower Guaranty (Office)”** means the Co-Borrower Guaranty by Fordham Office in favor of Administrative Agent on the Closing Date, as the same may be modified, supplemented or amended from time to time.

(55) "**Collateral Letter of Credit**" means a clean, irrevocable and unconditional standby letter of credit that is (a) issued for the account of an applicant other than Borrower, (b) issued in favor of Administrative Agent (on behalf of the Lenders), (c) issued by an issuer having a paying office in the City of New York and having a rating with respect thereto of "A" or better by S&P and an equivalent rating from Moody's, or such other issuer as shall be approved by the Administrative Agent in its sole and absolute discretion, (d) drawable, in whole or in part, from time to time, by Administrative Agent upon the presentment to the issuer of a clean sight-draft demanding such payment, (e) an "evergreen" letter of credit that initially has an expiration date of at least one (1) year from the date of deposit and is automatically renewed from year to year or one which does not expire until at least thirty (30) Business Days after the Maturity Date, and (f) freely assignable upon presentation of customary documents by Administrative Agent at no cost and expense to Administrative Agent.

(56) "**Commitment**" means, as to each Lender, the aggregate Acquisition Loan Commitment, Project Loan Commitment and Building Loan Commitment.

(57) "**Completion Date**" means the earlier of (a) twenty (20) months after the Closing Date, as such date may be extended due to Unavoidable Delays; provided, however, that in no event shall the Completion Date extend beyond the date which is twenty-four (24) months after the Closing Date, or (b) the effective date of any cancellation or termination right under any Major Lease due to the failure to complete any portion of the Project Completion Work, unless such cancellation or termination date is extended or waived by Tenant.

(58) "**Condominium**" means that certain condominium established pursuant to the Condominium Declaration.

(59) "**Condominium Act**" means Article 9-B of the Real Property Law of the State of New York (§ 339-d et seq.), and all amendments, modifications or replacements thereof or regulations with respect thereto, now or hereafter enacted or promulgated.

(60) "**Condominium Declaration**" means that certain Condominium Declaration filed with the Attorney General's Office of the State of New York and approved by Administrative Agent after the Closing Date for the purpose of creating the Condominium.

(61) "**Condominium Documents**" means the Condominium Declaration, the by-laws of any owner's association to be established pursuant to the Condominium Declaration to govern the affairs of the Condominium, and any other document, instrument or agreement creating, governing or affecting the Condominium.

(62) "**Consent and Agreement**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(63) "**Construction Consultant**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(64) "**Construction, Cost and Plan Review**" means a report of the Construction Consultant, dated October 3, 2007 and in form and substance reasonably satisfactory to Administrative Agent, as to the Budget, the Plans and Specifications, the construction plan, the Construction Schedule, and as to such other matters as Administrative Agent may reasonably request, including, without limitation, a detailed plan and cost review.

- (65) **“Construction Management Agreement”** has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (66) **“Construction Manager”** has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (67) **“Construction Schedule”** has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (68) **“Construction Work”** has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (69) **“Consumer Price Index”** means the consumer price index for the New York City area for all Urban Consumers-All Items, published monthly by the Bureau of Labor Statistics of the United States Department of Labor.
- (70) **“Contingency Fund”** has the meaning assigned to such term in Section 4.4.
- (71) **“Continue”** **“Continuation”** and **“Continued”** refer to the continuation pursuant to Section 2.2 of (a) a LIBOR-based Loan from one Interest Period to the next Interest Period or (b) a Base Rate Loan at the Base Rate.
- (72) **“Contribution Agreement”** means the Indemnity, Subrogation and Contribution Agreement among Lead Borrower, Fordham Office and Administrative Agent on the Closing Date, as the same may be modified, supplemented or amended from time to time.
- (73) **“Controlled Account”** means one or more deposit accounts established by Administrative Agent (for the benefit of the Lenders) at a Depository Bank that is acceptable to Administrative Agent, and which is established and maintained in accordance with the terms and provisions hereof.
- (74) **“Controlled Account Agreement”** shall have the meaning assigned to such term in [Section 16.1\(1\)\(a\)](#).
- (75) **“Controlled Account Collateral”** shall have the meaning assigned to such term in [Section 16.1\(3\)\(a\)](#).
- (76) **“Convert”** **“Conversion”** and **“Converted”** refer to a conversion pursuant to the terms of this Agreement of one Type of Loans into another Type of Loans, which may be accompanied by the transfer by a Lender (at its sole discretion) of a Loan from one Applicable Lending Office to another.
- (77) **“Cost of Improvement”** has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

- (78) **“Date Down Endorsement”** means any date down endorsement to the Title Policies or other evidence of date down of title acceptable to Administrative Agent in its reasonable discretion covering (a) disbursements of loan proceeds made or to be made subsequent to the date of the Title Policies and (b) the period subsequent to the date of the Title Policies.
- (79) **“Debt”** means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners, members (or other equity holders) or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person is liable, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.
- (80) **“Declarant”** means Acadia-PA East Fordham Acquisitions, LLC in its capacity as the declarant named in the Condominium Declaration.
- (81) **“Default Rate”** means the rate per annum from time to time applicable to Base Rate Loans plus 5%; provided, however, that in no event shall the Default Rate exceed the maximum rate allowed by Applicable Law.
- (82) **“Defaulting Lender”** has the meaning assigned in [Section 14.12\(1\)](#).
- (83) **“Deficiency Deposit Account”** has the meaning assigned to such term in [Section 4.3\(1\)\(b\)](#).
- (84) **“Deficiency Deposit”** has the meaning assigned in [Section 4.3\(1\)\(b\)](#).
- (85) **“Depository Bank”** means at any time any depository bank which is party to a Controlled Account Agreement.
- (86) **“Design Professional”** has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (87) **“Dollars”** and **“\$”** means lawful money of the United States of America.
- (88) **“Eligible Assignee”** means any of (i) a commercial bank organized under the Laws of the United States, or any State thereof, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined capital and surplus of at least \$250,000,000; (ii) a commercial bank organized under the laws of any other country which is a member of the Organization of Economic Cooperation and Development (“**OECD**”), or a political subdivision of any such country, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined capital and surplus of at least \$250,000,000, 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 OECD; (iii) a life insurance company organized under the Laws of any State of the United States, or organized under the Laws of any country and licensed as a life insurer by any State within the United States and having admitted assets of at least \$1,000,000,000; (iv) a nationally recognized investment banking company or other financial institution in the business of making loans, or an Affiliate thereof (other than any Person which is directly or indirectly a Borrower Party or directly or indirectly an Affiliate of any Borrower Party) organized under the Laws of any State of the United States, and licensed or qualified to conduct such business under the Laws of any such State and having (1) total assets of at least \$1,000,000,000 and (2) a net worth of at least \$250,000,000; (v) an Approved Fund; (vi) any Affiliate of Eurohypo, any other Person into which, or with which, Eurohypo is merged, consolidated or reorganized, or which is otherwise a successor to Eurohypo by operation of law, or which acquires all or substantially all of the assets of Eurohypo, any other Person which is a successor to the business operations of Eurohypo and engages in substantially the same activities, or any Affiliate of any of the foregoing; or (vii) any other Person reasonably acceptable to Borrower (to the extent Borrower’s consent to an assignment is required for an assignment to a Person other than those identified in clauses (i) through (vi) above, pursuant to [Section 12.23\(1\)](#), and provided that all other applicable conditions to such assignment set forth in [Section 12.23\(1\)](#) have been satisfied, including any applicable consent thereto to be delivered by Administrative Agent.

(89) “**Environmental Indemnity**” means that certain Environmental Indemnity Agreement by Borrower and Guarantor in favor of Administrative Agent and each of the Lenders, to be executed, dated and delivered to Administrative Agent (on behalf of the Lenders) on the Closing Date, as the same may be modified, amended and/or supplemented and in effect from time to time.

(90) “**Equity Balancing Contribution**” has the meaning assigned in [Section 4.3](#).

(91) “**Eurohypo**” means Eurohypo AG, New York Branch.

(92) “**Eurohypo Counterparty**” means Eurohypo and or (a) any Affiliate of Eurohypo, (b) any other Person into which, or with which, Eurohypo is merged, consolidated or reorganized, or which is otherwise a successor to Eurohypo by operation of law, or which acquires all or substantially all of the assets of Eurohypo, (c) any other Person which is a successor to the business operations of Eurohypo and engages in substantially the same activities, or (d) any Affiliate of any of the Persons described in [clauses \(b\) and \(c\)](#) of this definition.

(93) “**Event of Default**” has the meaning assigned in [Article 10](#).

(94) “**Excluded Taxes**” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), 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 such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by Borrower under [Section 2.7\(Z\)](#)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Applicable Lending Office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with [Section 2.7\(6\)\(e\)](#), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Applicable Lending Office (or assignment), to receive additional amounts from Borrower with respect to such withholding tax pursuant to [Section 2.7\(6\)\(a\)](#).

(95) “**Exculpated Party**” has the meaning assigned to such term in Section 13.1.

(96) “**Existing Tenant**” means (i) Sears, Roebuck and Co., a New York corporation (ii) Best Buy Stores, L.P., a Virginia limited partnership, (iii) Walgreen Eastern Co., Inc., a New York corporation and (iv) 24 Hour Fitness USA, Inc., a California corporation.

(97) “**Exit Fee**” has the meaning assigned to such term in Section 2.9.

(98) “**Extension Period**” means the First Extension Period, the Second Extension Period and/or the Third Extension Period, as applicable.

(99) “**Federal Bankruptcy Code**” shall mean Title 11 of the United States Code entitled “Bankruptcy” as amended from time to time, and any successor statutes and rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditor’s rights.

(100) “**Federal Funds Rate**” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) 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, provided that (a) if such day is not a Business Day, the Federal Funds Rate for the immediately preceding Business Day shall be applicable, as determined by Administrative Agent, or such other commercial bank as selected by Administrative Agent.

(101) “**Fee Letter**” means the letter agreement, dated the date hereof, between Borrower and Administrative Agent with respect to certain fees payable by Borrower in connection with the Loans, as the same may be modified or amended from time to time.

(102) “**First Extension Period**” has the meaning assigned to such term in Section 2.5(1).

(103) “**First Extension Notice**” has the meaning assigned to such term in Section 2.5(1)(a).

- (104) "**Flood Insurance Acts**" has the meaning assigned to such term in [Section 3.1\(1\)\(g\)](#).
- (105) "**Foreign Lender**" means any Lender that is organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.
- (106) "**GAAP**" means accounting principles generally accepted in the United States of America.
- (107) "**General Assignment**" means the Assignment of Contracts, Government Approvals and Other Project Documents, executed by Borrower in favor of Administrative Agent (on behalf of the Lenders), as the same may be modified, supplemented and/or amended from time to time.
- (108) "**Government Approval**" means any action, authorization, consent, approval, license, lease, ruling, permit, tariff, certification, exemption, filing or registration by or with any Governmental Authority, including all licenses, permits, allocations, authorizations, approvals and certificates obtained by or in the name of, or assigned to, Borrower and used in connection with the ownership, construction, operation, use or occupancy of the Project, including building permits, zoning and planning approvals, business licenses, licenses to conduct business, certificates of occupancy and all such other permits, licenses and rights.
- (109) "**Governmental Authority**" means any governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, federal, state, local, or foreign having jurisdiction over the matter or matters in question.
- (110) "**Guaranty of Completion**" means the Completion Guaranty executed by Guarantor to Administrative Agent (on behalf of the Lenders) on the Closing Date, as the same may be modified, supplemented or amended from time to time.
- (111) "**Guarantor**" means Acadia Strategic Opportunity Fund II, LLC.
- (112) "**Guarantor Documents**" means collectively, the Guaranty of Completion, the Recourse Guaranty, and the Environmental Indemnity.
- (113) "**Hard Costs**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (114) "**Hazardous Materials**" has the meaning assigned in [Section 5.1\(5\)](#).
- (115) "**Hedge Agreement**" means any interest rate hedge agreement between Borrower and Eurohypo or one or more financial institutions providing for the transfer or mitigation of interest risks either generally or under specific contingencies, as the same may be modified, amended and/or supplemented and in effect from time to time.

- (116) "**Hedge Pledge**" means that certain Pledge and Security Agreement, to be executed, dated and delivered by Borrower to Administrative Agent at any time Borrower elects to enter into a Hedge Agreement, as the same may be modified, amended and/or supplemented and in effect from time to time.
- (117) "**Improvements**" means, an approximately 285,000 square foot mixed-use retail/office building to be comprised, following completion of the Construction Work, of (a) approximately 125,000 square feet of retail space (the "**Retail Component**"), (b) an approximately 160,000 square foot, 14-story, Class A office tower (the "**Office Component**"), (c) all storage space contained therein, all signage improvements and all of the other improvements to be constructed on the Land, as more particularly described in the Plans and Specifications, and (d) the Tenant Improvement Work, to the extent required pursuant to Approved Leases.
- (118) "**In Balance**" has the meaning assigned to such term in [Section 4.3](#).
- (119) "**Indebtedness**" has the meaning assigned to such term in the Mortgages.
- (120) "**Indemnified Taxes**" means all Taxes other than Excluded Taxes.
- (121) "**Independent Manager**" means, in the case of a corporation, limited liability company or limited partnership, a director, member or manager that is a natural person who has no affiliation with any Borrower Party and who is approved by Administrative Agent.
- (122) "**Initial Equity Contribution**" means the amount of unreimbursed equity contributed by Borrower as a cash contribution to the Project including, without limitation, acquisition cost and development costs, prior to the initial funding of the Loans and as a condition thereto, which amount (subject to [Schedule 4 – Part A](#), paragraph 30) shall be not less than \$24,479,400.00 as verified by Administrative Agent pursuant to [Schedule 4 – Part A](#).
- (123) "**Insurance Premiums**" has the meaning assigned in [Section 4.4](#).
- (124) "**Insurance Proceeds Deficiency**," has the meaning assigned to such term in [Section 3.4\(5\)](#).
- (125) "**Interest Period**" means, with respect to any LIBOR-based Loan, each period commencing on the date such LIBOR-based Loan is made or Converted from a Base Rate Loan or (in the event of a Continuation) the last day of the immediately preceding Interest Period for such Loan and ending on the numerically corresponding day in the first, second, third, sixth or twelfth (if available from all Lenders) calendar month thereafter, as Lead Borrower may select as provided in [Section 2.6\(4\)](#); provided that (i) each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month; (ii) each Interest Period that would otherwise end on a day that is not a Business Day shall end on the next succeeding Business Day (or, if such next succeeding Business Day falls in the next succeeding calendar month, on the immediately preceding Business Day); (iii) no Interest Period shall have a duration of less than one month and, if the Interest Period for any LIBOR-based Loan would otherwise be a shorter period, such Loan shall bear interest at the Base Rate for Base Rate Loans; (iv) in no event shall any Interest Period extend beyond the Maturity Date; and (v) there may be no more than four (4) separate Interest Periods in respect of LIBOR-based Loans outstanding at any one time

(126) "**Interest Rate Hedge Period**" has the meaning assigned to such term in Section 9.15(1).

(127) "**Interest Reserve**" has the meaning assigned to such term in Section 4.3.

(128) "**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended.

(129) "**Land**" has the meaning assigned in the Recitals.

(130) "**Leasing Guidelines**" means the Leasing Guidelines described in Schedule 1.1(130) attached hereto.

(131) "**Lender**" and "**Lenders**" have the respective meanings assigned to such terms in the Preamble.

(132) "**Libor Rate**" means, for any Interest Period for any LIBOR-based Loan, the rate per annum appearing on Page 3750 of the Dow Jones (Telerate) Service (or on any successor or substitute page, or any successor to or substitute for such Service, as determined by Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m. London time on the date two (2) Business Days prior to the first day of such Interest Period as the rate for the offering of Dollar deposits having a term comparable to such Interest Period, provided that if such rate does not appear on such page, or if such page shall cease to be publicly available, or if the information contained on such page, in the reasonable judgment of Administrative Agent shall cease accurately to reflect the rate offered by leading banks in the London interbank market as reported by any publicly available source of similar market data selected by Administrative Agent, the Libor Rate for such Interest Period shall be determined from such substitute financial reporting service as Administrative Agent in its reasonable discretion shall determine.

(133) "**LIBOR-based Loans**" means Loans that bear interest at rates based on rates referred to in the definition of "Libor Rate."

(134) "**Lien**" means any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

(135) "**Lien Law**" means the Lien Law of the State of New York, as amended from time to time.

(136) "**Loans**" means the loans to be made by the Lenders to Borrower under this Agreement and all other amounts evidenced or secured by the Loan Documents.

(137) "**Loan Documents**" means: (a) this Agreement, (b) the Building Loan Agreement, (c) the Notes, (d) the Guarantor Documents, (e) the Security Documents, (f) the Co-Borrower Documents, (g) each Consent and Agreement, (h) any letter of credit provided to Administrative Agent in connection with the Loan (i) the Environmental Indemnity, (j) the Fee Letter, (k) the Subordination of Property Management Agreement, (l) such assignments of management agreements, contracts and other rights as may be required by Administrative Agent, (m) all other documents evidencing, securing, governing or otherwise pertaining to the Loans, and (n) all modifications, amendments, supplements or replacements of any of the foregoing.

(138) "**Loan Transactions**" has the meaning assigned to such term in [Section 2.6\(3\)](#).

(139) "**Major Contract**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(140) "**Major Contractor**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(141) "**Major Lease**" means any lease with an Existing Tenant and any other lease that (a) accounts for five percent (5%) or more of the total gross rental revenue of the Project and/or (b) is for 10,000 rentable square feet or more.

(142) "**Majority Lenders**" means Lenders holding at least 66⅔% of the aggregate outstanding principal amount of the Loans or, if the Loans shall not have been made, at least 66⅔% of the Commitments.

(143) "**Managing Member**" means Acadia-P/A Holding Company, LLC, a Delaware limited liability company, as sole member under the organizational documents of Borrower and its successors as permitted under the Loan Documents.

(144) "**Material Adverse Effect**" means a material adverse effect, as determined by Administrative Agent, in its reasonable judgment and discretion, on (a) the Project or the business, operations, financial condition, liabilities or capitalization of Borrower, (b) the ability of Borrower to perform its obligations under any of the Loan Documents to which it is a party, including the timely payment of the principal or interest on the Loans or other amounts payable in connection therewith, (c) the ability of any Borrower Party to perform its obligations under any of the Loan Documents to which it is a party, (d) the validity or enforceability of any of the Loan Documents or (e) the rights and remedies of the Lenders and Administrative Agent under any of the Loan Documents.

- (145) "**Maturity Date**" means the earlier of (a) October 5, 2009, as such date may be extended pursuant to [Section 2.5](#), or (b) any earlier date on which all of the Loans are required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Loan Documents.
- (146) "**Mezzanine Borrower(s)**" has the meaning assigned in [Section 12.28](#).
- (147) "**Mezzanine Option**" has the meaning assigned in [Section 12.28](#).
- (148) "**Minor Contract**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (149) "**Minor Contractor**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (150) "**Mold**" has the meaning assigned to such term in [Section 5.1\(6\)](#).
- (151) "**Moody's**" means Moody's Investor Services, Inc.
- (152) "**Mortgages**" means, collectively, the (a) Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, (b) the Building Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing and (c) the Acquisition Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, each executed by Borrower in favor of Administrative Agent (on behalf of the Lenders), covering the Project, as the same may be modified, amended and/or supplemented and in effect from time to time.
- (153) "**Mortgage Borrower**" has the meaning assigned in [Section 12.28\(2\)](#).
- (154) "**Mortgage Loan**" has the meaning assigned in [Section 12.28\(2\)](#).
- (155) "**Net Operating Income**" means the amount by which Operating Revenues exceed Operating Expenses.
- (156) "**Notes**" means, collectively, the Acquisition Loan Notes, the Project Loan Notes and the Building Loan Notes.
- (157) "**Notice of Default**" has the meaning assigned in [Section 14.3\(1\)](#).
- (158) "**Occupancy**" or "**Occupy**" means (a) with respect to any tenant (other than tenants and licensees covered by clause (b) below), such tenant shall have (i) accepted (or been deemed to have accepted in accordance with the terms of its lease) the delivery of all or substantially all of the space to be demised under the terms of its respective lease, including any Tenant Improvement Work to be performed by Borrower, subject in each case to Punch List Items, and (ii) commenced paying rent in accordance with the terms and conditions of its lease, and (b) with respect to any licensee of the signage or antenna tenants or licensees at the Project, such licensee or tenant, as applicable, shall have accepted the delivery of all of its respective premises, including any Tenant Improvement Work to be performed by Borrower.

(159) "**OECD**" has the meaning assigned to such term in the definition of "Eligible Assignee" herein.

(160) "**Office Component**" has the meaning assigned to such term in the definition of "Improvements" herein.

(161) "**Operating Expenses**" means all reasonable and necessary expenses of operating the Project in the ordinary course of business which are paid in cash by Borrower and which are directly associated with and fairly allocable to the Project for the applicable period, including ad valorem real estate taxes and assessments, insurance premiums, regularly scheduled tax impounds paid to Administrative Agent, maintenance costs (including, without limitation, costs required to be incurred pursuant to the Condominium Declaration), property management fees and costs not to exceed four percent (4%) of Operating Revenues, accounting, legal, and other professional fees, and other expenses incurred by Administrative Agent and reimbursed by Borrower under this Agreement and the other Loan Documents, deposits to any capital reserves required by Administrative Agent, wages, salaries, personnel expenses, but excluding debt service, capital expenditures, any of the foregoing expenses which are paid from deposits to cash reserves previously included as Operating Expenses, any payment or expense for which Borrower was or is to be reimbursed from proceeds of the Loans or insurance or by any third party, and any non-cash charges such as depreciation and amortization. Any management fee or other expense payable to Borrower or to an Affiliate of Borrower shall be included as an Operating Expense only with Administrative Agent's prior approval. Operating Expenses shall not include federal, state or local income taxes or legal and other professional fees unrelated to the operation of the Project.

(162) "**Operating Revenues**" means all cash receipts of Borrower from operation of the Project or otherwise arising in respect of the Project after the date hereof which are properly allocable to the Project for the applicable period, including receipts from leases and parking agreements, concession fees and charges and other miscellaneous operating revenues, proceeds from rental or business interruption insurance, proceeds of any loans (other than the Loans and any refinancing of the Loans) obtained by Borrower after the date hereof which are secured by the Project (less reasonable and customary expenses incurred in procuring and closing such loan and actually paid in cash to individuals or entities other than Borrower or any Affiliate of Borrower and without implying any consent of Administrative Agent or any Lender to the granting of any security for any such loans), withdrawals from cash reserves (except to the extent any operating expenses paid therewith are excluded from Operating Expenses), in all cases, determined in accordance with GAAP, but excluding (a) security deposits and earnest money deposits until they are forfeited by the depositor, (b) advance rentals (i.e. more than thirty (30) days in advance) until they are earned, (c) lump sum lease buy-out payments made by tenants in connection with any surrender, cancellation or termination of their lease, except to the extent equitably spread over the remaining months of the term of such lease, and (d) proceeds from a sale or other disposition.

(163) "**Other Taxes**" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

- (164) "**Participant**" has the meaning assigned to such term in Section 12.23(3).
- (165) "**Payment Date**" means the first Business Day of each calendar month.
- (166) "**Patriot Act**" means the USA PATRIOT Act of 2001, Pub. L. No. 107 56.
- (167) "**Payor**" has the meaning assigned to such term in Section 2.6(5).
- (168) "**Permitted Encumbrances**" means with respect to the Project, those exceptions to title set forth in the Title Policies issued to Administrative Agent pursuant to Schedule 4.
- (169) "**Permitted Transfer**" shall mean any of the following transfers, provided there is no Change of Control as a result of such transfer:
- (a) a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of Borrower or any Affiliate of Borrower, so long as Lead Borrower delivers notice to Administrative Agent as soon as practicable thereafter and that Borrower or such Affiliate is promptly reconstituted, if applicable, following the death of such member partner or shareholder;
 - (b) transfers for estate planning purposes of an individual's interest in Borrower or any Affiliate of Borrower to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower or such Affiliate is reconstituted, if required, following such transfer;
 - (c) the sale or pledge, in one or a series of transactions, of the stock, limited partnership interests or non-managing membership interests (as the case may be) in Borrower or an Affiliate of Borrower; provided, however, that no such transfers shall result in any sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of the Project, and as a condition to each such transfer, Administrative Agent shall receive no less than thirty (30) days prior written notice of such proposed transfer;
 - (d) a transfer by P/A Associates, LLC ("**P/A Associates**") of 100% of its member interest in Managing Member to Acadia Strategic Opportunity Fund II, LLC ("**Fund II**") or an Affiliate of Fund II;
 - (e) the sale, transfer, or issuance of stock in Acadia Realty Trust (the "**Trust**"), in the ordinary course of business, provided such stock is listed on the NYSE or other nationally recognized stock exchange; and
 - (f) a transfer made pursuant to Section 17.3.
- (170) "**Permitting Schedule**" has the meaning assigned to such term in Section 7.6.

(171) **“Person”** means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

(172) **“Plans and Specifications”** has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(173) **“Policy”** and **“Policies”** have the respective meanings assigned to such terms in **Section 3.1(2)**.

(174) **“Potential Default”** means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

(175) **“Prime Rate”** means the rate of interest from time to time announced by Eurohypo at its principal U.S. office as its prime commercial lending rate, it being understood that such prime commercial rate is a reference rate and does not necessarily represent the lowest or best rate being charged by Eurohypo to any customer.

(176) **“Prohibited Person”** shall mean any Person:

(a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the **“Executive Order”**);

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who is known to Borrower to commit, threaten or conspire to commit or support “terrorism”, as defined in the Executive Order;

(e) that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list; or

(f) who is known to Borrower to be an Affiliate of or affiliated with a Person listed above.

(177) **“Project”** has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

- Declaration.
- (178) "**Project Amenities**" means those areas or elements of, easements over, interests in or licenses or rights to use, those portions of the Project that are granted to Units in the Condominium
- (179) "**Project Completion Work**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (180) "**Project Costs**" means, collectively, the Project Loan Costs, the Hard Costs and the Soft Costs.
- (181) "**Project Documents**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (182) "**Project Loan**" and "**Project Loans**" have the respective meaning assigned to such terms in Section 2.1(1)(a).
- (183) "**Project Loan Budget**" shall mean the portion of the Budget designated as the Project Loan Budget, as the same may be modified from time to time in accordance with the provisions of this Agreement.
- (184) "**Project Loan Commitment**" means, as to each Lender, the obligation of such Lender to make Project Loans in a principal amount up to but not exceeding the amount set opposite the name of such Lender on Schedule 1 under the captions "Project Loan Commitment" or, in the case of a Person that becomes a Lender pursuant to an assignment permitted under Section 12.23(1), as specified in the respective instrument of assignment pursuant to which such assignment is effected.
- (185) "**Project Loan Costs**" shall mean any costs relating to the construction of the Project, including Tenant Improvement Allowances, which do not constitute a Cost of Improvement.
- (186) "**Project Loan Mortgage**" shall mean the Project Loan Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of the Total Project Loan Commitment and executed, dated and delivered by Borrower, to Administrative Agent (on behalf of the Lenders) on the Closing Date, securing the Project Loan Notes, as the same may be modified, amended and/or supplemented and in effect from time to time.
- (187) "**Project Loan Notes**" shall mean, collectively, the promissory note given to each of the Lenders, each note in principal amount equal to such Lender's Project Loan Commitment and substantially in the form of Exhibit C-1 attached hereto, to be executed, dated and delivered by Borrower to each of the Lenders as of the Closing Date, secured by the Project Loan Mortgage, as the same may be modified, amended and/or supplemented and in effect from time to time.
- (188) "**Project Work Substantial Completion Conditions**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

- (189) "**Property Management Agreement**" means that certain Property Management Agreement dated as of August 15, 2007 between Property Manager and Borrower with respect to the management of the Project by the Property Manager, together with any property management agreements entered into with future Property Managers in accordance with the terms of this Agreement.
- (190) "**Property Manager**" means Acadia-P/A Management Services, LLC, a Delaware limited liability company, which is initially the manager of the Project under the Property Management Agreement, together with any successor property managers appointed for the Project in accordance with the terms of this Agreement.
- (191) "**Property Transfer**" has the meaning assigned to such term in [Section 17.3](#).
- (192) "**Property Transfer Conditions**" has the meaning assigned to such term in [Section 17.3](#).
- (193) "**Proportionate Share**" means, with respect to each Lender, initially the percentage set forth opposite such Lender's name on [Schedule 1.1\(193\)](#) attached hereto, as such percentage may be modified from time to time pursuant to Assignment and Acceptances and as recorded in Administrative Agent's register of Lenders for the Loan.
- (194) "**Proposed Lender**" has the meaning assigned to such term in [Section 2.7\(Z\)](#).
- (195) "**Punch List Items**" has the meaning assigned to term in Section 1.1 of the Building Loan Agreement.
- (196) "**Qualified Manager**" shall mean either (x) Acadia-P/A Management Services LLC or (y) a reputable and experienced management organization possessing experience (or having principals possessing experience) of not less than ten (10) years managing projects which are similar in size, scope, class, use and value to the Project and is (or has principals currently) managing at least ten (10) properties similar in size, scope, class, use and value as the Project.
- (197) "**Real Estate Taxes**" has the meaning assigned to such term in [Section 9.3](#).
- (198) "**Recourse Guaranty**" means the Recourse Guaranty executed by Guarantor to Administrative Agent (on behalf of the Lenders) on the Closing Date, as the same may be modified, supplemented or amended from time to time.
- (199) "**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System of the United States of America (or any successor), as the same may be modified and in effect from time to time.
- (200) "**Replacement Lender**" has the meaning assigned to such term in [Section 14.12\(6\)](#).

- (201) “**Request for Loan Advance**” has the meaning assigned to such term in Section 4.2.
- (202) “**Requesting Lender**” has the meaning assigned to such term in Section 2.7(7).
- (203) “**Required Payment**” has the meaning assigned to such term in Section 2.6(5).
- (204) “**Restoration Consultant**” has the meaning assigned to such term in Section 3.4(2).
- (205) “**Retail Component**” has the meaning assigned to such term in the definition of “Improvements” herein.
- (206) “**Retainage**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (207) “**S&P**” means Standard & Poor’s Ratings Service, a division of The McGraw Hill Companies, Inc.
- (208) “**Second Extension Period**” has the meaning assigned to such term in Section 2.5(2).
- (209) “**Second Extension Notice**” has the meaning assigned to such term in Section 2.5(2)(a).
- (210) “**Security Accounts**” means, collectively, the Sweep Account and the Deficiency Deposit Account.
- (211) “**Security Account Collateral**” has the meaning assigned to such term in Section 15.2(1).
- (212) “**Security Documents**” means collectively, the Mortgages, the Construction Manager’s Consent, the Subordination of Property Management Agreement, any Controlled Account Agreement and all Uniform Commercial Code financing statements filed or to be filed to perfect any security interests arising under any of the Loan Documents.
- (213) “**Single Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof, unless otherwise approved in writing by Administrative Agent:

(a) is organized solely for the purpose of one of the following: (a) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Project, entering into this Agreement, refinancing the Project in connection with a permitted repayment of the Loans, and transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing or (b) acting as the sole managing member of Borrower;

- (b) is not engaged and will not engage in any business unrelated to (a) the acquisition, development, ownership, management or operation of the Project or (b) acting as the sole managing member of Borrower;
- (c) does not have and will not have any assets other than those related to (a) the Project or (b) its membership interest in Borrower;
- (d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests in violation of this Agreement (if such entity is a general partner in a limited partnership or a member in a limited liability company), or any amendment of its articles of incorporation, by-laws, limited partnership certificate, limited partnership agreement, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition without the prior written consent of Administrative Agent;
- (e) in the case of Borrower, has and will have, as its only managing member, the Managing Member, which shall be a limited liability company that is a Single Purpose Entity and has at least one (1) Independent Manager;
- (f) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a certificate of limited partnership and limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles of incorporation, that in each case provide that such entity shall not, without the consent without the unanimous written consent of all of its partners or members (and, in the case of the managing member of the Managing Member, its Independent Manager(s)): (a) dissolve, merge, liquidate or consolidate itself or any Person in which it has a direct or indirect legal or beneficial ownership interest; (b) sell all or substantially all of its assets or the assets of any other Person in which it has a direct or indirect legal or beneficial ownership interest; (c) engage in any other business activity or permit any Person in which it has a direct or indirect legal or beneficial ownership interest to engage in any other business activity, in each case except as permitted pursuant to the Loan Documents, (iv) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial ownership interest, or (v) amend its organizational documents with respect to the matters set forth in this definition without the consent of Administrative Agent;
- (g) if such entity is a limited partnership, has as its only general partner a Single Purpose Entity;
- (h) is and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (i) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

- (j) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns, except to the extent that it is required or permitted to file consolidated tax returns by law;
- (k) has not commingled and will not commingle its funds or assets with those of any other Person;
- (l) has held and will hold its assets in its own name;
- (m) has maintained and will maintain financial statements that properly and accurately show its separate assets and liabilities and do not show the assets or liabilities of any other Person, and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity other than an Affiliate (but in such case noting that such entity and the Affiliate are separate entities);
- (n) has maintained and will maintain a sufficient number of employees or has entered into appropriate alternative arrangements for workforce services in light of its contemplated business operations;
- (o) has observed and will observe all corporate, partnership or limited liability company formalities, as applicable;
- (p) has not incurred and will not incur any Debt other than (a) with respect to Borrower, the Loans and (b) trade and operational debt which is (i) incurred in the ordinary course of business, (ii) not more than sixty (60) days past due, (iii) with trade creditors, (iv) with respect to Borrower, in the aggregate, in an amount less than \$1,000,000, and (v) not evidenced by a note;
- (q) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;
- (r) has not and will not acquire obligations or securities of its members or shareholders or any other Affiliate;
- (s) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including, but not limited to, paying for shared office space and services performed by any officer or employee of an Affiliate;
- (t) maintains and uses and will maintain and use separate invoices and checks bearing its name. The stationary, invoices, and checks utilized by the Single Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Single Purpose Entity's agent;
- (u) except in connection with the Loans, has not pledged and will not pledge its assets for the benefit of any other Person;

(v) has conducted business, held itself out and identified itself and will conduct business, hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by a Person other than an Affiliate of Borrower and not as a division or part of any other Person;

(w) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person (other than cash and securities issued by an entity that is not an Affiliate or subject to common ownership with such entity);

(x) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(y) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(z) has not and will not have any obligation to indemnify its partners, officers, directors or members, as the case may be, unless such obligation is fully subordinated to the Indebtedness and will not constitute a claim against it in the event that, after payment of the Indebtedness, cash flow is insufficient to pay such obligation; and

(aa) if such entity is a corporation, it is required to consider the interests of its creditors in connection with all corporate actions.

(214) "**Site Assessment**" means an environmental engineering report for the Project prepared by an engineer engaged by Administrative Agent at Borrower's expense, and in a manner and scope satisfactory to Administrative Agent.

(215) "**Soft Costs**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(216) "**Special Advance Lender**" has the meaning assigned to such term in Section 14.12(1).

(217) "**Sponsor**" means Acadia Realty Limited Partnership.

(218) "**State**" means the State of New York.

(219) "**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

(220) "**Subguard Policy**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(221) "**Subordination of Property Management Agreement**" means that certain Subordination of Property Management Agreement, dated the date hereof, by the Property Manager in favor of Administrative Agent (on behalf of the Lenders), as the same may be modified, amended and/or supplemented and in effect from time to time.

(222) "**Survey**" means that certain survey delivered to Administrative Agent pursuant to **Schedule 4 – Part A**, paragraph 11 as the same may be modified from time to time.

(223) "**Sweep Account**" has the meaning assigned to such term in **Section 15.1**.

(224) "**Syndication**" has the meaning assigned to such term in **Section 12.27**.

(225) "**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

(226) "**Tenant Allowance Plans**" means, as to each tenant under an Approved Lease which is receiving any Tenant Improvement Allowance, the plans received by Borrower pursuant to the applicable Approved Lease and approved by Borrower and Borrower's Architect covering tenant work under Tenant Improvement Allowances, to be certified by Borrower to Administrative Agent and the Lenders and approved by the applicable tenant, Borrower, all required Governmental Authorities, and either (x) within the Budget or (y) approved reasonably by Administrative Agent.

(227) "**Tenant Estoppel**" means an estoppel in form and substance reasonably acceptable to Administrative Agent, to be completed, executed, dated and delivered by the applicable tenant to Administrative Agent (on behalf of the Lenders) and Borrower pursuant to the terms of this Agreement.

(228) "**Tenant Improvement Allowances**" means allowances for Tenant Improvement Work.

(229) "**Tenant Improvement Plans**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(230) "**Tenant Improvement Work**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

- (231) “**Third Extension Period**” has the meaning assigned to such term in Section 2.5(3).
- (232) “**Third Extension Notice**” has the meaning assigned to such term in Section 2.5(3)(a).
- (233) “**Third-Party Counterparty**” has the meaning assigned to such term in Section 9.15(3).
- (234) “**Third-Party Hedge Agreement**” has the meaning assigned to such term in Section 9.15(3).
- (235) “**Threshold Amount**” means \$2,000,000.
- (236) “**Title Insurer**” means, collectively, Royal Abstract of New York, LLC and NY Land Services, as co-insurers in amounts approved by Administrative Agent, through title insurance placed by Commonwealth Land Title Insurance Company, Stewart Title Insurance Company, and LandAmerica, respectively.
- (237) “**Title Policies**” has the meaning assigned in Schedule 4 – Part A, paragraph 10.
- (238) “**Total Acquisition Loan Commitment**” has the meaning assigned to such term in the Recitals.
- (239) “**Total Building Loan Commitment**” has the meaning assigned to such term in the Recitals.
- (240) “**Total Project Loan Commitment**” has the meaning assigned to such term in the Recitals.
- (241) “**Type**” means the type of Loan made hereunder, i.e. whether such Loan is a Base Rate Loan or LIBOR-based Loan.
- (242) “**Unavoidable Delay**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (243) “**Unit**” means each unit of the Condominium, together with all rights, interests and easements in and to the Project Amenities that are held by the owner of such unit as a result of the operation of the terms of the Condominium Declaration.
- (244) “**Unit Annual Assessments**” means the assessments allocated to each Unit and collected by Declarant as set forth in the Condominium Declaration.
- (245) “**Unpaid Amount**” has the meaning assigned to such term in Section 14.12(2).
- (246) “**Unsatisfactory Work**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

LOAN TERMS**Section 2.1 The Commitments, Loans and Notes.****(1) Loans.**

(a) Each Lender severally agrees, on the terms and conditions of this Agreement, to make loans (each advance of such a loan being a "**Project Loan**" and collectively, the "**Project Loans**") on a non-revolving basis to Borrower in Dollars from time to time in amounts equal to its Proportionate Share of the aggregate amount of Project Loans to be made of such time; provided, however, that in no event shall the aggregate principal amount advanced by each Lender exceed the amount of the Project Loan Commitment of such Lender. The Project Loans shall be advanced for the payment of Project Loan Costs in accordance with the Project Loan Budget.

(b) Each Lender severally agrees, on the terms and conditions of this Agreement, to make loans (each advance of such a loan being an "**Acquisition Loan**" and collectively, the "**Acquisition Loans**") on a non-revolving basis to Borrower in Dollars on the Closing Date in an amount equal to its Proportionate Share of the Total Acquisition Loan Commitment. The Acquisition Loans shall be advanced for purposes of re-financing Borrower's cost of acquiring its interest in the Land.

(2) **Requests for Loan Advances.** Advances with respect to the Acquisition Loans shall be made on the Closing Date. With respect to the other Loans, Lead Borrower shall give Administrative Agent (and the Construction Consultant) a Request for Loan Advance as provided in Section 4.2. Administrative Agent shall give each Lender notice of any such Request for Loan Advance in accordance with Section 2.6(4). Not later than 12:00 noon New York time on the date specified for each Loan, each Lender shall make available for the account of its Applicable Lending Office to Administrative Agent as specified by Administrative Agent, in immediately available funds, such Lender's Proportionate Share of each Loan to be made pursuant hereto. After Administrative Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article 4 and Schedule 4, Administrative Agent shall make such funds available to Lead Borrower by depositing the same in an account designated by Lead Borrower by the end of business on the applicable advance date.

(3) Changes of Commitments.

(a) The respective Commitments shall reduce pro rata automatically by reason of any prepayment of the Loans applicable thereto in the amount of any such prepayment.

(b) If the Maturity Date is extended in accordance with Section 2.5, all of the unfunded Commitments (other than for Tenant Improvement Allowances with respect to the Office Component and any remaining Retainage, which will terminate on the First Extension Maturity Date) then remaining at the commencement of the extended loan period shall be automatically terminated.

(4) **Lending Offices.** The Loans of each Lender shall be made and maintained at such Lender's Applicable Lending Office for Loans of such Type.

(5) **Several Obligations.** The failure of any Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan, but neither any Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Loan to be made by such other Lender.

(6) **Notes.**

(a) **Project Loan Notes.** The Project Loans made by each Lender shall be evidenced by a Project Loan Note of Borrower, payable to such Lender in a principal amount equal to the amount of its Project Loan Commitment as originally in effect and otherwise duly completed.

(b) **Building Loan Notes.** The Building Loans made by each Lender shall be evidenced by a Building Loan Note of Borrower, payable to such Lender in a principal amount equal to the amount of its Building Loan Commitment as originally in effect and otherwise duly completed.

(c) **Acquisition Loan Notes.** The Acquisition Loans made by each Lender shall be evidenced by an Acquisition Loan Note of Borrower, payable to such Lender in a principal amount equal to the amount of its Acquisition Loan Commitment as originally in effect and otherwise duly completed.

(d) **Substitution, Exchange and Subdivision of Notes.** No Lender shall be entitled to have its Notes substituted or exchanged for any reason, or subdivided for promissory notes of lesser denominations, except in connection with a permitted assignment of all or any portion of such Lender's Commitment, Loans and Notes pursuant to [Section 12.9](#) and [Section 12.23](#) (and, if requested by any Lender, Borrower agrees to so substitute or exchange any Notes and enter into note splitter agreements in connection therewith).

(e) **Loss, Theft, Destruction or Mutilation of Notes.** In the event of the loss, theft or destruction of any Note, upon Borrower's receipt of a reasonably satisfactory indemnification agreement executed in favor of Borrower by the holder of such Note, or in the event of the mutilation of any Note, upon the surrender of such mutilated Note by the holder thereof to Borrower, Borrower shall execute and deliver to such holder a new replacement Note in lieu of the lost, stolen, destroyed or mutilated Note.

Section 2.2 Conversions or Continuations of Loans

(1) Subject to Section 2.6(3), Section 2.7(2) and Section 2.7(3), Lead Borrower shall have the right to Convert Loans of one Type into Loans of another Type or Continue Loans of one Type as Loans of the same Type, at any time or from time to time; provided that: (a) Lead Borrower shall give Administrative Agent notice of each such Conversion or Continuation as provided in Section 2.6(4); (b) LIBOR-based Loans may be Converted only on the last day of an Interest Period for such Loans unless Borrower complies with the terms of Section 2.7(5) and (c) subject to Section 2.7(1) and Section 2.7(3), any Conversion or Continuation of Loans shall be pro rata among the Lenders. Notwithstanding the foregoing, and without limiting the rights and remedies of Administrative Agent and the Lenders under Article 11, in the event that any Event of Default exists, Administrative Agent may (and at the request of the Majority Lenders shall) suspend the right of Lead Borrower to Convert any Loan into a LIBOR-based Loan, or to Continue any Loan as a LIBOR-based Loan for so long as such Event of Default exists, in which event all Loans shall be Converted (on the last day(s) of the respective Interest Periods therefor) or Continued, as the case may be, as Base Rate Loans. In connection with any such Conversion, a Lender may (at its sole discretion) transfer a Loan from one Applicable Lending Office to another.

(2) Notwithstanding anything to the contrary contained in this Agreement, at any time that a Hedge Agreement is in effect, Lead Borrower shall have the right to choose only an Interest Period with respect to the principal amount equal to the notional amount under such Hedge Agreement which is the same as the Interest Rate Hedge Period which is the same as the Interest Rate Hedge Period.

Section 2.3 Interest Rate; Late Charge.

(1) Borrower hereby promises to pay to Administrative Agent for account of each Lender interest on the unpaid principal amount of each Loan made by such Lender for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full, at the following rates per annum:

(a) during such periods as such Loan is a Base Rate Loan, the Base Rate; and

(b) during such periods as such Loan is a LIBOR-based Loan, for each Interest Period relating thereto, the Adjusted Libor Rate for such Loan for such Interest Period plus the Applicable

Margin.

(2) Accrued interest on each Loan shall be payable (i) monthly in arrears on each Payment Date and (ii) in the case of any Loan, upon the payment or prepayment thereof or the Conversion of such Loan to a Loan of another Type (but only on the principal amount so paid, prepaid or Converted), except that interest payable at the Default Rate shall be payable from time to time on demand.

(3) Notwithstanding anything to the contrary contained herein, after the Maturity Date and during any period when an Event of Default exists, Borrower shall pay to Administrative Agent for the account of each Lender (i) interest at the applicable Default Rate on the outstanding principal amount of any Loan made by such Lender, (ii) any interest payments thereon not paid when due and (iii) interest on any other amount payable by Borrower hereunder, under the Notes and any other Loan Documents.

(4) Promptly after the determination of any interest rate provided for herein or any change therein, Administrative Agent shall give notice thereof to the Lenders to which such interest is payable and to Lead Borrower, but the failure of Administrative Agent to provide such notice shall not affect Borrower's obligation for the payment of interest on the Loans.

(5) In addition to any sums due under this Section 2.3, Borrower shall pay to Administrative Agent for the account of the Lenders a late payment premium in the amount of five percent (5)% of any payments of interest or other sums under the Loans made more than five (5) days after the due date thereof (other than the principal balance due on the Maturity Date), which late payment premium shall be due with any such late payment or upon demand by Administrative Agent. Such late payment charge represents the reasonable estimate of Borrower and the Lenders of a fair average compensation for the loss that may be sustained by the Lenders due to the failure of Borrower to make timely payments. Such late charge shall be paid without prejudice to the right of Administrative Agent and the Lenders to collect any other amounts provided herein or in the other Loan Documents to be paid or to exercise any other rights or remedies under the Loan Documents.

(6) Borrower shall pay Additional Interest under the Notes in accordance with the terms of any Hedge Agreement provided by a Eurohypo Counterparty.

Section 2.4 Terms of Payment

. The Loans shall be payable as follows:

(1) **Interest.** Borrower shall pay interest in arrears on each Payment Date in accordance with the wire transfer instructions set forth in Schedule 2.4(1) hereto (or such other instructions as Administrative Agent may from time to time provide) until all amounts due under the Loan Documents are paid in full. Subject to the provisions of Article 4 and Section 2.1, such accrued interest shall be payable from the interest reserves established pursuant to the Budget; provided, however, that such reserves shall not limit Borrower's obligation to pay such accrued interest.

(2) **Amounts Prepaid.** No amounts paid or prepaid by the Borrower under the Loans shall be available to be reborrowed by the Borrower.

(3) **Maturity.** On the Maturity Date, Borrower shall pay to Administrative Agent (on behalf of the Lenders) all outstanding principal, accrued and unpaid interest, and any other amounts due under the Loan Documents.

(4) **Optional Prepayments.** Subject to the provisions of Section 2.4(6) and Section 2.7(5), Borrower shall have the right to prepay Loans in whole or in part, without premium or penalty; provided that: (a) Lead Borrower shall give Administrative Agent notice of each such prepayment as provided in Section 2.6(4) (and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable hereunder) and (b) partial prepayments shall be in the minimum aggregate principal amounts specified in Section 2.6(3).

(5) **Mandatory Prepayments.** If a casualty or condemnation shall occur with respect to the Project, Borrower, upon Borrower's or Administrative Agent's receipt of the applicable insurance proceeds or condemnation award, shall prepay the Loan, if required by the provisions of Article 3, on the dates and in the amounts specified therein without premium or penalty (but subject to the provisions of Section 2.4(6) and Section 2.7(5)). Nothing in this Section 2.4(5) shall be deemed to limit any obligation of Borrower under the Mortgages or any other Security Document, including any obligation to remit to a collateral or similar account maintained by Administrative Agent pursuant to the Mortgages or any of the other Security Documents the proceeds of insurance, condemnation award or other compensation received in respect of any casualty or condemnation. Prepayments pursuant to this Section 2.4(5) shall be applied to the Loans then outstanding pro rata in the order set forth in Section 2.4(6).

(6) **Interest and Other Charges on Prepayment.** If the Loans are prepaid, in whole or in part, pursuant to Section 2.4(4) or Section 2.4(5), each such prepayment shall be made on the prepayment date specified in the notice to Administrative Agent pursuant to Section 2.6(4), together with (a) the accrued and unpaid interest (including accrued and unpaid Additional Interest, if applicable (which may include certain early termination payments, in accordance with the terms of any applicable Hedge Agreement provided by a Eurohypo Counterparty)) on the principal amount prepaid, (b) any amounts payable to a Lender pursuant to Section 2.7(5) as a result of such prepayment while an Adjusted Libor Rate is in effect and (c) the Exit Fee, if any, payable pursuant to Section 2.9.

(7) **Application of Payments.** Lead Borrower shall, at the time of Borrower's making of each payment under this Agreement or any Note for the account of any Lender, specify to Administrative Agent (which shall so notify the intended recipient(s) thereof) the Loans or other amounts payable by Borrower hereunder to which such payment is to be applied (and in the event that Lead Borrower fails to so specify, or if an Event of Default has occurred and is continuing, Administrative Agent may distribute such payment to the Lenders for application in such manner as it may determine to be appropriate, subject to Section 2.6(1) and any other agreement among Administrative Agent and the Lenders with respect to such application).

(8) **Payments by Borrower.** Except to the extent otherwise provided therein, all payments to be made by Borrower under the Loan Documents shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Administrative Agent at an account designated by Administrative Agent by notice to Lead Borrower, not later than 2:00 p.m., New York City time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(9) **Forwarding of Payments by Administrative Agent.** Except as otherwise agreed by Administrative Agent and the Lenders, each payment received by Administrative Agent under this Agreement or any Note for account of any Lender shall be paid by Administrative Agent promptly to such Lender, in immediately available funds, for account of such Lender's Applicable Lending Office for the Loan or the other obligation in respect of which payment is made.

(10) **Extension to Next Business Day.** If the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall be payable for any principal so extended for the period of such extension.

Section 2.5 Extension of Maturity Date.

(1) Borrower may, at its option, extend the term for a period of six (6) months to the six month anniversary of the original Maturity Date (the "**First Extension Maturity Date**") and the applicable period being, the "**First Extension Period**"), subject to the satisfaction of the following conditions:

- (a) Lead Borrower shall notify (the "**First Extension Notice**") Administrative Agent of Borrower's exercise of such option between forty-five (45) and ninety (90) days prior to the original Maturity Date;
- (b) No Event of Default exists and is continuing as of the date of the First Extension Notice, as of the original Maturity Date or would result from the extension of the maturity of the Loans for the First Extension Period;
- (c) With respect to the Retail Component, one-hundred percent 100% of the Approved Leases shall be in full force and effect with tenants in Occupancy pursuant to Approved Leases who are not in material default under their respective Approved Lease, and such Approved Leases shall provide for an aggregate fixed minimum rent (as determined in a manner reasonably acceptable to Administrative Agent) of no less than \$5,860,000;
- (d) With respect to the Office Component, the Office Component shall be fifty percent (50%) leased with tenants pursuant to Approved Leases who are not in material default under their lease;
- (e) At Administrative Agent's request, Borrower shall use commercially reasonable efforts to provide to Administrative Agent, written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under any Approved Lease confirming the term, rent, and other provisions and matters relating to such Approved Leases;
- (f) The ratio of (a) the total outstanding principal balance of the Loans to (b) the value of the Project does not exceed 70% based on a new Appraisal obtained by Administrative Agent with a value date as of not more than sixty (60) days prior to the original Maturity Date, such Appraisal to be at Borrower's expense;
- (g) Borrower shall have satisfied all of the Project Work Substantial Completion Conditions prior to the Completion Date;
- (h) All Government Approvals for the Improvements shall have been received to the extent then applicable, with copies (if applicable) having been delivered to Administrative Agent;
- (i) Current financial statements regarding Borrower (dated not earlier than ninety (90) days prior to the First Extension Notice) and all other financial statements and other information as may be required under this Agreement and the Loan Documents regarding Borrower and the Project shall have been submitted promptly to Administrative Agent;

(j) In the opinion of Administrative Agent, there shall not have occurred any Material Adverse Effect;

(k) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Administrative Agent and the Lenders in connection with the proposed extension (pre- and post-closing), including appraisal fees and reasonable legal fees; all such costs and expenses shall be due and payable upon demand, and any failure to pay such amounts shall constitute a default under this Agreement and the Loan Documents;

(l) Not later than the original Maturity Date, (i) the extension shall have been documented to the Lenders' reasonable satisfaction and consented to by Borrower, Administrative Agent and all the Lenders, including the execution and delivery by Guarantor of reaffirmations of their respective obligations under the Guarantor Documents and (ii) Administrative Agent shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Administrative Agent; and

(m) Borrower shall pay to Administrative Agent (for the benefit of the Lenders in accordance with their Proportionate Shares) on the original Maturity Date a non-refundable extension fee equal to 0.125% of an amount equal to the outstanding principal amount at such time.

(2) Borrower may, at its option, extend the term for a period of six (6) months to the first anniversary of the original Maturity Date (the "**Second Extension Maturity Date**") and the applicable period being, the "**Second Extension Period**"), subject to the satisfaction of the following conditions:

(a) Lead Borrower shall notify (the "**Second Extension Notice**") Administrative Agent of Borrower's exercise of such option between forty-five (45) and ninety (90) days prior to the First Extension Maturity Date;

(b) No Event of Default exists and is continuing as of the date of the Second Extension Notice, as of the First Extension Maturity Date or would result from the extension of the maturity of the Loans for the Second Extension Period;

(c) With respect to the Retail Component, one-hundred percent 100% of the Approved Leases shall be in full force and effect with tenants in Occupancy pursuant to Approved Leases who are not in material default under their respective Approved Lease, and such Approved Leases shall provide for an aggregate fixed minimum rent (as determined in a manner reasonably acceptable to Administrative Agent) of no less than \$5,860,000;

(d) With respect to the Office Component, the Office Component shall be eighty-three percent (83%) leased with tenants pursuant to Approved Leases who are not in material default under their lease;

- (e) At Administrative Agent's request, Borrower shall use reasonable commercially reasonable efforts to provide to Administrative Agent, written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under any Approved Lease confirming the term, rent, and other provisions and matters relating to such Approved Leases;
- (f) All Government Approvals for the Improvements shall have been received to the extent then applicable, with copies (if applicable) having been delivered to Administrative Agent;
- (g) Current financial statements regarding Borrower (dated not earlier than ninety (90) days prior to the Second Extension Notice) and all other financial statements and other information as may be required under this Agreement and the Loan Documents regarding Borrower and the Project shall have been submitted promptly to Administrative Agent;
- (h) In the opinion of Administrative Agent, there shall not have occurred any Material Adverse Effect;
- (i) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Administrative Agent and the Lenders in connection with the proposed extension (pre- and post-closing), including appraisal fees and reasonable legal fees; all such costs and expenses shall be due and payable upon demand, and any failure to pay such amounts shall constitute a default under this Agreement and the Loan Documents;
- (j) Not later than the First Extension Maturity Date, (i) the extension shall have been documented to the Lenders' reasonable satisfaction and consented to by Borrower, Administrative Agent and all the Lenders, including the execution and delivery by Guarantor of reaffirmations of their respective obligations under the Guarantor Documents and (ii) Administrative Agent shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Administrative Agent; and
- (k) Borrower shall pay to Administrative Agent (for the benefit of the Lenders in accordance with their Proportionate Shares) on the First Extension Maturity Date a non-refundable extension fee equal to 0.125% of an amount equal to the outstanding principal amount at such time.
- (3) Borrower may, at its option, extend the term for a period of six (6) months to the first anniversary of the First Extension Maturity Date (the "**Third Extension Maturity Date**") and the applicable period being, the ("**Third Extension Period**"), subject to the satisfaction of the following conditions:
- (a) Lead Borrower shall notify (the "**Third Extension Notice**") Administrative Agent of Borrower's exercise of such option between forty-five (45) and ninety (90) days prior to the Second Extension Maturity Date;

(b) No Event of Default exists and is continuing as of the date of the Third Extension Notice, as of the Second Extension Maturity Date or would result from the extension of the maturity of the Loans for the Third Extension Period;

(c) With respect to the Retail Component, one-hundred percent 100% of the Approved Leases shall be in full force and effect with tenants in Occupancy pursuant to Approved Leases who are not in material default under their respective Approved Lease, and such Approved Leases shall provide for an aggregate fixed minimum rent (as determined in a manner reasonably acceptable to Administrative Agent) of no less than \$5,860,000;

(d) With respect to the Office Component, the Office Component shall be ninety percent (90%) leased with tenants pursuant to Approved Leases who are not in material default under their lease;

(e) At Administrative Agent's request, Borrower shall use commercially reasonable efforts to provide to Administrative Agent, written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under any Approved Lease confirming the term, rent, and other provisions and matters relating to such Approved Leases;

(f) The ratio of (a) the total outstanding principal balance of the Loans to (b) the value of the Project does not exceed 70% based on a new Appraisal obtained by Administrative Agent with a value date as of not more than sixty (60) days prior to the Second Extension Maturity Date, such Appraisal to be at Borrower's expense;

(g) All Government Approvals for the Improvements shall have been received to the extent then applicable, with copies (if applicable) having been delivered to Administrative Agent;

(h) Current financial statements regarding Borrower (dated not earlier than ninety (90) days prior to the Third Extension Notice) and all other financial statements and other information as may be required under this Agreement and the Loan Documents regarding Borrower and the Project shall have been submitted promptly to Administrative Agent;

(i) In the opinion of Administrative Agent, there shall not have occurred any Material Adverse Effect;

(j) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Administrative Agent and the Lenders in connection with the proposed extension (pre- and post-closing), including appraisal fees and reasonable legal fees; all such costs and expenses shall be due and payable upon demand, and any failure to pay such amounts shall constitute a default under this Agreement and the Loan Documents;

(k) Not later than the Second Extension Maturity Date, (i) the extension shall have been documented to the Lenders' reasonable satisfaction and consented to by Borrower, Administrative Agent and all the Lenders, including the execution and delivery by Guarantor of reaffirmations of their respective obligations under the Guarantor Documents and (ii) Administrative Agent shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Administrative Agent; and

(l) Borrower shall pay to Administrative Agent (for the benefit of the Lenders in accordance with their Proportionate Shares) on the First Extension Maturity Date a non-refundable extension fee equal to 0.125% of an amount equal to the outstanding principal amount at such time.

Any extension pursuant to this Section 2.5 shall be otherwise subject to all of the other terms and provisions of this Agreement, the Building Loan Agreement and the other Loan Documents.

Section 2.6 Pro Rata Treatment of Payments; Etc.

(1) **Pro Rata Treatment.** Except as otherwise provided in Section 2.7(4), Loans shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Loans) or their respective Loans (in the case of Conversions or Continuations of Loans); (c) each payment or prepayment of principal of Loans by Borrower shall be made for account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them (subject, while any Event of Default exists, to the terms of any separate agreement among Administrative Agent and the Lenders); and (d) each payment of interest on Loans by Borrower shall be made for account of the Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders (subject, while any Event of Default exists, to the terms of any separate agreement among Administrative Agent and the Lenders).

(2) **Computations.** Interest on all Loans shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the applicable period.

(3) **Minimum Amounts.** Except for (a) mandatory prepayments made pursuant to Section 2.4(5) and (b) Conversions or prepayments made pursuant to Section 2.7(4), and (c) advances pursuant to Section 4.4, Section 4.5, Section 4.6, and Section 4.11, each borrowing, Conversion, Continuation and partial prepayment of principal (collectively, "**Loan Transactions**") of Loans shall be in an aggregate amount of at least \$1,000,000 and in additional increments of \$100,000 (Loan Transactions of or into Loans of different Types or Interest Periods at the same time hereunder shall each be deemed separate Loan Transactions for purposes of the foregoing). Any Loans or borrowings of less than \$1,000,000 shall be made as Base Rate Loans. ~~Notwithstanding the foregoing, the minimum amount of \$1,000,000 shall not apply to Conversions of lesser amounts into a tranche of Loans that has (or will have upon such Conversion) an aggregate principal amount exceeding \$1,000,000.~~

(4) **Certain Notices.** Notices by Lead Borrower to Administrative Agent regarding Loan Transactions and the selection of Types of Loans and/or of the duration of Interest Periods shall be irrevocable and shall be effective only if received by Administrative Agent (and, in the case of a Request for Loan Advance, the Construction Consultant) not later than 3:00 p.m., New York City time, on the number of Business Days prior to the date of the proposed Loan Transaction or the first day of such Interest Period specified below:

Notice	Number of Business Days Prior
Request for Loan Advance	10
Optional Prepayment	3
Conversions into, Continuations as, or borrowings in Base Rate Loans	3
Conversions into, Continuations as, borrowings in or changes in duration of Interest Period for, LIBOR-based Loans (subject to Section 2.4(6))	3

Each Loan Transaction notice shall specify the amount, Type, Interest Period and date of such proposed Loan Transaction, and in the case of a Request for Loan Advance, shall be accompanied by all documentation required by this Agreement as a condition precedent to the applicable Loans. Notices for Conversions and Continuations shall be in the form of Exhibit E. Each such notice specifying the duration of an Interest Period shall specify the portion of the Loans to which such Interest Period is to relate. In the case of a Request for Loan Advance, Administrative Agent shall notify the Lenders of their respective Proportionate Shares of the amount approved by Administrative Agent and the Construction Consultant. If Lead Borrower fails to select (i) the Type of Loan or (ii) the duration of any Interest Period for any LIBOR-based Loan within the required time period and otherwise as provided in this Section 2.6(4), such Loan (if outstanding as a LIBOR-based Loan) will be automatically Continued as an LIBOR-based Loan with an Interest Period of one (1) month (based on a LIBOR-based Rate determined two (2) Business Days prior to the first day of the next Interest Period) or, if outstanding as a Base Rate Loan, will remain as a Base Rate Loan.

(5) **Non Receipt of Funds by Administrative Agent.** Unless Administrative Agent shall have been notified by a Lender or Lead Borrower (in either case, and along with Borrower, the "**Payor**") prior to the date on which the Payor is to make payment to Administrative Agent of (in the case of a Lender) the proceeds of a Loan to be made by such Lender hereunder or (in the case of Borrower) a payment to Administrative Agent for account of any Lender hereunder (in either case, such payment being herein called the "**Required Payment**"); which notice shall be effective upon receipt, that the Payor does not intend to make the Required Payment to Administrative Agent, Administrative Agent may assume that the Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient(s) on such date; and, if the Payor has not in fact made the Required Payment to Administrative Agent, the recipient(s) of such payment shall, on demand, repay to Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date (the "**Advance Date**") such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount at a rate per annum equal to (a) the Federal Funds Rate for such day in the case of payments returned to Administrative Agent by any of the Lenders or (b) the applicable interest rate due hereunder with respect to payments returned by Borrower to Administrative Agent and, if such recipient(s) shall fail promptly to make such payment, Administrative Agent shall be entitled to recover such amount, on demand, from the Payor, together with interest as aforesaid; provided that if neither the recipient(s) nor the Payor shall return the Required Payment to Administrative Agent within three (3) Business Days of the Advance Date, then, retroactively to the Advance Date, the Payor and the recipient(s) shall each be obligated to pay interest on the Required Payment as follows:

(a) if the Required Payment shall represent a payment to be made by Borrower to the Lenders, Borrower and the recipient(s) shall each be obligated retroactively to the Advance Date to pay interest in respect of the Required Payment at the Default Rate (without duplication of the obligation of Borrower under Section 2.3 to pay interest on the Required Payment at the Default Rate), it being understood that the return by the recipient(s) of the Required Payment to Administrative Agent shall not limit such obligation of Borrower under Section 2.3 to pay interest at the Default Rate in respect of the Required Payment, and

(b) if the Required Payment shall represent proceeds of a Loan to be made by the Lenders to Borrower, the Payor and Borrower shall each be obligated retroactively to the Advance Date to pay interest in respect of the Required Payment pursuant to whichever of the rates specified in Section 2.3 is applicable to the Type of such Loan, it being understood that the return by Borrower of the Required Payment to Administrative Agent shall not limit any claim Borrower may have against the Payor in respect of such Required Payment.

(6) **Sharing of Payments, Etc.**

(a) **Sharing.** If any Lender shall obtain from Borrower payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any other Loan Document through the exercise (subject, as among the Lenders, to Section 12.25) of any right of set off, banker's lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loans or such other amounts then due hereunder or thereunder by Borrower to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans or such other amounts, respectively, owing to such other Lenders (or in interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal of and/or interest on the Loans or such other amounts, respectively, owing to each of the Lenders. To such end all the 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.

(b) **Consent by Borrower.** Borrower agrees that any Lender so purchasing such a participation (or direct interest) may exercise (subject, as among the Lenders, to Section 12.25) all rights of set off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(c) **Rights of Lenders; Bankruptcy.** Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set off to which this Section 2.6(6) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 2.6(6) to share in the benefits of any recovery on such secured claim.

Section 2.7 Yield Protection; Etc.

(1) **Increased Costs.**

(a) **Increased Costs Generally with Respect to Making or Maintaining LIBOR-based Loans.** If any Change in Law shall:

(A) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted Libor Rate);

(B) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any LIBOR-based Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 2.7(6) and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(C) impose on any Lender or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender.

and the result of any of the foregoing shall be to increase the cost to such Lenders of making or maintaining any LIBOR-based Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then Borrower will promptly upon demand pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender reasonably determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time Borrower will promptly upon demand pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered; provided that such Lender would cause similarly situated Borrowers to compensate them for such an event.

(c) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.7(1) shall be delivered to Lead Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof by Lead Borrower.

(d) **Delays in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender notifies Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

(2) **Limitation on Types of Loans.** Anything herein to the contrary notwithstanding, if, on or prior to the determination of the Libor Rate for any Interest Period:

(a) Administrative Agent reasonably determines that quotations of interest rates for the relevant deposits referred to in the definition of Libor Rate are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR-based Loans; or

(b) the Majority Lenders reasonably determine, and notify Administrative Agent that the relevant rates of interest referred to in the definition of Libor Rate are not likely adequate to cover the cost to such Lenders of making or maintaining LIBOR-based Loans for such Interest Period;

then Administrative Agent shall give Lead Borrower and each Lender prompt notice thereof and, so long as such condition remains in effect, the Lenders shall be under no obligation to make additional LIBOR-based Loans, to Continue LIBOR-based Loans or to Convert Loans of any other Type into LIBOR-based Loans, and Borrower shall, on the last day(s) of the then current Interest Period(s) for the outstanding LIBOR-based Loans, either prepay such Loans or such Loans shall be automatically Converted into Base Rate Loans.

(3) **Illegality.** Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its Applicable Lending Office to honor its obligation to make or maintain LIBOR-based Loans hereunder (and, in the sole opinion of such Lender, the designation of a different Applicable Lending Office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify Lead Borrower thereof (with a copy to Administrative Agent) and such Lender's obligation to make or Continue, or to Convert Loans of any other Type into, LIBOR-based Loans shall be suspended until such time as such Lender may again make and maintain LIBOR-based Loans.

(4) **Treatment of Affected Loans.** If the obligation of any Lender to make LIBOR-based Loans or to Continue, or to Convert Base Rate Loans into, LIBOR-based Loans shall be suspended pursuant to Section 2.7(1) or Section 2.7(3), such Lender's Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for Loans (or, in the case of a Conversion resulting from a circumstance described in Section 2.7(3), on such earlier date as such Lender may specify to Lead Borrower with a copy to Administrative Agent) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 2.7(1) or Section 2.7(3) that gave rise to such Conversion no longer exist:

(a) to the extent that such Lender's Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's Loans shall be applied instead to its Base Rate Loans; and

(b) all Loans that would otherwise be made or Continued by such Lender as LIBOR-based Loans shall be made or Continued instead as Base Rate Loans, and all Loans of such Lender that would otherwise be Converted into LIBOR-based Loans shall remain as Base Rate Loans.

If such Lender gives notice to Lead Borrower with a copy to Administrative Agent that the circumstances specified in Section 2.7(1) or Section 2.7(3) that gave rise to the Conversion of such Lender's Loans pursuant to this Section 2.7(4) no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR-based Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR-based Loans, to the extent necessary so that, after giving effect thereto, all Base Rate Loans and LIBOR-based Loans are allocated among the Lenders ratably (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

(5) **LIBOR Breakage Costs.** Borrower shall upon request pay to Administrative Agent for account of each Lender, such amount or amounts as shall be sufficient (in the reasonable opinion of each Lender) to compensate it for any loss, cost or expense that such Lender determines is attributable to:

(a) any payment, prepayment or Conversion of a LIBOR-based Loan made by such Lender for any reason (including, without limitation, the acceleration of the Loans pursuant to Administrative Agent's or the Lenders' rights referred to in Article 11) on a date other than the last day of the Interest Period for such Loan; or

(b) any failure by Borrower for any reason to borrow a LIBOR-based Loan from such Lender on the date for such borrowing specified in any Request for Loan Advance.

Without limiting the effect of the preceding sentence, such compensation shall include an amount equal to the excess, if any, of (i) the amount of interest that otherwise would have accrued on the principal amount so paid, prepaid, Converted or not borrowed for the period from the date of such payment, prepayment, Conversion or failure to borrow to the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, the Interest Period for such Loan that would have commenced on the date specified for such borrowing) at the applicable rate of interest for such Loan provided for herein over (ii) the amount of interest that otherwise would have accrued on such principal amount at a rate per annum equal to the interest component of the amount such Lender would have bid in the London interbank market for Dollar deposits of leading banks in amounts comparable to such principal amount and with maturities comparable to such period (as reasonably determined by such Lender), or if such Lender shall cease to make such bids, the equivalent rate, as reasonably determined by such Lender, derived from Page 3750 of the Telerate Service or other publicly available source as described in the definition of Libor Rate. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this section shall be delivered to Lead Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(6) **Taxes.**

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (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 or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) **Payment of Other Taxes by Borrowers.** Without limiting the provisions of paragraph (a) above, Borrower shall pay any Other Taxes but not Excluded Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) **Indemnification by Borrower.** Borrower shall indemnify Administrative Agent and each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Lead Borrower by a Lender, or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) **Evidence of Payments.** As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Borrower to a Governmental Authority, Lead Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) **Foreign Lenders.** Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the applicable Borrower (with a copy to Administrative Agent), prior to the Initial Advance, Form W-8BEN or Form W-8ECI of the Internal Revenue Service, or such other properly completed and executed forms, certifications, statements or documentation prescribed by applicable law or reasonably requested by such Borrower as will permit such payments to be made without withholding or at a reduced rate. Administrative Agent shall not be obligated to make any payments hereunder to Lenders in respect of the Loan until such Lenders shall have furnished to Administrative Agent the requested form, certification, statement or documentation.

(f) **Refunds.** If Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this [Section 2.7\(6\)](#), it shall pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this [Section 2.7\(6\)](#) with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that Borrower, upon the request of Administrative Agent or such Lender, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Administrative Agent or such Lender in the event Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This section shall not be construed to require Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to Borrower or any other Person..

(7) **Replacement of Lenders.** If any Lender requests compensation pursuant to [Section 2.7\(1\)](#) or [Section 2.7\(6\)](#), or any Lender's obligation to Continue Loans of any Type, or to Convert Loans of any Type into the other Type of Loan, shall be suspended pursuant to [Section 2.7\(2\)](#) or [Section 2.7\(3\)](#) (any such Lender requesting such compensation, or whose obligations are so suspended, being herein called a "**Requesting Lender**"), Lead Borrower, upon three (3) Business Days' notice, may require that such Requesting Lender transfer all of its right, title and interest under this Agreement and such Requesting Lender's Note to any bank or other financial institution (a "**Proposed Lender**") identified by Lead Borrower that is satisfactory to Administrative Agent (i) if such Proposed Lender agrees to assume all of the obligations of such Requesting Lender hereunder, and to purchase all of such Requesting Lender's Loans hereunder for consideration equal to the aggregate outstanding principal amount of such Requesting Lender's Loans, together with accrued interest thereon to the date of such purchase and pay all other amounts accrued and payable hereunder to such Requesting Lender as of the date of such transfer (including any fees accrued hereunder and any amounts that would be payable under [Section 2.7\(1\)](#), [Section 2.7\(5\)](#) or [Section 2.7\(6\)](#)). Subject to the provisions of [Section 12.23\(1\)](#), such Proposed Lender shall be a "Lender" for all purposes hereunder. Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements of Borrower contained in [Section 2.7\(1\)](#) and [Section 2.7\(6\)](#) (without duplication of any payments made to such Requesting Lender by Borrower or the Proposed Lender) shall survive for the benefit of such Requesting Lender under this [Section 2.7\(7\)](#) with respect to the time prior to such replacement.

Section 2.8 Agency Fee. Until payment in full of all obligations under this Agreement and the other Loan Documents, Borrower shall pay to Administrative Agent, for its sole account, the Agency Fee in accordance with the Fee Letter.

Section 2.9 Exit Fee. With respect to any repayment or prepayment of principal under the Loans for any reason whatsoever (whether such repayment or prepayment of the Loans is made voluntarily or involuntarily or as a result of the occurrence of an Event of Default pursuant to which the Administrative Agent has accelerated the obligations of the Borrower under the Loan Documents or otherwise), Borrower shall pay to Administrative Agent, in addition to all other amounts that may be due hereunder, an amount equal to one quarter of one percent (0.25%) of the amount so repaid or prepaid under the Loans (the "Exit Fee"). The Exit Fee will be automatically waived in the event that (1) the Loans are prepaid in connection with a bona-fide arms length sale of the Project to a third party which is not an Affiliate of Borrower, or (2) the Loans are paid in full pursuant to a refinancing arrangement with Administrative Agent.

ARTICLE 3

INSURANCE, CONDEMNATION, AND IMPOUNDS

Section 3.1 Insurance.

(1) Borrower shall obtain and maintain, or cause to be maintained, Policies providing at least the following coverages for Borrower and the Project (at all times through the repayment of the Loans in full):

(a) comprehensive all-risk insurance on the Improvements and the personal property, in each case (i) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, (ii) containing an agreed amount endorsement with respect to the improvements and personal property waiving all co insurance provisions; (iii) providing for no deductible in excess of \$50,000; (iv) providing for repairs and alteration coverage; and (v) providing coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements together with an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Project shall at any time constitute legal non-conforming structures or uses. The Full Replacement Cost shall be redetermined from time to time (but not more frequently than once in any twenty-four (24) calendar months) at the request of Administrative Agent by an appraiser or contractor designated by Borrower and reasonably approved by Administrative Agent, or by an engineer or appraiser in the regular employ of the insurer. The cost of such appraisal shall be paid by Administrative Agent unless an Event of Default shall have occurred and be continuing, in which case such cost shall be paid by Borrower. After the first appraisal, additional appraisals may be based on construction cost indices customarily employed in the trade. No omission on the part of Administrative Agent to request any such ascertainment shall relieve Borrower of any of its obligations under this Section 3.1(1)(a);

(b) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage (including liabilities as a result of repairs and alterations) occurring upon, in or about the Project, such insurance (i) to be on the so called "occurrence" form with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; (ii) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (iii) to cover at least the following hazards: (A) premises and operations; (B) products and completed operations on an "if any" basis and for a period of not less than five (5) years after the completion of construction of the applicable Improvements; (C) independent contractors; (D) blanket contractual liability for all "insured contracts" as defined in the standard general liability policy; and (E) contractual liability covering the indemnities contained in Sections 5.4, 11.3 and 14.5 hereof, to the extent the same is available and falls within the definition of "insured contracts";

(c) business income/loss of rents insurance (i) with loss payable to Administrative Agent (for the benefit of the Lenders); (ii) covering all risks required to be covered by the insurance provided for in Section 3.1(1)(g) hereof; (iii) in an amount equal to 100% of the projected gross income from the Project (on an actual loss sustained basis) for a period continuing until the Restoration of the Project is completed; the amount of such business income/loss of rents insurance shall be determined prior to the date hereof and at least once each year thereafter based on the greater of (x) Borrower's reasonable estimate of the gross income from the Project, and (y) the highest gross income received during the term of the Notes for any full calendar year prior to the date the amount of such insurance is being determined (or such lesser period as may have expired from the date of substantial completion of the applicable Improvements to the date the amount of such insurance is being determined), in each case for the succeeding eighteen (18) month period and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the improvements and the personal property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twenty-four (24) months from the date that the Project, is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. All insurance proceeds payable to Administrative Agent (for the benefit of the Lenders) pursuant to this Section 3.1(1)(c), shall be held by Administrative Agent and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Notes and this Agreement; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Notes and this Agreement except to the extent such amounts are actually paid out of the proceeds of such business income/loss of rents insurance;

(d) when required by Administrative Agent or at the discretion of Borrower, at all times prior to the completion of construction of the Improvements, the insurance provided for in Section 3.1(1)(a), shall be written in a so called builder's risk completed value form (i) on a non reporting basis, (ii) against all risks insured against pursuant to Section 3.1(1)(a), (iii) shall include permission to occupy the Project, and (4) shall contain an agreed amount endorsement waiving co-insurance provisions, and shall also include coverage for:

(A) loss suffered with respect to materials, equipment, machinery, and supplies whether on-site, in transit, or stored off-site and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property;

(B) Soft Costs, plans, specifications, blueprints and models in connection with any restoration following a casualty;

(C) demolition and increased cost of construction, including, without limitation, increased costs arising out of changes in Applicable Law and codes;

(D) operation of building laws;

(E) collapse, transit and testing; and

(F) delayed opening coverage on an actual loss sustained basis with extended period of indemnity endorsement consistent with Section 3.1(1)(c).

(e) workers' compensation insurance, as required by any Governmental Authority or legal requirement, subject to the statutory limits of the state of New York;

(f) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Administrative Agent on terms consistent with the commercial property insurance policy required under Section 3.1(1)(a);

(g) if any portion of the Improvements is at any time located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor law (the "**Flood Insurance Acts**"), flood hazard insurance in an amount not less than the greater of (A) the maximum limit of coverage available with respect to the Project, under Policies issued pursuant to the Flood Insurance Acts, subject only to customary deductibles under such Policies, and (B) the maximum limit of coverage available with respect to the Project, under Policies issued by private insurance carriers;

(h) earthquake insurance (based on probable maximum loss) in amounts and in form and substance satisfactory to Administrative Agent, provided that the insurance pursuant to this Section 3.1(1)(h) hereof shall be on terms consistent with the all risk insurance policy required under Section 3.1(1)(a), hereof;

(i) umbrella liability insurance in an amount not less than \$100,000,000 per occurrence on terms consistent with the commercial general liability insurance policy required under Section 3.1(1)(b), hereof;

(j) insurance with respect to the Construction Manager, the Major Contractors, Borrower's Architect and other Design Professionals as specified in Schedule 3.1(1)(j) attached hereto;

(k) secured creditor's environmental insurance, insuring against unknown environmental hazards and conditions in amounts and in form and substance satisfactory to Administrative Agent, which shall name the Administrative Agent as a loss payee or additional insured, as applicable; and

(l) such other insurance and in such amounts as Administrative Agent from time to time may request against such other insurable hazards which at the time are available on commercially reasonable terms for properties located in or around the region where the Project is located and are customarily required by institutional lenders with respect to projects similar to the Project.

(2) All insurance provided in compliance with Section 3.1(1)(a) hereof shall be obtained under valid and enforceable policies (the "**Policies**" or in the singular, the "**Policy**"), in such forms and, from time to time after the date hereof, in such amounts as may be satisfactory to Administrative Agent, issued by financially sound and responsible insurance companies permitted to do business in the state of New York and reasonably approved by Administrative Agent. The insurance companies must have a claims paying ability/financial strength rating of "AX" (or its equivalent) or better by A.M. Best. No Policy shall contain an exclusion from coverage under such Policy for loss or damage incurred as a result of an act of terrorism or similar acts of sabotage, provided that Borrower may obtain separate Terrorism Insurance coverage subject to and in accordance with the terms of this Section 3.1(2). Borrower will be required to maintain insurance against terrorism, terrorist acts or similar acts of sabotage ("**Terrorism Insurance**") with coverage amounts of not less than an amount equal to the full replacement cost of the improvements and the personal property (the "**Terrorism Insurance Required Amount**"). Notwithstanding the foregoing sentence, Borrower shall not be obligated to expend in any fiscal year on Insurance Premiums for Terrorism Insurance more than two (2.0) times the then-current annual premium paid by Borrower for the comprehensive all-risk insurance required under subsection 3.1(1)(a) hereof (the "**Terrorism Insurance Cap**") and if the cost of the Terrorism Insurance Required Amount exceeds the Terrorism Insurance Cap, Borrower shall purchase the maximum amount of Terrorism Insurance available with funds equal to the Terrorism Insurance Cap; provided, however, the Terrorism Insurance Cap shall not apply or restrict the amount of terrorism coverage required to be obtained and maintained by this subsection (x) with respect to the Project if (a) owners and/or operators of mixed-use retail/office buildings in the same class as the Project in Bronx, New York are generally obtaining terrorism insurance, (b) lenders financing such mixed-use retail/office properties in the same class as the Project in Bronx, New York are generally requiring terrorism insurance as a condition of financing, or (c) Borrower or Sponsor or any Affiliate of Borrower or Sponsor, is obtaining terrorism insurance on any other properties in Bronx, New York of which any of the foregoing Persons own or operate. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Section 3.1(1) hereof, Lead Borrower shall deliver to Administrative Agent insurance certificates showing payment of all premiums (the "**Insurance Premiums**") for such Policies, which certificates shall be in form and substance reasonably satisfactory to Administrative Agent. Within sixty (60) days following the expiration dates of the Policies, Lead Borrower shall deliver to Administrative Agent certified copies of such Policies marked "premium paid" or accompanied by evidence satisfactory to Administrative Agent of payment of the Insurance Premiums.

(3) Borrower shall not obtain (a) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Administrative Agent and Lenders' interest is included therein as provided in this Agreement, or (b) separate insurance concurrent in form or contributing in the event of loss with that required in Section 3.1(1) to be furnished by, or which may be required to be furnished by, Borrower. In the event Borrower obtains separate insurance or an umbrella or a blanket policy, Lead Borrower shall notify Administrative Agent of the same and shall cause certified copies of each Policy to be delivered as required in Section 3.1(1).

(4) All Policies provided for or contemplated by Section 3.1(1) hereof, except for the Policy referenced in Section 3.1(1)(e), shall name Administrative Agent (for the benefit of the Lenders) as additional insured under liability policies and as mortgagee/loss payee under property policies, as their respective interests may appear, and in the case of property, boiler and machinery, and flood insurance, shall contain a so called New York standard non-contributing mortgagee clause in favor of Administrative Agent providing that the loss thereunder shall be payable to Administrative Agent in accordance with the terms of this Agreement.

(5) All Policies provided for in Section 3.1(1)(a) hereof shall contain clauses or endorsements to the effect that:

- (a) no willful act or negligence of Borrower, or anyone acting for Borrower, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Administrative Agent is concerned;
- (b) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or cancelled without at least thirty (30) days' written notice (or ten (10) days' written notice, in the case of non payment of premium) to Administrative Agent and any other party named therein as an insured;
- (c) each Policy shall provide that the issuers thereof shall give written notice to Administrative Agent if the Policy has not been renewed fifteen (15) days prior to its expiration; and
- (d) Administrative Agent shall not be liable for any insurance premiums thereon or subject to any assessments thereunder.

(6) If at any time Administrative Agent is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Administrative Agent shall have the right, on five (5) Business Days' notice to Lead Borrower to take such action as Administrative Agent deems necessary to protect its interest in the Project, including, without limitation, the obtaining of such insurance coverage as Administrative Agent in its sole and absolute discretion deems appropriate, and all expenses incurred by Administrative Agent in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Administrative Agent upon demand and until paid shall be secured by the Security Documents and shall bear interest at the Default Rate.

(7) In the event of a foreclosure of the Mortgages, or other transfer of title to Project in extinguishment in whole or in part of the Loans, all right, title and interest of Borrower in and to the Policies then in force and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lenders or other transferee in the event of such other transfer of title.

(8) Lead Borrower shall give immediate written notice of any loss in excess of \$100,000 to the insurance carrier and to Administrative Agent. In connection with losses in excess of \$100,000, but less than or equal to \$2,000,000, Borrower and Administrative Agent shall cooperate in all matters related to the loss including, without limitation, making proof of loss, adjusting and compromising any claim under the insurance policies, appearing in and prosecuting any action arising from such insurance policies, and collecting and receiving insurance proceeds. In connection with losses in excess of \$2,000,000, Borrower hereby irrevocably authorizes and empowers Administrative Agent, as attorney in fact for Borrower coupled with an interest, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Administrative Agent's expenses incurred in the collection of such proceeds. Nothing contained in this Section 3.1(8), however, shall require Administrative Agent or any Lender to incur any expense or take any action hereunder.

Section 3.2 Condemnation Awards. Lead Borrower shall immediately notify Administrative Agent of the institution of any proceeding for the condemnation or other taking of the Project or any portion thereof. Administrative Agent may participate in any such proceeding and Lead Borrower will deliver to Administrative Agent all instruments necessary or required by Administrative Agent to permit such participation. Without Administrative Agent's prior consent (subject to the approval of the Majority Lenders), Borrower (1) shall not agree to any compensation or award, and (2) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Project or any part thereof are hereby assigned to and shall be paid to Administrative Agent. Borrower authorizes Administrative Agent to collect and receive such awards and compensation, to give proper receipts and acquittances therefor, and in Administrative Agent's sole discretion (which Administrative Agent shall exercise at the direction of the Majority Lenders) to apply the same toward the payment of the Loans, notwithstanding that the Loans may not then be due and payable, or to the restoration of the Project; provided, however, if the award is less than or equal to the Threshold Amount and Borrower requests that such proceeds be used for non structural site improvements (such as landscape, driveway, walkway and parking area repairs) required to be made as a result of such condemnation, Administrative Agent will apply the award to such restoration in accordance with the terms applicable to insurance proceeds set forth in Section 3.3. Borrower, upon request by Administrative Agent, shall execute all instruments requested to confirm the assignment of the awards and compensation to Administrative Agent, free and clear of all liens, charges or encumbrances.

Section 3.3 Use and Application of Insurance Proceeds. Administrative Agent shall apply insurance proceeds to costs of restoring the Project or the Loans as follows:

(1) if the loss is less than or equal to the Threshold Amount, Administrative Agent shall promptly apply the insurance proceeds to restoration provided (a) no Event of Default exists, and (b) Borrower promptly commences and is diligently pursuing restoration of the Project;

(2) if the loss exceeds the Threshold Amount but is not more than ten percent (10%) of the replacement value of the Improvements (for projects containing multiple phases or stand alone structures, such calculation to be based on the damaged phase or structure, not the project as a whole), Administrative Agent shall apply the insurance proceeds to restoration provided that at all times during such restoration (a) no Event of Default exists; (b) Administrative Agent determines that there are sufficient funds including Borrower's equity available to restore and repair the Project to a condition reasonably approved by Administrative Agent; (c) Administrative Agent reasonably determines that any operating deficits, including all debt service, which will be incurred with respect to the Project following any such loss and until the restoration has been completed, will be covered out of (A) the insurance proceeds, (B) the proceeds of business interruption insurance, if applicable, (C) Net Operating Income of the Project or (D) by other funds of Borrower; (d) Administrative Agent reasonably determines that all Major Leases will remain in effect after restoration is complete; (e) Administrative Agent determines that restoration and repair of the Project to a condition reasonably approved by Administrative Agent will be completed prior to the Completion Date; (f) Borrower promptly commences and is diligently pursuing restoration of the Project; and (g) if still applicable, Administrative Agent shall have unilaterally determined that the Guaranty of Completion shall remain in full force and effect during the period of restoration, or Guarantor shall have executed and delivered to Administrative Agent a guaranty of completion with respect to all restoration in substantially the same form as the Guaranty of Completion and otherwise reasonably satisfactory to Administrative Agent;

(3) if the conditions set forth above are not satisfied or the loss exceeds the maximum amount specified in **Section 3.3(2)** above, Administrative Agent may in its sole discretion (subject to the approval of the Majority Lenders) apply any insurance proceeds it may receive to the payment of the Loans or allow all or a portion of such proceeds to be used for the restoration of the Project.

Section 3.4 Disbursement of Proceeds.

(1) The insurance proceeds shall be held by Administrative Agent in a Controlled Account and shall constitute additional security for the Loans. Upon receipt of evidence reasonably satisfactory to Administrative Agent that all the conditions precedent, including those set forth in **Section 3.3(2)** above, have been satisfied, the insurance proceeds shall be disbursed by Administrative Agent to, or as directed by, Lead Borrower from time to time during the course of the restoration in accordance with the applicable provisions of Article 4 and Schedule 4 of this Agreement and (to the extent such disbursements are related to construction costs) the Building Loan Agreement.

(2) All plans and specifications required in connection with the restoration shall be subject to prior review and reasonable approval by Administrative Agent and by an independent consulting engineer selected by Administrative Agent (the "**Restoration Consultant**"); provided, however, that if the plans and specifications are consistent with those attached to the Building Loan Agreement, Administrative Agent shall be deemed to have approved such plans and specifications. Administrative Agent shall have the non-exclusive use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the restoration. The identity of the contractors, subcontractors and materialmen engaged in the restoration, as well as all Major Contracts, shall be subject to prior review and reasonable approval by Administrative Agent and the Restoration Consultant. All reasonable costs and expenses incurred by Administrative Agent in connection with making the insurance proceeds available for the restoration including reasonable counsel fees and disbursements and the Restoration Consultant's fees, shall be paid by Borrower. Borrower shall also obtain, at its sole cost and expense, all necessary government approvals as and when required in connection with such restoration and provide copies thereof to Administrative Agent and Restoration Consultant.

(3) In no event shall Administrative Agent be obligated to make disbursements of the insurance proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the restoration, as certified by the Restoration Consultant, minus the Retainage. Administrative Agent shall establish, maintain and release any Retainage in accordance with the terms of the Building Loan Agreement.

(4) Administrative Agent shall not be obligated to make disbursements of the insurance proceeds more frequently than once per month.

(5) If at any time the insurance proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Administrative Agent in consultation with the Restoration Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Restoration Consultant to be incurred in connection with the completion of the restoration, Borrower shall deposit the deficiency (the "**Insurance Proceeds Deficiency**") with, or deliver a Collateral Letter of Credit in the amount of such deficiency to, Administrative Agent within ten (10) Business Days of Administrative Agent's request and before any further disbursement of the insurance proceeds shall be made. The Insurance Proceeds Deficiency shall be held in a Controlled Account and shall be disbursed for costs actually incurred in connection with the restoration on the same conditions applicable to the disbursement of the insurance proceeds, and, until so disbursed, shall constitute additional security for the Loans.

(6) After the Restoration Consultant certifies to Administrative Agent that a restoration has been substantially completed in accordance with the provisions of this Section 3.4, and the receipt by Administrative Agent of evidence satisfactory to Administrative Agent that all costs incurred in connection with the restoration have been paid in full, the excess, if any, of the insurance proceeds and the remaining balance, if any, of the Insurance Proceeds Deficiency deposited with Administrative Agent shall, so long as no Potential Default or Event of Default has occurred, be paid to Lead Borrower. If a Potential Default or Event of Default has occurred, the remaining balance of the Insurance Proceeds Deficiency shall be applied to repayment of the Loans.

(7) All insurance proceeds not required (i) to be made available for the restoration or (ii) to be returned to Lead Borrower as excess insurance proceeds pursuant to subsection (G) above may (A) be retained and applied by Administrative Agent toward the payment of the Loans, whether or not then due and payable, in such order, priority and proportions as Administrative Agent in its sole discretion shall deem proper, or, (B) at the sole discretion of Administrative Agent, the same may be paid, either in whole or in part, to Lead Borrower for such purposes and upon such conditions as Administrative Agent shall designate.

(8) Notwithstanding any casualty, Borrower shall continue to make payments with respect to the outstanding principal amount in the manner provided in the Notes, this Agreement and the other Loan Documents and the outstanding principal amount shall not be reduced unless and until (i) any insurance proceeds or condemnation award shall have been actually received by Administrative Agent, (ii) Administrative Agent shall have deducted its reasonable expenses of collecting such proceeds and (iii) Administrative Agent shall have applied any portion of the balance thereof to the repayment of the outstanding principal amount in accordance with Section 4.3. The Lenders shall not be limited to the interest paid on any condemnation award but shall continue to be entitled to receive interest as provided in Article 2.

ARTICLE 4

DISBURSEMENTS OF THE LOANS

Section 4.1 General Conditions.

(1) Subject to (a) Borrower's satisfaction of the applicable conditions precedent set forth in Schedule 4 and (b) Borrower's compliance with the applicable provisions of this Article 4, the Lenders shall disburse the proceeds of the Acquisition Loan on the Closing Date and the proceeds of each other Loan within ten (10) Business Days after Administrative Agent's receipt of all of the documents and items to be delivered or received pursuant to Schedule 4 and this Article 4; provided, however, that at no time shall the Lenders be obligated to:

- (i) advance to Lead Borrower more than the amount that Borrower has funded from its own monies or an existing loan or is then required to fund to the party seeking payment or, in the case of reimbursement, to the party seeking reimbursement (subject to Retainage, if applicable),
- (ii) make an advance if the Loans are not In Balance in accordance with Section 4.3,
- (iii) subject to possible reallocation in accordance with Section 4.5, advance proceeds of a Loan in an amount in excess of the Budget Line Items set forth in the Budget, as the same may be adjusted in accordance with the terms of this Agreement, or
- (iv) make any Loans to the extent any Operating Revenues have not been applied in accordance with Section 4.6(1).

(2) Notwithstanding anything to the contrary contained in this Agreement, the Lenders shall have no obligation to advance any Loan unless Administrative Agent is, at all times, satisfied that the Improvements can be constructed Lien free, substantially in accordance with the Plans and Specifications (or the Tenant Improvement Plans in the case of Tenant Improvement Work) for the sums set forth in the Budget (or, if more, Borrower has furnished the difference in cash or cash equivalents, subject to the provisions of [Section 4.3](#), [Section 4.4](#) and [Section 4.5](#)), by the Completion Date or, with respect to Tenant Improvement Work, such date as shall be required for the completion of the applicable Tenant Improvement Work under an Approved Lease. Administrative Agent will endeavor to give notice to Lead Borrower of its intention not to authorize disbursement of any Loan proceeds based on the foregoing, but neither the Lenders nor Administrative Agent shall have any liability hereunder should Administrative Agent fail to do so, and no failure by Administrative Agent to give such notice shall affect Administrative Agent's or any Lender's rights under this [subsection \(2\)](#). ; Notwithstanding anything herein to the contrary, if such applicable conditions precedent are not satisfied for the full required disbursement, then, to the extent that the amounts in any Request for Loan Advance are broken down such that Administrative Agent is satisfied that all of the above conditions are met with respect to a portion of any Loan advance, the Lenders shall advance such portion of the requested Loan advance.

Section 4.2 Procedure for Making Disbursements of Loan Proceeds.

(1) After the Closing Date, disbursements shall be made from time to time as construction progresses pursuant to a request for advance in the applicable form attached hereto as Exhibit F (each, a "[Request for Loan Advance](#)"), but no more frequently than once in each calendar month.

(2) Each Request for Loan Advance with respect to Loans shall (a) be duly executed by an Authorized Officer on behalf of Lead Borrower, (b) be submitted to Administrative Agent and the Construction Consultant not less than ten (10) Business Days prior to the proposed disbursement date for such Loans, (c) specify the items to be paid or reimbursed with the proceeds of the requested Loans, (d) include the documentation required to be included therewith under [Schedule 4](#) and (e) be in the minimum amounts required under [Section 2.6\(3\)](#).

(3) All advances of the Loans shall be made for the payment of Project Costs in accordance with the Budget upon Borrower's satisfaction of the applicable conditions set forth in this [Article 4](#) and [Schedule 4 – Parts A and B](#), as applicable.

(4) In the event Lead Borrower does not request a disbursement within thirty (30) days after the previous disbursement of a Loan, Borrower shall nonetheless within such thirty (30) day period and during each subsequent thirty (30) day period in which Lead Borrower does not request a disbursement of the Loan, satisfy the conditions precedent to disbursements set forth in this Agreement.

Section 4.3 Loan Balancing.

(1) Borrower represents that the Budget sets forth all anticipated costs to be incurred by Borrower in connection with the ownership, development, construction, financing, marketing, maintenance and leasing of the Improvements, from time to time through the Maturity Date as extended pursuant to [Section 2.5](#) hereof. Borrower further agrees as follows:

(a) Subject to reallocations pursuant to Section 4.4 and Section 4.5, if at any time, the projected costs anticipated to be incurred for any item of Construction Work or for the ownership, development, financing, marketing, maintenance or leasing of the Improvements through the Maturity Date exceed the amount set forth in the Budget for such item (as the same may be adjusted in accordance with the terms of this Agreement), as determined by Administrative Agent and the Construction Consultant in their reasonable discretion (including any such determination that the undisbursed Loan proceeds allocated for the payment of future interest (the "Interest Reserve") is insufficient) based on factors, including, but not limited to, (1) Administrative Agent's projections of interest rates for period(s) up to and including the full remaining term of the Loan (and permitted extensions); (2) the effect of any Hedge Agreement; (3) cost overruns or Change Orders; or (4) failure of the Improvements to lease at the rate of absorption or otherwise at rates and terms projected by Borrower, then the Loans shall be deemed not "In Balance."

(b) If the Loans are deemed not "In Balance," then Borrower shall, at Administrative Agent's option, within ten (10) Business Days after written notice from Administrative Agent either (a) deposit with Administrative Agent an amount sufficient to cover such deficiency (a "Deficiency Deposit"), which Deficiency Deposit shall be deposited with Administrative Agent in the Controlled Account (the "Deficiency Deposit Account"), (b) make one or more equity contributions to be used by Borrower to pay costs that will bring the Loans In Balance (an "Equity Balancing Contribution"), or (c) deliver a Collateral Letter of Credit in an amount such that the available proceeds thereunder would be sufficient to bring the Loans In Balance and upon which Administrative Agent shall be entitled to draw in compliance with the provisions set forth below in this Section 4.3. Administrative Agent shall not be required to authorize any disbursement of any Loans before receiving (i) payment of any such Deficiency Deposit into the Deficiency Deposit Account and the prior application of such Deficiency Deposit to the payment of Project Costs so as to bring the Loans In Balance, (ii) verification that an Equity Balancing Contribution has been made and the proceeds thereof used for the payment of Project Costs on account of the Improvements, so as to bring the Loans In Balance or (iii) a Collateral Letter of Credit as set forth above. Failure of Borrower to provide satisfactory verification of an Equity Balancing Contribution or deliver a Deficiency Letter of Credit as required above shall be deemed Borrower's election to make a Deficiency Deposit. The Deficiency Deposit shall be allocated to the Project Loan Budget and the Budget, as applicable, and shall be applied to the payment of Project Costs on account of the Improvements prior to any further disbursement of the Loans.

(c) The balances of the applicable Contingency Fund from time to time shall not be considered for purposes of determining whether the Loans are In Balance.

(2) If an Event of Default shall occur and be continuing, Administrative Agent (subject to the provisions of Section 14.3) may, at its option, in addition to exercising any other rights or remedies available under the Loan Documents, (A) apply any unexpended Deficiency Deposit to (or draw on any Collateral Letter of Credit to pay) the costs of completion of the Improvements and/or (B) apply any unexpended Deficiency Deposit to (or draw on any Collateral Letter of Credit for application of the sums drawn thereunder to) the immediate reduction of any amounts due under the Notes and the other Loan Documents. With respect to any Collateral Letter of Credit that Borrower may furnish or cause to be furnished to Administrative Agent in accordance with the terms of this Section 4.3:

(a) Administrative Agent will be entitled, among other things, to make one or more draws pursuant to and in accordance with this Agreement or the Building Loan Agreement, as applicable, by presentment thereof to the issuing bank accompanied only by Administrative Agent's clean sight-draft, it being intended that the issuing bank shall have no right to inquire as to Administrative Agent's right to draw upon such Collateral Letter of Credit;

(b) Administrative Agent shall be entitled, among other things, to draw upon each Collateral Letter of Credit pursuant to this Agreement or the Building Loan Agreement, as applicable, in whole, or in part from time to time, to the extent (without taking into account the Collateral Letter of Credit) the Loan is not In Balance, (i) in order to pay any costs not covered by Loan proceeds, Equity Balancing Contributions or Deficiency Deposits or (ii) upon any Event of Default; and

(c) Administrative Agent shall have the right to draw upon any Collateral Letter of Credit within ten (10) Business Days prior to the expiration date of such Collateral Letter of Credit and each renewal and extension thereof unless, prior to such expiration date of such Collateral Letter of Credit and each renewal and extension thereof, Borrower shall have furnished a replacement, extension or renewal Collateral Letter of Credit, acceptable to Administrative Agent, it being the intent hereof that at no time shall the unexpired term of any Collateral Letter of Credit be less than ten (10) Business Days. If Administrative Agent draws upon a Collateral Letter of Credit pursuant to the terms hereof, then Administrative Agent shall hold the proceeds thereof in a Controlled Account as a Deficiency Deposit. Administrative Agent shall also be entitled to draw upon a Collateral Letter of Credit if the credit rating of the issuing bank no longer meets the standard required of a Collateral Letter of Credit and Borrower does not deliver to Administrative Agent a replacement letter of credit that otherwise conforms to the requirements for Deficiency Letters of Credit within ten (10) days following notice of the same from Administrative Agent, or if Administrative Agent reasonably believes that its rights to draw on such Collateral Letter of Credit are in imminent jeopardy of not being honored.

Section 4.4 Budget Contingencies. The Budget contains line items designated for contingency for Hard Costs and Soft Costs (collectively, the "**Contingency Fund**") which represent amounts necessary to provide reasonable assurances to Administrative Agent and the Lenders that funds are available within the Budget if additional costs, expenses and/or delays are incurred or additional interest accrues on the Loans, or other unanticipated events or problems occur. Upon request of Lead Borrower, Administrative Agent may, in its reasonable discretion, re-allocate a portion of the Contingency Fund to cover cost overruns, cost of change orders, additional interests and other anticipated costs based upon the percentage of completion of the Construction Work (e.g. (and as an example only) fifty percent (50%) of the Contingency Fund may be allocated when the project is fifty percent (50%) complete). Any such re-allocation shall reduce, by the amount of such re-allocation, the amount of the Contingency Fund available to be allocated thereafter. Subject to the foregoing, Borrower agrees that the decisions with respect to utilizing any portion of the Contingency Fund shall be made by Administrative Agent in its reasonable discretion and that the Loans may not be In Balance, and Borrower may be required to make a Deficiency Deposit or Equity Balancing Contribution, even if funds remain in the Contingency Fund.

Section 4.5 Budget Line Items. The Budget includes as line items (collectively, "**Budget Line Items**") the cost of all labor, materials, equipment, fixtures and furnishings needed for the completion of all Construction Work, and all other costs, fees and expenses relating in any way whatsoever to the Construction Work and the operation of the Project. Borrower agrees that all Loans shall be used only for the Budget Line Items for which such Loans are made (as re-allocated from time to time in accordance with the terms of this Agreement). Borrower agrees that, while an Event of Default exists, Administrative Agent may, at any time and from time to time without prior written notice to Lead Borrower or Borrower, authorize the disbursement of the Budget Line Items for the purposes for which they have been set aside, or for any other purposes related to the Construction Work or otherwise provided for in the Budget as Administrative Agent may determine, either by payment of such items or by reimbursement to Borrower for payments actually made by Borrower for such items. Administrative Agent shall not be obligated to authorize the disbursement of any amount for any category of costs set forth as a Budget Line Item which is greater than the amount set forth for such category in the applicable Budget Line Item; provided, however, that subject to Administrative Agent's prior reasonable consent, Borrower may apply savings from one Budget Line Item to cost overruns in another Budget Line Item or to the Contingency Fund, or to any other unbudgeted Project Cost provided (a) there are no Potential Defaults or Events of Defaults existing, (b) all costs to be paid out of the Budget Line Item from which funds are being re-allocated have been paid or sufficient sums remain in said line item to pay such costs when the same become due, (c) said savings are actual savings and are documented or otherwise established to the satisfaction of Administrative Agent and the Construction Consultant in their reasonable discretion, (d) such reallocation will not violate the provisions of the Lien Law or affect the priority of the Mortgages on the Project and (e) Administrative Agent, at Borrower's sole cost and expense, obtains endorsements to the Title Policies insuring against "any statutory lien for services, labor or materials furnished or contracted for prior to the date hereof *i.e.*, the date of such endorsement (or any statutory lien for services, labor or materials furnished after the date hereof, the priority of which lien relates back to services, labor or materials furnished or contracted for prior to the date hereof), and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy," as a result of the reallocation of such Budget Line Item; provided, however, the Borrower shall not reallocate any portion of the Soft Costs Budget Line Items which have been allocated to the payment of real estate taxes and the interest reserve.

Section 4.6 Interest; Fees; and Expenses.

(1) Included in the Budget are projected amounts for (a) interest on the Loans, (b) the Agency Fee, (c) the fees and expenses of the Construction Consultant, Administrative Agent's counsel and the Title Company and (d) the fees and expenses related to the recording of the Mortgages. Subject to Borrower's compliance with all of the conditions set forth in Schedule 4 and this Article 4, Lead Borrower may in any Request for Loan Advance request advances for the purpose of paying the aforesaid items due at such time, in which event Administrative Agent shall be authorized and is hereby directed to disburse the amount thereof to the Persons entitled to such payments. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, Lead Borrower shall not have the right to request the advance of any Loans for any items covered by clauses (a) through (d) above to the extent Operating Revenues are available to pay such items.

(2) Borrower hereby authorizes Administrative Agent to disburse the proceeds of any Loan to pay (a) interest accrued on the Notes, (b) the Agency Fees, (c) the fees and expenses of the Construction Consultant, Administrative Agent's counsel and the Title Company, (d) any expenses payable in accordance with Section 9.28, and (e) any Date Down Endorsements, notwithstanding that Lead Borrower may not have requested a disbursement of such amounts.

(3) Subject to the provisions of Section 14.3, Administrative Agent in its sole and absolute discretion may (but shall not be obligated to do so) direct the Lenders to make such Loans for disbursements authorized under this Section 4.6 notwithstanding that the Loans are not In Balance or that a Potential Default or Event of Default exists under the terms of this Agreement or any other Loan Document. Such disbursements shall constitute a Loan and be added to the principal balance of the Notes, and the Lenders shall make the applicable Loans to fund any such disbursements. The authorization hereby granted is irrevocable, and no further direction, authorization or Request for Loan Advance from Lead Borrower is necessary for the Lenders to make such disbursements. Nothing contained in this Section 4.6 shall require Administrative Agent to direct the Lenders to make Loans for payment of any of the items set forth in subsection (2) above if the other conditions set forth in this Agreement for Loans are not satisfied.

Section 4.7 Reserved.

Section 4.8 Tenant Improvement Allowances.

(1) Loans shall be made to Borrower in connection with Tenant Improvement Allowances as the same shall be payable pursuant to Approved Leases.

(2) The first request for disbursement for any Tenant Improvement Allowance shall be accompanied by the following, all of which shall be subject to the reasonable approval of the Administrative Agent to the extent Borrower has any outstanding (i.e. unexpired) approval rights with respect thereto pursuant to the terms of the applicable Approved Lease (any such approval or disapproval to be made by the Administrative Agent within a reasonably sufficient time for Borrower to comply with any time limits set forth in the applicable Approved Lease for Borrower's response):

- (a) documentation required to be delivered by the applicable tenant pursuant to its respective Approved Lease;
- (b) if not already delivered to the Administrative Agent, a fully executed lease (already approved by the Administrative Agent) covering such leased space; and
- (c) all matters set forth in subsection (3) below.

(3) The Administrative Agent's obligation to make disbursements of any Loans for Tenant Improvement Allowances shall be subject to the further condition precedent that all of the following requirements shall have been completed to the reasonable satisfaction of the Administrative Agent to the extent Borrower has any outstanding (i.e. unexpired) approval rights with respect thereto pursuant to the terms of the applicable Approved Lease (any such approval or disapproval to be made by the Administrative Agent within a reasonably sufficient time for Borrower to comply with any time limits set forth in the applicable Approved Lease for Borrower's response):

- (a) Borrower shall have promptly furnished to the Administrative Agent and the Construction Consultant all documents and other information relating to such Tenant Improvement Allowance which Borrower is entitled to receive pursuant to and in accordance with the applicable Approved Lease;
- (b) Loans shall be made for Tenant Improvement Allowances only to the extent the applicable tenant is then entitled to receive payments related to such Tenant Improvement Allowance pursuant to the terms of its applicable Approved Lease;
- (c) no mechanic's liens shall have been filed against the Project in connection with the work being performed under the applicable Approved Lease; and
- (d) Borrower shall have complied with all the other applicable conditions precedent to a disbursement of a Loan contained in Section 2.1.

(4) The obligation of the Lenders to make the final Loan to Borrower for a Tenant Improvement Allowance for any Approved Lease is subject to the further condition precedent that all of the following requirements shall have been completed to the reasonable satisfaction of the Administrative Agent (in the case of clause (b) below, to the extent Borrower has any approval rights with respect thereto pursuant to the terms of the applicable Approved Lease, any such approval or disapproval to be made by the Administrative Agent within a reasonably sufficient time (but in no event less than ten (10) Business Days) to enable Borrower to comply with applicable time limits set forth in the applicable Approved Lease for Borrower's response):

- (a) The applicable work covered by a Tenant Improvement Allowance has been substantially completed, subject to Punch List Items, free of mechanics' liens unless such liens shall be bonded or otherwise removed of record or the Title Company shall have provided affirmative coverage in accordance with Schedule 4 – Part A, paragraph 10;
- (b) Borrower shall have promptly furnished to the Administrative Agent and the Construction Consultant all documents and other information relating to the final advance of the applicable Tenant Improvement Allowance which Borrower is entitled to receive in accordance with the applicable Lease; and
- (c) All of the applicable conditions precedent to any Loan contained in Section 2.1 shall have been satisfied.

Section 4.9 Direct Loan Advances by Administrative Agent. The Lenders shall, at the option of Administrative Agent, advance all or any part of any particular Loan either (1) to Lead Borrower for disbursement in accordance with a Request for Loan Advance, (2) while any Event of Default exists, directly to the Construction Manager, a Major Contractor, other contractor, subcontractor, material supplier or other party any costs payable to such party, (3) after an Event of Default, at Borrower's expense, to the Title Company which shall pay said monies to the parties as so instructed by Administrative Agent or (4) as contemplated by Section 1.01(d) of the Completion Guaranty (whether the applicable work is being performed by Guarantor or Administrative Agent). The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization to the Lenders to make such direct advances provided for in ~~clauses (2), (3) and (4)~~ above and no further authorization from Borrower shall be necessary to warrant such direct advances, and all such direct advances shall be secured by the Security Documents as fully as if made directly to Borrower, regardless of the disposition thereof by any party so paid. After an Event of Default, at Administrative Agent's request, any advance of Loan proceeds made by and through the Title Company may be made pursuant to a construction escrow agreement reasonably approved by Administrative Agent. Borrower agrees to join as a party to such escrow agreement and to comply with the requirements set forth therein (which shall be in addition to and not in substitution for the requirements contained in this Agreement) and to pay the fees and expenses of the Title Company charged in connection with the performance of its duties under such construction escrow agreement.

Section 4.10 No Waiver or Approval by Reason of Loan Advances. The making of any Loans by the Lenders shall not be deemed an acceptance or approval by Administrative Agent or the Lenders (for the benefit of Borrower or any third party) of the Construction Work or other work theretofore done or constructed or to the Lenders' obligations to make further Loans, nor, in the event Borrower is unable to satisfy any condition, shall any such failure to insist upon strict compliance have the effect of precluding Administrative Agent or the Lenders from thereafter declaring such inability to be an Event of Default as herein provided. Administrative Agent's and/or the Lenders' waiver of, or failure to enforce, any conditions to or requirements associated with any Loans in any one or more circumstances shall not constitute or imply a waiver of such conditions or requirements in any other circumstances.

Section 4.11 Authorization to Make Loan Advances to Cure Borrower's Defaults. If an Event of Default shall occur, Administrative Agent (subject to the provisions of ~~Section 14.3~~) may (but shall not be required to) perform any of such covenants and agreements with respect to which Borrower is in Event of Default. Any amounts expended by Administrative Agent in so doing and any amounts expended by Administrative Agent in connection therewith shall constitute a Loan and be added to the outstanding principal balance of the Loans, and the Lenders shall make the applicable Loans to fund any such disbursements. The authorization hereby granted is irrevocable, and no prior notice to or further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

Section 4.12 Designation of Lead Borrower as Agent for Borrower.

(1) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's agent to obtain loans and advances under the Loan, the proceeds of which shall be available to each Borrower as set forth herein. As the disclosed principal for its agent, each Borrower shall be obligated to the Agent and the Lenders on account of loans and advances so made under the Loan as if made directly by the Lenders to that Borrower, notwithstanding the manner by which such loans and advances are recorded on the books and records of the Lead Borrower and/or of any Borrower (including, without limitation, on account of any such treatment of said loan or advance as an equity investment in a Borrower by Lead Borrower).

(2) Each Borrower recognizes that credit available to it under the Loan is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower, jointly and severally, hereby assumes and agrees fully, faithfully, and punctually to discharge all obligations of all of the Borrowers under the Loan Documents.

(3) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a loan or other advance under the Loan.

(4) The proceeds of each loan and advance provided under the Loan which is requested by the Lead Borrower shall be deposited into an account in the name of the Lead Borrower or as otherwise indicated by the Lead Borrower. The Lead Borrower shall cause the transfer of the proceeds thereof to the Borrower(s) on whose behalf such loan and advance was obtained. Neither the Agent nor any Lender shall have any obligation to see to the application of such proceeds.

(5) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's attorney-in-fact to act in the Borrower's name and stead and to do and perform all matters, to grant to the Agent for the benefit of the Lenders a security interest in the Collateral, transact all business, and make, execute and acknowledge all Loan Documents and other instruments relating to this Agreement including but not limited to, this Agreement, the Note, and the Security Documents. The Borrowers hereby acknowledge and agree that the power of attorney created hereby is coupled with an interest.

Section 4.13 Administrative Agent's Right to Make Loan Advances in Compliance with the Guaranty of Completion. Any Loan proceeds disbursed by Administrative Agent as contemplated by Section 1.01(b) of the Guaranty of Completion (whether the applicable work is being performed by Guarantor or Administrative Agent) shall constitute a Loan and be added to the outstanding principal balance of the Loans, and the Lenders shall make the applicable Loans to fund any such disbursements. The authorization hereby granted is irrevocable and no prior notice to or further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

Section 4.14 No Third-Party Benefit. This Agreement is solely for the benefit of the Lenders, Administrative Agent, Lead Borrower and Borrower. All conditions of the obligations of the Lenders to make advances hereunder are imposed solely and exclusively for the benefit of the Lenders and may be freely waived or modified in whole or in part by the Lenders at any time if in their sole discretion they deem it advisable to do so, and no Person other than Lead Borrower or Borrower (provided, however, that all conditions have been satisfied) shall have standing to require the Lenders to make any Loan advances or shall be a beneficiary of this Agreement or any advances to be made hereunder.

ENVIRONMENTAL MATTERS

Section 5.1 Certain Definitions. As used herein, the following terms have the meanings indicated:

(1) **“Environmental Claim”** means, with respect to any Person, any written request for information by a governmental authority, or any written notice, notification, claim, administrative, regulatory or judicial action, suit, judgment, demand or other written communication by any Person or governmental authority alleging or asserting liability with respect to Borrower or the Project, whether for damages, contribution, indemnification, cost recovery, compensation, injunctive relief, investigatory, response, remediation, damages to natural resources, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, use or release into the environment of any Hazardous Materials originating at or from, or otherwise affecting, the Project, (ii) any fact, circumstance, condition or occurrence forming the basis of any violation, or alleged violation, of any Environmental Law by Borrower or otherwise affecting the health, safety or environmental condition of the Project or (iii) any alleged injury or threat of injury to the environment by Borrower or otherwise affecting the Project.

(2) **“Environmental Laws”** means any federal, state or local law (whether imposed by statute, or administrative or judicial order, or common law), now or hereafter enacted and applicable to the Project, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, including, such laws governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to, Hazardous Materials.

(3) **“Environmental Liens”** has the meaning assigned to such term in Section 5.3(4).

(4) **“Environmental Losses”** means any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including, but not limited to, strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, reasonable attorneys’ fees and expenses, engineers’ fees, environmental consultants’ fees, and investigation costs (including, but not limited to, costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards relating to Hazardous Materials, Environmental Claims, Environmental Liens and violation of Environmental Laws.

(5) **“Hazardous Materials”** means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by product thereof, (b) asbestos or asbestos containing materials, (c) polychlorinated biphenyls (PCBs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based paint, (h) Mold, or (i) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any governmental authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws.

(6) **“Mold”** means any microbial or fungus contamination or infestation in any Project of a type that could reasonably be anticipated (after due inquiry and investigation) to pose a risk to human health or the environment or could reasonably be anticipated (after due inquiry and investigation) to negatively impact the value of the affected Property in any material respect.

Section 5.2 Representations and Warranties on Environmental Matters. Borrower represents and warrants to Administrative Agent and the Lenders that, to Borrower’s knowledge, except as set forth in the Site Assessment, (1) no Hazardous Material is now or was formerly used, stored, generated, manufactured, installed, treated, discharged, disposed of or otherwise present at or about the Project or any property adjacent to the Project (except for cleaning and other products currently used in connection with the routine maintenance or repair of the Project and de minimus quantities used by tenants in the normal course of business in full compliance with Environmental Laws), (2) all permits, licenses, approvals and filings required by Environmental Laws have been obtained, and the use, operation and condition of the Project do not, and did not previously, violate any Environmental Laws, (3) no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought or been threatened, nor have any settlements been reached by or with any parties or any Liens imposed in connection with the Project concerning Hazardous Materials or Environmental Laws and (4) no underground storage tanks exist at the Project.

Section 5.3 Covenants on Environmental Matters.

(1) Borrower shall (a) comply strictly and in all respects with applicable Environmental Laws; (b) notify Administrative Agent immediately upon Borrower’s discovery of any spill, discharge, release or presence of any Hazardous Material at, upon, under, within, contiguous to or otherwise affecting the Project; (c) promptly remove such Hazardous Materials and remediate the Project in full compliance with Environmental Laws and as reasonably recommended to preserve the value and/or use of the Project, in accordance with the reasonable recommendations and specifications of an independent environmental consultant approved by Administrative Agent; and (d) promptly forward to Administrative Agent copies of all orders, notices, permits, applications or other communications and reports in connection with any spill, discharge, release or the presence of any Hazardous Material or any other matters relating to the Environmental Laws or any similar laws or regulations, as they may affect the Project or Borrower.

(2) Borrower shall not cause, shall prohibit any other Person within the control of Borrower from causing, and shall use prudent, commercially reasonable efforts to prohibit other Persons (including tenants) from causing (a) any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Materials at, upon, under, within or about the Project or the transportation of any Hazardous Materials to or from the Project (except for cleaning and other products used in connection with the routine maintenance or repair of the Project in full compliance with Environmental Laws), (b) any underground storage tanks to be installed at the Project, or (c) any activity that requires a permit or other authorization under Environmental Laws to be conducted at the Project.

(3) Lead Borrower shall provide to Administrative Agent, at Borrower's expense promptly upon the written request of Administrative Agent from time to time, a Site Assessment or, if required by Administrative Agent, an update to any existing Site Assessment, to assess the presence or absence of any Hazardous Materials and the potential costs in connection with abatement, cleanup or removal of any Hazardous Materials found on, under, at or within the Project. Borrower shall pay the cost of no more than one such Site Assessment or update in any twelve (12) month period, unless Administrative Agent's request for a Site Assessment is based on a reasonable suspicion of Hazardous Materials at or near the Project, a breach of representations under Section 5.2, or an Event of Default, in which case any such Site Assessment or update shall be at Borrower's expense.

(4) **Environmental Notices.** Lead Borrower shall promptly provide notice to Administrative Agent of:

- Borrower;
- (a) all Environmental Claims asserted or threatened against Borrower or any other party occupying the Project or any portion thereof or against the Project which become known to Borrower;
 - (b) the discovery by Borrower of any occurrence or condition on the Project or on any real property adjoining or in the vicinity of the Project which could reasonably be expected to lead to an Environmental Claim against Borrower, Administrative Agent or any of the Lenders;
 - (c) the commencement or completion of any environmental remediation at the Project; and
 - (d) any Lien or other encumbrance imposed pursuant to any Environmental Law ("**Environmental Liens**").

In connection therewith, Lead Borrower shall transmit to Administrative Agent copies of any citations, orders, notices or other written communications received from any Person and any notices, reports or other written communications submitted to any governmental authority with respect to the matters described above.

Section 5.4 Allocation of Risks and Indemnity. As between Borrower, Administrative Agent and the Lenders, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Material at, upon, within, contiguous to or otherwise affecting the Project, shall lie solely with Borrower. Accordingly, Borrower shall bear all risks and costs associated with any Environmental Loss, damage or liability therefrom, including all costs of removal of Hazardous Materials or other remediation required hereunder or by law. Borrower shall indemnify, defend and hold Administrative Agent and the Lenders harmless from and against all loss, liabilities, damages, claims, costs and expenses (including reasonable costs of defense) arising out of or associated, in any way, with the non-compliance with Environmental Laws, or the existence of Hazardous Materials in, on, or about the Project, or a breach of any representation, warranty or covenant contained in this Article 5, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent and the Lenders; provided, however, Borrower shall not be liable under such indemnification to the extent such loss, liability, damage, claim, cost or expense results solely from Administrative Agent's or any Lender's gross negligence or willful misconduct. Borrower's obligations under this Section 5.4 shall arise upon the discovery of the presence of any Hazardous Material, whether or not any governmental authority has taken or threatened any action in connection with the presence of any Hazardous Material, and whether or not the existence of any such Hazardous Material or potential liability on account thereof is disclosed in the Site Assessment and shall continue notwithstanding the repayment of the Loans or any transfer or sale of any right, title and interest in the Project (by foreclosure, deed in lieu of foreclosure or otherwise).

Section 5.5 No Waiver. Notwithstanding any provision in this Article 5 or elsewhere in the Loan Documents, or any rights or remedies granted by the Loan Documents, Administrative Agent and the Lenders do not waive and expressly reserve all rights and benefits now or hereafter accruing to Administrative Agent and/or any Lenders under the "security interest" or "secured creditor" exception under applicable Environmental Laws, as the same may be amended. No action taken by Administrative Agent and/or any Lender pursuant to the Loan Documents shall be deemed or construed to be a waiver or relinquishment of any such rights or benefits under the "security interest exception."

ARTICLE 6

LEASING MATTERS

Section 6.1 Representations and Warranties on Leases. Borrower represents and warrants to Administrative Agent and the Lenders with respect to leases of the Project that: (1) to Borrower's knowledge, the rent roll delivered to Administrative Agent is true and correct, and the leases are valid and in full force and effect; (2) the leases (including amendments) are in writing, and there are no oral agreements with respect thereto; (3) the copies of the leases delivered to Administrative Agent are true and complete; (4) to Borrower's knowledge, neither the landlord nor any tenant is in default under any of the leases; (5) Borrower has no knowledge of any notice of termination or default with respect to any lease; (6) Borrower has not assigned or pledged any of the leases, the rents or any interests therein except to Administrative Agent (on behalf of the Lenders); (7) no tenant or other party has an option to purchase all or any portion of the Project; (8) no tenant has the right to terminate its lease prior to expiration of the stated term of such lease except in the case of a casualty or condemnation of the Project to the extent permitted pursuant to the terms and conditions of such lease; and (9) no tenant has prepaid more than one month's rent in advance (except for bona fide security deposits not in excess of an amount equal to two month's rent). To the extent that any part of the Land is located in the State of New York, reference is hereby made to Section 291-f of the Real Property Law of the State of New York for purposes of obtaining for Administrative Agent and the Lender the benefits of said Section in connection herewith.

Section 6.2 Standard Lease Form; Approval Rights. All leases and other rental arrangements shall in all respects be approved by Administrative Agent and shall be on a standard lease form for the Office Component, approved by Administrative Agent with no material modifications (except as approved by Administrative Agent in writing). Such lease form shall provide (a) that the lease is subordinate to the Mortgages, (b) that the tenant shall attorn to Administrative Agent (on behalf of the Lenders) following an Event of Default and (c) that any cancellation, surrender, or amendment of such lease without the prior written consent of Administrative Agent shall be voidable by Administrative Agent. Borrower shall hold, in trust, all tenant security deposits in a segregated account, and, to the extent required by Applicable Law, shall not commingle any such funds with any other funds of Borrower. Within ten (10) days after Administrative Agent's request, Borrower shall furnish to Administrative Agent a statement of all tenant security deposits, and copies of all leases not previously delivered to Administrative Agent, certified by Borrower as being true and correct. Notwithstanding anything contained in the Loan Documents, Administrative Agent's approval shall not be required for future leases or lease extensions if the following conditions are satisfied: (1) there exists no Potential Default or Event of Default; (2) the lease is on the standard lease form approved by Administrative Agent with no modifications except for commercially reasonable changes agreed to in the ordinary course of Borrower's business, but in any event there shall be no modifications to the subordination, attornment, estoppel and landlord liability clause without the prior written consent of Administrative Agent; (3) the lease does not conflict with any restrictive covenant affecting the Project or any other lease for space in the Project; (4) the lease is not a Major Lease; (5) the lease shall provide for rental rates and landlord concessions comparable to existing local market rates as shall be established pursuant to the Leasing Guidelines; (6) the lease is with a third party not an Affiliate of Borrower, Sponsor or Guarantor; (7) the lease shall not contain any options for renewal or expansion by the tenant at rental rates which are below reasonable comparable market levels at the time the lease is executed; (8) the lease shall be to a tenant which Borrower, in its professional and commercially reasonable judgment, has determined is creditworthy and (9) the lease is for a term of not more than ten (10) years (exclusive of renewal options which, together with the initial lease term shall not exceed fifteen (15) years).

Section 6.3 Covenants. Borrower (1) shall perform the obligations which Borrower is required to perform under the leases, including the performance of any Tenant Improvement Work with respect thereto; (2) shall enforce the obligations to be performed by the tenants; (3) shall promptly furnish to Administrative Agent any notice of default or termination received by Borrower from any tenant, and any notice of default or termination given by Borrower to any tenant; (4) shall not collect any rents for more than thirty (30) days in advance of the time when the same shall become due, except for bona fide security deposits not in excess of an amount equal to two month's rent; (5) shall not enter into any ground lease or master lease of any part of the Project; (6) shall not further assign or encumber any lease; (7) shall not, except with Administrative Agent's prior written consent, cancel or accept surrender or termination of any Major Lease; (8) shall not, except with Administrative Agent's prior written consent, modify or amend any Major Lease (except for minor modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices, not affecting the economic terms of the lease); (9) shall use its best efforts to lease the Improvements; and (10) shall not, with respect to the Best Buy Lease, select or change the "Outside Delivery Date" (as defined in such lease) without the prior written consent of Administrative Agent, and any action in violation of clauses (5), (6), (7), and (8) of this Section 6.3 shall be void at the election of Administrative Agent.

Section 6.4 Tenant Estoppels. At Administrative Agent's request, Borrower shall, within thirty (30) days, obtain and furnish to Administrative Agent, (1) written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under leases in the Project and confirming the term, rent, and other provisions and matters relating to the leases and (2) written subordination and attornment agreements, in form and substance satisfactory to Administrative Agent, executed by tenants under leases in the Project, whereby, among other things, such tenants subordinate their interest in the Project to the Loan Documents and agree to attorn to Administrative Agent (on behalf of the Lenders) and its successors and assigns upon foreclosure or other transfer of the Project after an Event of Default.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and the Lenders that:

Section 7.1 Organization and Power. Borrower and each Borrower Party is duly organized, validly existing and in good standing under the laws of the state of its formation or existence, and is in compliance with legal requirements applicable to doing business in the State. Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Internal Revenue Code. Lead Borrower's U.S. taxpayer identification number is 20-1577239 and Fordham Office's U.S. taxpayer identification number is 26-1094416.

Section 7.2 Validity of Loan Documents. The execution, delivery and performance by Borrower and each Borrower Party of the Loan Documents: (1) are duly authorized and do not require the consent or approval of any other party or governmental authority which has not been obtained; and (2) will not violate any law or result in the imposition of any Lien upon the assets of any such party, except as contemplated by the Loan Documents. The Loan Documents constitute the legal, valid and binding obligations of Borrower and each Borrower Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 7.3 Liabilities; Litigation.

(1) The financial statements delivered by Borrower and each Borrower Party are true and correct with no material change since the date of preparation. Except as disclosed in such financial statements, there are no liabilities (fixed or contingent) affecting the Project, Borrower or any Borrower Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to the knowledge of Borrower, threatened, against the Project, Borrower or any Borrower Party which if adversely determined could have a Material Adverse Effect.

(2) Neither Borrower nor any Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Borrower nor any Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

Section 7.4 Taxes and Assessments. The Project is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Borrower's best knowledge, proposed, special or other assessments for public improvements or otherwise affecting the Project, nor are there any contemplated improvements to the Project (other than the Construction Work) that may result in such special or other assessments.

Section 7.5 Other Agreements; Defaults. Neither Borrower nor any Borrower Party is a party to or in violation of any agreement or instrument or subject to any court order, injunction, permit, or restriction which might have a Material Adverse Effect.

Section 7.6 Compliance with Law; Government Approvals.

(1) Borrower and the Project, as applicable, and the contemplated use thereof and operations thereat, comply, and upon completion of construction of the Construction Work shall comply, with all Applicable Law, except where the failure so to comply could not reasonably be expected to have a Material Adverse Effect.

(2) All Government Approvals necessary in connection with the construction and operation of the Project as contemplated by the Loan Documents and the Project Documents, are set forth in Schedule 7.6 attached hereto (the "**Permitting Schedule**") and, other than those Government Approvals to be obtained after the date hereof as expressly identified in the Permitting Schedule, have been duly obtained, were validly issued, are in full force and effect, are not subject to appeal, are held in the name of Borrower (in the case of the Project, are held in the name of Borrower (in the case of the Project)), are free from conditions or requirements, the compliance with which could reasonably be expected to have a Material Adverse Effect or which Borrower does not reasonably expect will be able to be satisfied in the ordinary course of business, and are assignable to and assumable by the successors in interest and transferees of Borrower and run with the land.

(3) There is no proceeding pending or, to Borrower's Knowledge, threatened that seeks, or may reasonably be expected, to rescind, terminate, modify or suspend any such Government Approval.

(4) The information set forth in each application and other written material submitted by Borrower and, to Borrower's Knowledge, to the applicable Governmental Authority in connection with each such Government Approval is accurate and complete in all material respects.

(5) The Government Approvals expressly described on the Permitting Schedule as those to be obtained after the date hereof are required solely in connection with later stages of development, construction or operation of the Improvements. Borrower has no reason to believe that any Government Approval that has not yet been obtained by Borrower, but which will be required in the future, will not be granted in due course, on or prior to the date when required and free from any condition or requirement which Borrower does not reasonably expect will be able to be satisfied in the ordinary course of business.

(6) The Project (if constructed in accordance with the Plans and Specifications and the Project Documents) will conform to and comply with all covenants, conditions, restrictions and reservations in the Government Approvals and all Applicable Law, except where the failure so to comply could not reasonably be expected to have a Material Adverse Effect.

(7) Borrower has no reason to believe that Administrative Agent, acting for the benefit of the Lenders, will not be entitled, to the benefit of each Government Approval set forth on the Permitting Schedule hereto with respect to the Project upon the exercise of remedies under the Security Documents.

(8) Borrower has delivered to Administrative Agent a true and complete copy of each Government Approval heretofore obtained with respect to the Project as indicated on the Permitting Schedule, as the same shall be supplemented during the course of obtaining additional Government Approvals as the Construction Work proceeds.

Section 7.7 Location of Borrower. Borrower's principal place of business and chief executive offices are located at the address stated in [Section 12.1](#).

Section 7.8 ERISA. Borrower has no employees and has not established any pension plan for employees which would cause Borrower to be subject to the Employee Retirement Income Security Act of 1974, as amended.

Section 7.9 Margin Stock. No part of proceeds of the Loans will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

Section 7.10 Tax Filings. Borrower and each Borrower Party have filed (or have obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and each Borrower Party, respectively.

Section 7.11 Solvency. Giving effect to the Loans, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loans, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loans, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loans will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debts as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

Section 7.12 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower or any Borrower Party in this Agreement or in any of the other Loan Documents or in any certificate, statement or questionnaire delivered by Borrower or any Borrower Party in connection with the Loans contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower or any Borrower Party which has not been disclosed to Administrative Agent which might have a Material Adverse Effect.

Section 7.13 Single Purpose Entity. Borrower is and has at all times since its formation been a Single Purpose Entity.

Section 7.14 Property Management Agreement; Construction Management Agreement; Development Agreement.

(1) The Property Management Agreement is the only property management agreement in existence with respect to the operation or management of the Project. The copy of the Property Management Agreement delivered to Administrative Agent is a true and correct copy, and such agreement has not been modified. Neither party to such agreement is in default under such agreement and the Property Manager has no defense, offset right or other right to withhold performance under or terminate such agreement.

(2) The Construction Management Agreement is the only Construction Management Agreement in existence with respect to the construction management of the Project. The copy of the Construction Management Agreement delivered to Administrative Agent is a true and correct copy, and such agreement has not been modified. Neither party to such agreement is in default under such agreement and the Construction Manager has no defense, offset right or other right to withhold performance under or terminate such agreement.

(3) There is no development agreement with respect to the Project.

Section 7.15 No Conflicts.

(1) The execution, delivery and performance of the Loan Documents, and the Project Documents by Borrower do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, operating agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Applicable Law or Government Approval applicable to Borrower or the Project.

(2) Each Government Approval required for and each consent or approval required to be obtained from, and notice required to be delivered to, any other Person in connection with the execution, delivery and performance by Borrower of this Agreement, the other Loan Documents, and the Project Documents has been obtained or delivered and is in full force and effect.

Section 7.16 Title. Borrower has good, marketable and insurable fee simple title to the Project, free and clear of all Liens, except for the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. The Mortgages create (and upon the recordation thereof and of any related financing statements there will be perfected) (1) a valid Lien on the Project, subject only to Permitted Encumbrances and (2) security interests in and to, and collateral assignments of, all personalty (including the leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. There are no claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

Section 7.17 Use of Project. The Project, upon completion of the construction of the Improvements, will be used exclusively for retail, office and other ancillary uses permitted by applicable zoning law, and for no other purpose or purposes.

Section 7.18 Flood Zone. No portion of the Project or the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1994, as amended, or any successor law.

Section 7.19 Insurance. Borrower has obtained and has delivered to Administrative Agent certified copies of all of the insurance policies for the Project reflecting the insurance coverages, amounts and other insurance requirements set forth in this Agreement. No claims have been made under any such policy, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any such policy.

Section 7.20 Condemnation. No condemnation has been commenced or, to Borrower's knowledge, is contemplated with respect to all or any portion of the Project or for the relocation of roadways providing access to the Project.

Section 7.21 Utilities; Access. The Project has adequate rights of access to public ways and is or will, following completion of the Improvements, be served by adequate electric, gas, water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary to the full use and enjoyment of the Project are or will be located in the public right-of-way abutting such project, there exists sufficient capacity to support the Project and all such utilities are or will, following the completion of the Improvements, be connected so as to serve such project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting such project. All roads necessary for the full utilization of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for on-site and off-site infrastructure improvements to be developed pursuant to the Government Approvals by Borrower for the Project, there are no amenities, services or facilities (including those for access, parking, recreational activities and otherwise) not located or to be constructed upon the Project, pursuant to the applicable Project Documents, which are necessary to the use or enjoyment, or intended to benefit the owner or occupants, thereof.

Section 7.22 Boundaries. Except as shown on the Survey all of the improvements to be developed in connection with the Project lie wholly within the boundaries and building restriction lines of such project, and no improvements on adjoining properties encroach upon the Project.

Section 7.23 Separate Lots. The Project is comprised of one (1) or more parcels which constitutes one (1) or more separate tax lots and does not constitute a portion of any other tax lot not a part of the Project.

Section 7.24 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable legal requirements currently in effect in connection with the transfer of the Project to Borrower or any transfer of a controlling interest in Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgages, have been paid and, the Mortgages are enforceable in accordance with its terms by Administrative Agent or any subsequent holder thereof (on behalf of the Lenders), subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 7.25 Investment Company Act. Borrower is not (1) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (2) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 7.26 Foreign Assets Control Regulations, Etc. Neither the execution and delivery of the Notes and the other Loan Documents by Borrower Parties nor the use of the proceeds of the Loans, will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended), Executive Order No. 13,224,66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or any enabling legislation or executive order relating to any of the same. No Borrower Party nor any of their respective subsidiaries or Affiliates is a Prohibited Person.

Section 7.27 Organizational Structure.

(1) Borrower has heretofore delivered to Administrative Agent a true and complete copy of the Organizational Documents of each Borrower Party.

(2) Schedule 7.27 contains a true and accurate chart reflecting the ownership of all of the direct and indirect equity interests in Borrower and each Borrower Party, including the percentage of ownership interest of the Persons shown thereon.

Section 7.28 Project Documents. Borrower has heretofore delivered to Administrative Agent a true and complete copy of each Project Document and, subject to the terms of Section 9.7 of the Building Loan Agreement, none of the Project Documents has been further modified. The Project Documents are in full force and effect and Borrower is not in default under or with respect to any Project Document. To the best of Borrower's knowledge, no other party to a Project Document is in default under any material covenant or obligation set forth therein.

Section 7.29 Budget. The amounts and allocations set forth in the Budget (including the Project Costs), as it may be amended in accordance with the terms of this Agreement, present a full, complete and good faith representation of all costs, expenses and fees anticipated to be required to acquire and develop the Project, complete the Construction Work, and pay interest on the Loans, the carrying and operating costs for the Project, costs in connection with the leasing of premises within the Project.

Section 7.30 Interim Disbursements. All Loans, if any, disbursed prior to the date hereof by Administrative Agent to Lead Borrower have been applied to the respective items listed in the respective Request for Loan Advance, except that in the case of any disputed items, such Loans have been applied to other Budget Line Items with Administrative Agent's prior approval or repaid to Administrative Agent (on behalf of the Lenders).

Section 7.31 Reserved.

Section 7.32 Tenant Improvement Allowances. Schedule 7.32 attached hereto sets forth a true and complete summary of all Tenant Improvement Allowances currently provided for in the Leases; provided that Schedule 7.32 shall be subject to update as Approved Leases are executed and/or amended in accordance with the terms hereof and as plans for Tenant Improvement Allowances are further developed pursuant to Approved Leases.

Section 7.33 Reserved.

ARTICLE 8

FINANCIAL REPORTING

Section 8.1 Financial Statements.

(1) **Monthly Reports.** During the period commencing on the Closing Date and ending upon the satisfaction of the Project Work Substantial Completion Conditions, as soon as available and in any event within fifteen (15) Business Days after the end of each calendar month occurring during such period, a certificate of an authorized officer of Lead Borrower, in form and substance reasonably satisfactory to Administrative Agent, setting forth in reasonable detail (a) Borrower's total sources of funds and uses thereof during such month (specifically identifying any uses of contingency funds permitted to be advanced by Administrative Agent), (b) the aggregate amounts paid during such month to the Construction Manager and/or subcontractors and any unpaid amounts owing to the Construction Manager and/or subcontractors which are sixty (60) days past their due date, (c) variations from the Construction Schedule, including, without limitation, the estimated Completion Date, and the reasons therefor, (d) if the amounts paid to the Construction Manager and/or subcontractors during such month are at variance from the amounts scheduled to be paid pursuant to the applicable Request for Loan Advance, the reasons for such variance, (e) any Liens placed on the Project and their payment status, (f) the status of construction generally and of the Government Approvals necessary for the construction and operation of the Project; and (g) copies of Lien Waivers and any other reports as may reasonably be requested by Administrative Agent.

(2) **Quarterly Reports.** Within sixty (60) days after the end of each calendar quarter (except for the fourth quarter ending on December 31), Lead Borrower shall furnish to Administrative Agent (a) on and after the satisfaction the Project Work Substantial Completion Conditions, quarterly operating statements for the Project for the most recent fiscal quarter, (b) a current rent roll for the Project, (c) on and after the Occupancy of the first tenant in the Project for operation of its business, a statement of all rent arrearages as of the last day of such fiscal quarter, (d) a leasing status report, (e) quarterly financial statements (including a balance sheet, income statement and cash flow statement) for Borrower, Guarantor and the Managing Member prepared in accordance with GAAP (and including all appropriate and customary notes), and (f) a certificate executed by the chief financial officer of Borrower or the Managing Member of Borrower stating that each such quarterly statement presents fairly the financial condition and the results of operations of Borrower and the Project and has been prepared in accordance with general accepted accounting principles.

(3) **Annual Reports.** Within one hundred twenty (120) days after the end of each calendar year, Lead Borrower will furnish to Administrative Agent a complete copy of Borrower's annual financial statements prepared in accordance with GAAP and otherwise in form and detail reasonably acceptable to Administrative Agent, for such calendar year which financial statements shall contain (x) a balance sheet and (y) on and after the Occupancy of the first tenant in the Project, a detailed operating statement for each of Borrower and the Project. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior calendar year, and (ii) a certificate executed by the chief financial officer of Borrower or the Managing Member of Borrower (in the case of the Borrower financial statements) stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Project and has been prepared in accordance with general accepted accounting principles. Together with Borrower's annual financial information to be delivered pursuant to this Section 8.1(3), copies, certified by an Authorized Officer of Borrower to be true and correct, for each annual period prior to the Completion Date, the annual audited financial statement of the Construction Manager, in each case prepared in accordance with GAAP, and together with the opinion of the independent certified public accountant of the Construction Manager, which opinion is not qualified as to the scope of the audit or as to the status of the Construction Manager.

(4) **Additional Reports.** Upon completion of the Improvements and if the Maturity Date is extended pursuant to Section 2.5, Lead Borrower shall deliver to Administrative Agent as soon as reasonably available, but in no event later than thirty (30) days after such items become available to Borrower in final form a summary report containing each of the following with respect to the Project for the most recently completed calendar year: (A) aggregate sales by tenants under leases or other occupants of the Project, both on an actual (or to the extent such information is not provided by tenants, Property Manager's or Borrower's best estimate) and on a comparable store basis, (B) rent per square foot payable by each tenant and (C) aggregate Occupancy of the Project by anchor space and in-line store space as of December 31.

Section 8.2 Accounting Principles. All financial statements shall be prepared in accordance with sound accounting principles applicable to commercial real estate, consistently applied from year to year. If the financial statements are prepared on an accrual basis, such statements shall be accompanied by a reconciliation to cash basis accounting principles.

Section 8.3 Other Information. Lead Borrower shall deliver to Administrative Agent such additional information regarding Borrower, its subsidiaries, its business, any Borrower Party, and the Project within thirty (30) days after Administrative Agent's request therefor.

Section 8.4 Audits. Administrative Agent shall have the right to choose and appoint a certified public accountant to perform financial audits as it deems necessary, at Borrower's expense. Borrower shall permit Administrative Agent to examine such records, books and papers of Borrower which reflect upon its financial condition and the income and expense relative to the Project.

ARTICLE 9

COVENANTS

Borrower covenants and agrees with Administrative Agent and the Lenders as follows:

Section 9.1 Due on Sale and Encumbrance; Transfers of Interests. Without the prior written consent of Administrative Agent and the Lenders (to the extent required under Section 12.2),

(1) Borrower shall not allow any Change of Control to occur;

(2) neither Borrower nor any other Person having an ownership or beneficial interest in Borrower shall (a) allow, directly or indirectly, any Transfer (other than a Permitted Transfer), to occur; or (b) further encumber, alienate, grant a Lien or grant any other interest in the Project or any part thereof (including any partnership, membership or other ownership interest in Borrower), whether voluntarily or involuntarily; and

(3) Borrower shall not assign any of its rights or obligations hereunder or under the Loan Documents.

As used in this Section 9.1, "Transfer" shall include the sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of (a) the Project (including, following the establishment of a condominium regime with respect to the Project, any Unit), (b) any partnership interest in any general partner in Borrower that is a partnership, (c) any membership interest in any member in Borrower that is a limited liability company and (d) any voting stock in any managing member in Borrower that is a corporation; "Transfer" shall not include (i) the leasing of any space within the Project so long as Borrower complies with the provisions of the Loan Documents relating to such leasing activity; or (ii) the transfers of non-managing membership interests in Borrower so long as no Change of Control results therefrom.

Section 9.2 Maintenance of the Project; Alterations.

(1) Upon the completion of construction of the Project, Borrower shall:

(a) maintain or cause to be maintained the Improvements with the facilities and amenities as described in the definition of "Improvements," in good condition and repair, in a manner consistent with a class "A" mixed-use commercial property located in Bronx, New York, and make or cause to be made all reasonably necessary repairs or replacements thereto;

(b) not remove, demolish or structurally alter, or permit or suffer the removal, demolition or structural alteration of, any of the Improvements without the prior written consent of Administrative Agent except to the extent required pursuant to the development of the Project and in connection with the Construction Work or as permitted by this Agreement or required by Applicable Law;

(c) subject to the terms of the Loan Documents (and the Condominium Declaration, if applicable), promptly restore or cause to be restored in like manner any portion of the Improvements which may be damaged or destroyed from any cause whatsoever;

(d) not commit, or permit, any waste of the Project; and

(e) subject to the terms of the Loan Documents (and the Condominium Declaration, if applicable), not remove or permit the removal of any item constituting part of the Project without replacing it with a comparable item of equal quality, value and usefulness; except that the foregoing provisions shall not prohibit the sale or disposition, in the ordinary course of business, of any property which is obsolete or such replacement is impracticable and not within the sound business judgment of Borrower, all as subject to the consent of Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned.

(2) Upon the completion of construction of the Project, Borrower shall obtain Administrative Agent's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, to any alterations to the Improvements, other than alterations performed in connection with the restoration of the Project after the occurrence of a casualty in accordance with the terms and provisions of this Agreement (and the Condominium Declaration, if applicable).

Section 9.3 Real Estate Taxes; Charges. Borrower shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any real estate taxes and assessments, franchise taxes and charges, and other governmental charges that may become a Lien upon the Project or become payable during the term of the Loans (collectively, the "**Real Estate Taxes**"), and will promptly furnish Administrative Agent with evidence of such payment; however, Borrower's compliance with Section 9.16 of this Agreement relating to impounds for taxes and assessments shall, with respect to payment of such taxes and assessments, be deemed compliance with this Section 9.3. Borrower shall not suffer or permit the joint assessment of the Project with any other real property constituting a separate tax lot or with any other real or personal property. Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a Lien on the Project; however, Borrower may contest the validity of such claims and demands or taxes so long as (1) Lead Borrower notifies Administrative Agent that Borrower intends to contest such claim or demand, (2) Borrower provides Administrative Agent with an indemnity, bond or other security satisfactory to Administrative Agent (including an endorsement to Administrative Agent's title insurance policy insuring against such claim or demand) assuring the discharge of Borrower's obligations for such claims and demands, including interest and penalties, (3) Borrower is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the tenth (10th) day preceding the earlier to occur of the Maturity Date or the date on which the Project is scheduled to be sold, forfeited, terminated, cancelled or lost for non payment, (4) such proceedings shall not subject Borrower, the Administrative Agent or any Lender to criminal or civil liability (other than civil liability as to which adequate security has been provided pursuant to clause (2) above), and (5) Borrower shall promptly upon final determination thereof pay the amount of such items, together with all costs, interests and penalties.

(2) Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Notes or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Administrative Agent or any Lender. If there shall be enacted any law (1) deducting the Loans from the value of the Project for the purpose of taxation, (2) affecting any Lien on the Project, or (3) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Administrative Agent, on demand, all taxes, costs and charges for which Administrative Agent or any Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loans usurious, then instead of collecting such payment, Administrative Agent may (and on the request of the Majority Lenders shall) declare all amounts owing under the Loan Documents to be immediately due and payable.

Section 9.4 Development; Management.

(1) Borrower shall not terminate, replace or appoint any property manager or terminate or amend the Property Management Agreement for the Project without Administrative Agent's prior written approval. Any change in majority ownership or control of the Property Manager shall be cause for Administrative Agent to reasonably re-approve such Property Manager and Property Management Agreement. Borrower shall replace the Property Manager as the request of the Administrative Agent (i) upon the occurrence of an Event of Default, (ii) if the Property Manager is in default of its obligations under the Property Management Agreement, or (iii) if the Property Manager is insolvent or is the subject of an involuntary or voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities under any bankruptcy, insolvency or other similar law.

(2) If at any time Administrative Agent consents to the appointment of a new property manager, such new property manager and Borrower shall, as a condition of Administrative Agent's consent, execute a Property Manager's Consent and Subordination of Property Management Agreement in the form then used by Administrative Agent. Each property manager shall hold and maintain all necessary licenses, certifications and permits required by law. Borrower shall fully perform all of its covenants, agreements and obligations under the Property Management Agreement.

(3) Borrower shall cause the Project to be managed by a Qualified Manager engaged by Borrower and approved by Administrative Agent in its reasonable discretion. Acadia-P/A Management Services, LLC is hereby approved as the initial Property Manager, pursuant to the terms set forth in the Property Management Agreement.

(4) Subject to the terms of the Subordination of Property Management Agreement, the Property Manager shall be entitled to receive a management fee of not more than four percent (4%) of total operating revenues as defined in the applicable Property Management Agreement approved by the Administrative Agent.

(5) The Property Manager shall, prior to the Closing Date, deliver an executed Subordination of Property Management Agreement.

(6) Lead Borrower shall deliver to Administrative Agent, as and when executed, certified copies of all maintenance, management, service, leasing and sales contracts entered into with respect to the Project, each of which shall provide that Administrative Agent shall have the right, upon foreclosure, to terminate such contract on thirty (30) days notice, or, if such right is not provided in such contract, such contract shall be entered into with a party, and on terms and conditions reasonably acceptable to Administrative Agent, and contemporaneously with entering into each such contract, at Administrative Agent's option, cause the service provider under each such contract to deliver to Administrative Agent a Consent and Agreement, pursuant to which such service provider shall undertake, inter alia, to continue performance on behalf of the Lenders following any Event of Default without additional cost (other than sums owed pursuant to such contract for services thereafter rendered to or for Administrative Agent).

(7) Borrower will not enter into a development agreement with respect to the Project unless: (a) Administrative Agent has approved the developer in writing; (b) the form and substance of the development agreement is acceptable to Administrative Agent and (c) the development agreement has been collaterally assigned to the Administrative Agent, in accordance with a form reasonably acceptable to the Administrative Agent, and consented to by the developer.

Section 9.5 Compliance with Laws; Inspection.

(1) Borrower shall:

(a) comply in all material respects (subject to such more stringent requirements as may be set forth elsewhere herein) with all Applicable Laws;

(b) obtain, comply with and maintain in full force and effect all Government Approvals and shall from time to time obtain all Government Approvals as shall now or hereafter be necessary under Applicable Law in connection with the ownership, construction, operation or maintenance of the Project or the execution, delivery and performance by Borrower of any of the Project Documents to which it is a party and shall comply with all such Government Approvals and keep them in full force and effect;

(c) promptly furnish a true and complete copy of each such Government Approval to Administrative Agent;

(d) unless otherwise approved by the Administrative Agent, use its reasonable efforts to contest any proceedings before any Governmental Authority and to resist any proposed adverse changes in Applicable Law to the extent that such proceedings or changes are directed specifically toward the Project or could reasonably be expected to have a Material Adverse Effect; and

(e) permit Administrative Agent and the Lenders and their agents, representatives and employees, upon reasonable prior notice to Borrower, to inspect the Project and conduct such environmental and engineering studies and inspections of the Project as Administrative Agent may require, provided such inspections and studies are conducted during normal business hours and do not materially interfere with the use and operation of the Project.

(2) After prior notice by Lead Borrower to Administrative Agent, Borrower, at its own expense, may contest by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, the validity or application of any Applicable Law; provided that:

(a) no Event of Default exists;

(b) Borrower shall pay any outstanding fines, penalties or other payments under protest unless such proceeding shall suspend the collection of such items;

(c) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Project is subject and shall not constitute a default thereunder;

(d) no part of or interest in the Project will be in danger of being sold, forfeited, terminated, canceled or lost during the pendency of the proceeding;

(e) such proceeding shall not subject Borrower, Administrative Agent or any Lender to criminal or civil liability (other than civil liability as to which adequate security has been provided pursuant to clause (f) below);

(f) unless paid under protest, Borrower shall have furnished such security as may be required in the proceeding, or as may be reasonably requested by Administrative Agent, to insure the payment of any such items, together with all interest and penalties thereon, which shall not be less than 110% of the maximum liability of Borrower as reasonably determined by Administrative Agent; and

(g) Borrower shall promptly upon final determination thereof pay the amount of such items, together with all costs, interest and penalties.

(3) Administrative Agent will engage an inspecting architect at Borrower's reasonable expense, in accordance with Administrative Agent's standard engagement procedures, to review plans, specifications and budgets of the Project on a monthly basis, inspect the Project and provide reports on such inspections to the Administrative Agent for the benefit of the Lenders.

Section 9.6 Legal Existence; Name, Etc.

(1) Borrower and each Managing Member in Borrower shall preserve and keep in full force and effect their respective existence as a Single Purpose Entity, entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of the Project. Neither Borrower nor any Managing Member of Borrower shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of all or substantially all of their respective assets, or acquire all or substantially all of the assets of the business of any Person, or permit any subsidiary or Affiliate of Borrower to do so. Borrower and each Managing Member in Borrower shall conduct business only in its own respective name and shall not change its respective name, identity, or organizational structure, or the location of its chief executive office or principal place of business unless Borrower or such Managing Member (a) shall have obtained the prior written consent of Administrative Agent to such change, and (b) shall have taken all actions necessary or requested by Administrative Agent to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents.

(2) Borrower shall at all times cause there to be at least one (1) duly appointed member of the board of managers or other governing board or body of the managing member of the Managing Member, who is an Independent Manager. Borrower shall not take any action or permit any action to be taken which, under the terms of this Agreement, or the limited partnership agreement or limited liability company operating agreement of Borrower, the Managing Member, or the managing member of the Managing Member, requires the consent of such Independent Manager(s), unless such Independent Manager(s) shall have consented in writing to such action.

(3) Neither Borrower nor Borrower's Managing Member shall cause or permit any modification to be made in its organizational documents that would be inconsistent with the provisions of Section 7.27 or this Section 9.6, that would interfere with its ability to comply with its status as a Single Purpose Entity, as applicable, or that otherwise in any other respect would violate this Agreement or could reasonably be expected to have a Material Adverse Effect.

Section 9.7 Affiliate Transactions

(1) Without the prior written consent of Administrative Agent, Borrower shall not engage in any transaction affecting the Project with an Affiliate of Borrower.

Section 9.8 Limitation on Other Debt.

(1) Borrower and Managing Member shall not, without the prior written consent of Administrative Agent and the Majority Lenders, incur any Debt other than, in the case of Borrower, the Debt permitted by the definition of Single Purpose Entity.

(2) Borrower shall not make any loans, and no direct or indirect interest in Borrower may be pledged as collateral for any financing or otherwise, except for the Approved Mezzanine Loan and as otherwise may be permitted under this Agreement or expressly approved by Administrative Agent and Majority Lenders in their discretion.

Section 9.9 Further Assurances. Borrower shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, and (2) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Administrative Agent may reasonably request to further evidence and more fully describe the collateral for the Loans, to correct any omissions in the Loan Documents, to perfect, protect or preserve any Liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith.

Section 9.10 Loan Certificates. Borrower or Administrative Agent, within ten (10) days after request from the other party, shall furnish to the requesting party a written statement, duly acknowledged, setting forth the amount due on the Loans, the terms of payment of the Loans, the date to which interest has been paid, whether any offsets or defenses exist against the Loans and, if any are alleged to exist, the nature thereof in detail, and such other matters as the requesting party reasonably may request.

Section 9.11 Notice of Certain Events. Lead Borrower shall promptly notify Administrative Agent of (1) any Potential Default or Event of Default, together with a detailed statement of the steps being taken to cure such Potential Default or Event of Default; (2) any notice of default received by Borrower or any Borrower Party under other obligations relating to the Project or otherwise material to Borrower's business; and (3) any threatened or pending legal, judicial or regulatory proceedings, including any dispute between Borrower and any governmental authority, affecting Borrower or the Project.

Section 9.12 Indemnification. Borrower shall indemnify, defend and hold Administrative Agent and each Lender harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including the reasonable fees and actual expenses of their counsel, which may be imposed upon, asserted against or incurred by any of them relating to or arising out of (1) the Project or (2) any of the Loan Documents or the transactions contemplated thereby, including, without limitation, (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about any of the Project or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways, (b) any inspection, review or testing of or with respect to the Project, (c) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Administrative Agent or any Lender is designated a party thereto, commenced or threatened at any time (including after the repayment of the Loans) in any way related to the execution, delivery or performance of any Loan Document or to the Project, (d) any proceeding instituted by any Person claiming a Lien, and (e) any brokerage commissions or finder's fees claimed by any broker or other party claiming to have dealt with the Borrower in connection with the Loans, the Project, or any of the transactions contemplated in the Loan Documents, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent or any Lender, except to the extent any of the foregoing is caused by Administrative Agent's or any Lender's gross negligence or willful misconduct, in which case the party to whom the gross negligence or willful misconduct is attributable (but not any other party) shall not be entitled to the indemnification provided for hereunder to the extent of such gross negligence or willful misconduct, to the extent determined by a court of competent jurisdiction.

Section 9.13 Covenants Regarding the Condominium Declaration. Borrower covenants and agrees that, from and after the establishment of any condominium regime with respect to the Project:

- (1) Borrower shall pay when due and before any fine, penalty, interest or cost may be added thereto for the late payment or non-payment thereof, all Unit Annual Assessments imposed on Borrower's Project Interest and all other charges mentioned in and payable by Borrower under the Condominium Declaration (including, without limitation, all insurance and taxes applicable to Borrower's Project Interest), and shall comply with all of its other obligations under the Condominium Declaration, and shall do all things necessary to preserve and to keep unimpaired Borrower's rights, powers and privileges (whether as the owner of the Units, as the Declarant, as the holder of any special class of voting rights, or otherwise) thereunder. If Borrower shall fail to do so, the Lenders shall, if required by Administrative Agent, pay such Unit Annual Assessments or other charges. Lead Borrower shall deliver to Administrative Agent, upon request, copies of receipts or other proof satisfactory to Administrative Agent evidencing the timely payment of such Unit Annual Assessments and other charges.
- (2) Borrower shall comply with the covenants, agreements and provisions of the Condominium Documents, and Lead Borrower shall promptly notify Administrative Agent of (a) any failure by Borrower to comply with the Condominium Declaration and (b) the receipt by Borrower of any notice asserting or claiming a default by Borrower under the Condominium Declaration, and shall promptly cause a copy of such notice to be delivered to Administrative Agent.
- (3) Borrower shall not vote in favor of or otherwise approve any amendment of the Condominium Declaration without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld.
- (4) Borrower shall not waive any material right of the Borrower (whether as the owner of the Units, as the Declarant, as the holder of any special class of voting rights, or otherwise) under the Condominium Declaration without the prior written consent of Administrative Agent which shall not be unreasonably withheld.
- (5) The Lien of the Mortgages shall encumber all of Borrower's Project Interest, including all of Borrower's rights to vote on or approve any matter with respect to Borrower's Project Interest. Without the prior written consent of Administrative Agent, Borrower shall not exercise such voting or approval rights with respect to any of the following:
 - (a) any partition of all or a part of the Project subject to the Condominium Declaration;
 - (b) the nature and amount of any insurance covering all or a part of the Project and the disposition of any proceeds thereof;

- connection therewith;
- (c) the manner in which any condemnation or threat of condemnation of all or a part of the Project shall be defended or settled and the disposition of any award or settlement in connection therewith;
 - (d) the construction of any additions or improvements to, or any repair, rebuilding or restoration of all or a portion of any Improvements to, the Project (to the extent that the same would require the approval of Administrative Agent under this Agreement);
 - (e) the distribution of any insurance or condemnation proceeds (other than in compliance with this Agreement); and
 - (f) any other material action or decision provided for in the Condominium Declaration.
- (6) If required by the Administrative Agent, Lead Borrower will take all action to obtain as promptly as possible, and forthwith upon receipt furnish to the Administrative Agent, a true and correct copy of: (a) any statement showing the allocation of expenses and other assessments against the Units and (b) any statements issued to Borrower calling for payment of expenses.
- (7) Lead Borrower shall be, and remain through the repayment of the Loans in full, the Declarant under the Condominium Declaration.
- (8) Borrower shall at all times comply with the provisions of Section 17.2(5), hereof.
- (9) Borrower shall at all times comply with the covenants contained in Section 17.1(2).
- (10) Borrower acknowledges and agrees that nothing set forth in this Section or in any of the other provisions of the Loan Documents shall impose upon Administrative Agent or any Lender any obligation or responsibility to Borrower under the Condominium Declaration.

Section 9.14 Collateral Letters of Credit. With respect to any Collateral Letter of Credit that Borrower may furnish or cause to be furnished to Administrative Agent in accordance with the terms of this Agreement or any of the other Loan Documents:

- (1) Administrative Agent will be entitled, among other things, to make one or more draws by presentment thereof to the issuing bank accompanied only by Administrative Agent's clean sight-draft, it being intended that the issuing bank shall have no right to inquire as to Administrative Agent's right to draw upon such Collateral Letter of Credit;
- (2) Administrative Agent shall be entitled, among other things, to draw upon each Collateral Letter of Credit, in whole, or in part from time to time, upon the occurrence and during the continuance of any Event of Default or under the other circumstances under which a draw shall be permitted under the Loan Documents or the Collateral Letter of Credit;

(3) Administrative Agent shall have the right to draw upon any Collateral Letter of Credit within thirty (30) days prior to the expiration date of such Collateral Letter of Credit and each renewal and extension thereof unless, prior to such expiration date of such Collateral Letter of Credit and each renewal and extension thereof, the Borrower shall have furnished a replacement, extension or renewal Collateral Letter of Credit, acceptable to Administrative Agent, it being the intent hereof that at no time shall the unexpired term of any Collateral Letter of Credit be less than thirty (30) days. If Administrative Agent draws upon a Collateral Letter of Credit pursuant to the terms of this subsection (3), then Administrative Agent shall hold the proceeds thereof in a Controlled Account as additional collateral for the Obligations, to be applied in accordance with subsection (5) below;

(4) Administrative Agent shall also be entitled to draw upon a Collateral Letter of Credit if Administrative Agent believes that its rights to draw on such Collateral Letter of Credit could be in jeopardy. Without limiting the foregoing, Administrative Agent shall also be entitled to draw on a Collateral Letter of Credit if the credit rating or financial condition of the issuing bank is no longer meets the minimum rating contained in the definition of Collateral Letter of Credit. Following a draw by Administrative Agent on a Collateral Letter of Credit solely because of the deterioration of the creditworthiness of the issuing bank, Administrative Agent will deposit such proceeds in a Controlled Account as security for the purposes for which such Letter of Credit was delivered and Administrative Agent shall be entitled to draw upon such proceeds to the same extent it would have been entitled to make a draw under the applicable Letter of Credit. Administrative Agent shall disburse such proceeds to Lead Borrower provided (i) Borrower delivers to Administrative Agent a replacement Collateral Letter of Credit within ten (10) days of Administrative Agent's draw, (ii) there exists no Event of Default or Potential Default and (iii) Borrower pays all of Administrative Agent's fees and expenses in connection with such draw and disbursement;

(5) No draw by Administrative Agent on any Collateral Letter of Credit shall cure or be deemed to cure any Event of Default or limit in any respect any of Administrative Agent's or the Lenders' remedies under the Loan Documents, it being understood that Administrative Agent's and the Lenders' rights and remedies hereunder shall be cumulative and Administrative Agent and the Lenders shall have no obligations to apply the proceeds of any draw to missed installments or other amounts then due and unpaid under the Loans. Proceeds of any draw upon a Collateral Letter of Credit (after reimbursement of any costs and expenses, including attorneys' fees and reimbursements, incurred by Administrative Agent in connection with such draw), other than a draw made in accordance with Section 9.14(4), may be applied by Administrative Agent to the payment of the Obligations in such manner as Administrative Agent may determine. No delay or omission of Administrative Agent or the Lenders in exercising any right to draw on a Collateral Letter of Credit shall impair any such right, or shall be construed as a waiver of, or acquiescence in, any Event of Default; and

(6) Administrative Agent shall, upon request, release its rights in any Collateral Letters of Credit and surrender such Collateral Letters of Credit to the issuing bank upon the payment in full of all obligations under the Loan Documents.

Section 9.15 Hedge Agreements.

- (1) At Borrower's option, the Borrower may enter into one or more Hedge Agreements. Each Hedge Agreement shall, at Borrower's option, be based on Interest Periods (each, an "**Interest Rate Hedge Period**") of one, two, three months or such other Interest Periods satisfactory to Administrative Agent in its sole discretion. The economic and other benefits of the Hedge Agreements and all of the other rights thereunder shall be collaterally assigned to Administrative Agent as additional security for the Loans, pursuant to a Hedge Pledge. All Hedge Pledges shall be accompanied by (i) Uniform Commercial Code financing statements, in duplicate, with respect to such pledges and (ii) the consent and agreement of the counterparty thereunder that it will pay all amounts due thereunder to an account designated by Administrative Agent and will continue to perform its obligations under such Hedge Agreement for the benefit of Administrative Agent and the Lenders after enforcement of and/or realization on such Hedge Pledge and an acknowledgement that Administrative Agent shall not be deemed to have assumed any of the obligations or duties of Borrower under any such Hedge Agreement.
- (2) All of Borrower's obligations under any Hedge Agreement provided by a Eurohypo Counterparty shall be secured by the lien of the Mortgages on a pari passu basis with the Loans and other sums evidenced or secured by the Loan Documents.
- (3) Any Hedge Agreement entered into with one or more banks or insurance companies (each a "**Third-Party Counterparty**") other than a Eurohypo Counterparty (a "**Third-Party Hedge Agreement**") shall not be secured by the Mortgage or a Lien on any portion of the collateral under the Security Documents or on or in any direct or indirect interest in Borrower.
- (4) Borrower shall cause all payments payable by a Third-Party Counterparty under the Hedge Agreement to be deposited into an account designated by Administrative Agent. On the due date for interest on the Loans each month, the amounts so deposited in such account shall be debited, and applied to pay the accrued but unpaid interest on the Loans due on such date, before applying any portion of the Loan proceeds which is allocated to the Interest Reserve for such purpose, and before applying any Operating Revenues for such purpose.
- (5) Any payment due from the counterparty under any Hedge Agreement upon a termination thereof, shall be delivered to Administrative Agent and applied by Administrative Agent to any amounts due under the Loan Documents.
- (6) In connection with a Third-Party Hedge Agreement, Lead Borrower shall obtain and deliver to Administrative Agent an opinion from counsel (which counsel may be in-house counsel for the Third-Party Counterparty) for the Third-Party Counterparty (in form reasonably satisfactory to Administrative Agent and upon which Administrative Agent, the Lenders and their respective successors and assigns may rely) which shall provide, in relevant part, that:
 - (a) the Third-Party Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Third-Party Hedge Agreement;

(b) the execution and delivery of the Third-Party Hedge Agreement by the Third-Party Counterparty, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property;

(c) all consents, authorizations and approvals required for the execution and delivery by the Third-Party Counterparty of the Third-Party Hedge Agreement, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance; and

(d) the Third-Party Hedge Agreement, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by the Third-Party Counterparty and constitutes the legal, valid and binding obligation of the Third-Party Counterparty, enforceable against the Third-Party Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(7) For so long as a Hedge Agreement is in effect, Administrative Agent may elect to cause advances of the Loan proceeds available for interest payments to be used to make "regular" payments due under the Hedge Agreement (i.e., other than those payments which are due upon the termination of such Hedge Agreement), in addition to interest payments on the Loans.

Section 9.16 Reserves. Administrative Agent may at any time after the occurrence of an Event of Default, at its option (or at the direction of the Majority Lenders), to be exercised by written notice to Lead Borrower, require the deposit by Borrower, on each Payment Date, of additional amounts sufficient to discharge when due the obligations of Borrower under Section 9.3 and Section 3.1 (if applicable, and excluding all income, franchise, single business or other taxes imposed on Borrower unless the same is in lieu of real estate taxes) when they become due. Simultaneously with the initial deposit under this Section 9.16, Borrower shall deposit with Administrative Agent an amount determined by Administrative Agent to be necessary to ensure that there will be on deposit with Administrative Agent an amount which, when added to the monthly payments subsequently required to be deposited with Administrative Agent hereunder on account of Real Estate Taxes, insurance premiums, will result in there being on deposit with Administrative Agent an amount sufficient to pay the next due periodic installment of Real Estate Taxes, insurance premiums one (1) month prior to the delinquency date thereof and the next periodic payments of insurance premiums one (1) month prior to the due date thereof. Commencing on the first Business Day of the first calendar month after the occurrence of an Event of Default and continuing thereafter on the first Business Day of each month thereafter, Borrower shall pay to Administrative Agent deposits in an amount equal to one-twelfth (1/12) of the yearly amount of Real Estate Taxes, insurance premiums that will next become due and payable on the Project. The determination of the amount to be deposited with Administrative Agent with each installment shall be made by Administrative Agent in its reasonable discretion. Such amounts shall be held by Administrative Agent in an account under the sole dominion and control of Administrative Agent and applied (together with any interest earned thereon) to the payment of the obligations in respect to which such amounts were deposited or, at the option of the Administrative Agent, to the payment of said obligations in such order of priority as Administrative Agent shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one (1) month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligations in full, Borrower, within five (5) days after demand, shall deposit the amount of the deficiency with Administrative Agent. Nothing herein contained shall be deemed to affect any right or remedy of Administrative Agent and/or the Lenders under the provisions of this Agreement or the other Loans Documents or of any statute or rule of law to pay any such amount and to add the amount so paid together with interest at the Default Rate to the indebtedness secured by the Mortgages. Borrower hereby pledges to Administrative Agent (on behalf of the Lenders) and grants to Administrative Agent (on behalf of the Lenders) a security interest in any and all monies now or hereafter deposited in such reserves and the account established by Administrative Agent as additional security for the payment of the Loans and agrees to enter into an agreement with Administrative Agent and the bank where such account is established in order to perfect Administrative Agent's security interest therein. In making any payment from such reserves, Administrative Agent may do so according to any bill, statement or estimate or procured from the appropriate public office (with respect to Real Estate Taxes), insurer or agent (with respect to insurance premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any such charge.

Section 9.17 Handicapped Access.

(1) Borrower (a) agrees that it shall use commercially reasonable efforts to ensure that the Project shall at all times comply with the applicable requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, "Access Laws") and (b) has no actual knowledge as to the Project's non-compliance with any Access Laws where the failure to so comply could have a material adverse effect on the Project or on Borrower's ability to repay the Loans in accordance with the terms hereof.

(2) Notwithstanding any provisions set forth herein or in any other document regarding Administrative Agent's approval of alterations of the Project, Borrower shall not alter the Project in any manner which would materially increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Administrative Agent. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Administrative Agent may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person reasonably acceptable to Administrative Agent.

(3) Lead Borrower agrees to give prompt notice to Administrative Agent of the receipt by Borrower of any written complaints related to violation of any Access Laws with respect to the Project and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

Section 9.18 Zoning. Borrower shall not, without Administrative Agent's prior consent, such consent not to be unreasonably withheld, seek, make, suffer, consent to or acquiesce in any change or variance in any zoning or land use laws or other conditions of use of the Project or any portion thereof. Borrower shall not use or permit the use of any portion of the Project in any manner that could result in such use becoming a non-conforming use under any zoning or land use law or any other applicable law or modify any agreements relating to zoning or land use matters or with the joinder or merger of lots for zoning, land use or other purposes, without the prior written consent of Administrative Agent. Without limiting the foregoing, in no event shall Borrower take any action that would reduce or impair either (a) the number of parking spaces at the Improvements or (b) access to the Project from adjacent public roads. Further, without Administrative Agent's prior written consent, such consent not to be unreasonably withheld, Borrower shall not file or subject any part of the Project to any declaration of condominium or co-operative or convert any part of the Project to a condominium, co-operative or other direct or indirect form of multiple ownership and governance.

Section 9.19 ERISA. Borrower shall not hire any employees, and shall obtain all workforce services required for the ownership, operation, construction or development of the Project by contracting therefor pursuant to the Construction Management Agreement and the Project Documents. Borrower shall not take any action, or omit to take any action, which would (a) cause Borrower's assets to constitute "plan assets" for purposes of ERISA or the Internal Revenue Code or (b) cause the transactions contemplated by this Agreement and the other Loan Documents to be nonexempt prohibited transactions (as such term is defined in Section 4975 of the Internal Revenue Code or Section 406 of ERISA) that could subject Administrative Agent and/or the Lenders, on account of any Loan or execution of the Loan Documents hereunder, to any tax or penalty on prohibited transactions imposed under Section 4975 of the Internal Revenue Code or Section 502(i) of ERISA.

Section 9.20 Books and Records. Borrower will, and will cause each of the other Borrower Parties to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Borrower will, and will cause each of the other Borrower Parties to, permit any representatives designated by Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

Section 9.21 Foreign Assets Control Regulations.

(1) Neither Borrower nor any Borrower Party shall use the proceeds of the Loan in any manner that will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended), Executive Order No. 13,224,66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or any enabling legislation or executive order relating to any of the same. Without limiting the foregoing, neither Borrower, nor any Borrower Party, nor any partner or member (or other direct or indirect principal) in a Borrower Party will permit itself nor any of its Subsidiaries to (a) become a blocked person described in Section 1 of the above referenced Executive Order or (b) knowingly engage in any dealings or transactions or be otherwise associated with any person who is known by such Borrower Party or who (after such inquiry as may be required by Applicable Law) should be known by such Borrower Party to be a blocked person.

(2) Each partner or member (or other direct or indirect principal) in Borrower shall be at all times during the term of the Loans an entity or person which is (and whose principals shall be) a reputable entity or person of good character and in good standing as reasonably determined by the Lenders, and is not adverse to any of the Lenders in any pending material litigation or arbitration in which any Lender is also a party.

Section 9.22 Performance of Project Documents and Easements.

(1) Borrower shall (a) perform and observe in all material respects all of its covenants and agreements contained in each of the Project Documents to which it is a party, (b) take all reasonable and necessary action to prevent the termination of any such Project Document in accordance with the terms thereof or otherwise, (c) enforce each material covenant or obligation of each such Project Document in accordance with its terms, (d) cause Lead Borrower to promptly give Administrative Agent copies of any material default or other material notices given by or on behalf of Borrower received by or on behalf of Borrower from any other Person under the Project Documents and (e) take all such action to achieve the purposes described in clauses (a), (b) and (c) of this Section 9.22 as may from time to time be reasonably requested by Administrative Agent; provided, however, that Borrower shall be permitted, upon Administrative Agent's reasonable approval, to contest the validity or applicability of any requirement under the Project Documents.

(2) Borrower will comply in all material respects with all restrictive covenants and easements affecting the Project (unless the Title Company has insured against the enforcement of same in the Title Policy). All covenants, easements, cross easements or operating agreements which may hereafter be acquired, entered into or amended by Borrower affecting the Project shall be submitted to Administrative Agent for reasonable approval prior to the execution thereof by Borrower, accompanied by a drawing or survey showing the location thereof.

Section 9.23 Operating Plan and Budget.

(1) Lead Borrower shall, no less than sixty (60) days after the satisfaction of the Project Work Substantial Completion Conditions, and then annually thereafter not later than November 15th of the previous calendar year, submit to Administrative Agent for Administrative Agent's written approval an annual operating and capital budget (each an "**Annual Budget**"), in form reasonably satisfactory to Administrative Agent setting forth in detail budgeted monthly Operating Revenues and monthly Operating Expenses and projected capital expenditures for the Project. Administrative Agent shall have the right to reasonably approve such Annual Budget (such approval to be in the Administrative Agent's sole discretion during an Event of Default and any period where Administrative Agent is taking action to remove the Property Manager). If Administrative Agent objects to the proposed Annual Budget, Administrative Agent shall advise Lead Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Lead Borrower a reasonably detailed description of such objections) and Lead Borrower shall within five (5) days after receipt of notice of any such objections revise such Annual Budget and resubmit the same to Administrative Agent such procedure to be repeated until such time as Administrative Agent shall approve such Annual Budget. Each such Annual Budget approved by Administrative Agent in accordance with terms hereof is referred to herein as an "**Approved Annual Budget**." Until such time that Administrative Agent has approved a proposed Annual Budget, the most recently Approved Annual Budget shall apply, provided that such Approved Annual Budget shall be adjusted to reflect actual increases in real estate taxes, insurance premiums and utilities expenses and shall otherwise be adjusted to reflect any change during the preceding year in the Consumer Price Index.

(2) Lead Borrower may at any time propose an amendment to an Approved Annual Budget for the remainder of the then current calendar year, and, when approved as provided below, such amended Approved Annual Budget shall be deemed to be and shall be effective as the Approved Annual Budget for such calendar year. Prior to making any expenditures not reflected in the then current Approved Annual Budget in excess of an aggregate amount of \$150,000 per annum, Lead Borrower shall propose an amendment to the Approved Annual Budget to Administrative Agent for its reasonable approval; provided, however, that Administrative Agent shall have no approval rights with respect to increases in non-discretionary items (e.g. real estate taxes and insurance premiums). Copies of any such proposed amended Approved Annual Budget shall be furnished at least fifteen (15) days before final adoption thereof to Administrative Agent for its approval. Administrative Agent shall have fifteen (15) days after receipt of any proposed amendment to the Approved Annual Budget to approve or disapprove such proposed amendment.

Section 9.24 Proceedings to Enjoin or Prevent Construction. If any proceedings are filed seeking to enjoin or otherwise prevent or declare invalid or unlawful all or any part of the Construction Work, Borrower, at its sole cost and expense, will cause such proceedings to be contested in a commercially reasonable manner, and in the event of an adverse ruling or decision, if commercially reasonable, prosecute all allowable appeals therefrom, and will, without limiting the generality of the foregoing, resist the entry or seek the stay of any temporary or permanent injunction that may be entered, and use its best efforts to bring about a favorable and speedy disposition of all such proceedings.

Section 9.25 Industrial and Commercial Incentive Program

- (1) On or before the Closing Date, Borrower shall deliver to Administrative Agent the preliminary application submitted to the New York City Department of Finance (“Department of Finance”) evidencing the Project’s eligibility for the partial tax exemption in accordance with paragraph 24 of Schedule 4-Part A.
- (2) Pursuant to Title 11, Chapter 2, Part 4 of the Administrative Code of the City of New York City and the regulations promulgated thereunder, as amended from time to time (“Code”), Borrower shall make a thorough and complete final application to the Department of Finance for a certificate of eligibility for a partial exemption of real property taxes for the Improvements for a twenty-five (25) year period (“ICIP Tax Exemption”) subsequent to commencing construction on the Project. Borrower shall provide a copy of the said application to Administrative Agent evidencing that same was received by the Department of Finance.
- (3) Pursuant to the Code, Borrower shall submit a thorough and complete final construction report within sixty (60) days of completing construction on the Project to the Department of Finance for a certificate of eligibility for the ICIP Tax Exemption. Borrower shall provide a copy of the certificate of eligibility, or if unavailable, a letter from the Department of Finance evidencing same, to Administrative Agent promptly upon Borrower’s receipt thereof and in any event no later than sixty (60) days after the submission of such application, or such later date to the extent that the Borrower’s failure to receive such certificate is due to Unavoidable Delay.
- (4) Before, during and after the construction of the Improvements, Borrower shall do all things necessary and required by statute, rule and regulation to maintain the availability of the ICIP Tax Exemption, including, but not limited to the following: (i) notify the ICIP unit of the Department of Finance (“ICIP Unit”) and the New York City Department of Small Business Services/Division of Labor Services (“Division of Labor Services”) in writing fifteen (15) business days prior to commencing construction on the Project; (ii) submit construction employment reports for the Project to the Division of Labor Services; and, if requested by the Department of Finance, file a certificate of continuing use with the ICIP Unit annually in each year of benefit period.
- (5) Notwithstanding anything to the contrary in this Agreement, Borrower’s failure to obtain a certificate of eligibility for a ICIP Tax Exemption pursuant to clauses (2) and (3) above shall not constitute a default provided that (a) Borrower has otherwise complied with the provisions of this Section 9.25, (b) is diligently proceeding to obtain such certificate and (iii) the only cause for Borrower’s inability to obtain the applicable certificate is the Department of Finance’s bureaucratic delay in issuing the applicable certificate and not for reasons related to Borrower’s actions or eligibility.

Section 9.26 Reserved.

Section 9.27 Reserved.

Section 9.28 Reimbursement of Expenses. Borrower shall pay or reimburse Administrative Agent and/or the Lenders on demand of the applicable party for: (1) all reasonable expenses incurred by Administrative Agent in connection with the Loans, including reasonable fees and expenses of Administrative Agent's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the negotiation, recording or filing of Loan Documents, (2) all reasonable out-of-pocket expenses of Administrative Agent in connection with the administration of the Loans, including audit costs, inspection fees, reasonable attorneys' fees and disbursement, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto, (3) all of Administrative Agent's reasonable costs and expenses (including reasonable fees and disbursements of Administrative Agent's external counsel) incurred in connection with the syndication of the Loans to the Lenders, not to exceed \$25,000 (excluding attorney's fees and internal expenses incurred by the Borrower), and (4) Administrative Agent and the Lenders for all amounts expended, advanced or incurred by Administrative Agent and the Lenders to collect the Notes, or to enforce the rights of Administrative Agent and the Lenders under this Agreement or any other Loan Document, or to defend or assert the rights and claims of Administrative Agent and the Lenders under the Loan Documents or with respect to the Project (by litigation or other proceedings), which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be incurred by Administrative Agent and the Lenders in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to Administrative Agent and the Lenders, all of which shall constitute part of the Loans and shall be secured by the Loan Documents.

ARTICLE 10

EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default under the Loans:

Section 10.1 Payments. Borrower's failure to (i) pay any regularly scheduled installment of principal, interest, the Agency Fee or other amount due under the Loan Documents or (ii) make a deposit of cash, and/or deliver a Collateral Letter of Credit required under the Loan Documents, within five (5) days of (and including) the date when due, or Borrower's failure to pay the Loans at the Maturity Date, whether by acceleration or otherwise.

Section 10.2 Insurance. Borrower's failure to maintain insurance as required under Section 3.1 of this Agreement.

Section 10.3 Single Purpose Entity. If Borrower or any Borrower Party materially breaches its covenant under Section 9.6 with respect to its status as a Single Purpose Entity.

Section 10.4 Real Estate Taxes. If any of the Real Estate Taxes are not paid when the same are due and payable and such failure continues for ten (10) Business days after Borrower has actual knowledge of such failure.

Section 10.5 Sale, Encumbrance, Etc. The sale, transfer, conveyance, pledge, mortgage or assignment of any part or all of the Project, or any interest therein, or of any interest in Borrower, in violation of Section 9.1 of this Agreement.

Section 10.6 Representations and Warranties. Any representation or warranty made in any Loan Document proves to be untrue in any material respect when made or deemed made.

Section 10.7 Other Encumbrances. Any material default under any document or instrument, other than the Loan Documents, evidencing or creating a Lien on the Project or any part thereof that is not cured within any applicable notice or cure period.

Section 10.8 Various Covenants. Borrower defaults under any of its obligations under Section 6.2 (pertaining to lease approvals), 9.7 (transactions with Affiliates), 9.8 (limitations on debt), 9.18 (zoning and use changes) or 9.19 (ERISA), of this Agreement.

Section 10.9 Reserved.

Section 10.10 Financial Covenants. Borrower defaults under any of its obligations under Section 9.12 and Section 9.28 of this Agreement.

Section 10.11 Involuntary Bankruptcy or Other Proceeding. Commencement of an involuntary case or other proceeding against any Borrower Party which seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of sixty (60) days; or an order for relief against a Borrower Party shall be entered in any such case under the Federal Bankruptcy Code.

Section 10.12 Voluntary Petitions, Etc. Commencement by a Borrower Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Borrower Party 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 the making by a Borrower Party of a general assignment for the benefit of creditors, or the failure by a Borrower Party, or the admission by a Borrower Party in writing of its inability, to pay its debts generally as they become due, or any action by a Borrower Party to authorize or effect any of the foregoing.

Section 10.13 Debt. The occurrence, at any time prior to Substantial Completion, of any "Event of Default" under (and as such term is defined in) the loan agreement included within the Approved Mezzanine Loan Documents; or Borrower or Managing Member shall default in the payment when due of any principal of or interest on any of its other Debt aggregating \$1,000,000 or more and such default shall not be cured within any applicable notice or cure period provided with respect to such Debt; or any event specified in any note, agreement, indenture or other document evidencing or relating to any such Debt shall occur if the effect of such event is to cause, or (with the giving of any notice or the lapse of time or both) to permit the holder or holders of such Debt to cause, such Debt to become due, or to be prepaid in full (whether by redemption, purchase, offer to purchase or otherwise); prior to its stated maturity.

Section 10.14 Dissolution. Any of Borrower Parties shall be terminated, dissolved or liquidated (as a matter of law or otherwise) or proceedings shall be commenced by any Person (including any Borrower Party) seeking the termination, dissolution or liquidation of any Borrower Party, which, in the case of actions by Persons other than a Borrower Party or any of their Affiliates, shall continue unstayed and in effect for a period of sixty (60) or more days.

Section 10.15 Judgments. One or more (i) judgments for the payment of money (exclusive of judgment amounts fully covered by insurance where the insurer has admitted liability in respect of such judgment) aggregating with respect to any Borrower Party (other than Guarantor) in excess of \$1,000,000 shall be rendered against such party or (ii) non-monetary judgments, orders or decrees shall be entered against any of the Borrower Parties which have or would reasonably be expected to have a Material Adverse Effect, and, in either case, the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of such Borrower Party to enforce any such judgment.

Section 10.16 Security. The Liens created by the Security Documents shall at any time not constitute a valid and perfected first priority Lien (subject to the Permitted Encumbrances) on the collateral intended to be covered thereby in favor of Administrative Agent, free and clear of all other Liens (other than the Permitted Encumbrances), or, except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by any Borrower Party or any of their Affiliates, provided that, as long as the security provided by the Security Documents shall not be impaired, with respect to a Lien (other than a Permitted Encumbrance) on the collateral, Borrower shall have ten (10) days for monetary Liens and thirty (30) days for all non-monetary Liens within which provide Administrative Agent with evidence that such Lien has been bonded or otherwise removed of record.

Section 10.17 Guarantor Documents. Guarantor shall (i) default under any Guarantor Document beyond any applicable notice and grace period; or (ii) revoke or attempt to revoke, contest or commence any action against its obligations under any Guarantor Document.

Section 10.18 Reserves. Borrower uses, or permits the use of, funds from any reserves or from any Controlled Account required under this Agreement for any purpose other than the purpose for which such funds were disbursed from such reserves or such Controlled Account and such default is not cured within ten (10) days of Borrower's knowledge of such default.

Section 10.19 Co-Borrower Documents. Either Borrower shall (i) default under any Co-Borrower Document beyond any applicable notice and grace period; or (ii) revoke or attempt to revoke, contest or commence any action against its obligations under any Co-Borrower Document.

Section 10.20 Covenants. Borrower's failure to perform or observe any of the agreements and covenants contained in this Agreement or in any of the other Loan Documents and not specified above, and, if such failure is susceptible to being cured, the continuance of such failure for thirty (30) days after notice by Administrative Agent to Lead Borrower; provided, however, subject to any shorter period for curing any failure by Borrower as specified in any of the other Loan Documents, Borrower shall have an additional ninety (90) days to cure such failure if (1) such failure does not involve the failure to make payments on a monetary obligation; (2) such failure cannot reasonably be cured within thirty (30) days; (3) Borrower is diligently undertaking to cure such default, and (4) Borrower has provided Administrative Agent with security reasonably satisfactory to Administrative Agent against any reasonably anticipated interruption of payment or impairment of collateral as a result of such continuing failure.

Section 10.21 Deficiency Deposits. Borrower shall fail to make a Deficiency Deposit or Equity Balancing Contribution within the time and in the manner provided in Section 4.3.

Section 10.22 Reserved.

Section 10.23 Reserved.

Section 10.24 Building Loan Agreement Default. An Event of Default shall occur under the Building Loan Agreement.

ARTICLE 11

REMEDIES

Section 11.1 Remedies – Insolvency Events. Upon the occurrence of any Event of Default described in Section 10.11 or Section 10.12, the obligations of the Lenders to advance amounts hereunder shall immediately terminate, and all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrower; provided, however, if Borrower Party under Section 10.11 or Section 10.12 is other than Borrower, then all amounts due under the Loan Documents shall become immediately due and payable at Administrative Agent's election.

Section 11.2 Remedies – Other Events. Except as set forth in Section 11.1 above, while any Event of Default exists, Administrative Agent may (1) by written notice to Lead Borrower, declare the entire amount of the Loans to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrower, (2) terminate the obligation, if any, of the Lenders to advance amounts hereunder, and (3) exercise all rights and remedies therefor under the Loan Documents and at law or in equity.

Section 11.3 Administrative Agent's Right to Perform the Obligations. Without limiting the provisions of Section 11.4 below, if Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Administrative Agent or any Lender may have because of such Event of Default, Administrative Agent may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter upon the Project for such purpose and to take all such action thereon and with respect to the Project and the other collateral for the Loans as it may deem necessary or appropriate. If Administrative Agent shall elect to pay any sum due with reference to the Project, Administrative Agent may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Administrative Agent shall not be bound to inquire into the validity of any apparent or threatened adverse title, Lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Additionally, if any Hazardous Materials affect or threaten to affect the Project, Administrative Agent may (but shall not be obligated to) give such notices and take such actions as it deems necessary or advisable in order to abate the discharge of any Hazardous Materials or remove the Hazardous Materials. Borrower shall indemnify, defend and hold Administrative Agent and the Lenders harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees and disbursements, incurred or accruing by reason of any acts performed by Administrative Agent or any Lender pursuant to the provisions of this Section 11.3, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent and any Lender, except as a result of Administrative Agent's or any Lender's gross negligence or willful misconduct. All sums paid by Administrative Agent pursuant to this Section 11.3, and all other sums expended by Administrative Agent or any Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loans, shall be secured by the Loan Documents and shall be paid by Borrower to Administrative Agent upon demand.

Section 11.4 Administrative Agent's Right to Complete Construction. Administrative Agent may take possession of the Project and complete the construction and equipping of the Improvements and do anything in its sole judgment to fulfill the obligations of Borrower hereunder, including either the right to avail itself of and procure performance of existing contracts or enter into any contracts with the same contractors or others and to employ watchmen to protect the Project from injury. Without restricting the generality of the foregoing and for the purposes aforesaid, Borrower hereby appoints and constitutes Administrative Agent its lawful attorney-in-fact with full power of substitution in the Project to complete construction of the Improvements in the name of Borrower; to use unadvanced funds remaining under the Commitments or which may be reserved, or escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes (and all such amounts shall be payable by Borrower together with interest at the Default Rate), to complete the Improvements; to make changes in the Plans and Specifications which shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans and Specifications; to retain or employ new construction managers, subcontractors, architects, engineers and inspectors as shall be required for said purposes; to pay, settle, or compromise all existing bills and claims and Liens against the Project and take any other steps relating to clearing title to the Project from any Liens that are not Permitted Encumbrances, or to avoid such bills and claims becoming Liens against the Project or security interest against fixtures or equipment, or as may be necessary or desirable for the completion of the construction and equipping of the Improvements or for the clearance of title; to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; to do any and every act which Borrower might do in its own behalf; and to prosecute and defend all actions and proceedings in connection with the Project or fixtures or equipment; to take action and require such performance as it deems necessary under any bonds furnished in connection with the construction of the Improvements and to make settlements and compromises with surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction; it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked.

Section 11.5 Administrative Agent's Rights under the Guaranty of Completion. Exercise the Lenders' rights under the Guaranty of Completion to require Guarantor to perform thereunder, in which case Borrower hereby (1) authorizes Administrative Agent and the Lenders to make advances of the Loans directly to Guarantor in accordance with the terms of the Guaranty of Completion and this Agreement and (2) agrees that Borrower shall be liable to the Lenders for all such advances to Guarantor and such advances shall be deemed Loans under this Agreement and be evidenced by the Notes and secured by the Mortgages and the other Security Documents.

Section 11.6 NO OBLIGATION WITH RESPECT TO COMPLETION OF THE IMPROVEMENTS. WHETHER OR NOT ADMINISTRATIVE AGENT OR THE LENDERS ELECT TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, NEITHER ADMINISTRATIVE AGENT NOR ANY OF THE LENDERS SHALL BE LIABLE FOR THE CONSTRUCTION OF OR FAILURE TO CONSTRUCT, COMPLETE OR PROTECT THE IMPROVEMENTS OR FOR PAYMENT OF ANY EXPENSES INCURRED IN CONNECTION WITH THE EXERCISE OF ANY REMEDY AVAILABLE TO ADMINISTRATIVE AGENT OR THE LENDERS OR FOR THE PERFORMANCE OR NON-PERFORMANCE OF ANY OTHER OBLIGATION OF BORROWER.

ARTICLE 12

MISCELLANEOUS

Section 12.1 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and either shall be (a) mailed by certified mail, postage prepaid, return receipt requested, (b) sent by overnight air courier service, (c) personally delivered to a representative of the receiving party, or (d) sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12.1) to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof. Any communication so addressed and mailed shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first Business Day after deposit with an overnight air courier service, or (3) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Administrative Agent, a Lender, Lead Borrower or Borrower, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified above, and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12.1. Any party may designate a change of address by written notice to each other party by giving at least ten (10) days' prior written notice of such change of address.

Section 12.2 Amendments, Waivers, Etc. This Agreement and any other Loan Document may be modified only by an instrument in writing signed by Borrower and Administrative Agent, subject to Section 14.9.

Section 12.3 Compliance with Usury Laws. It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrower, Administrative Agent and the Lenders with respect to the Loans are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Administrative Agent or any Lender or charged by any Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loans would be usurious under Applicable Law (including the laws of the State and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (1) the aggregate of all consideration which constitutes interest under Applicable Law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by Applicable Law, and any excess shall be credited on the Notes by the holders thereof (or, if the Notes have been paid in full, refunded to Borrower); and (2) if maturity is accelerated by reason of an election by Administrative Agent in accordance with the terms hereof, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by Applicable Law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by Applicable Law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under Applicable Law, then such excess interest shall be cancelled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Notes (or, if the Notes have been paid in full, refunded to Borrower). The terms and provisions of this Section 12.3 shall control and supersede every other provision of the Loan Documents. Except as otherwise expressly provided therein, the Loan Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State of New York, except that if at any time the laws of the United States of America permit the Lenders to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State of New York (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which the Lenders may contract for, take, reserve, charge or receive under the Loan Documents.

Section 12.4 Invalid Provisions. If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 12.5 Approvals; Third Parties; Conditions. All approval rights retained or exercised by Administrative Agent and the Lenders with respect to leases, contracts, plans, studies and other matters are solely to facilitate the Lenders' credit underwriting, and shall not be deemed or construed as a determination that the Lenders have passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person. This Agreement is for the sole and exclusive use of Administrative Agent, the Lenders, the Lead Borrower and Borrower and may not be enforced, nor relied upon, by any Person other than Administrative Agent, the Lenders, the Lead Borrower and Borrower. All conditions of the obligations of Administrative Agent and the Lenders hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Administrative Agent and the Lenders, their successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that the Lenders will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Administrative Agent and the Lenders at any time in their sole discretion.

Section 12.6 Lenders and Administrative Agent Not in Control; No Partnership. None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Administrative Agent or any Lender the right or power to exercise control over the affairs or management of Borrower, the powers of Administrative Agent and the Lenders being limited to the rights to exercise the remedies referred to in the Loan Documents. The relationship between Borrower and the Lenders is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders, Lead Borrower and Borrower. Administrative Agent and the Lenders neither undertake nor assume any responsibility or duty to Borrower or to any other person with respect to the Loans, the Project or the other collateral for the Loans, except as expressly provided in the Loan Documents. Notwithstanding any other provision of the Loan Documents: (1) neither Administrative Agent nor any Lender is, nor shall be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Borrower or any Borrower Party or any of their respective stockholders, members, or partners, and neither Administrative Agent nor any Lender intends to ever assume such status; (2) no Lender or Administrative Agent shall in any event be liable for any Debts, expenses or losses incurred or sustained by Borrower or any Borrower Party; and (3) no Lender or Administrative Agent shall be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or any Borrower Party or any of their respective stockholders, members, or partners. Administrative Agent, the Lenders and Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders and Borrower, or to create an equity in the Project or any other collateral for the Loan in Administrative Agent or any Lender, or any sharing of liabilities, losses, costs or expenses.

Section 12.7 Time of the Essence. Time is of the essence with respect to this Agreement.

Section 12.8 Successors and Assigns. Subject to the provisions of Section 12.23, this Agreement shall be binding upon and inure to the benefit of Administrative Agent, the Lenders and Borrower and the respective successors and permitted assigns.

Section 12.9 Renewal, Extension or Rearrangement. All provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loans.

Section 12.10 Waivers. No course of dealing on the part of Administrative Agent or any Lender, their officers, employees, consultants or agents, nor any failure or delay by Administrative Agent or any Lender with respect to exercising any right, power or privilege of Administrative Agent or any Lender under any of the Loan Documents, shall operate as a waiver thereof.

Section 12.11 Cumulative Rights. Rights and remedies of Administrative Agent and the Lenders under the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

Section 12.12 Singular and Plural. Words used in this Agreement and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 12.13 Phrases. When used in this Agreement and the other Loan Documents, the phrase “including” shall mean “including, but not limited to,” the phrases “satisfactory to any Lender” or “satisfactory to Administrative Agent” shall mean in form and substance satisfactory to such Lender or Administrative Agent, as the case may be, in all respects, the phrases “with Lender’s consent,” “with Lender’s approval,” “with Administrative Agent’s consent” or “with Administrative Agent’s approval” shall mean such consent or approval at Lender’s or Administrative Agent’s, as the case may be, discretion, and the phrases “acceptable to Lender” or “acceptable to Administrative Agent” shall mean acceptable to Lender or Administrative Agent, as the case may be, at such party’s sole discretion.”

Section 12.14 Exhibits and Schedules. The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 12.15 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Agreement and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 12.16 Promotional Material. Borrower authorizes Administrative Agent and each of the Lenders to issue press releases, advertisements and other promotional materials in connection with Administrative Agent’s or such Lender’s own promotional and marketing activities, and describing the Loans in general terms or in detail and Administrative Agent’s or such Lender’s participation in the Loans. All references to Administrative Agent or any Lender contained in any press release, advertisement or promotional material issued by Borrower shall be approved in writing by Administrative Agent and such Lender in advance of issuance.

Section 12.17 Survival. All of the representations, warranties, covenants, and indemnities of Borrower hereunder (including environmental matters under Article 5, the obligations under Sections 2.7(1), 2.7(5) 2.7(6)), and under the indemnification provisions of the other Loan Documents shall survive (a) the repayment in full of the Loans and the release of the Liens evidencing or securing the Loans, (b) the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Project to any party, whether or not an Affiliate of Borrower and (c) in the case of any Lender that may assign any interest in its Commitment or Loans hereunder in accordance with the terms of this Agreement, the making of such assignment, notwithstanding that such assigning Lender may cease to be a "Lender" hereunder.

Section 12.18 WAIVER OF JURY TRIAL. BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOANS OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND EACH LENDER TO ENTER THIS AGREEMENT.

Section 12.19 Remedies of Borrower. It is expressly understood and agreed that, notwithstanding any Applicable Law or any provision of this Agreement or the other Loan Documents to the contrary, the liability of Administrative Agent and each Lender (including their respective successors and assigns) and any recourse of Borrower against Administrative Agent and each Lender shall be limited solely and exclusively to their respective interests in the Loans and/or Commitments or the Project. Without limiting the foregoing, in the event that a claim or adjudication is made that Administrative Agent, any of the Lenders, or their agents, acted unreasonably or unreasonably delayed acting in any case where by Applicable Law or under this Agreement or the other Loan Documents, Administrative Agent, any Lender or any such agent, as the case may be, has an obligation to act reasonably or promptly, or otherwise violated this Agreement or the Loan Documents, Borrower agrees that none of Administrative Agent, the Lenders or their agents shall be liable for any incidental, indirect, special, punitive, consequential or speculative damages or losses resulting from such failure to act reasonably or promptly in accordance with this Agreement or the other Loan Documents.

Section 12.20 Governing Law. This Agreement, the notes and the other Loan Documents shall be governed by, and construed in accordance with the law of the State of New York, except to the extent otherwise specified in any of the Loan Documents.

THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY ADMINISTRATIVE AGENT AND LENDERS AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTES DELIVERED PURSUANT HERETO SHALL BE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTES, AND THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ADMINISTRATIVE AGENT, ANY LENDER OR BORROWER ARISING OUT OF OR RELATING TO THE LOAN DOCUMENTS MAY AT ADMINISTRATIVE AGENT'S OPTION (WHICH DECISION SHALL BE MADE BY THE MAJORITY LENDERS) BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR *FORUM NON CONVENIENS* OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT NATIONAL REGISTERED AGENTS, INC., 875 AVENUE OF THE AMERICAS, SUITE 501, NEW YORK, NY 10001 AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (A) SHALL GIVE PROMPT NOTICE TO ADMINISTRATIVE AGENT OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.]

Section 12.21 Entire Agreement. This Agreement and the other Loan Documents embody the entire agreement and understanding between Administrative Agent, the Lenders and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents 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. If any conflict or inconsistency exists between any term sheet, application or commitment letter and this Agreement or any of the other Loan Documents, the terms of this Agreement shall control.

Section 12.22 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 12.23 Assignments and Participations.

(1) **Assignments by the Lenders.** Each Lender may assign any of its Loans, its Note and its Commitment (but only with the consent of Administrative Agent); provided that:

(a) no such consent by Administrative Agent shall be required in the case of any assignment by any Lender to another Lender or an Affiliate of such Lender or such other Lender (provided that in the case of an assignment to any such Affiliate, the assigning Lender will not be released from its obligations under the Loan Documents and the Administrative Agent may continue to deal only with such assigning Lender);

(b) except to the extent Administrative Agent shall otherwise consent, any such partial assignment (other than to another Lender or an Affiliate of a Lender) shall be in an amount at least equal to \$10,000,000;

(c) each such assignment (including an assignment to another Lender or an Affiliate of a Lender) by a Lender of its Loans or Commitment shall be made in such manner so that the same portion of its Loans and Commitment is assigned to the respective assignee;

(d) subject to the applicable Lender's compliance with the provisions of clauses (b) and (c) above, no consent by Borrower shall be required and Administrative Agent's consent shall not be unreasonably withheld, delayed or conditioned if such assignment is made to an Eligible Assignee, and the provisions of clause (e) have been satisfied; and

(e) upon execution and delivery by the assignee (even if already a Lender) to Borrower and Administrative Agent of an Assignment and Assumption pursuant to which such assignee agrees to become a "Lender" hereunder (if not already a Lender) having the Commitment and Loans specified in such instrument, and upon consent thereto by Administrative Agent to the extent required above, the assignee shall have, to the extent of such assignment (unless otherwise consented to by Administrative Agent), the obligations, rights and benefits of a Lender hereunder holding the Commitment and Loans (or portions thereof) assigned to it (in addition to the Commitment and Loans, if any, theretofore held by such assignee) and the assigning Lender shall, to the extent of such assignment, be released from the Commitment (or portion thereof) so assigned. Upon each such assignment the assigning Lender shall pay Administrative Agent a processing and recording fee of \$3,500 and the reasonable fees and disbursements of Administrative Agent's counsel incurred in connection therewith.

(2) **Approval by Borrower.** In the event Borrower's consent to an assignment is required under Section 12.23(1), such consent shall not be unreasonably withheld, and shall be granted or denied in writing delivered to Administrative Agent within five (5) Business Days from the date of Administrative Agent's or a Lender's request therefor. If Administrative Agent does not receive such consent or a denial of such consent in writing within said five (5) Business Days following delivery of a request for such consent, Borrower's consent shall be deemed to have been granted. In the event Borrower withholds its consent, Lead Borrower shall, concurrently with Borrower's written disapproval, provide written notice to Administrative Agent and such Lender of the reasons for Borrower's disapproval.

(3) **Participations.**

(a) A Lender may sell to one or more other Persons (each a "Participant") a participation in all or any part of any Loans held by it, or in its Commitment, provided (A) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) 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 the other Loan Documents. In no event shall a Lender that sells a participation agree with the Participant to take or refrain from taking any action hereunder or under any other Loan Document except that such Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the related Loan or Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, (iv) reduce the rate at which interest is payable thereon, or any fee hereunder payable to the Participant, to a level below the rate at which the Participant is entitled to receive such interest or fee or (v) consent to any modification, amendment or waiver hereof or of any of the other Loan Documents to the extent that the same, under Section 12.2, requires the consent of each Lender. Borrower agrees that each Participant shall be entitled to the benefits of Section 2.7(1), Section 2.7(5), and Section 2.7(6) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.23; provided, however, that a Participant that is a non-U.S. Person that would become a Lender shall not be entitled to the benefits of Section 2.7(6) unless Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 2.7(6) as though it were a Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.23 as though it were a Lender; provided that such Participant agrees to be subject to Section 12.23 as though it were a Lender.

(4) **Certain Pledges.** In addition to the assignments and participations permitted under the foregoing provisions of this Section 12.23 (but without being subject thereto), any Lender may (without notice to Borrower, Administrative Agent or any other Lender and without payment of any fee) assign and pledge all or any portion of its Loans and its Note to any Federal Reserve Bank as collateral security pursuant to Regulation A and any operating circular issued by such Federal Reserve Bank, and such Loans and Note shall be fully transferable as provided therein.[] 0; No such assignment shall release the assigning Lender from its obligations hereunder.

(5) **Provision of Information to Assignees and Participants.** A Lender may furnish any information concerning Borrower, any Borrower Party or any of their respective Affiliates or the Project in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants); provided that such assignee and participant agree to be bound by the terms of Section 12.29.

(6) **No Assignments to Borrower or Affiliates.** Anything in this Section 12.23 to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan held by it hereunder to Borrower or any of its Affiliates without the prior consent of each Lender.

Section 12.24 Brokers. Borrower hereby represents to Administrative Agent and each Lender that Borrower has not dealt with any broker, underwriters, placement agent, or finder in connection with the transactions contemplated by this Agreement and the other Loan Documents. Borrower hereby agrees to indemnify and hold Administrative Agent and each Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower in connection with the transactions contemplated herein.

Section 12.25 Right of Set-off.

(1) Upon the occurrence and during the continuance of any Event of Default, each of the Lenders is, subject (as between the Lenders) to the provisions of subsection (3) of this Section 12.25, hereby authorized at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower) and 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) at any time he ld, and other indebtedness at any time owing, by such Lender in any of its offices, in Dollars or in any other currency, to or for the credit or the account of Borrower against any and all of the respective obligations of Borrower now or hereafter existing under the Loan Documents, irrespective of whether or not such Lender or any other Lender shall have made any demand hereunder and although such obligations may be contingent or unmatured and such deposits or indebtedness may be unmatured. Each Lender hereby acknowledges that the exercise by any Lender of offset, set-off, banker's lien, or similar rights against any deposit or other indebtedness of Borrower whether or not located in New York or any other state with certain laws restricting lenders from pursuing multiple collection methods, could result under such laws in significant impairment of the ability of all the Lenders to recover any further amounts in respect of the Loan. **Therefore, each Lender agrees that no Lender shall exercise any such right of set-off, banker's lien, or otherwise, against any assets of Borrower (including all general or special, time or demand, provisional or other deposits and other indebtedness owing by such Lender to or for the credit or the account of Borrower) without the prior written consent of Administrative Agent.**

(2) Each Lender shall promptly notify Lead Borrower and Administrative Agent after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lenders under this [Section 12.25](#) are in addition to other rights and remedies (including other rights of set-off) which the Lenders may have.

(3) Each Lender agrees that it shall turn over to Administrative Agent any payment (whether voluntary or involuntary, through the exercise of any right of setoff or otherwise) on account of the Loans held by it in excess of its ratable portion (in accordance with this agreement and any separate agreement among Administrative Agent and the Lenders) of payments on account of the Loans obtained by all the Lenders.

Section 12.26 Limitation on Liability of Administrative Agent's and the Lenders' Officers, Employees, etc. Any obligation or liability whatsoever of Administrative Agent or any Lender which may arise at any time under this Agreement or any other Loan Document shall be satisfied, if at all, out of Administrative Agent's or such Lender's respective assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Administrative Agent's or any Lender's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 12.27 Cooperation with Syndication. Borrower acknowledges that Administrative Agent intends to syndicate a portion of the Commitments to one or more Lenders (the "**Syndication**") and in connection therewith, Borrower shall take all actions as Administrative Agent may reasonably request to assist Administrative Agent in its Syndication effort. Without limiting the generality of the foregoing, Borrower shall, at the request of Administrative Agent (i) facilitate the review of the Loans, the Project and the other collateral for the Loans by any prospective Lender; (ii) assist Administrative Agent and otherwise cooperate with Administrative Agent in the preparation of information offering materials (which assistance may include reviewing and commenting on drafts of such information materials and drafting portions thereof); (iii) deliver updated information on Borrower Parties, the Project and the other collateral for the Loans; (iv) make representatives of Borrower available to meet with prospective Lenders at tours of the Project and bank meetings; (v) facilitate direct contact between the senior management and advisors of Borrower and any prospective Lender; and (vi) provide Administrative Agent with all information reasonably deemed necessary by it to complete the Syndication successfully. Subject to the provisions of [Section 9.28](#), Borrower agrees to take such further reasonable action, in connection with documents and amendments to the Loan Documents, as may reasonably be required to effect such Syndication; provided, however, that notwithstanding any other provision of this [Section 12.27](#) or [Section 12.28](#) to the contrary, Borrower shall not be required to enter into any such documents and amendments which would alter any of the material economic terms of the Loan Documents or which would create new or greater obligations or liabilities on Borrower Parties under the Loan Documents.

(1) **Loan Components.** The Administrative Agent shall have the right, at any time, with respect to all or any portion of the Loan, to (a) cause the Notes, the Mortgages and the other Security Documents to be severed and/or split into two or more separate notes, mortgages and other security agreements, so as to evidence and secure one or more senior and subordinate mortgage loans, (b) create one more senior and subordinate notes (i.e., an A/B or A/B/C structure) secured by the Mortgages and the other Security Documents, (c) create multiple components of the Notes (and allocate or re-allocate the outstanding principal amount of the Loan among such components) or (d) otherwise sever the Loan into two or more loans secured by the Mortgages and the other Security Documents (each of clauses (a) through (d), together with the Mezzanine Option described below, a "**Bifurcation**"); in each such case, in whatever proportions and priorities as Administrative Agent may so direct in its discretion to Administrative Agent; provided, however, that in each such instance (i) the outstanding principal amount of all the Notes evidencing the Loan (or components of such Notes) immediately following such Bifurcation shall be equal to the outstanding principal amount of the Loan immediately prior to such Bifurcation, and (ii) the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the new notes immediately after such Bifurcation and at all times prior to the occurrence of any Event of Default shall not exceed the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the initial Notes delivered hereunder (as such interest rates are subject to being adjusted from time to time in accordance herewith, including as a result of the accrual of interest at the Default Rate). If requested by Administrative Agent in writing, Borrower shall execute within ten (10) days after such request, a severance agreement, amendments to or amendments and restatements of any one or more Loan Documents, and such documentation as Administrative Agent may reasonably request to evidence and/or effectuate any such Bifurcation, all in form and substance reasonably satisfactory to Administrative Agent.

(2) **Mezzanine Financing.** Administrative Agent shall have the right, at any time, to divide the Loan into two or more parts (the "**Mezzanine Option**"): a mortgage loan (the "**Mortgage Loan**") and one or more Approved Mezzanine Loans. The principal amount of the Mortgage Loan plus the principal amount of the Approved Mezzanine Loan(s) shall equal the outstanding principal balance of the Loan immediately prior to the creation of the Mortgage Loan and the Approved Mezzanine Loan(s). In effectuating the foregoing, the Approved Mezzanine Lender will make a loan to a borrower (the "**Mezzanine Borrower(s)**"); Mezzanine Borrower(s) will contribute the amount of the Approved Mezzanine Loan(s) to Borrower (in its capacity as Borrower under the Mortgage Loan, "**Mortgage Borrower**") and Mortgage Borrower will apply the contribution to pay down the Loan to its Mortgage Loan amount (without prepayment premium). The Mortgage Loan and the Approved Mezzanine Loan(s) shall be on the same terms and subject to the same conditions set forth in this Agreement, the Notes, the Mortgages and the other Loan Documents except as follows:

(a) The Administrative Agent shall have the right, at any time, to establish different interest rates and debt service payments for the Mortgage Loan(s) and the Approved Mezzanine Loan and to require the payment of the Mortgage Loan and the Approved Mezzanine Loan(s) in such order of priority as may be designated by Administrative Agent; provided that (i) the total of the loan amounts for the Mortgage Loan and the Approved Mezzanine Loan(s) immediately following the creation of such Approved Mezzanine Loan(s) shall equal the amount of the Loan immediately prior to the creation of the Mortgage Loan and the Approved Mezzanine Loan(s), (ii) the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the Mortgage Loans and the Approved Mezzanine Loan immediately after such bifurcation and at all times prior to the occurrence of any Event of Default shall not exceed the weighted average prior to such bifurcation, and (iii) there shall be no acceleration of amortization and the initial debt service payments on the Mortgage Loan note and the Approved Mezzanine Loan note(s) shall initially on the date created equal the debt service payment which was due under the Loan immediately prior to such bifurcation. The Approved Mezzanine Loan(s) shall be subordinate to the Mortgage Loan and shall be governed by the terms of an intercreditor agreement between the holders of the Mortgage Loan and the Approved Mezzanine Loan(s).

(b) Mezzanine Borrower(s) shall be a newly-formed special purpose, bankruptcy remote entity satisfactory to Administrative Agent, and shall own directly or indirectly one hundred percent (100%) of Mortgage Borrower. The security for the Approved Mezzanine Loan shall be a pledge of one hundred percent (100%) of the direct and indirect ownership interests in Mortgage Borrower.

(c) Mezzanine Borrower and Mortgage Borrower shall cooperate with all reasonable requests of Administrative Agent in order to convert the Loan into a Mortgage Loan and one or more Approved Mezzanine Loan(s) and shall execute and deliver such documents as shall reasonably be required by Administrative Agent in connection therewith, including, without limitation, (i) the modification of organizational documents and loan documents, (ii) documents authorizing Administrative Agent to file any UCC 1 Financing Statements reasonably required by Administrative Agent to perfect the security interest in the collateral for the Approved Mezzanine Loan(s), (iii) execution of such other documents reasonably required by Administrative Agent in connection with the creation of the Approved Mezzanine Loan(s), including, without limitation, an environmental indemnity substantially similar in form and substance to the Environmental Indemnity Agreement delivered on the date hereof in connection with the Loan, (iv) delivery of appropriate authorization and enforceability opinions with respect to the Approved Mezzanine Loan(s), and (v) delivery of an "Eagle 9" or equivalent UCC title insurance policy, satisfactory to Administrative Agent, insuring the perfection and priority of the lien on the Approved Mezzanine Loan collateral; provided, however, that notwithstanding any other provision of [Section 12.27](#) or this [Section 12.28\(2\)](#) to the contrary, Borrower shall not be required to enter into any such documents and amendments which would alter any of the material economic terms of the Loan Documents or which would create new or greater obligations or liabilities Borrower or Borrower Parties under the Loan Documents

Section 12.29 Confidentiality. Each of Administrative Agent and the Lenders and Borrower Parties and Sponsor agrees to maintain the confidentiality of the Confidential Information, except that Confidential Information may be disclosed (a) to it 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 shall be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority, (c) to the extent required by Applicable Law 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 under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) to any assignee or pledgee of or Participant in, or any prospective assignee or pledgee of or Participant in, any of its rights or obligations under this Agreement or any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations, (g) with the consent of Borrower or Administrative Agent, as applicable, or (h) to the extent such Confidential Information (i) becomes publicly available other than as a result of a breach of this Section 12.29 or of arrangements entered into pursuant hereto or (ii) becomes available to such party from a source other than Borrower or its Affiliates or the Administrative Agent or the Lender or their Affiliates, as applicable; provided, however, the obligation to maintain the confidentiality of the Confidential Information provided hereunder shall expire twelve (12) months after the date upon which the Loans hereunder are indefeasibly paid in full. Administrative Agent and each Lender, to the extent required to maintain the confidentiality of Information as provided in this Section 12.29, 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 Confidential Information as a commercial banker exercising reasonable and customary business practices would accord to its own confidential information. Notwithstanding anything herein to the contrary, the information subject to this Section 12.29 shall not include, and Administrative Agent and each Lender may disclose without limitation of any kind, any information with respect to the "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to Administrative Agent or such Lender relating to such tax treatment and tax structure. For purposes of this Section 12.29, the information that shall be treated as Confidential Information shall mean, in the case of Administrative Agent and the Lenders, written non-public information concerning the Project and, in the case of Borrower, information concerning the terms and conditions set forth in the Loan Documents.

RECOURSE LIABILITY

Section 13.1 Recourse Liability. No past, present or future member, or any past, present or future shareholder, partner, member, officer, employee, servant, executive, director, agent, authorized representative or Affiliate of Borrower or any member of Borrower, (each such Person, an “**Exculpated Party**”) shall be personally liable for payments due hereunder or under any other Loan Document or for the performance of any obligation, or breach of any representation or warranty made by Borrower hereunder or thereunder. The sole recourse of the Lenders and Administrative Agent for satisfaction of the obligations of Borrower hereunder and under any other Loan Document shall be against Borrower and its assets and not against any assets or property of any such Exculpated Party other than the direct or indirect ownership interest of such Exculpated Party in Borrower. In the event that a Potential Default or Event of Default occurs in connection with such obligations, no action shall be brought against any such Exculpated Party by virtue of its direct or indirect ownership interest in Borrower. In the event of foreclosure or other sale or disposition of the Project, no judgment for any deficiency upon the obligations hereunder or under any other Loan Document shall be obtainable by the Lenders or Administrative Agent against any such Exculpated Party. Notwithstanding the foregoing, nothing in this Section 13.1 shall affect or diminish the obligations of Borrower or Guarantors under or in respect of each Loan Document to which it is a party, including Guarantor Documents (including the right to name any Guarantor in any foreclosure action in connection with its obligations under the Guarantor Documents) and the Co-Borrower Documents. Notwithstanding the foregoing provisions of this Section 13.1, each Exculpated Party shall be personally (and on a full recourse basis) liable for and shall indemnify and defend Administrative Agent and the Lenders from and against, and shall hold Administrative Agent and the Lenders harmless of, from and against any deficiency, liability, loss, damage, costs, and expenses (including legal fees and disbursements) suffered by Administrative Agent and/or the Lenders and caused by, or arising out of or as a result of any of the following: (i) such Person’s commission of a criminal act, (ii) such Person’s failure to comply with the provisions of the Loan Documents prohibiting a transfer or Change of Control; (iii) such Person’s misappropriation of any cash flow or other revenue derived from or in respect of the Project, including security deposits, insurance proceeds, condemnation awards, or any rental, sales or other income derived directly or indirectly from the Project, or the misapplication of any of the foregoing sums, in either event, in contravention of any provision of this Agreement or the other Loan Documents; (iv) such Person’s fraud or misrepresentation or inaccurate certification made at any time in connection with the Loan Documents or the Loans; (v) such Person’s intentional interference with Administrative Agent’s (or the Lenders’) exercise of its rights under any of the Loan Documents; (vi) such Person’s intentional destruction or removal of fixtures or personal property securing the Loans unless replaced by items of equal value and utility; (vii) such Person’s misapplication or misappropriation of funds disbursed from the Security Accounts or the Controlled Accounts; (viii) such Person’s commissions of intentional waste to or of the Project or any portion thereof or failure to maintain the Project in the manner required by the Loan Documents; (ix) failure to maintain the insurance coverage required by the Loan Documents; (x) failure to pay taxes, assessments and any other charges, including, without limitation, charges for labor or materials, which could result in prior liens against any portion of the Project; (xi) willful misconduct; (xii) Borrower files a voluntary petition under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xiii) such Person files or joins in the filing of, or solicits or acts in concert with, or colludes or conspires with petitioning creditors with respect to, an involuntary petition against Borrower under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xiv) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xv) such Person consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Project; (xvi) Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; or (xvii) Borrower violates any of provisions set forth in the definition of Single Purpose Entity and such violation results in a substantive consolidation of the Borrower or its assets in the bankruptcy of an Affiliate.

Section 13.2 No Waiver of Certain Rights. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, (A) neither of Administrative Agent nor the Lenders shall be deemed to have waived any right which Administrative Agent or any Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Federal Bankruptcy Code, as such sections may be amended, to file a claim for the full amount due to Administrative Agent or such Lender under the Loan Documents or to require that all collateral shall continue to secure the amounts due under the Loan Documents and (B) Administrative Agent may pursue any power of sale, bring any foreclosure action, any action for specific performance, or any other appropriate action or proceedings against Borrower or any other Person for the purpose of enabling the Administrative Agent and the Lenders to realize upon the collateral for the Loans (including, without limitation, any Net Operating Income to the extent provided for in the Loan Documents) or to obtain the appointment of a receiver.

ARTICLE 14

ADMINISTRATIVE AGENT

Section 14.1 Appointment, Powers and Immunities. Each Lender hereby appoints and authorizes Administrative Agent to act as its agent hereunder and under the other Loan Documents with such powers as are specifically delegated to Administrative Agent by the terms of this Agreement and of the other Loan Documents, together with such other powers as are reasonably incidental thereto. Administrative Agent (which term as used in this sentence and in Section 14.5 and the first sentence of Section 14.6 shall include reference to its Affiliates and its own and its Affiliates' officers, directors, employees and agents):

(a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents, and shall not by reason of this Agreement or any other Loan Document be a 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 nor shall any Lender have any fiduciary duty to Borrower or any other Lender;

(b) shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in this Agreement or in any other Loan Document, or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or any other Loan Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of the Loan Documents or any other document referred to or provided for therein or for any failure by Borrower or any other Person to perform any of its obligations thereunder; and

(c) shall not be responsible for any action taken or omitted to be taken by it under any Loan Document or under any other document or instrument referred to or provided for therein or in connection therewith, except to the extent any such action taken or omitted violates Administrative Agent's standard of care set forth in the first sentence of Section 14.5.

(d) shall not, except to the extent expressly instructed by the Majority Lenders with respect to collateral security under the Security Documents, be required to initiate or conduct any litigation or collection proceedings hereunder or under any other Loan Document; and

(e) shall not be required to take any action which is contrary to the Loan Documents or Applicable Law.

The relationship between Administrative Agent and each Lender is a contractual relationship only, and nothing herein shall be deemed to impose on Administrative Agent any obligations other than those for which express provision is made herein or in the other Loan Documents. Administrative Agent may employ agents and attorneys, and may delegate all or any part of its obligations hereunder, to third parties and shall not be responsible for the negligence or misconduct of any such agents, attorneys in fact or third parties selected by it in good faith. Administrative Agent may deem and treat the payee of a Note as the holder thereof for all purposes hereof unless and until a notice of the assignment or transfer thereof shall have been filed with Administrative Agent, any such assignment or transfer to be subject to the provisions of Section 12.23. Except to the extent expressly provided in Section 14.8, the provisions of this Article 14 are solely for the benefit of Administrative Agent and the Lenders, and Borrower shall not have any rights as a third-party beneficiary of any of the provisions hereof and the Lenders may modify or waive such provisions of this Article 14 in their sole and absolute discretion.

Section 14.2 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including, without limitation, any thereof by telephone, telecopy, telegram or cable) reasonably 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. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Majority Lenders, and such instructions of the Majority Lenders and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

Section 14.3 Defaults.

(1) Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Potential Default or Event of Default unless Administrative Agent has received notice from a Lender or Lead Borrower specifying such Potential Default or Event of Default and stating that such notice is a "Notice of Default." In the event that Administrative Agent receives such a notice of the occurrence of a Potential Default or Event of Default, Administrative Agent shall give prompt notice thereof to the Lenders. Within ten (10) days of delivery of such notice of Potential Default or Event of Default from Administrative Agent to the Lenders (or such shorter period of time as Administrative Agent determines is necessary), Administrative Agent and the Lenders shall consult with each other to determine a proposed course of action. Administrative Agent shall (subject to Section 14.7) take such action with respect to such Potential Default or Event of Default as shall be directed by the Majority Lenders, provided that, (A) unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, including decisions (1) to make protective advances that Administrative Agent determines are necessary to protect or maintain the Project and (2) to foreclose on any of the Project or exercise any other remedy, with respect to such Potential Default or Event of Default as it shall deem advisable in the interest of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of all of the Lenders and (B) no actions approved by the Majority Lenders shall violate the Loan Documents or Applicable 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 Loan Documents (including the Notes) other than through Administrative Agent. Administrative Agent shall advise the Lenders of all material actions which Administrative Agent takes in accordance with the provisions of this Section 14.3(1) and shall continue to consult with the Lenders with respect to all of such actions. Notwithstanding the foregoing, if the Majority Lenders shall at any time direct that a different or additional remedial action be taken from that already undertaken by Administrative Agent, including the commencement of foreclosure proceedings, such different or additional remedial action shall be taken in lieu of or in addition to, the prosecution of such action taken by Administrative Agent; provided that all actions already taken by Administrative Agent pursuant to this Section 14.3(1) shall be valid and binding on each Lender. All money (other than money subject to the provisions of Section 14.7) received from any enforcement actions, including the proceeds of a foreclosure sale of the Project, shall be applied, first, to the payment or reimbursement of Administrative Agent for expenses incurred in accordance with the provisions of Sections 14.3(2), (3) and (4) and 14.5 and to the payment of the Agency Fee to the extent not paid by Borrower pursuant to Section 14.11, second, to the payment or reimbursement of the Lenders for expenses incurred in accordance with the provisions of Section 14.3(2), (3) and (4) and 14.5; third, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 14.3(2); and fourth, to the Lenders in accordance with their respective Proportionate Shares (and, if applicable, to Eurohypo Counterparty under any Hedge Agreement for its Additional Interest in accordance with Section 9.15), unless an Unpaid Amount is owed pursuant to Section 14.12, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defaulting Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender.

(2) All losses with respect to interest (including interest at the Default Rate) and other sums payable pursuant to the Notes or incurred in connection with the Loans shall be borne by the Lenders in accordance with their respective proportionate shares of the Loans. All losses incurred in connection with the Loans, the enforcement thereof or the realization of the security therefor, shall be borne by the Lenders in accordance with their respective proportionate shares of the Loan, and the Lenders shall promptly, upon request, remit to Administrative Agent their respective proportionate shares of (i) any expenses incurred by Administrative Agent in connection with any Default to the extent any expenses have not been paid by Borrower, (ii) any advances made to pay taxes or insurance or otherwise to preserve the Lien of the Security Documents or to preserve and protect the Project, whether or not the amount necessary to be advanced for such purposes exceeds the amount of the Mortgages, (iii) any other expenses incurred in connection with the enforcement of the Mortgages or other Loan Documents, and (iv) any expenses incurred in connection with the consummation of the Loans not paid or provided for by Borrower. To the extent any such advances are recovered in connection with the enforcement of the Mortgages or the other Loan Documents, each Lender shall be paid its proportionate share of such recovery after deduction of the expenses of Administrative Agent and the Lenders.

(3) If, at the direction of the Majority Lenders or otherwise as provided in Section 14.3(1), any action(s) is brought to collect on the Notes or enforce the Security Documents or any other Loan Document, such action shall (to the extent permitted under Applicable Law and the decisions of the court in which such action is brought) be an action brought by Administrative Agent and the Lenders, collectively, to collect on all or a portion of the Notes or enforce the Security Documents or any other Loan Document and counsel selected by Administrative Agent shall prosecute any such action on behalf of Administrative Agent and the Lenders, and Administrative Agent and the Lenders shall consult and cooperate with each other in the prosecution thereof. All decisions concerning the appointment of a receiver while such action is pending, the conduct of such receivership, the conduct of such action, the collection of any judgment entered in such action and the settlement of such action shall be made by Administrative Agent. The costs and expenses of any such action shall be borne by the Lenders in accordance with each of their respective proportionate shares.

(4) If, at the direction of the Majority Lenders or otherwise as provided in Section 14.3(1), any action(s) is brought to foreclose the Mortgages, such action shall (to the extent permitted under Applicable Law and the decisions of the court in which such action is brought) be an action brought by Administrative Agent and the Lenders, collectively, to foreclose all or a portion of the Mortgages and collect on the Notes. Counsel selected by Administrative Agent shall prosecute any such foreclosure on behalf of Administrative Agent and the Lenders and Administrative Agent and the Lenders shall consult and cooperate with each other in the prosecution thereof. All decisions concerning the appointment of a receiver, the conduct of such foreclosure, the acceptance of a deed in lieu of foreclosure, the bid on behalf of Administrative Agent and the Lenders at the foreclosure sale of the Project, the manner of taking and holding title to the Project (other than as set forth in subsection (5) below), the sale of the Project after foreclosure, and the commencement and conduct of any deficiency judgment proceeding shall be made by Administrative Agent. The costs and expenses of foreclosure will be borne by the Lenders in accordance with their respective proportionate shares.

(5) If title is acquired to the Project after a foreclosure sale or by a deed in lieu of foreclosure, title shall be held by Administrative Agent in its own name in trust for the Lenders or, at Administrative Agent's election, in the name of a wholly owned subsidiary of Administrative Agent, on behalf of the Lenders, or a subsidiary wholly owned by the Lenders and managed by the Administrative Agent.

(6) If Administrative Agent (or its subsidiary) acquires title to the Project or is entitled to possession of the Project during or after the foreclosure, all material decisions with respect to the possession, ownership, development, construction, control, operation, leasing, management and sale of the Project shall be made by Administrative Agent. All income or other money received after so acquiring title to or taking possession of the Project with respect to the Project, including income from the operation and management of the Project and the proceeds of a sale of the Project, shall be applied (subject to the terms of any separate agreement among Administrative Agent and the Lenders), first, to the payment or reimbursement of Administrative Agent and the expenses incurred in accordance with the provisions of this Article 14 and to the payment of the Agency Fee to the extent not paid by Borrower pursuant to Section 14.11, second, to the payment of operating expenses with respect to the Project; third, to the establishment of reasonable reserves for the operation of the Project; fourth, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 14.3(2); fifth, to fund any capital improvement, leasing and other reserves; and sixth, to the Lenders in accordance with their respective Proportionate Shares (and, if applicable, to Eurohypo Counterparty under any Hedge Agreement for its Additional Interest in accordance with Section 9.15), unless an Unpaid Amount is owed pursuant to Section 14.12, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defaulting Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender.

Section 14.4 Rights as a Lender. With respect to its Commitment and the Loans made by it Eurohypo (and any successor acting 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 term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Administrative Agent in its individual capacity. Eurohypo (and any successor acting as Administrative Agent) and its Affiliates may (without having to account therefor to any Lender) lend money to, make investments in and generally engage in any kind of lending, trust or other business with Borrower (and any of its Affiliates) as if it were not acting as Administrative Agent, and Eurohypo and its Affiliates may accept fees and other consideration from Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

Section 14.5 Standard of Care; Indemnification. In performing its duties under the Loan Documents, Administrative Agent will exercise the same degree of care as it normally exercises in connection with real estate loans that it syndicates and administers, but Administrative Agent shall have no further responsibility to any Lender except as expressly provided herein and except for its own gross negligence or willful misconduct which resulted in actual loss to such Lender, and, except to such extent, Administrative Agent shall have no responsibility to any Lender for the failure by Administrative Agent to comply with any of Administrative Agent's obligations to Borrower under the Loan Documents or otherwise. Subject to the terms of any separate agreement among Administrative Agent and the Lenders, the Lenders agree to indemnify Administrative Agent (to the extent not reimbursed under Section 9.28, but without limiting the obligations of Borrower under Section 9.28) ratably in accordance with the aggregate principal amount of the Loans held by the Lenders (or, if no Loans are at the time outstanding, ratably in accordance with their respective Commitments), for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Administrative Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Loan Document or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses that Borrower is obligated to pay under Section 9.28, but excluding, unless an Event of Default has occurred and is continuing, normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents, provided that no Lender shall be liable for any of the foregoing to the extent they arise from Administrative Agent's breach of its standard of care set forth in the first sentence of this Section.

Section 14.6 Non Reliance on Administrative Agent and Other Lenders. Each Lender agrees 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 credit analysis of Borrower and its Affiliates and 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 under any other Loan Document. Subject to the provisions of the first sentence of Section 14.5, Administrative Agent shall not be required to keep itself informed as to the performance or observance by Borrower of this Agreement or any of the other Loan Documents or any other document referred to or provided for herein or therein or to inspect the Project or the books of Borrower or any of its Affiliates. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by Administrative Agent hereunder or as otherwise agreed by Administrative Agent and the Lenders, 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 any of its Affiliates that may come into the possession of Administrative Agent or any of its Affiliates.

Section 14.7 Failure to Act. Except for action expressly required of Administrative Agent hereunder, and under the other Loan Documents, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 14.5 against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

Section 14.8 Resignation of Administrative Agent. Administrative Agent may resign at any time by giving notice thereof to the Lenders and Lead Borrower. Upon any such resignation, the Majority Lenders shall have the right to appoint a successor Administrative Agent that shall be a Person that meets the qualifications of an Eligible Assignee. If no successor Administrative Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, that shall be an institutional lender that meets the requirements of the immediately preceding sentence. 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 (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder (if not already discharged therefrom as provided above in this Section 14.8). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provision of this Article 14 and Section 9.28 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 14.9 Consents under Loan Documents. Administrative Agent may (without any Lender's consent), give or withhold its agreement to any amendments of the Loan Documents or any waivers or consents in respect thereof or exercise or refrain from exercising any other rights or remedies which Administrative Agent may have under the Loan Documents or otherwise provided that such actions do not, in Administrative Agent's reasonable judgment, materially adversely affect the value of any collateral, taken as a whole, or represent a departure from Administrative Agent's standard of care described in Section 14.5, except that, except as otherwise provided in any separate agreement entered into among Administrative Agent and the Lenders, Administrative Agent shall not agree to the following (provided that no Lender's consent shall be required for any of the following which are otherwise required or contemplated under the Loan Documents):

(a) increase the Commitment of any Lender without the consent of such Lender;

(b) reduce the principal amount of the Loans or reduce the interest rate thereon without the consent of each Lender affected thereby;

(c) extend any stated payment date for principal of or interest on the Loans payable to any Lender without the consent of each Lender affected thereby;

(d) release Borrower, any Guarantor or any other party from liability under the Loan Documents (except for any assigning Lender pursuant to Section 12.23 and any resigning Administrative Agent pursuant to Section 14.8) without the consent of each Lender (except that no such consent shall be required, and Administrative Agent is hereby authorized, to release Borrower and Guarantors (A) as expressly provided in the Loan Documents and (B) upon payment of the Obligations in full in accordance with the terms of the Loan Documents);

(e) release or subordinate in whole or in part any material portion of the collateral given as security for the Loans without the consent of each Lender (except that no such consent shall be required, and Administrative Agent is hereby authorized, to release any Lien covering the collateral under the Security Documents (A) as expressly provided in the Loan Documents and (B) upon payment of the Obligations in full in accordance with the terms of the Loan Documents);

(f) modify any of the provisions of this Section 14.9, the definition of "Majority Lenders" or any other provision in the Loan Documents specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder without the consent of each Lender;

(g) _____ modify the terms of any Event of Default without the consent of each Lender; or

(h) _____ consent to (i) the sale, transfer or encumbrance of any portion of the Project (or any interest therein) or any direct or indirect ownership interest therein and (ii) the incurrence by Borrower of any additional indebtedness secured by the Project, in each case to the extent such consent is required under the Loan Documents (and subject to any standard of reasonability set forth therein) without the consent of each Lender.

Notwithstanding anything to the contrary contained in this Agreement, (a) any modification or supplement of Article 14, or of any of the rights or duties of Administrative Agent hereunder, shall require the consent of Administrative Agent and (b) in the case of Change Orders, the Lenders hereby authorize Administrative Agent (on behalf of the Lenders) to modify the Loan Documents to the extent reasonably necessary to comply with the requirements of the Lien Law in connection therewith and (y) Administrative Agent is hereby authorized to enter into modifications or amendments to the Loan Documents which are ministerial in nature, including the preparation and execution of Uniform Commercial Code forms, Assignments and Assumptions and subordination and non-disturbance agreements with tenants at the Project. If Administrative Agent solicits any consents or approvals from the Lenders under any of the Loan Documents, each Lender shall within ten (10) Business Days of receiving such request, give Administrative Agent written notice of its consent or approval or denial thereof, provided that, if any Lender does not respond within such ten (10) Business Days, such Lender shall be deemed to have authorized Administrative Agent to vote such Lender's interest with respect to the matter which was the subject of Administrative Agent's solicitation as Administrative Agent elects. Any such solicitation by Administrative Agent for a consent or approval shall be in writing and shall include a description of the matter or thing as to which such consent or approval is requested and shall include Administrative Agent's recommended course of action or determination in respect thereof.

Section 14.10 Authorization. Administrative Agent is hereby authorized by the Lenders to execute, deliver and perform in accordance with the terms of each of the Loan Documents to which Administrative Agent is or is intended to be a party and each Lender agrees to be bound by all of the agreements of Administrative Agent contained in such Loan Documents. Borrower shall be entitled to rely on all written agreements, approvals and consents received from Administrative Agent as being that also of the Lenders, without obtaining separate acknowledgment or proof of authorization of same.

Section 14.11 Agency Fee. So long as the Commitments are in effect and until payment in full of all obligations under this Agreement, the Notes and the other Loan Documents, Borrower shall pay to Administrative Agent, for its sole account, the Agency Fee. The Agency Fee shall be payable annually in advance commencing on the Closing Date pursuant to the Fee Letter.

Section 14.12 Defaulting Lenders.

(1) _____ If any Lender (a "Defaulting Lender") shall for any reason fail to (i) make any respective Loan required pursuant to the terms of this Agreement or (ii) pay its proportionate share of an advance or disbursement to protect the Project or the Lien of the Security Documents, any of the other Lenders may, but shall not be obligated to, make all or a portion of the Defaulting Lender's Loan or proportionate share of such advance, provided that such Lender gives the Defaulting Lender and Administrative Agent prior notice of its intention to do so. The right to make such advances in respect of the Defaulting Lender shall be exercisable first by the Lender holding the greatest proportionate share and thereafter to each of the Lenders in descending order of their respective proportionate shares of the Loans or in such other manner as the Majority Lenders (excluding the Defaulting Lender) may agree on. Any Lender making all or any portion of the Defaulting Lender's proportionate share of the applicable Loan or advance in accordance with the foregoing terms and conditions shall be referred to as a "Special Advance Lender."

(2) In any case where a Lender becomes a Special Advance Lender (i) the Special Advance Lender shall be deemed to have purchased, and the Defaulting Lender shall be deemed to have sold, a senior participation in the Defaulting Lender's respective Loan to the extent of the amount so advanced or disbursed (the "**Advanced Amount**") bearing interest (including interest at the Default Rate, if applicable) and (ii) the Defaulting Lender shall have no voting rights under this Agreement or any other Loan Documents so long as it is a Defaulting Lender. It is expressly understood and agreed that each of the respective obligations under this Agreement and the other Loan Documents, including advancing Loans, losses incurred in connection with the Loan, costs and expenses of enforcement, advancing to preserve the Lien of the Mortgages or to preserve and protect the Project, shall be without regard to any adjustment in the proportionate shares occasioned by the acts of a Defaulting Lender. The Special Advance Lender shall be entitled to an amount (the "**Unpaid Amount**") equal to the applicable Advanced Amount, plus any unpaid interest due and owing with respect thereto, less any repayments thereof made by the Defaulting Lender immediately upon demand. The Defaulting Lender shall have the right to repurchase the senior participation in its Loan from the Special Advance Lender at any time by the payment of the Unpaid Amount.

(3) A Special Advance Lender shall (i) give notice to the Defaulting Lender, Administrative Agent and each of the other Lenders (provided that failure to deliver said notice to any party other than the Defaulting Lender shall not constitute a default under this Agreement) of the Advance Amount and the percentage of the Special Advance Lender's senior participation in the Defaulting Lender's Loan and (ii) in the event of the repayment of any of the Unpaid Amount by the Defaulting Lender, give notice to the Defaulting Lender and Administrative Agent of the fact that the Unpaid Amount has been repaid (in whole or in part), the amount of such repayment and, if applicable, the revised percentage of the Special Advance Lender's senior participation. Provided that Administrative Agent has received notice of such participation, Administrative Agent shall have the same obligations to distribute interest, principal and other sums received by Administrative Agent with respect to a Special Advance Lender's senior participation as Administrative Agent has with respect to the distribution of interest, principal and other sums under this Agreement; and at the time of making any distributions to the Lenders, shall make payments to the Special Advance Lender with respect to a Special Advance Lender's senior participation in the Defaulting Lender's Loan out of the Defaulting Lender's share of any such distributions.

(4) A Defaulting Lender shall immediately pay to a Special Advance Lender all sums of any kind paid to or received by the Defaulting Lender from Borrower, whether pursuant to the terms of this Agreement or the other Loan Documents or in connection with the realization of the security therefor until the Unpaid Amount is fully repaid. Notwithstanding the fact that the Defaulting Lender may temporarily hold such sums, the Defaulting Lender shall be deemed to hold same as a trustee for the benefit of the Special Advance Lender, it being the express intention of the Lenders that the Special Advance Lender shall have an ownership interest in such sums to the extent of the Unpaid Amount.

(5) Each Defaulting Lender shall indemnify, defend and hold Administrative Agent and each of the other Lenders harmless from and against any and all losses, damages, liabilities or expenses (including reasonable attorneys' fees and expenses and interest at the Default Rate) which they may sustain or incur by reason of the Defaulting Lender's failure or refusal to abide by its obligations under this Agreement or the other Loan Documents, except to the extent a Defaulting Lender became a Defaulting Lender due to the gross negligence or willful misconduct of Administrative Agent and/or any Lender. Administrative Agent shall, after payment of any amounts due to any Special Advance Lender pursuant to the terms of subsection (3) above, set-off against any payments due to such Defaulting Lender for the claims of Administrative Agent and the other Lenders pursuant to this indemnity.

(6) In the event any Lender becomes a Defaulting Lender and none of the other Lenders elects to be a Special Advance Lender pursuant to subsection (1) above, Borrower shall have the right, at any time prior to the Completion Date, provided that no Potential Default or Event of Default exists, to cause another financial institution, reasonably acceptable to (x) the Majority Lenders if such institution is not an Eligible Assignee or (y) Administrative Agent if such institution is an Eligible Assignee, to assume Defaulting Lender's obligations with respect to the Advance Amount on the then-existing terms and conditions of the Loan Documents (such replacement institution, a "Replacement Lender"). Such assumption shall be pursuant to a written instrument reasonably satisfactory to Administrative Agent. Upon such assumption, the Replacement Lender shall become a "Lender" for all purposes hereunder, with a Commitment in an amount equal to the Advance Amount, and the Defaulting Lender's Commitment shall automatically be reduced by the Advance Amount. In connection with the foregoing, Borrower shall execute and deliver to the Replacement Lender and the Defaulting Lender substitute notes substantially in the form of Exhibit C and stating: "This Note is a substitute note as contemplated by Section 14.12 of the Agreement; it replaces and is in lieu of that certain note made by Maker dated [date of Note] to the order of [Defaulting Lender] in the principal sum of [Defaulting Lender's original Commitment]." Such substitute notes shall be in amounts equal to, in the case of the Replacement Lender's note, the Advance Amount and, in the case of the Defaulting Lender's note, its Commitment as reduced aforesaid. Such substitute notes shall constitute "Notes" and the obligations evidenced by such substitute notes shall be secured by the Mortgages. In connection with Borrower's execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent evidence, satisfactory to Administrative Agent, of all requisite partnership/limited liability company/corporate action to authorize Borrower's execution and delivery of the substitute notes and any related documents. Upon delivery of the foregoing substitute notes, each Defaulting Lender shall return to Borrower its note which was replaced, provided that the delivery of a substitute note to the Defaulting Lender pursuant to this Section 14.12 shall operate to void and replace the note previously held by the Defaulting Lender regardless of whether Defaulting Lender returns the same as required hereby. 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 substitution of Lenders in accordance with the foregoing provisions of this Section. Lenders shall reasonably cooperate with Borrower's attempts to obtain a Replacement Lender, but they shall not be obligated to modify the Loan Documents in connection therewith, other than modifications pursuant to the immediately preceding sentence.

Section 14.13 Liability of Administrative Agent. Administrative Agent shall not have any liabilities or responsibilities to Borrower on account of the failure of any Lender (other than Administrative Agent in its capacity as a 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 Loan Document.

Section 14.14 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 Lead Borrower and the Lenders thereof.

ARTICLE 15

CASH MANAGEMENT

Section 15.1 Cash Management.

(1) Upon the occurrence of an Event of Default and continuing until the Maturity Date, Borrower and Borrower's Managing Member shall (a) enter into and thereafter comply with the Cash Management Agreement and (b) continuing until ninety (90) days after the date that such Event of Default has been cured, cause all tenants in the Improvements to remit all rental and other payments due under their respective leases into a sweep account established in accordance with the Cash Management Agreement (the "**Sweep Account**"). The insufficiency of funds on deposit in any account established pursuant to the Cash Management Agreement shall not absolve Borrower of the obligation to make any payments as and when due pursuant to this Agreement or the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(2) Administrative Agent, in its sole discretion, may, on a monthly basis, release from the Sweep Account an amount equal to the monthly Operating Expenses pursuant to an Approved Annual Budget. After such release of funds described in the preceding sentence, Administrative Agent, may, in its sole discretion, release any remaining funds to pay for interest on the Loans and for Project Costs.

Section 15.2 Security Accounts Generally.

(1) **Grant of Security Interest.** Borrower hereby grants a perfected first priority security interest in favor of Administrative Agent for the ratable benefit of the Lenders in each Security Account established by or for it hereunder and all financial assets and other property and sums at any time held, deposited or invested therein, and all security entitlements and investment property relating thereto, together with any interest or other earnings thereon, and all proceeds thereof, whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities (collectively, "**Security Account Collateral**"), together with all rights of a secured party with respect thereto (even if no further documentation is requested by Administrative Agent or the Lenders or executed by Borrower).

(2) **Borrower Covenants.** Borrower covenants and agrees:

(a) to do all acts that may be reasonably necessary to maintain, preserve and protect Security Account Collateral;

(b) to pay promptly when due all material taxes, assessments, charges, encumbrances and liens now or hereafter imposed upon or affecting any Security Account Collateral;

(c) to appear in and defend any action or proceeding which may materially and adversely affect Borrower's title to or Administrative Agent's interest in the Security Account Collateral;

(d) following the creation of each Security Account established by or for Borrower and the initial funding thereof, other than to Administrative Agent pursuant to the Cash Management Agreement or this Agreement, not to transfer, assign, sell, surrender, encumber, mortgage, hypothecate, or otherwise dispose of any of the Security Account Collateral or rights or interests therein, and to keep the Security Account Collateral free of all levies and security interests or other liens or charges except the security interest in favor of Administrative Agent granted hereunder;

(e) to account fully for and promptly deliver to Administrative Agent, in the form received, all documents, chattel paper, instruments and agreements constituting the Security Account Collateral hereunder, endorsed to Administrative Agent or in blank, as requested by Administrative Agent, and accompanied by such powers as appropriate and until so delivered all such documents, instruments, agreements and proceeds shall be held by Borrower in trust for Administrative Agent, separate from all other property of Borrower; and

(f) from time to time upon request by Administrative Agent, to furnish such further assurances of Borrower's title with respect to the Security Account Collateral, execute such written agreements, or do such other acts, all as may be reasonably necessary to effectuate the purposes of this agreement or as may be required by law, or in order to perfect or continue the first-priority lien and security interest of Administrative Agent in the Security Account Collateral.

(3) **Rights on Event of Default.** Upon the occurrence and during the continuance of an Event of Default, Administrative Agent, at its option, may withdraw the funds in any Security Account and apply such funds to the items for which the Security Accounts were established or to payment of the Loans in such order, proportion and priority as Administrative Agent may determine in its discretion. Administrative Agent's right to withdraw and apply such funds shall be in addition to all other rights and remedies provided to Administrative Agent on behalf of the Lenders under the Cash Management Agreement and the other Loan Documents.

(4) **Prohibition Against Further Encumbrance.** Borrower shall not, without the prior written consent of Administrative Agent, further pledge, assign or grant any security interest in the Security Account Collateral or permit any Lien to attach thereto, or any levy to be made thereon, or any Uniform Commercial Code financing statements, except those naming Administrative Agent on behalf of the Lenders as the secured party, to be filed with respect thereto.

(5) **Release of Funds in Security Accounts.** Any amount remaining in the Security Accounts after the Loans have been paid in full shall promptly be returned to the Lead Borrower.

ARTICLE 16

CONTROLLED ACCOUNTS

Section 16.1 Controlled Accounts. Borrower hereby agrees with Administrative Agent, as to any Controlled Account into which this Agreement requires Borrower to deposit funds, as follows:

(1) **Establishment and Maintenance of the Controlled Account.**

(a) Each Controlled Account (i) shall be established at, and a separate and identifiable account from all other funds held by, a Depository Bank and (ii) shall contain only funds required to be deposited pursuant to this Agreement or any other Loan Document. Any interest which may accrue on the amounts on deposit in a Controlled Account shall be added to and shall become part of the balance of such Controlled Account. Borrower, Administrative Agent and the applicable Depository Bank shall enter into an agreement (a "Controlled Account Agreement"), substantially in the form of Exhibit G attached hereto (with such changes thereto as may be required by such Depository Bank and satisfactory to Administrative Agent) which shall govern such Controlled Account and the rights, duties and obligations of each party to such Controlled Account Agreement.

(b) Each Controlled Account shall be established in the name of Administrative Agent, as agent for the Lenders and shall be subject to the sole dominion, control and discretion of Administrative Agent, provided, however that Administrative Agent shall act in accordance with the provisions of this Agreement. Neither Borrower nor any other Person, including, without limitation, any Person claiming on behalf of or through Borrower, shall have any right or authority, whether express or implied, to make use of or withdraw, or cause the use or withdrawal of, any proceeds from any Controlled Account or any of the other proceeds deposited therein, except as expressly provided in this Agreement or in the applicable Controlled Account Agreement.

(2) **Deposits to and Disbursements from the Controlled Account.** All deposits to and disbursements of all or any portion of the deposits to any Controlled Account shall be in accordance with this Agreement and the applicable Controlled Account Agreement. Borrower shall pay any and all fees charged by Depository Bank in connection with the maintenance of each Controlled Account required to be established by or for it hereunder, and the performance of the Depository Bank's duties.

(3) Security Interest.

(a) Borrower hereby grants a perfected first priority security interest in favor of Administrative Agent for the ratable benefit of the Lenders in each Controlled Account established by or for it hereunder and all financial assets and other property and sums at any time held, deposited or invested therein, and all security entitlements and investment property relating thereto, together with any interest or other earnings thereon, and all proceeds thereof, whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities (collectively, "Controlled Account Collateral"), together with all rights of a secured party with respect thereto under the Uniform Commercial Code, as security for the obligations of Borrower under the Loan Documents.

(b) All interest earned on any Controlled Account shall be retained in such Controlled Account. Borrower shall treat all interest earned on its Controlled Account as its income for federal income tax purposes.

(c) While any Event of Default exists, Administrative Agent shall be entitled to exercise all rights of a secured party under the Uniform Commercial Code with respect to each Controlled Account, and (without limiting the foregoing) may apply the Controlled Account Collateral to the unpaid obligations of Borrower under the Loan Documents in such order as Administrative Agent may elect in its sole discretion, without liability for any loss, and Borrower hereby consents to any such withdrawal and application as a commercially reasonable disposition of such funds and agrees that such withdrawal shall not result in satisfaction of such obligations except to the extent the proceeds are applied to such sums.

ARTICLE 17

CONDOMINIUM PROVISIONS

Section 17.1 Establishment; Covenants

(1) Subject to the terms and conditions hereof, including without limitation, Section 17.2, Lead Borrower shall have the right, with the prior written approval of the Administrative Agent, to establish a condominium regime with respect to its ownership of the Project.

(2) Lead Borrower covenants and agrees with the Lenders and Administrative Agent that, in the event that it establishes a condominium regime pursuant to Section 17.1, Lead Borrower shall:

(a) Submit the Project, together with all of the Improvements constructed or to be constructed thereon, to the provisions of the Condominium Act and satisfy all of the requirements thereof and of any other Applicable Law necessary to create a valid condominium regime inclusive of all of the Units; and obtain any required approval of the Condominium Documents from the Attorney General of the State of New York. Any Condominium Documents and any modifications or amendments thereto shall be reasonably approved by Administrative Agent prior to the recording, filing or effectiveness thereof, provided that in the case of any such amendment which shall increase the number of condominium units, in the event that a casualty or condemnation has occurred and the provisions of Article 3 prevent restoration in connection with such casualty or condemnation, then prior to the recording, filing or effectiveness, as applicable, of such amendment, Lead Borrower, at Administrative Agent's option, shall be prohibited from recording, filing or otherwise causing the amendment to become effective and Administrative Agent, at the Majority Lenders' election, shall be permitted to vote, on Lead Borrower's behalf in accordance with the Voting Proxy delivered to Administrative Agent, or require Lead Borrower to vote, to terminate and dissolve the Condominium. In connection with such amendment, Lead Borrower shall provide updates of the documents and opinion provided herein in the event that the Condominium Declaration has been modified or amended or any of the officers, managers or directors have changed as a result of such amendment;

(b) Duly perform or cause to be duly performed, in all material respects, all obligations of the developers or sponsors under the Condominium Documents, and do or cause to be done all things necessary to operate and maintain the Project and the Condominium as a retail condominium project, that are required to be done by the developers or sponsors and comply with all Applicable Laws applicable to the Condominium, and furnish such evidence of compliance therewith as Administrative Agent may reasonably request;

(c) Subject to Administrative Agent's approval in its reasonable discretion, not cancel, terminate or revoke, or modify, or in any way alter or permit the alteration of, any of the material provisions of the Condominium Documents or grant any consents or waivers thereunder, and not to exercise any right it may have under the Condominium Documents to cancel, terminate or revoke the same. Any request for approval by Administrative Agent pursuant to this paragraph shall be made to, and approved by, Administrative Agent prior to, if necessary, submitting such request to the Attorney General of the State of New York; and

Section 17.2 Subordination of Lien to Project Condominium Declarations. Provided there exists no Potential Default or Event of Default, Administrative Agent shall, on Lead Borrower's written request, subordinate the liens of the Mortgages to the Condominium Declaration and shall execute the appropriate instruments (reasonably satisfactory to the Administrative Agent in all respects) in recordable form to effect such subordination, upon the satisfaction of the following conditions:

(1) The Administrative Agent shall have received and approved the Condominium Documents, which shall be in proper form for recording or filing, as necessary, in the appropriate offices, and certified by an officer of Lead Borrower as true, correct and complete copies of the Condominium Documents;

(2) The Title Policies insuring the Mortgages shall have been endorsed to provide a condominium endorsement and non-impairment of lien endorsement (or equivalent affirmative coverage) (which endorsements and affirmative coverage, if applicable, shall not extend the effective date of the Title Policies);

(3) The Lead Borrower shall have caused to be duly executed and delivered to Administrative Agent (i) an Assignment of Declarant's Rights in the form of Exhibit H, (ii) conditional resignations of the officers and managers of the Board of Directors of the applicable condominium association in the form of Exhibits I and J, respectively, to the extent designated by the Lead Borrower, (iii) a proxy from the Lead Borrower and each representative of the Lead Borrower on such Board of Directors in the form of Exhibit K and (iv) a letter from all the members of such Board of Directors with respect to common charges substantially in the form of Exhibit L;

(4) Administrative Agent shall have received an opinion from the Condominium's counsel to the effect that (i) the Condominium Documents satisfy all applicable requirements of Governmental Authorities, (ii) all requirements of any Applicable Law have been duly satisfied with respect to the creation of the Condominium by the Lead Borrower in New York State and (iii) the documents referred to in this Section 17.2(4) have each been duly authorized, executed and delivered by the respective parties thereto and are enforceable against said parties in accordance with their respective terms subject to customary limitations; and

(5) The condominium association which shall be created by the Condominium Documents shall have furnished to Administrative Agent at no cost or expense to Administrative Agent, insurance policies for the insurance required hereunder and under the Condominium Documents, with extended coverage naming Administrative Agent, said condominium association, and Borrower (as owner of the Units), as their respective interests may appear, as the insureds, covering all of the Improvements; said insurance shall at all times be an amount equal to 100% of the insurable value of the Improvements and shall otherwise comply with the applicable conditions contained in the Mortgages and elsewhere in this Agreement.

Section 17.3 Transfer of Collateral. The Lead Borrower will, upon the creation of the condominium regime, transfer its ownership interest in the Unit containing the Office Component (a "Property Transfer") to Fordham Office. Lead Borrower shall only affect such a transfer after Lead Borrower has provided written notice to Administrative Agent that each of the following conditions precedent has been satisfied with respect to such Property Transfer (hereinafter, singly and collectively, the "Property Transfer Conditions"):

(1) The Lead Borrower shall have provided Administrative Agent with at least ten (10) Business Days' notice of the intended Property Transfer;

(2) The construction of the Improvements shall have commenced and shall have proceeded in accordance with the terms and conditions hereof to a sufficient stage of completion acceptable to Administrative Agent, in its reasonable discretion;

(3) The Borrower shall have executed and delivered, or caused the execution and delivery of, any and all easements and any other matters as to which the Unit is either the servient or the dominant estate, that are necessary for the ownership, construction, use or operation of the Improvements;

(4) The Borrower and Guarantor shall have executed and delivered to Administrative Agent such instruments, documents, agreements, and certifications as Administrative Agent shall have reasonably requested to effectuate, evidence or confirm the Property Transfer and the Administrative Agent's rights or remedies under the Loan Documents, including without limitation an amendment to each of the Mortgages, but in no way expanding or modifying the obligations of such Borrower or Guarantor hereunder or under the Loan Documents;

(5) Borrower shall have delivered to the Administrative Agent such documents, instruments, materials and further estoppels and certifications as Administrative Agent shall have determined are reasonably required to approve or consent to, to the extent required, the applicable Property Transfer and any requested endorsement(s) to the Title Policies delivered to Administrative Agent pursuant to Schedule 4 – Part A, Paragraph 10; and

(6) Borrower shall have paid all costs and expenses incurred by Administrative Agent in connection with any Property Transfer, including, without limitation, Administrative Agent's reasonable attorneys' fees and costs.

[Signature Pages Follow]

LENDER:

EUROHYPO AG, NEW YORK BRANCH

By: /s/ Mark A. Fisher
Name: Mark A. Fisher
Title: Executive Director

By: /s/ John Hayes
Name: John Hayes
Title: Vice President

Address for Notices to Eurohypo AG, New York Branch:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Legal Director
Telecopier No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Head of Portfolio Operations
Telecopier No.: 866 267 7680

- and -

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

ADMINISTRATIVE AGENT:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: /s/ Mark A. Fisher
Name: Mark A. Fisher
Title: Executive Director

By: /s/ John Hayes
Name: John Hayes
Title: Vice President

Address for Notices to Eurohypo AG, New York Branch:

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- and -

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

LEGAL DESCRIPTION OF PROJECT

PARCEL I - (f/k/a LOT 8, Now Part of LOT 9)

ALL THAT CERTAIN piece or parcel of land, together with any improvements thereon situate, lying and being in the Borough of the Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Webster Avenue (100 feet in width), said point being distant south 08 degrees 26 minutes 11 seconds west, a distance of 254.35 feet from a point formed by the intersection of said easterly side of Webster Avenue with the southerly side of East Fordham Road (a/k/a Pelham Avenue variable in width) and from said point of beginning

RUNNING THENCE along the common dividing line between said Lot 8 and Lot 9 south 85 degrees 39 minutes 56 seconds east, a distance of 108.97 feet to a point;

THENCE along the common dividing line between said Lot 8 and Lot 12 south 04 degrees 33 minutes 31 seconds west, a distance of 24.68 feet to a point;

THENCE along the common dividing line between said Lots 8 and Lot 4 (lands now or formerly of Automotive Realty Corporation) north 85 degrees 39 minutes 56 seconds west, a distance of 110.65 feet to a point; on the aforementioned easterly side of Webster Avenue;

THENCE along the easterly side of said Webster Avenue, north 08 degrees 26 minutes 11 seconds east, a distance of 24.74 feet to the point or place of BEGINNING.

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PARCEL II - LOT 9:

ALL THAT CERTAIN piece or parcel of land, together with any improvements thereon situate, lying and being in the Borough of the Bronx, City and State of New York, and as further bounded and described as follows:

BEGINNING at a point on the easterly side of Webster Avenue (100 feet wide), said point being distant south 08 degrees 26 minutes 11 seconds west, a distance of 228.81 feet from a point formed by the intersection of said easterly side of Webster Avenue with the southerly side of East Fordham Road (a/k/a Pelham Avenue, variable width) and from said point of beginning;

RUNNING THENCE the following two (2) courses along the dividing line between Lot 9 (n/f reputed owner Acadia-PA East Fordham Acquisitions, LLC and Lot 12 (n/f reputed owner Acadia-PA East Fordham Acquisitions, LLC), Block 3033;

1. South 85 degrees 39 minutes 56 seconds east, a distance of 115.24 feet to a point; thence

2. South 03 degrees 58 minutes 56 seconds west, a distance of 25.48 feet to a point; thence

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3. Along the common dividing line between the aforementioned Lot 9 and Lots 12 & 8 (n/f Acadia-PA East Fordham Acquisitions LLC), Block 3033 north 85 degrees 39 minutes 56 seconds west, a distance of 117.22 feet to a point on the aforementioned easterly side of Webster Avenue; thence

4. Along said easterly side of Webster Avenue, north 08 degrees 26 minutes 11 seconds east, a distance of 25.54 feet to the point or place of BEGINNING.

This description is prepared in accordance with a Survey made by Control Point Associates Inc. dated 8/30/07 and last revised 9/18/07 by Gregory A. Gallas NY P.L.S. (Control Point Associates Inc.)

PARCEL III - LOT 12:

ALL THAT CERTAIN plot, piece or parcel of land, together with any improvements thereon situate, situate, lying and being in the Borough and County of Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point formed by the intersection of the easterly side of Webster Avenue (100 feet wide) with the southerly side of East Fordham Road (A.K.A. Pelham Avenue, Variable Width) and from said point of beginning.

RUNNING THENCE the following three (3) courses along said southerly side of East Fordham Road;

1. South 84 degrees 34 minutes 46 seconds east, a distance of 43.27 feet to a point, THENCE

2. South 54 degrees 01 minute 22 seconds east, a distance of 29.77 feet to a point; THENCE;

3. South 40 degrees 09 minutes 32 seconds east, a distance of 85.32 feet to a point on the westerly side of Park Avenue (Variable Width) THENCE

4. Along said westerly side of Park Avenue, south 00 degrees 10 minutes 48 seconds east, a distance of 201.71 feet to a point THENCE

5. Along the dividing line between Lot 12 (Lands now or formerly of Acadia-PA East Fordham Acquisitions LLC) and Lot 4 (Lands now or formerly of Automotive Realty Corporation), Block 3033, North 85 degrees 39 minutes 56 seconds west, a distance of 53.59 feet to a point, THENCE

6. Along the common dividing line between the aforementioned Lot 12, Lot 8 (Land now or formerly of Acadia-PA East Fordham Acquisitions LLC) and Lot 9 (lands now or formerly of Acadia-PA East Fordham Acquisitions LLC) Block 3033, North 04 degrees 33 minutes 31 seconds east, a distance of 24.68 feet to a point, THENCE, The following three (3) courses along the dividing line between the aforementioned Lots 12 and 9;

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7. South 85 degrees 39 minutes 56 seconds east, a distance of 8.25 feet to a point, THENCE

8. North 03 degrees 58 minutes 56 seconds east, a distance of 25.48 feet to a point, THENCE

9. North 85 degrees 39 minutes 56 seconds west, a distance of 115.24 feet to a point on the aforementioned easterly side of Webster Avenue, THENCE

10. Along said easterly side of Webster Avenue, north 08 degrees 26 minutes 11 seconds east, a distance of 228.81 feet to the point and place of BEGINNING.

BUDGET

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Building Loan Budget
(Reflecting "Cost-of-Improvement" items only)

Borrower: Acadia-PA East Fordham Acquisitions LLC and Fordham Place Office LLC

Premises: 400 East Fordham Road
Bronx, New York

Date: October 5, 2007

A	B	C	D	E
Item Nos.	Items of Cost	Total Costs (Est. if no firm Contracts)	Loan Bud. Amounts	Borrower Equity
	Hard Costs			
	Construction Costs	\$ 60,305,566	\$ 52,683,443	\$ 7,622,123
	General Conditions	\$ 3,977,600	\$ 2,459,860	\$ 1,517,740
	CM Fee	\$ 1,093,000	\$ 845,818	\$ 247,182
	Contingency	\$ 2,601,546	\$ 2,601,546	
			\$ -	
	Subtotals (Hard Costs)	\$ 67,977,712	\$ 58,590,667	\$ 9,387,045
	Soft Costs			
1	Real Estate Taxes	\$ 750,000	\$ 750,000	
2	Fees:		\$ -	
	Lender's Counsel	\$ 124,250	\$ 124,250	
	Commitment Fee*	\$ 693,089	\$ 693,089	
	Administration Fee*	\$ 97,000	\$ 97,000	
	Title Insurance Premium*	\$ 207,745	\$ 207,745	
	Leasing Commissions**	\$ 3,911,200	\$ 3,911,200	
	Borrower's Archts/Engineers	\$ 2,795,819	\$ 1,983,639	\$ 812,180
3	Mortgage Recording Tax*	\$ 2,098,653	\$ 2,098,653	
4	Interest Reserve*	\$ 5,000,000	\$ 5,000,000	
5	Insurance:		\$ -	
	Liability	\$ 1,883,000	\$ 1,883,000	
	Builder's Risk	\$ 206,000	\$ -	\$ 206,000
			\$ -	
			\$ -	
	(Soft Costs)	\$ 17,766,756	\$ 16,748,576	\$ 1,018,180
	Subtotals			
	(Hard and Soft Costs)	\$ 85,744,468	\$ 75,339,243	\$ 10,405,225
	Totals			

* on Building Loan Mortgage only

** on commercial leases for more than 3 year term

Acquisition and Project Loan Budget

Borrower: Acadia-PA East Fordham Acquisitions LLC and Fordham Place Office LLC

Premises: 400 East Fordham Road
Bronx, New York

Date: October 5, 2007

Project Loan Budget

A	B	C	D	F
Item Nos.	Items of Cost	Total Costs (Est. if no firm Contracts)	Loan Bud. Amounts	Borrower Equity
	Commitment Fee*	\$ 21,436	\$ 21,436	
	Administrative Fee*	\$ 3,000	\$ 3,000	
	Title Premium and fees*	\$ 72,988	\$ 72,988	
	Mortgage Recording Tax*	\$ 64,907	\$ 64,907	
	ICIP Consultant and Legal	\$ 181,500	\$ 181,500	
	Borrower Legal	\$ 625,750	\$ 625,750	\$ -
	Soft Cost Contingency	\$ -	\$ -	
	Interest Reserve*	\$ 900,000	\$ 900,000	
	Fee to Joe Rose	\$ 148,815	\$ -	\$ 148,815
	Closing Costs	\$ 356,176	\$ 356,176	\$ -
	NY SERTA Reimbursement	\$ (295,000)	\$ (295,000)	
Subtotals		\$ 2,079,572	\$ 1,930,757	\$ 148,815
Acquisition Loan Budget				
	Building Acquisition Cost	\$ 30,000,000.00	\$ 18,000,000	\$ 12,000,000.00
	Parcel Acquisition A	\$ 850,000.00		\$ 850,000.00
	Parcel Acquisition B	\$ 1,072,460.00		\$ 1,072,460.00
Subtotals		\$ 31,922,460	\$ 18,000,000	\$ 13,922,460

* on Project Loan Mortgage only

FORM OF PROJECT LOAN NOTE

PROJECT LOAN NOTE

_____, 200
 New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC (individually and collectively, jointly and severally, the "**Borrower**"), hereby promises to pay to _____ (the "**Lender**"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of EUROHYPO AG, NEW YORK BRANCH, at 1114 Avenue of the Americas, 29th Floor, New York, New York 10036, the principal sum of _____ and _____ Dollars (\$ _____) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

With respect to the definition of "**Borrower**", except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Project Loan Note is one of the Notes referred to in the Acquisition and Project Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") among Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as permitted by Sections 12.8 and 12.23 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

As long as a Hedge Agreement with the Eurohypo Counterparty is in effect, the interest payable under this Note shall be increased or decreased from time to time in accordance with such Hedge Agreement. Therefore, this Note also evidences such amounts as may become due and payable by Borrower under the Hedge Agreement with the Eurohypo Counterparty, including, without limitation, any amount payable upon or in connection with termination of such Hedge Agreement, all of which sums shall be deemed to constitute "Additional Interest" evidenced hereby and payable pursuant to this Note and in accordance with the terms and provisions of the Hedge Agreement with a Eurohypo Counterparty.

[No further text on this page]

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IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first above written.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company.

By: _____
Name: Robert Masters
Title: Senior Vice President

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company.

By: _____
Name: Robert Masters
Title: Senior Vice President

FORM OF BUILDING LOAN NOTEBUILDING LOAN NOTE

_____, 2007
 \$ _____
 New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC (individually and collectively, jointly and severally, the "**Borrower**"), hereby promises to pay to _____ (the "**Lender**"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of EUROHYPO AG, NEW YORK BRANCH, at 1114 Avenue of the Americas, 29th Floor, New York, New York 10036, the principal sum of _____ and _____ Dollars (\$ _____), (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

With respect to the definition of "**Borrower**", except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Building Loan Note is one of the Notes referred to in the Acquisition and Project Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") and the Building Loan Agreement, each among Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as permitted by Sections 12.8 and 12.23 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

As long as a Hedge Agreement with the Eurohypo Counterparty is in effect, the interest payable under this Note shall be increased or decreased from time to time in accordance with such Hedge Agreement. Therefore, this Note also evidences such amounts as may become due and payable by Borrower under the Hedge Agreement with the Eurohypo Counterparty, including, without limitation, any amount payable upon or in connection with termination of such Hedge Agreement, all of which sums shall be deemed to constitute "Additional Interest" evidenced hereby and payable pursuant to this Note and in accordance with the terms and provisions of the Hedge Agreement with a Eurohypo Counterparty.

[No further text on this page]

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first above written.

ACADIA-PA EAST FORDHAM
ACQUISITIONS, LLC, a Delaware limited
liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

FORDHAM PLACE OFFICE LLC, a
Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

FORM OF ACQUISITION LOAN NOTE

ACQUISITION LOAN NOTE

\$ _____

_____, 2007
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC (individually and collectively, jointly and severally, the "Borrower"), hereby promises to pay to _____ (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of EUROHYPO AG, NEW YORK BRANCH, at 1114 Avenue of the Americas, 29th Floor, New York, New York 10036, the principal sum of _____ and _____ Dollars (\$ _____) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

With respect to the definition of "Borrower", except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any indebtedness and/or obligations of Borrower shall be deemed to include any indebtedness and/or obligations of the Borrowers, or any indebtedness and/or obligations of any one of them.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Acquisition Loan Note is one of the Notes referred to in the Acquisition and Project Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "Agreement") among Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

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- The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

- Except as permitted by Sections 12.8 and 12.23 of the Agreement, this Note may not be assigned by the Lender to any other Person.

- This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

- As long as a Hedge Agreement with the Eurohypo Counterparty is in effect, the interest payable under this Note shall be increased or decreased from time to time in accordance with such Hedge Agreement. Therefore, this Note also evidences such amounts as may become due and payable by Borrower under the Hedge Agreement with the Eurohypo Counterparty, including, without limitation, any amount payable upon or in connection with termination of such Hedge Agreement, all of which sums shall be deemed to constitute "Additional Interest" evidenced hereby and payable pursuant to this Note and in accordance with the terms and provisions of the Hedge Agreement with a Eurohypo Counterparty.

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- [No further text on this page]
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IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first above written.

ACADIA-PA EAST FORDHAM
ACQUISITIONS, LLC, a Delaware limited
liability company.

By: _____
Name: Robert Masters
Title: Senior Vice President

FORDHAM PLACE OFFICE LLC, a
Delaware limited liability company.

By: _____
Name: Robert Masters
Title: Senior Vice President

FORM OF ASSIGNMENT AND ASSUMPTION

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the "Assignor") and [Insert name of Assignee] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreements identified below (as amended, the "Loan Agreements"), 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 and Assumption 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 Agreements, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Loan Agreements 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 any letters of credit included in such facilities) 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 Agreements, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including 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 and Assumption, without representation or warranty by the Assignor.

- 1. Assignor:
2. Assignee:
3. Borrower:
4. Administrative Agent:
5. Construction Loan Agreement:

1 Select as applicable.

6. Assigned Interest:

Table with 5 columns: Commitment/Loans Assigned, Aggregate Amount of Commitment/Loans for all Lenders, Amount of Loans Assigned, Amount of Unused Commitment Assigned, Percentage Assigned of Commitment and Loans2

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 and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]
By:
Name:
Title:
ASSIGNEE
[NAME OF ASSIGNEE]
By:
Name:
Title:
Applicable Lending Office
Address for Notices:
Telephone No.: ()
Telecopier No.: ()

2 Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

- [Consented to and]³ Accepted:

- EUROHYPO AG, NEW YORK BRANCH, as
Administrative Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

³ To be added only if the consent of Administrative Agent is required by the terms of the Loan Agreements.

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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 Assumption 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 Agreements 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 Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreements, (ii) it satisfies the requirements, if any, specified in the Loan Agreements that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreements 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 Agreements, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Loan Agreements, 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.

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 the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption 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 and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

FORM OF NOTICE OF CONVERSION/CONTINUATION

_____, 200__

Eurohypo AG, New York Branch, as Administrative Agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attn: _____

Re: (i) Acquisition and Project Loan Agreement dated as of October __, 2007 (as the same may be amended, modified or supplemented from time to time, the "Agreement") and (ii) Building Loan Agreement, dated as of October __, 2007, each by and among ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC, a Delaware limited liability company (jointly and severally, individually and collectively the "Borrower"), the lenders from time to time party to the Agreement (the "Lenders"), and EUROHYPO AG, NEW YORK BRANCH, as Administrative Agent on behalf of the Lenders (the "Administrative Agent")

Ladies and Gentlemen:

Reference is made to the Agreement. Capitalized terms used in this Notice of Conversion/Continuation without definition have the meanings specified in the Agreement.

Pursuant to Section 2.2 of the Agreement, Borrower hereby elects to convert or continue the loans described in attached Schedule 1 (the "Loans"). In connection therewith, Borrower and the undersigned authorized officer of Borrower hereby certify that:

(1) Representations and Warranties. All representations and warranties of Borrower contained in the Loan Documents, including those contained in Article 7 of the Agreement, are true and correct as of the date hereof and shall be true and correct on the date of the continuation/conversion of the Loans, both before and after giving effect to such continuation/conversion; and

(2) No Event of Default. No Event of Default exists as of the date hereof or will result from the continuation/conversion of the Loans.

ACADIA-PA EAST FORDHAM ACQUISITIONS,
LLC, a Delaware limited liability company
By: _____
Name:
Title:

LOAN(S) TO BE CONVERTED OR CONTINUED

All conversions and continuations must be of a Loan, or portion thereof, in a principal amount of \$1,000,000 or a multiple of \$100,000 in excess thereof.

Conversions/continuations to a Eurodollar Loan under paragraphs C(1) and (2) below are not permitted if, after giving effect to thereto, (a) there would be more than four (4) different Eurodollar Loans in effect, or (b) the aggregate outstanding principal amount of all Eurodollar Loans would be reduced to be less than \$1,000,000.

Pursuant to Section 2.2 of the Agreement, Borrower elects to Continue or Convert Loans as follows:

(1) Effective Date of Election: _____, 200__

(2) Amount, Type and Interest Period of Eurodollar Loans to be Continued as Eurodollar Loans:

(i) Eurodollar Loans in the aggregate amount of \$ _____ to be Continued as Eurodollar Loans with an Interest Period of _____ months, such Eurodollar Loans consisting of the following Loans:

Project Loans: _____ \$ _____
Building Loans: _____ \$ _____
Acquisition Loans: _____ \$ _____

(3) Amount, Type and Interest Period of Alternate Base Rate Loans to be Converted to Eurodollar Loans:

(i) Alternate Base Rate Loans in the aggregate amount of \$ _____ to be Converted to Eurodollar Loans with an Interest period of _____ months, such Alternate Base Rate Loans consisting of the following Loans:

Project Loans: _____ \$ _____
Building Loans: _____ \$ _____
Acquisition Loans: _____ \$ _____

(4) Amount and Type of Eurodollar Loans to be Converted to Alternate Base Rate Loans:

(i) Eurodollar Loans in the aggregate amount of \$ _____ to be Converted to Alternate Base Rate Loans, such Eurodollar Loans consisting of the following Loans:

Project Loans: _____ \$ _____
Building Loans: _____ \$ _____
Acquisition Loans: _____ \$ _____

FORM OF REQUEST FOR LOAN ADVANCE (PROJECT LOANS)

REQUEST FOR LOAN ADVANCE (PROJECT LOANS)

_____, 200

Eurohypo AG, New York Branch, as Administrative Agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attn: _____

Re: Eurohypo AG, New York Branch, as Administrative Agent, Loans in the aggregate amount of \$ _____ to _____

Project: _____

Ladies and Gentlemen:

Reference is made to that certain (i) Acquisition and Project Loan Agreement dated October _____, 2007 among Eurohypo AG, New York Branch, as Administrative Agent, certain lenders thereto, Fordham Place Office LLC and the undersigned (the "Loan Agreement") and (ii) Building Loan Agreement, dated October _____, 2007 among Eurohypo AG, New York Branch, as Administrative Agent, certain lenders thereto, Fordham Place Office LLC and the undersigned (the "Building Loan Agreement"). Terms not defined in this Request for Loan Advance shall have the same meaning as in the Loan Agreement.

This Request for Loan Advance (Project Loans) (i) is request No. _____ under the Loan Agreement with respect to Project Loans, (ii) constitutes Borrower's request to borrow Project Loans in the amounts and in the manner set forth below and (iii) is otherwise subject to the terms of the Loan Agreement. The information relating to the proposed Project Loans is as follows:

1. The date of the proposed Project Loans is _____.
2. The aggregate amount of the proposed Project Loans (after deducting an aggregate Retainage of \$ _____) is \$ _____.
3. The aggregate amount of the proposed Project Loans which are to bear interest as Base Rate Loans is \$ _____.
4. The aggregate amount of the proposed Project Loans which are to bear interest as Eurodollar Loans is \$ _____.
5. The Interest Periods and the aggregate amount of the proposed Eurodollar Loans with respect to each such Interest Period are as follows:

- 1 month	\$ _____.
- 2 month	\$ _____.
- 3 month	\$ _____.
- 6 month	\$ _____.
- 9 month	\$ _____.
- 12 month	\$ _____.

6. _____ The aggregate amount of Project Loans requested hereunder, when added to prior (if any) Project Loans funded under the Loan Agreement, will result in total Project Loans outstanding under the Loan Agreement of \$ _____. Funds undrawn under the aggregate Project Loan Commitments after giving effect to the Project Loans requested hereunder will then be \$ _____.

Attached to this Request for Loan Advance are the following items:

- A. To the extent not previously delivered to Administrative Agent, for funds due under the Construction Management Agreement, copies of the Construction Manager's invoices relating to payments requested under this Request for Loan Advance, together with paid invoices evidencing payment of funds previously advanced to the Construction Manager pursuant to Project Loans;
 - B. To the extent not previously delivered to Administrative Agent, for funds paid directly by Borrower, copies of all invoices relating to payments requested under this Request for Loan Advance, together with paid invoices evidencing payment of funds previously advanced to Borrower pursuant to Project Loans;
 - C. Copy of the Budget attached as Schedule 1 hereto, showing the portion of each budget line item comprising the aggregate Project Loans subject to this request and any Retainage with respect thereto, and the total of all Project Loans to date, inclusive of the Project Loans subject to this request;
 - D. If this Request for Loan Advance covers any stored materials under Section 4.8 of the Building Loan Agreement, a Stored Materials Statement in the form of Schedule 2 attached thereto.
 - E. Copies of sworn unconditional lien waivers from each trade contractor, subcontractor, materialman, supplier and vendor who is to be paid from the proceeds of this Advance, to the extent not previously delivered to Administrative Agent;
 - F. Borrower's Architect's Certificate for Payment in accordance with AIA Document G 702;
 - G. Requisition form duly executed by the Construction Manager; and
 - H. Copies of all other documents required pursuant to Article IV and Schedule 4 of the Loan Agreement.
-

In connection with this advance, Borrower hereby certifies that the following are true and correct:

- I. To the best of its knowledge, the facts set forth in the Construction Manager's invoices and in Schedule 1 and Schedule 2;
- II. Except for contractors, subcontractors, materialmen, suppliers or vendors who are to be paid from proceeds of the Project Loans requested hereunder, there is no outstanding Indebtedness of the undersigned for labor, wages or materials in connection with the construction of the Improvements which is currently due, excluding work that is being contested in good faith, and which could become the basis of a Lien on the Project;
- III. All sums previously requisitioned have been applied to the payment of the Hard Costs and the Soft Costs, excluding work that is being contested in good faith, heretofore incurred;
- IV. All Change Orders have been submitted to Administrative Agent and the Construction Consultant and all Change Orders for which a Project Loan is requested hereby have been approved by Administrative Agent and the Construction Consultant to the extent required by the Loan Agreement;
- V. In the judgment of Borrower, the Improvements are _____ % complete; and
- VI. To the best of its knowledge, Borrower is not in Potential Default or Event of Default under any of the terms and conditions of the Loan Documents;
- VII. After giving effect to this advance, the Loans will remain In Balance, in accordance with Section 4.3 of the Loan Agreement, and all conditions to this advance have been satisfied in accordance with Section 4.1 of the Loan Agreement;
- VIII. Each representation and warranty of Borrower set forth in the Loan Agreement remains true and correct in all material respects as of the date of this Request for Loan Advance and will be so on the date of disbursement of the requested Loan, except with respect to (a) matters which have been disclosed in writing to and approved by Administrative Agent (subject, however, to the terms of the Loan Agreement) or (b) liens of mechanics and materialmen (subject to Schedule 4 – Part A, [paragraph 3]) and matters addressed in Section 3.1 of the Loan Agreement, which would not, if adversely decided, have a Material Adverse Effect;
- IX. No litigation or arbitral proceedings are pending or, to the best of Borrower's knowledge, threatened against Borrower, Guarantor or the Property Manager, which is likely to (1) affect the validity or priority of the liens of the Mortgages or (2) or, if adversely decided, have a Material Adverse Effect; and
- X. All Government Approvals, to the extent then required for the construction of the Construction Work, have been obtained and that all Applicable Laws relating to the construction and operation of the Project have been and will continue to be complied with.

The undersigned requests that the requested Project Loans be advanced by depositing the same into Borrower's account to be designated by Borrower (Account No. _____). The person signing this Request for Loan Advance (Project Loans) on behalf of Borrower represents and warrants to you that such person is authorized to execute this letter on behalf of Borrower.

[Signature Page Follows]

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company.

By: _____

Name:

Title:

RECEIVED:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

cc: _____ [CONSTRUCTION CONSULTANT] (with attachments)

-

SCHEDULE 1 – to Request for Loan Advance

[Attach form of Budget Outline to be Used]

SCHEDULE 2 - to Request for Loan Advance

STORED MATERIALS STATEMENT NO.

Borrower: _____ □ 0: Period Covered (PC): From _____ To _____

Project: _____ Date: _____

Address: _____

<u>ITEM NO.</u>	<u>DESCRIPTION OF MATERIALS STORED (ATTACH INVOICES, LISTINGS AND/OR OTHER PRICE SUPPORTING DOCUMENTATION)</u>	<u>LOCATION WHERE STORED</u>	<u>NAME OF SUB-CONTRACTOR/SUPPLIER</u>	<u>OPENING INVENTORY</u>	<u>ADDITIONS TO INVENTORY</u>	<u>USAGE OF INVENTORY</u>	<u>CLOSING INVENTORY</u>	<u>RETAINED AMOUNT NOT YET DUE</u>
-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-
-	<u>TOTALS OR SUBTOTALS</u>	-	-	-	-	-	-	-

FORM OF REQUEST FOR LOAN ADVANCE (BUILDING LOANS)

REQUEST FOR LOAN ADVANCE (BUILDING LOANS)

_____, 200

Eurohypo AG, New York Branch, as Administrative Agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attn: _____

Re: Eurohypo AG, New York Branch, as Administrative Agent, Loans in the aggregate amount of \$ _____ to Acadia-PA East Fordham Acquisitions, LLC and Fordham Place Office LLC

Project: _____

Ladies and Gentlemen:

Reference is made to that certain (i) Acquisition and Project Loan Agreement dated October _____, 2007 among Eurohypo AG, New York Branch, as Administrative Agent, certain lenders thereto, Fordham Place Office LLC and the undersigned (the "Loan Agreement") and (ii) Building Loan Agreement, dated October _____, 2007 among Eurohypo AG, New York Branch, as Administrative Agent, certain lenders thereto, Fordham Place Office LLC and the undersigned (the "Building Loan Agreement"). Terms not defined in this Request for Loan Advance shall have the same meaning as in the Loan Agreement.

This Request for Loan Advance (Building Loans) (i) is request No. _____ under the Loan Agreement with respect to Building Loans, (ii) constitutes Borrower's request to borrow Building Loans in the amounts and in the manner set forth below and (iii) is otherwise subject to the terms of the Loan Agreement and the Building Loan Agreement. The information relating to the proposed Building Loans is as follows:

1. The date of the proposed Building Loans is _____.
2. The aggregate amount of the proposed Building Loans (after deducting an aggregate Retainage of \$ _____) is \$ _____.
3. The aggregate amount of the proposed Building Loans which are to bear interest as Base Rate Loans is \$ _____.
4. The aggregate amount of the proposed Building Loans which are to bear interest as Eurodollar Loans is \$ _____.

5. The Interest Periods and the aggregate amount of the proposed Eurodollar Loans with respect to each such Interest Period are as follows:

<u>- 1 month</u>	<u>\$ _____.</u>
<u>- 2 month</u>	<u>\$ _____.</u>
<u>- 3 month</u>	<u>\$ _____.</u>
<u>- 6 month</u>	<u>\$ _____.</u>
<u>- 9 month</u>	<u>\$ _____.</u>
<u>- 12 month</u>	<u>\$ _____.</u>

6. The aggregate amount of Building Loans requested hereunder, when added to prior (if any) Building Loans funded under the Building Loan Agreement, will result in total Building Loans outstanding under the Building Loan Agreement of \$ _____. Funds undrawn under the aggregate Building Loan Commitments after giving effect to the Building Loans requested hereunder will then be \$ _____.

Attached to this Request for Loan Advance (Building Loans) are the following items:

- A. To the extent not previously delivered to Administrative Agent, for funds due under the Construction Management Agreement, copies of the Construction Manager's invoices relating to payments requested under this Request for Loan Advance (Building Loans), together with paid invoices evidencing payment of funds previously advanced to the Construction Manager pursuant to Building Loans;
 - B. To the extent not previously delivered to Administrative Agent, for funds paid directly by Borrower, copies of all invoices relating to payments requested under this Request for Loan Advance (Building Loans), together with paid invoices evidencing payment of funds previously advanced to Borrower pursuant to Building Loans;
 - C. Copy of the Budget attached as Schedule 1 hereto, showing the portion of each budget line item comprising the aggregate Building Loans subject to this request and any Retainage with respect thereto, and the total of all Building Loans to date, inclusive of the Building Loans subject to this request;
 - D. If this Request for Loan Advance (Building Loans) covers any stored materials under Section 4.8 of the Building Loan Agreement, a Stored Materials Statement in the form of Schedule 2 attached thereto.
 - E. Copies of sworn unconditional lien waivers from each trade contractor, subcontractor, materialman, supplier and vendor who is to be paid from the proceeds of this Advance, to the extent not previously delivered to Administrative Agent;
-

- E. Borrower's Architect's Certificate for Payment in accordance with AIA Document G 702;
- G. Requisition form duly executed by the Construction Manager; and
- H. Copies of all other documents required pursuant to Article IV and Schedule 4 of the Loan Agreement.

In connection with this advance, Borrower hereby certifies that the following are true and correct:

- I. To the best of its knowledge, the facts set forth in the Construction Manager's invoices and in Schedule 1 and Schedule 2;
- II. Except for contractors, subcontractors, materialmen, suppliers or vendors who are to be paid from proceeds of the Building Loans requested hereunder, there is no outstanding Indebtedness of the undersigned for labor, wages or materials in connection with the construction of the Improvements which is currently due, excluding work that is being contested in good faith, and which could become the basis of a Lien on the Project;
- III. All sums previously requisitioned have been applied to the payment of the Hard Costs and the Soft Costs, excluding work that is being contested in good faith, heretofore incurred;
- IV. All Change Orders have been submitted to Administrative Agent and the Construction Consultant and all Change Orders for which a Building Loan is requested hereby have been approved by Administrative Agent and the Construction Consultant to the extent required by the Loan Agreement;
- V. In the judgment of Borrower, the Improvements are _____ % complete; and
- VI. To the best of its knowledge, Borrower is not in Potential Default or Event of Default under any of the terms and conditions of the Loan Documents;
- VII. After giving effect to this advance, the Loans will remain In Balance, in accordance with Section 4.3 of the Loan Agreement, and all conditions to this advance have been satisfied in accordance with Section 4.1 of the Loan Agreement;
- VIII. Each representation and warranty of Borrower set forth in the Loan Agreement remains true and correct in all material respects as of the date of this Request for Loan Advance and will be so on the date of disbursement of the requested Loan, except with respect to (a) matters which have been disclosed in writing to and approved by Administrative Agent (subject, however, to the terms of the Loan Agreement) or (b) liens of mechanics and materialmen (subject to Schedule 4 – Part A, [paragraph 3]) and matters addressed in Section 3.1 of the Loan Agreement, which would not, if adversely decided, have a Material Adverse Effect;
- IX. No litigation or arbitral proceedings are pending or, to the best of Borrower's knowledge, threatened against Borrower, Guarantor or the Property Manager, which is likely to (1) affect the validity or priority of the liens of the Mortgages or (2) or, if adversely decided, have a Material Adverse Effect; and
- X. All Government Approvals, to the extent then required for the construction of the Construction Work, have been obtained and that all Applicable Laws relating to the construction and operation of the Project have been and will continue to be complied with.

The undersigned requests that the requested Building Loans be advanced by depositing the same into Borrower's account to be designated by Borrower (Account No. _____). The person signing this Request for Loan Advance (Building Loans) on behalf of Borrower represents and warrants to you that such person is authorized to execute this letter on behalf of Borrower.

[Signature Page Follows]

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ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company.

By: _____

Name:

Title:

RECEIVED:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

cc: _____ [CONSTRUCTION CONSULTANT] (with attachments)

SCHEDULE 1 – to Request for Loan Advance

[Attach form of Budget Outline to be Used]

SCHEDULE 2 – to Request for Loan Advance

STORED MATERIALS STATEMENT NO. _____

Borrower: _____ □ 0: Period Covered (PC): From _____ To _____

Project: _____

Date: _____

Address: _____

<u>ITEM NO.</u>	<u>DESCRIPTION OF MATERIALS STORED (ATTACH INVOICES, LISTINGS AND/OR OTHER PRICE SUPPORTING DOCUMENTATION)</u>	<u>LOCATION WHERE STORED</u>	<u>NAME OF SUB-CONTRACTOR/SUPPLIER</u>	<u>OPENING INVENTORY</u>	<u>ADDITIONS TO INVENTORY</u>	<u>USAGE OF INVENTORY</u>	<u>CLOSING INVENTORY</u>	<u>RETAINED AMOUNT NOT YET DUE</u>
-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-
<u>TOTALS OR SUBTOTALS</u>								

CONTROLLED ACCOUNT AGREEMENT

See Attached

ASSIGNMENT OF DECLARANT'S RIGHTS

Acadia PA East Fordham Acquisitions, LLC, a Delaware limited liability company, and Fordham Place Office, LLC, a Delaware limited liability company, each having an address c/o Acadia Realty Trust, 1311 Mamoroneck Avenue, Suite 260, White Plains, New York (collectively the "Assignor"), for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, assign, transfer and set over unto EUROHYPO AG, NEW YORK BRANCH ("Administrative Agent"), all of Assignor's right and privileges (the "Declarant's Rights") arising under (i) the Declaration (as defined below), and (ii) the by-laws and articles of incorporation relating to the condominium (the "Condominium") created by the Declaration (said by-laws and articles of incorporation, together with the Declaration, collectively called the "Condominium Documents");

So long as no Default or Event of Default shall exist under the Mortgages (as defined below), Assignor may exercise the Declarant's Rights and Administrative Agent may not exercise the Declarant's Rights, except that Assignor may not (i) transfer or encumber any of the Declarant's Rights, except as permitted in the Mortgages, (ii) except as permitted under the Loan Agreement (as defined below) cause or allow any of the Condominium Documents that require the consent or approval of declarant to amend or which Assignor has the right to amend independently to be modified without Administrative Agent's prior written consent or (iii) allow any of the officers or managers of the association of the Condominium which Assignor has appointed to resign or be removed from office, unless Assignor shall have caused to be delivered to Administrative Agent (A) duly executed letter of resignation from each such officer or director being added to said association in the form attached as Exhibits I and J, respectively, to the Acquisition and Project Loan Agreement, dated as of October 1, 2007, among Administrative Agent, certain lenders and Assignor, as borrower (the "Loan Agreement") and (B) a proxy from each director in the form attached as Exhibit K to the Loan Agreement.

Upon the full payment and performance of all obligations secured by the Mortgage, the Declarant's Rights shall automatically be reassigned to Assignor by Administrative Agent and this Assignment shall terminate.

For the purposes of this Assignment, "Declaration" shall mean the Declaration of Condominium for _____, a condominium, dated _____, 200____, and recorded on _____, 200____, in the Public Records of _____ County, _____ in Book _____, page _____, together with all amendments thereto, if any; "Mortgages" shall mean, collectively, the mortgages dated October 1, 2007 from Assignor to Administrative Agent which secure a \$ _____ acquisition loan, a \$ _____ project loan and a \$ _____ building loan and which were recorded on _____, 2007 in the aforesaid Public Records in Book _____, page _____.

This Assignment shall be construed and enforced in accordance with the laws of the State of New York.

The rights and privileges of Administrative Agent hereunder shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, Assignor and Administrative Agent have each duly executed and delivered this Assignment this _____ day of _____, 200__.

- ACADIA PA EAST FORDHAM ACQUISITIONS, LLC,
- a Delaware limited liability company.
-
By: _____
- Name:
- Title:
-
- FORDHAM PLACE OFFICE LLC, a Delaware limited liability company.
-
By: _____
- Name:
- Title:
-
- EUROHYPO AG, NEW YORK BRANCH,
- as Administrative Agent
-
By: _____
- Name:
- Title:
By: _____
- Name:
- Title:

[add acknowledgements]

CONDITIONAL RESIGNATION OF OFFICERS

CONDOMINIUM

(Resignation of Officers)

, 200

Eurohypo AG, New York Branch
as administrative agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:

Re: Condominium

Ladies and Gentlemen:

The undersigned _____, _____, _____ and _____, being all of the officers of the Owner's Association of the referenced Condominium which were appointed by _____, hereby tender their respective resignations as officers hereof. Said resignations may not be rescinded or revoked by any of the undersigned so long as you are the holder of any mortgage or deed of trust encumbering any of the unsold condominium units of said Condominium. Said resignations shall be effective upon your acceptance thereof, without notice to the undersigned, at any time during the existence of an Event of Default under any such mortgage or deed of trust.

Very truly yours,

CONDITIONAL RESIGNATION OF MANAGERS

CONDOMINIUM

(Resignation of Managers)

_____, 200

Eurohypo AG, New York Branch
as administrative agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:

Re: Condominium

Ladies and Gentlemen:

The undersigned _____, _____, _____ and _____, being all of the managers of the Board of Managers of the Owner's Association of the referenced Condominium which were appointed by _____, hereby tender their respective resignations as managers thereof. Said resignations may not be rescinded or revoked by any of the undersigned so long as you are the holder of any mortgage or deed of trust encumbering any of the unsold condominium units of said Condominium. Said resignations shall be effective upon your acceptance thereof, without notice to the undersigned, at any time during the existence of an Event of Default under any such mortgage or deed of trust.

Very truly yours,

VOTING PROXY

CONDOMINIUM

(Proxy).

, 200

Eurohypo AG, New York Branch
as administrative agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:

Re: _____ Condominium

Ladies and Gentlemen:

Reference is made to that certain (i) Acquisition and Project Loan Agreement, dated as of October ____, 2007 (as same may hereafter be amended, modified or supplemented, the "Agreement") and (ii) Building Loan Agreement, dated as of October ____, 2007, each among Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC, both as borrowers (collectively the "Borrower"), the lenders party thereto (collectively, together with their successors and assigns, "Lenders") and Eurohypo AG, New York Branch, as administrative agent (in such capacity, together with its successors and assigns, "Administrative Agent") relating to the development of the above referenced Condominium. All capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Agreement.

Each of (a) Borrower, being the owner of the Units under the Condominium Documents, and (b) the undersigned representatives of Borrower on the board of managers of the Condominium (collectively, the "Board Members"), hereby grants to Administrative Agent (on behalf of the Lenders) this proxy to take all actions and to exercise all rights and privileges of Borrower and the Board Members pursuant to the Condominium Documents, or any of them, but only if and for so long as an Event of Default shall occur and be continuing. Borrower and each Board Member hereby irrevocably appoints Administrative Agent as its true and lawful attorney-in-fact, which appointment is together with an interest, to execute all documents and take all actions necessary to effectuate such proxy, provided that such appointment is being made on the understanding that Administrative Agent shall only exercise the rights and powers provided in this proxy following the occurrence and during the continuance of an Event of Default.

This proxy may be executed in one or more counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same proxy. Nothing contained in this proxy shall impose or subject Lender to any liability or obligations or shall obligate Administrative Agent to take any actions with the powers conveyed by this proxy. This proxy shall, notwithstanding anything to the contrary in the Condominium Documents, be irrevocable prior to the repayment in full of all of the Indebtedness.

-
- ACADIA PA EAST FORDHAM ACQUISITIONS, LLC,
- a Delaware limited liability company

-
- By: _____
- Name:
- Title:

- FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

-
- By: _____
- Name:
- Title:

-
- _____
- Name:

-
- _____
- Name:

-
- _____
- Name:

-
- This Proxy and the powers granted and designation made hereby are acknowledged by the undersigned.

-
- _____ CONDOMINIUM

-
- By: _____
- Name:
- Title:

-
- [add acknowledgements]



COMMON CHARGES LETTER

CONDOMINIUM
(Condominium Charges)

,200

Eurohypo AG, New York Branch
as administrative agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:

Re: Condominium

Ladies and Gentlemen:

Reference is made to that certain (i) Acquisition and Project Loan Agreement, dated as of October __, 2007 (as same may hereafter be amended, modified or supplemented, the "Agreement") and (ii) Building Loan Agreement, dated as of October __, 2007, each among Acadia PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC, both as borrowers (collectively, the "Borrower"), the lenders party thereto (collectively, together with their successors and assigns, "Lenders") and Eurohypo AG, New York Branch, as administrative agent (in such capacity, together with its successors and assigns, "Administrative Agent") relating to the development of the above referenced Condominium. All capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Agreement.

In connection with the Loans, recognizing that Lenders and Administrative Agent will rely on the matters set forth herein in making the Loans to Borrowers, hereby represent, warrant, certify and agree as follows:

1. All initially capitalized terms used herein without definition and which are defined in that certain [DESCRIBE DECLARATION], (the "Declaration"), or in the By-Laws referred to therein, shall have the meanings set forth for such terms in the Declaration, or in such By-Laws (as applicable). A true, correct and complete copy of the Declaration (including the By-Laws attached thereto) and all rules and regulations adopted by the Board pursuant to Section __ of the By-Laws or otherwise (all such items being collectively referred to herein as the "Condominium Documents") are attached hereto as Exhibit A. Except as indicated in Exhibit A, the Condominium Documents have not been modified, altered or amended and are in full force and effect.

2. The Board hereby recognizes Administrative Agent (on behalf of the Lenders) as, and Administrative Agent shall be deemed to be, a [Recognized Mortgagee] of Unit Nos. __ and __ (collectively, the "Units") and that the lien of Administrative Agent's [Registered Mortgage(s)] are first priority liens for purposes of the Condominium Documents. Administrative Agent's current address is as set forth above.

¹ Definitions must be amended accordingly.

3. All [Common Charges] and all other charges and assessments, if any, assessed against any of the Units or otherwise payable under any of the Condominium Documents by the Unit Owners have been paid in full through the date hereof. No special assessments have been levied or assessed by the Board which are payable.

4. No Unit, Unit Owner or Occupant is in violation or breach of, or in default under, any of the Condominium Documents, and the Board knows of no (a) event or condition which, with the passage of time or the giving of notice or both, would constitute such a violation, breach or default by any Unit, Unit Owner or Occupant or (b) claims, demands, causes of action or proceedings, pending or threatened, against the Board or any Unit Owner or Occupant which would entitle the Board or any Unit Owner or Occupant to indemnification by any other Unit Owner or Occupant pursuant to any of the Condominium Documents (including, without limitation, pursuant to Section _____ of the Declaration).

5. There are no mortgages, deed of trust, liens or other security interests encumbering any Unit (including liens for unpaid Common Charges), except those in favor of Administrative Agent.

6. The Board has not engaged or employed any managing agent or employees pursuant to Section _____ of the By-Laws.

7. A budget has not yet been adopted by the Board. The Board will deliver a true, correct and complete copy of each budget (and any amendments thereto) to Administrative Agent promptly following the date on which each of such items is adopted pursuant to Section _____ of the By-Laws.

8. The officers of the Condominium are as follows:

President: _____

Vice President/Treasurer: _____

Vice President/Secretary: _____

9. In addition to the Board's obligations under Section _____ of the By-Laws, the Board agrees to execute and deliver to Administrative Agent, as soon as is reasonably practical, and in any event within ten (10) days after Administrative Agent's written request, a letter dated as of the then current date, in the form of this letter (with such changes as may be necessary due to changes in the applicable facts and circumstances) and addressing any other facts and circumstances pertaining to the Condominium Documents and the operation of the Project as may reasonably be requested by Administrative Agent at such time.

10. The Board hereby acknowledges and consents to the powers granted and the designation made by [_____] and the officers of the Condominium to Administrative Agent pursuant to that certain Proxy given by [_____] and the officers of the Condominium to the Lenders in connection with the Loans.

This letter may be executed in one or more counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same letter.

- _____
- Name:
- -
- _____
- Name:
- -
- _____
- Name:

The undersigned, being the Unit Owner of the Units hereby consents to, acknowledges and agrees with the foregoing with the same force and effect as if it were the Board.

- ACADIA PA EAST FORDHAM ACQUISITIONS, LLC,
- a Delaware limited liability company.
-
- By: _____
- Name:
- Title:
-
- FORDHAM PLACE OFFICE LLC, a Delaware limited liability company.
-
- By: _____
- Name:
- Title:
- -

Exhibit A

Condominium Documents

-
-
Project Loan Commitments:

- Lender
Eurohypo AG, New York Branch

Commitment
\$1,930,757.00

-
-
Total

\$
\$
\$1,930,757.00

-
Building Loan Commitments:

- Lender
Eurohypo AG, New York Branch

Commitment
\$75,339,243.00

-
-
Total

\$
\$
\$75,339,243.00

-
Acquisition Loan Commitments:

- Lender
Eurohypo AG, New York Branch

Commitment
\$18,000,000.00

-
-
Total

\$
\$
\$18,000,000.00

LEASING GUIDELINES

-
-
-
-
-

PROPORTIONATE SHARE

SCHEDULE 1.1(193)

Lender
Eurohypo AG, New York Branch
Total

Percentage
100%
100%

-
-
-
-

-

WIRE INSTRUCTIONS

Bank of New York, NY

ABA 021 000 018

Account No.: 8900513497

Account Name: Eurohypo AG, NY

Ref: 400 E. Fordham Road

**INSURANCE REQUIREMENTS FOR CONSTRUCTION MANAGERS,
MAJOR CONTRACTORS, ARCHITECTS AND DESIGN PROFESSIONALS**

A. Minimum Insurance Requirements For Contractors

1. Workers Compensation and Employers Liability Coverage.

- Statutory Workers Compensation coverage
- Employers Liability – \$1 million policy limit
- Thirty (30) days notice of cancellation

2. General Liability Coverage

Limits of Liability: \$1 million combined single limit for bodily injury, personal injury or property damage per occurrence/\$2 million aggregate per project or location. General Liability Insurance shall also include an endorsement providing that the insurance afforded under the contractor's policy is primary insurance and without contribution from any other insurance maintained by Borrower.

"Occurrence" form, including:

- Premises/Operations Liability
- Blanket Contractual Liability, including coverage for all liability assumed under this contract
- Products & Completed Operations
- Pollution coverage for losses arising out of a hostile fire
- "XCU" Hazards must be covered
- Thirty (30) days notice of cancellation to Borrower as a condition of cancellation

3. Business Automobile Coverage

- Limit of Liability: \$1 million combined single limit per accident for bodily injury or property damage
 - Business Auto policy form, including:
 - coverage for "any auto" which includes autos owned, hired, and non-owned autos
 - Thirty (30) days notice of cancellation
-

4. Umbrella Liability Coverage

: Limit of Liability: Not less than \$100 million.

5. Property Insurance

All contractors and subcontractors shall be responsible for all loss or damage to contractors' tools, equipment sheds, and any other materials or supplies which do not become part of the finished project. Borrower and its agents take no responsibility for said equipment.

Additional Requirements

- : Insurances specified in items 2, 3, and 4 shall name Borrower and Administrative Agent (on behalf of the Lenders) as additional insureds, binders or endorsements to insurance policies may be required.
- : All insurances shall contain a provision allowing insured to waive subrogation rights against other parties prior to loss except workers' compensation.
- : All insurances shall be secured from financially responsible insurance carriers qualified to do business in the state in which this operation is located.
- : Certificates of insurance in form and substance acceptable to Borrower and Administrative Agent and evidencing all insurances must be presented to Borrower prior to the commencement of any work of operations at the project and upon request. Such certificates shall provide that the insurer shall not cancel or terminate coverage without thirty (30) days' prior written notice to Borrower and Administrative Agent.
- : All notices will be received by the following:

For Administrative Agent:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Legal Director
Facsimile No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Head of Portfolio Operations
Facsimile No.: 866 267 7680

- and -

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

B. Minimum Insurance Requirements For Major Contractors

1. Workers Compensation and Employer-Liability Coverage

- : Statutory Workers Compensation coverage
- : Employers Liability – \$1 million policy limit
- : Thirty (30) days notice of cancellation

2. General Liability Coverage

Limits of Liability: \$1 million combined single limit for bodily injury, personal injury or property damage per occurrence, \$2 million aggregate per project or location, \$2 million Products & Completed Operations

“Occurrence” form, including:

- : Premises/Operations Liability
- : Blanket Contractual Liability, including coverage for all liability assumed under this contract
- : Products & Completed Operations
- : Pollution coverage for losses arising out of a hostile fire
- : “XCU” Hazards must be covered
- : Thirty (30) days notice of cancellation to Borrower and Administrative Agent as a condition of cancellation

3. Business Automobile Coverage

- : Limit of Liability-,\$1 million combined single limit per accident for bodily injury or property damage
- : Business Auto policy form, including:
 - coverage for “any auto” which includes autos owned, hired, and non-owned autos
 - Thirty (30) days notice of cancellation

4. Umbrella Liability Coverage

: Limit of Liability: Not less than \$5 million, except steel erectors, crane operators, and other high hazard operations, not less than \$20 million.

5. Property Insurance

All contractors and subcontractors shall be responsible for all loss or damage to contractors' tools, equipment sheds, and any other materials or supplies which do not become part of the finished project.

Additional Requirements

- : Insurances specified in items 2, 3, and 4 shall name Borrower and Administrative Agent (on behalf of the Lenders) as additional insureds.
- : All insurances shall contain a provision allowing insured to waive subrogation rights against other parties prior to loss.
- : All insurances shall be secured from financially responsible insurance carriers qualified to do business in the state in which this operation is located.
- : Certificates of insurance in form and substance acceptable to Borrower and Administrative Agent and evidencing all insurances must be presented to the owner prior to the commencement of any work of operations at the project and upon request. Such certificates shall provide that the insurer shall not cancel or terminate coverage without thirty (30) days' prior written notice to the owner and lender.

All notices will be received by the following:

For Administrative Agent:

Address for Notices to

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Legal Director
Facsimile No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:
Facsimile No.: 866 267 7680

= and =

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

C. Owner Controlled Insurance Program ("OCIP") or Wrap-Up Program

Borrower may satisfy the on site Commercial General Liability Workers Compensation and Umbrella Liability insurance requirements of Section 3.1(1) and this Schedule for Borrower, Construction Manager and Major Contractors by and through placement of a Wrap Up or OCIP Insurance Program.

If this type of Liability insurance program is selected by Borrower, it shall meet all of the requirements of coverage as set forth elsewhere in Section 3.1(1) and this Schedule.

The overall limits of insurance required under this form of insurance program shall include Umbrella Liability insurance with a \$100 million per occurrence and Annual Aggregate Minimum Limit, and shall contain Products and Completed Operations liability discovery period of not less than 24 months.

This Wrap-Up Program shall contain Cross Suits coverage and allow for separation of insured.

All other coverage required of contractors shall continue to be required.

D. Minimum Insurance Requirements For Architects & Engineers

1. Workers Compensation and Employers Liability Coverage

* Statutory Workers Compensation coverage

* Employers Liability – \$1 million policy limit

* Thirty (30) days notice of cancellation

2. General Liability Coverage

Limits of Liability: \$1 million combined single limit for bodily injury, personal injury or property damage per occurrence, \$2 million aggregate per project or location, \$2 million Products & Completed Operations

"Occurrence" form, including:

- : Premises/Operations Liability
- : Blanket Contractual Liability, including coverage for all liability assumed under this contract
- : Products & Completed Operations
- : Pollution coverage for losses arising out of a hostile fire
- : "XCU" Hazards must be covered
- : Thirty (30) days notice of cancellation to owner and lender as a condition of cancellation

3. Business Automobile Coverage

- : Limit of Liability: \$1 million combined single limit per accident for bodily injury or property damage
- : Business Auto policy form, including:
 - = coverage for "any auto" which includes autos owned, hired, and non-owned autos
 - = Thirty (30) days notice of cancellation

4. Professional Liability

- : Architects & Engineers Professional Liability covering errors and/or omissions in the performance of professional services in conjunction with this project.
 - : Limits of \$20 million each claim and annual aggregate are required. Coverage must continue throughout the term of the job and continue until the project is accepted by the owner. The coverage shall provide for a five (5)-year discovery period after acceptance in which claims can be made, coverage may be provided through an Owner Protective Policy.
-

ADVANCE CONDITIONS

-
-
Part A – Initial Advance

-
Part B – General Conditions

-
-
-
-

PART A. CONDITIONS PRECEDENT TO EFFECTIVENESS OF ACQUISITION LOAN COMMITMENTS AND PROJECT LOAN COMMITMENTS AND TO INITIAL ACQUISITION LOANS AND PROJECT LOANS.

- The effectiveness of the Commitments and the obligation of the Lenders to make the initial Loans are subject the Administrative Agent's receipt, review, approval and/or confirmation of the following, at Borrower's cost and expense, each in form and content satisfactory to the Administrative Agent in its sole discretion (such conditions not to be duplicative to the extent they are the same matters required as conditions precedent to the effectiveness of the Building Loans that are being advanced concurrently therewith under the Building Loan Agreement):

- **ORGANIZATIONAL AND AUTHORIZATION DOCUMENTS; OPINIONS; OTHER DOCUMENTATION RELATING TO BORROWER, BORROWER PARTIES AND OTHER PERSONS**

- 1. All documents evidencing the formation, organization, valid existence, good standing of and for Borrower and each Borrower Party, and the authorization, execution, delivery and performance of the Loan Documents and Project Documents by Borrower and each Borrower Party, including a certified organizational chart for Borrower and Borrower Parties.

- 2. Legal opinions issued by counsel for Borrower and each Borrower Party, opining as to the due organization, valid existence and good standing of Borrower and each Borrower Party; as to the due authorization, execution, delivery, enforceability and validity of the Loan Documents with respect to Borrower and each Borrower Party (and including opinions with respect to non-contravention, perfection, choice of law and usury); and as to such matters concerning the zoning and entitlements for the Project, compliance with Applicable Law (including the Affordable Housing Requirements) and such other matters as Administrative Agent and Administrative Agent's counsel reasonably may specify.

- 3. Current Uniform Commercial Code searches, and litigation, bankruptcy and judgment reports, as requested by Administrative Agent, with respect to Borrower and Borrower Parties.

- 4. Copies of the most recent financial statements of Borrower certified by an officer of the Borrower and each Borrower Party, if applicable, and copies of the most recent audited annual financial statement of Guarantor, and certificates dated the Closing Date and signed by an Authorized Officer of Borrower and each Borrower Party stating that (i) such financial statements are true, complete and correct and (ii) no change shall have occurred in the financial condition of Borrower or any Borrower Party which would have a Material Adverse Effect on the Project, or on Borrower's or any Borrower Party's ability to repay the Loans or otherwise perform its obligations under the Loan Documents. Further, there shall not exist any material default by Borrower or any Borrower Party under any loan, financing or similar arrangement with any lender.

5. Satisfactory financial review and background checks (including such background checks as deemed necessary by Administrative Agent and Lenders to comply with the Patriot Act) of Borrower and Borrower Parties.

6. Opening balance sheet for Borrower.

LOAN DOCUMENTS; CLOSING CERTIFICATES; APPRAISAL

7. The Loan Documents, executed by Borrower and, as applicable, each Borrower Party.

8. A certificate of an Authorized Officer of Borrower, dated as of the Closing Date, certifying that: (i) the representations and warranties of Borrower and each Borrower Party contained in the Loan Documents are true and correct in all material respects on and as of such date as if made on and as of such date (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such date), and (ii) no Potential Default or Event of Default has occurred and is continuing on such date.

9. An Appraisal, such that the aggregate amount of the Commitments shall not exceed seventy percent (70%) of the aggregate value of the Project. The Appraisal shall run in favor of "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon."

TITLE; SURVEY

10. An ALTA policy or policies of title insurance satisfactory to Administrative Agent with respect to the Acquisition Loans, the Project Loans and the Building Loans (collectively, the "Title Policies"), issued by the Title Insurer together with evidence of the payment of all premiums due thereon, (a) insuring Administrative Agent for the benefit of the Lenders, in an amount equal to the aggregate amount of the Commitments, that Borrower is lawfully seized and possessed of a valid and subsisting fee simple interest in the Land and Improvements and that the Mortgages constitute valid fee simple mortgages or deeds of trust liens on the Land and Improvements subject to no Liens other than the Permitted Encumbrances applicable thereto and (b) providing (i) affirmative insurance or endorsements for coverage against all mechanics' and materialmen's liens, (ii) a pending disbursements clause, (iii) such other affirmative insurance, endorsements and reinsurance as Administrative Agent may require, and (iv) evidence of payment of real estate and other municipal charges through the Closing Date. The form of the Title Policies and all endorsements thereto shall be approved by Administrative Agent in its sole discretion. The Title Policies shall name as the insured "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon"

11. A survey of the Project (the "Survey") in form and content, and prepared by a registered land surveyor, satisfactory to Administrative Agent. The Survey shall be certified to "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon" in accordance with a surveyor's certificate in form and substance satisfactory to Administrative Agent.

12. Evidence that all of the land parcels required to develop the Project per the final Plans and Specifications are owned by Borrower and are encumbered by the Mortgages and insured by the Title Policies.

INSURANCE

13. A certified copy of, or certificates of insurance with respect to, the insurance policies required under Section 3.1(1) of this Agreement (inclusive of the insurance policies required under Schedule 3.1(1)(J)), together with evidence of the payment of all premiums therefor.

GOVERNMENT APPROVALS; COMPLIANCE WITH LAW

14. Originals (or copies certified by an Authorized Officer of Borrower to be true copies) of all Government Approvals referred to in the Permitting Schedule, other than those expressly provided for in said Schedule to be obtained at a later time (together with, if requested by Administrative Agent, an opportunity to review (or certified copies of) all correspondence referred to in such Government Approvals and all applications for such Government Approvals).

15. Evidence satisfactory to Administrative Agent of final approval from Borrower's Architect and the New York City Department of Buildings of Project design and specifications.

16. Evidence satisfactory to Administrative Agent that the Land is and, upon completion thereof, the Improvements will be in compliance with all Applicable Law (including zoning laws) and any applicable covenants, conditions and restrictions affecting the Land.

17. Receipt, review and acceptance by Administrative Agent of a Phase I environmental report and, if applicable, a Phase II environmental report for the Project.

PROJECT DOCUMENTS; CONSENTS AND AGREEMENTS; GOVERNMENT APPROVALS

18. Copies of the Construction Management Agreement, certified by Borrower as being true, correct and complete, and in each case in form and substance satisfactory to Administrative Agent.

19. True and correct copies of each of the Project Documents (including all amendments thereto), certified as such by an Authorized Officer of Borrower, together with evidence that (a) each of the Project Documents has been duly executed and delivered by each Person that is a party thereto and is in full force and effect; (b) neither Borrower nor, to the best of Borrower's knowledge, any other Person which is party to any of the Project Documents, is in default thereunder beyond any applicable cure and notice periods; (c) no term or condition thereof shall have been amended, modified or waived without the prior consent of Administrative Agent. The form and substance of each of the Project Documents shall be satisfactory to Administrative Agent.

- 20. A true and correct copy of the Construction Management Agreement certified as such by an Authorized Officer of Borrower and evidence that no term or condition of such contract shall have been modified, amended, supplemented and/or waived without the prior consent of Administrative Agent, together with financial statements for the Construction Manager. The form and substance of the Construction Management Agreement, and the financial statements of the Construction Manager, shall be satisfactory to Administrative Agent.

- 21. A certificate of the Construction Manager in favor of Administrative Agent (on behalf of the Lenders) certifying that the Construction Schedule and the Budget (as its relates to Hard Costs) are realistic and can be adhered to in completing the Construction Work for the Improvements in accordance with the Plans and Specifications.

- 22. A true and correct copy of Borrower's Architect's Agreement certified as such by an Authorized Officer of Borrower and evidence that no term or condition of Borrower's Architect's Agreement shall have been modified, amended, supplemented and/or waived without the prior consent of Administrative Agent. The form and substance of Borrower's Architect's Agreement shall be satisfactory to Administrative Agent.

- 23. A schedule of the identity of the Major Contractors for the Improvements representing at least eighty percent (80%) of the cost of the completion of the Project Completion Work for the Improvements (including the Major Contracts for the mechanical, electrical and plumbing work and any other Major Contractors deemed reasonably appropriate by Administrative Agent), and copies of the executed Major Contracts entered into with such Major Contractors and all modifications, amendments and/or supplements thereto with respect thereto, together with a certificate of an Authorized Officer of Borrower certifying that (A) the copies of the Major Contracts attached to such certificate are true, correct and complete in all respects; (B) such Major Contracts attached to such certificate are in full force and effect; and (C) neither Borrower, nor the Construction Manager nor the applicable Major Contractor is in default thereunder. The form and substance of the Major Contracts shall be satisfactory to Administrative Agent.

- 24. Evidence satisfactory to the Administrative Agent that the Project is eligible to obtain and receive a partial exemption of real property taxes for the Improvements for a twenty-five (25) year period under the Industrial and Commercial Incentive Program, as of right.

- PLANS AND SPECIFICATIONS; BUDGET; CONSTRUCTION SCHEDULE; REPORTS AND STUDIES

- 25. Receipt, review, and approval by Administrative Agent and the Construction Consultant of the final Plans and Specifications for the Improvements, including any construction, architectural and engineering drawings, sealed by the applicable Design Professionals.

- 26. The delivery by the Construction Consultant to Administrative Agent of the Construction, Cost and Plan Review in form and substance satisfactory to Administrative Agent.

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27. The Budget as approved by Administrative Agent, which shall include all Project Costs for the Improvements and shall be sufficient to complete the Improvements and carry the Project through the Maturity Date based on the final Plans and Specifications. The Budget shall be such that the aggregate amount of the Commitments shall not exceed eighty percent (80%) of the aggregate Project Costs for the entire Project reflected on the Budget. To the extent that the Commitments would exceed any of the limits described in this section, they shall be automatically reduced to an amount not in excess of the limits described in this section.

28. The Construction Schedule, together with (if any Construction Work has been commenced prior to the Closing Date) evidence satisfactory to Administrative Agent that the development of the Construction Work is proceeding in accordance with the Construction Schedule and the Budget.

29. Receipt, review, and acceptance by Administrative Agent of (i) Site Assessments relating Project; (ii) seismic studies showing a probable maximum loss of less than 20% for the Project; and (iii) soils reports, engineering reports, geotechnical reports and other reports and studies in each case as required by Administrative Agent and prepared in accordance with Administrative Agent's scope and by consultants engaged by Administrative Agent or, if consented to by Administrative Agent, engaged by Borrower with reliance rights with respect to such reports and studies expressly granted in writing to Administrative Agent and its on behalf of the Lenders and the respective successors and assigns of each of the foregoing. All such reports and studies shall be in a form approved by Administrative Agent, and shall be certified to Administrative Agent (on behalf of the Lenders and their successors and assigns) in a form reasonably requested by Administrative Agent which may include certification to additional participants, co-lenders and/or investors. Such reports and studies shall run in favor of "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon".

PAYMENT OF INITIAL EQUITY CONTRIBUTION, FEES, EXPENSES AND COSTS

30. There shall have been made by Borrower unreimbursed equity contributions to the Project in an aggregate amount equal to the Initial Equity Contribution, and Borrower shall have delivered to Administrative Agent evidence satisfactory to it that Borrower has made such contribution, including, without limitation, a certificate of an Authorized Officer of Borrower certifying thereto and itemizing the uses of such contributions, such certificate to be accompanied by backup materials documenting the amount of such contributions and the use of same; provided, however, the Administrative may, in its sole discretion, waive this requirement for the closing of the Loan, as long as such requirement is satisfied prior to or contemporaneously with the initial advance of proceeds of the Loan.

31. Payment to Administrative Agent in accordance with the Fee Letters of the upfront fee and arrangement fee described therein.

32. Payment of all fees and commissions payable to real estate brokers, mortgage brokers, or any other brokers or agents in connection with the Loans, such evidence to be accompanied by any waivers or indemnifications deemed necessary by Administrative Agent.

33. Payment of Administrative Agent's costs and expenses in underwriting, documenting, and closing the transaction, including fees and expenses of Administrative Agent's inspecting engineers, consultants, and outside counsel.

34. Payment of all expenses and premiums in connection with the issuance of the Title Policy and all recording charges, mortgage taxes and filing fees payable in connection with recording the Mortgages and the filing of the Uniform Commercial Code financing statements related thereto in the appropriate offices.

35. Payment of any due and payable real estate taxes and assessments with respect to the Project remaining unpaid on the Closing Date.

LEASES:

36. Receipt, review, and acceptance by Administrative Agent of (i) the leases with the Existing Tenants, and (ii) for each of the leases with the Existing Tenants, (1) written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by the Existing Tenants and confirming the term, rent, and other provisions and matters relating to the leases and (2) written subordination and attornment agreements, in form and substance satisfactory to Administrative Agent, executed by the Existing Tenants, whereby, among other things, such tenants subordinate their interest in the Project to the Loan Documents and agree to attorn to Administrative Agent (on behalf of the Lenders) and its successors and assigns upon foreclosure or other transfer of the Project after an Event of Default.

37. Evidence satisfactory to Administrative Agent that, as of the Closing Date, the aggregate fixed minimum rent of the retail leases shall be no less than \$5,150,000.

OTHER

38. Such other documents or items as Administrative Agent or its counsel reasonably may require, including, without limitation the delivery of such documents or items as may be indicated on a closing checklist distributed to Borrower by Administrative Agent or its counsel.

39. No material change shall have occurred in the financial markets which would have, in Administrative Agent's judgment, a material adverse affect on the Project or any obligor's ability to repay the Loans or otherwise perform its obligations under the Loan Documents. No condemnation or adverse zoning or usage change shall have occurred or shall have been proposed with respect to the Project; no law, regulation, ordinance, moratorium, injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any third Person or Governmental Authority, which would have, in the Administrative Agent's judgment, a Material Adverse Effect on the Borrower and/or the Project.

40. Evidence that the other conditions set forth in Article 4 have been satisfied.

41. Evidence that all of the conditions precedent to the effectiveness of the initial Building Loans under the Building Loan Agreement shall have been satisfied.

PART B. GENERAL CONDITIONS TO ALL LOANS

- The obligation of the Lenders to make any Loans shall be subject to Administrative Agent's receipt, review, approval and/or confirmation of the following, each in form and content satisfactory to Administrative Agent in its sole discretion:

- 1. There shall exist no Potential Default or Event of Default (both before and after giving effect to the requested advance).
 - 2. The representations and warranties contained in this Agreement and in all other Loan Documents shall be true and correct in all material respects on and as of the date of the making of such Loan with the same force and effect as if made on and as of such date.
 - 3. Such advance shall be secured by the Mortgages and the other Security Documents, subject only to the Permitted Encumbrances, as evidenced by a Date Down Endorsement satisfactory to Administrative Agent.
 - 4. Borrower shall have paid Administrative Agent's costs and expenses in connection with such advance (including title charges and attorneys' fees and expenses).
 - 5. No change shall have occurred in the financial condition of Borrower or any Borrower Party or in the Project which would have a Material Adverse Effect.
 - 6. No proceeding with respect to condemnation, adverse possession, zoning change or usage change proceeding shall have occurred or shall have been threatened against the Project the Project shall not have suffered any damage by fire or other casualty which has not been repaired or is not being restored in accordance with this Agreement; no Applicable Law or injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any Governmental Authority, which would have, in Administrative Agent's judgment, a material adverse effect on the Project or Borrower's or any Borrower Party's ability to perform its obligations under the Loan Documents.
 - 7. The Construction Work (or such part thereof as may have been constructed at the time of any borrowing) shall have been constructed substantially in accordance with the Plans and Specifications and the Construction Schedule (as each may have been modified in accordance with this Agreement) and all applicable Government Approvals; and there shall exist no Unsatisfactory Work.
 - 8. The Construction Consultant shall have reviewed and approved the disbursement requested in the Request for Loan Advance delivered by Lead Borrower with respect to such Loan. Such Request for Loan Advance shall include copies of all documents, contracts, invoices, bills, construction records, lien waivers, Change Orders, and drawings, plans and specifications as the Construction Consultant shall reasonably require, to enable the Construction Consultant to timely review each Request for Loan Advance.
 - 9. Borrower shall have provided the Construction Consultant, Administrative Agent and the Lenders, or their representatives, prompt and reasonable access to the Project, in order to inspect the Construction Work then completed.
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10. Administrative Agent shall have received the following items in connection with each Loan:

(a) A Request for Loan Advance as provided in Section 2.6(4) and 4.24.2 duly executed by an Authorized Officer of Borrower, together with the required attachments thereto;

(b) Such invoices, contracts and other supporting data as Administrative Agent may reasonably require to evidence that all Project Costs for which disbursement is sought have been incurred and are then due and payable;

(c) Except for Liens insured against pursuant to the Title Policies, (i) sworn unconditional waivers of lien from contractors, subcontractors, materialmen, suppliers and vendors, covering all work for which funds have been advanced pursuant to a prior disbursement and (ii) at Administrative Agent's election, sworn conditional waivers of lien from contractors, subcontractors, materialmen, suppliers and vendors, covering all work of such Persons for which funds are being advanced pursuant to the then current Request for Loan Advance, all in compliance with the Lien Law;

(d) Copies of any Change Orders which have not been previously furnished to Administrative Agent and the Construction Consultant, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement;

(e) Copies of all subcontracts and purchase orders which have been executed or modified, amended and/or supplemented since the last Loan, together with (i) any Bonds or Subguard Policies relating to such subcontracts (to the extent required under this Agreement), (ii) a certificate by an Authorized Officer of Borrower certifying that the delivered items are true, accurate and complete copies of the originals thereof, and (iii) Consents and Agreements in the applicable form attached to the General Assignment from each Major Contractors who has entered into a Major Contract but has not previously delivered a Consent and Agreement;

(f) Inventory of materials and equipment stored on the Project and evidence that Borrower has complied with all of the requirements of Section 4.8 relating to such stored materials;

(g) Copies of all Government Approvals (to the extent required as of such date) not previously delivered to Administrative Agent, certified by an Authorized Officer of Borrower;

(h) If any material dispute arises between or among Borrower, the Construction Manager or any Major Contractor, a written summary of the nature of such dispute;

(i) If the Budget shall have been modified, copies of all such modifications, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement;

(j) Copies of all amendments to the Construction Schedule not previously delivered to Administrative Agent, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement;

(k) Promptly after the completion of the construction of the foundation or other support elements for the Construction Work, Borrower shall provide to Administrative Agent a current survey of the Land showing all improvements located thereon and complying with the requirements set forth in Part A, paragraph 11 and shall obtain a foundation endorsement to the Title Policies in form satisfactory to Administrative Agent insuring that all foundations and other support elements are located within applicable property and setback lines and do not encroach upon any easements or rights of way; and

(l) To the extent not previously delivered to Administrative Agent, evidence showing compliance with the insurance provisions of Section 3.1.

11. All of the conditions set forth in Part A above shall remain satisfied and all applicable conditions in Article 4 shall have been satisfied, including the application of all Operating Revenues in accordance with Section 4.6.

12. The Loans shall be In Balance, and all material actions required to have been undertaken or obtained prior to the date of such disbursement pursuant to the Permitting Schedule and the Marketing Plan and Schedule shall have been undertaken or obtained as applicable.

13. Operating Revenues shall have been applied in accordance with Sections 4.1(1) and 4.6(1).

14. To the extent not previously delivered to Administrative Agent, Borrower shall provide evidence of the payment of all costs, expenses and other charges covered by previous Requests for Loan Advances for which advances of Loans have previously been made.

15. Administrative Agent has reasonably determined withholding such disbursement in whole or in part is not required by the Lien Law.

16. Such other documents and items as Administrative Agent may reasonably request.

PERMITTING SCHEDULES

(See Attached)

Permit Schedule

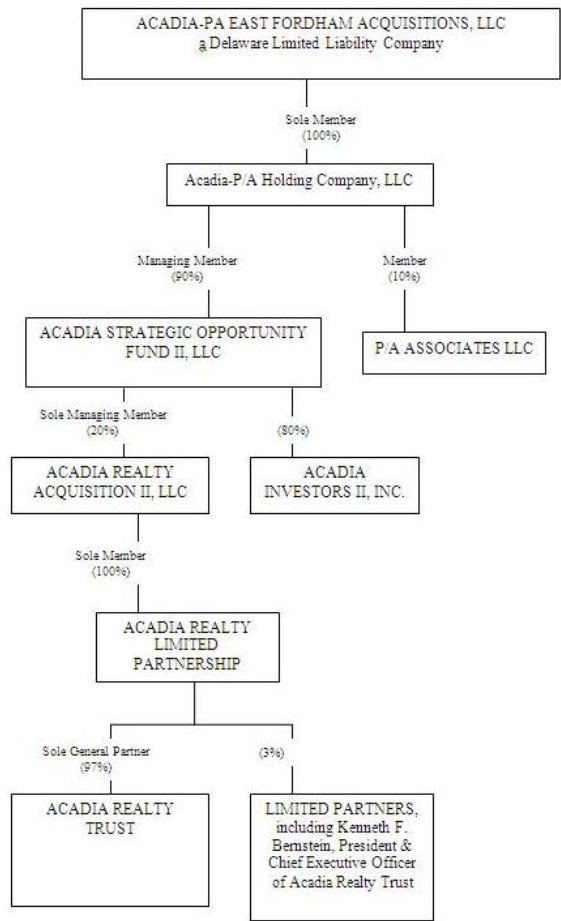
Current Permit	Road	Issued	Expires	Permit #
Crossing Sidewalk	East Fordham Rd	7/10/2007	10/6/2007	X02-2007192-006
Place equipment other than crane or shov (Port-O-Sans)	Webster Ave	8/16/2007	11/16/2007	X02-2007228-001
Place equipment other than crane or shov (Lull)	Webster Ave	8/27/2007	11/27/2007	X02-2007239-004
Place equipment other than crane or shov (Excavator)	Webster Ave	9/4/2007	12/4/2007	X02-2007247-013
Place Container on Street	Webster Ave	10/6/2007	12/31/2007	X02-2007274-013
Occupancy of Roadway as Stipulated	Webster Ave	10/6/2007	12/31/2007	X02-2007274-010
Place equipment other than crane or shov (Fence & Barrier)	Webster Ave	10/6/2007	12/31/2007	X02-2007274-007
Place equipment other than crane or shov (Concrete Pump)	Webster Ave	10/6/2007	12/31/2007	X02-2007274-024
Place Material on Street	Webster Ave	10/6/2007	12/31/2007	X02-2007274-005
Occupancy of Sidewalk as Stipulated	Park Ave	10/6/2007	12/31/2007	X02-2007274-023
Place equipment other than crane or shovel (Fence)	Park Ave	10/6/2007	12/31/2007	X02-2007274-022
Crossing Sidewalk	Park Ave	10/6/2007	12/31/2007	X02-2007274-021
Occupancy of Sidewalk as Stipulated	Webster Ave	10/6/2007	12/31/2007	X02-2007274-015
Place equipment other than crane or shovel (Fence)	East Fordham Rd	10/6/2007	12/31/2007	X02-2007274-018
Occupancy of Sidewalk as Stipulated	East Fordham Rd	10/6/2007	12/31/2007	X02-2007274-019
Place Material on Street	East Fordham Rd	10/6/2007	12/31/2007	X02-2007274-016
Crossing Sidewalk	Webster Ave	10/6/2007	12/31/2007	X02-2007274-006
ALT2 - Installation of Soldier Pile Lagging	N/A	4/27/2007	1/1/2008	201120526-01-EW-OT
ALT3 - Sidewalk Shed	N/A	4/4/2007	4/3/2008	201103162-01-EQ-SH
ALT3 - Scaffold	N/A	4/5/2007	5/1/2008	201104811-01-EQ-SF
ALT3 - Fence	N/A	4/5/2007	5/1/2008	201103153-01-EQ-FN
Plumbing - ALT1	N/A	6/21/2007	6/20/2008	200999571-03-PL
ALT1 - Alteration	N/A	6/20/2007	7/1/2008	200999571-01-AL
ALT2 - Construction	N/A	6/20/2007	7/1/2008	200996128-01-EW-OT
ALT2 - Sprinkler Installation	N/A	7/16/2007	7/15/2008	201117772-01-EW-SP
ALT2 - Standpipe Installation	N/A	7/16/2007	7/15/2008	201117772-01-EW-SD
Temporary Service (Electric)	N/A	2/27/2007	2/27/2010	Y135232
General Wiring	N/A	4/20/2007	4/20/2010	Y136009

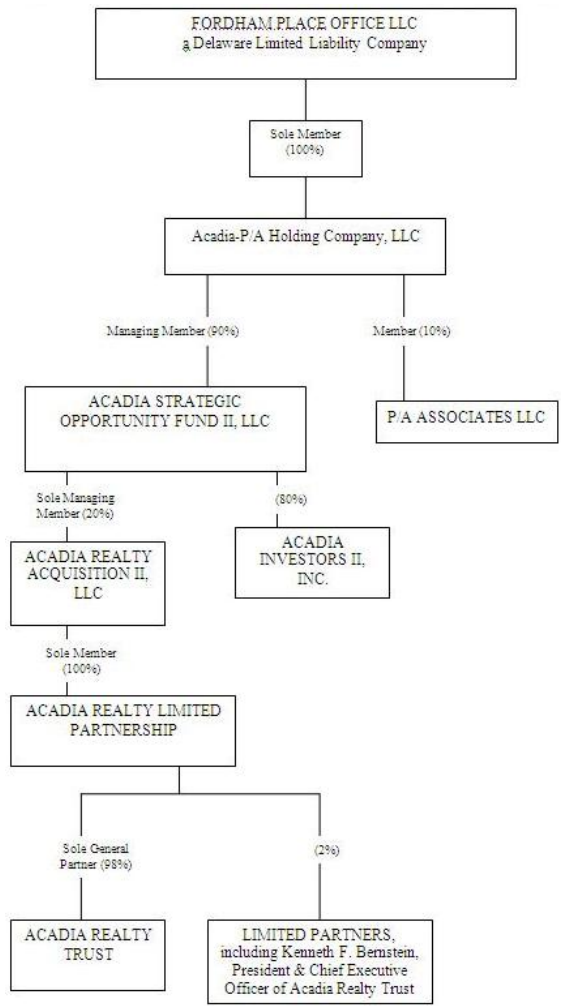
FUTURE Permits

For Each Tenant Buildout in the future, the following permits will likely be required:

- Building Permit
- Sprinkler Permit
- Plumbing Permit
- Mechanical Permit
- Electrical Permit

ORGANIZATIONAL CHART





TENANT IMPROVEMENT ALLOWANCES

(See Attached)

CLIENT: East Fordham A&E
PROJECT: Fordham Place
LOCATION: 400 East Fordham Rd., Bronx, NY
ARCHITECT: Greenberg/Farrow

PROJ. NO:
DATE: 03/31/07
BY: PW

DESCRIPTION	01/31/07 (revised) Estimate		14 Sty. Tower		Existing	
	Gross Floor Area	Cost/Est	Gross Floor Area	Cost/Est	Gross Floor Area	Cost/Est
TOTAL	1,652		149,968		1,071,801	
02000 Demolition	\$ 1,798,541	\$ 4.51	\$ 685,953	\$ 4.57	\$ 1,071,801	\$ 4.57
Man/Material Hoist	\$ 1,239,208	\$ 4.48	\$ 1,239,208	\$ 8.26	\$ -	\$ -
Sitework- Site Utilities	\$ 157,438	\$ 0.57	\$ 83,092	\$ 0.55	\$ 74,346	\$ 0.55
Sheeting & Shoring	\$ 1,523,450	\$ 5.51	\$ 1,500,000	\$ 10.00	\$ -	\$ -
Excavation	\$ 413,815	\$ 1.50	\$ 378,404	\$ 2.52	\$ 24,591	\$ 2.52
Pile Driving	\$ 1,425,000	\$ 5.15	\$ 1,374,888	\$ 9.17	\$ -	\$ -
Dewatering	\$ 100,000	\$ 0.38	\$ 100,000	\$ 0.67	\$ -	\$ -
Street Trees	\$ 9,000	\$ 0.03	\$ 9,000	\$ 0.06	\$ -	\$ -
03000 Concrete	\$ 2,775,687	\$ 10.04	\$ 2,306,920	\$ 15.38	\$ 180,856	\$ 15.38
04000 Masonry	\$ 781,617	\$ 2.83	\$ 226,879	\$ 1.51	\$ 477,715	\$ 1.51
05000 Metals- Structural Steel	\$ 6,713,323	\$ 24.28	\$ 5,723,483	\$ 38.17	\$ 81,929	\$ 38.17
Miscellaneous Iron	\$ 994,695	\$ 3.60	\$ 824,140	\$ 5.50	\$ 93,625	\$ 5.50
06000 Carpentry and Millwork	\$ 91,545	\$ 0.33	\$ 8,988	\$ 0.08	\$ 62,808	\$ 0.08
07000 Therm./Mols.Prot.- Waterproofing	\$ 290,185	\$ 1.05	\$ 168,449	\$ 1.12	\$ 103,586	\$ 1.12
Building Insulation	\$ 125,598	\$ 0.45	\$ 75,071	\$ 0.50	\$ 46,718	\$ 0.50
Spray Fireproofing	\$ 285,998	\$ 1.05	\$ 262,468	\$ 1.75	\$ 5,974	\$ 1.75
Roofing	\$ 354,365	\$ 1.28	\$ 147,205	\$ 0.98	\$ 179,650	\$ 0.98
Fire Stopping	\$ 351,750	\$ 1.27	\$ 282,500	\$ 1.85	\$ 22,000	\$ 1.85
08000 Doors, Frames, and Hardware	\$ 135,400	\$ 0.49	\$ 104,200	\$ 0.69	\$ 24,600	\$ 0.69
Rolling Doors	\$ 75,000	\$ 0.27	\$ 75,000	\$ 0.50	\$ -	\$ 0.50
08330 Windows/Glass	\$ 2,622,435	\$ 9.48	\$ 1,007,250	\$ 11.12	\$ 810,595	\$ 11.12
08800 Pre-Fab Wall Panels	\$ 4,900,000	\$ 17.72	\$ 4,127,337	\$ 27.52	\$ 331,412	\$ 27.52
09100 Drywall	\$ 1,370,204	\$ 4.98	\$ 1,115,733	\$ 7.44	\$ 158,648	\$ 7.44
09600 Floor Covering/Stair Treads	\$ 87,271	\$ 0.32	\$ 69,758	\$ 0.47	\$ 16,574	\$ 0.47
09900 Painting	\$ 250,071	\$ 0.90	\$ 167,720	\$ 1.12	\$ 61,233	\$ 1.12
10000 Specialties	\$ 103,880	\$ 0.37	\$ 39,240	\$ 0.26	\$ 57,510	\$ 0.26
11000 Equipment	\$ 75,000	\$ 0.27	\$ 75,000	\$ 0.50	\$ -	\$ 0.50
14200 Vertical Transportation	\$ 1,300,000	\$ 4.70	\$ 1,300,000	\$ 8.67	\$ -	\$ 8.67
15300 Sprinkler	\$ 728,944	\$ 2.64	\$ 407,383	\$ 2.72	\$ 273,504	\$ 2.72
15400 Plumbing	\$ 750,000	\$ 2.71	\$ 417,000	\$ 2.78	\$ 272,892	\$ 2.78
15800 HVAC	\$ 3,365,000	\$ 12.17	\$ 1,804,762	\$ 12.03	\$ 1,283,204	\$ 12.03
16000 Electrical/Fire Alarm	\$ 4,590,000	\$ 16.80	\$ 2,477,803	\$ 16.52	\$ 1,718,998	\$ 16.52
NYSERDA Requirements	\$ 2,000,000	\$ 7.23	\$ 2,000,000		\$ -	
Security Systems	\$ 250,000	\$ 0.90	\$ 250,000		\$ -	
Window Washer Equipment	\$ 225,000	\$ 0.81	\$ 225,000		\$ -	
Joe Rose	\$ 100,000	\$ 0.38	\$ 100,000		\$ -	
Sub-Total Trades	\$ 42,364,059	\$ 153.20	\$ 31,629,631	\$ 195.08	\$ 7,432,829	\$ 195.08
Wallgreens- (per wk.tr.)	10,875 sf	\$ 258,400	\$ 23.76	N/A	\$ 258,400	\$ 23.76
24hr. Fitness- (per work letter)	32,526 sf	\$ 699,571	\$ 21.51	\$ 290,341	\$ 21.51	\$ 177,603
Best Buy- (per work letter)	38,316 sf	\$ 3,448,929	\$ 90.01	\$ 1,147,603	\$ 90.01	\$ 2,110,059
Sears- (per work letter)	34,912 sf	\$ 3,416,637	\$ 97.87	\$ 1,369,998	\$ 97.87	\$ 1,826,841
Retail #2- (per work letter)	4,429 sf	\$ 155,015	\$ 35.00	\$ 155,015	\$ 35.00	\$ -
Retail #7- (per work letter)	769 sf	\$ 85,080	\$ 110.00	N/A	\$ 85,080	\$ 110.00
Retail #8	4,015 sf	\$ 140,525	\$ 35.00	\$ 140,525	\$ 35.00	\$ -
Community Lobby-	2,306 sf	\$ 600,000	\$ 260.19	N/A	\$ 600,000	\$ 260.19
Exterior Lobby-	926 sf	\$ 76,318	\$ 82.24	N/A	\$ 76,318	\$ 82.24
Existing Offices-	24,426 sf	\$ 1,204,910	\$ 49.33	N/A	\$ 1,204,910	\$ 49.33
New Offices-	113,000 sf	\$ 2,486,000	\$ 22.00	\$ 2,486,000	\$ 22.00	\$ -
General Conditions		\$ 3,977,808	\$ 14.38	\$ 2,278,800	\$ 860.126	\$ 2,278,800
Sub-Total	\$ 50,913,252		\$ 39,918,910		\$ 14,032,165	
Construction Contingency	\$ 3,000,000		\$ 2,000,000		\$ 800,000	
Sub-Total	\$ 53,913,252		\$ 41,918,910		\$ 14,832,165	
Environmental	\$ 546,000		\$ 356,000		\$ 135,000	
Sub-Total	\$ 54,459,252		\$ 42,274,910		\$ 14,967,165	
ACRS Fee 1.75%	\$ 1,083,037		\$ 739,811		\$ 261,025	
Sub-Total	\$ 55,542,289		\$ 43,014,721		\$ 15,228,091	
A&E Fees	\$ 2,650,000		\$ 1,775,500		\$ 682,500	
Sub-Total	\$ 58,192,289		\$ 44,790,221		\$ 15,891,591	
Builder's Risk .2%	\$ 132,405		\$ 89,580		\$ 31,783	
Insurance 2.65%	\$ 1,577,669		\$ 1,189,315		\$ 421,989	
TOTALS	\$ 60,092,563		\$ 46,069,116		\$ 16,345,543	

T1
Per
Leases

NOTE:
** Items have been negotiated and contracts awarded.

Tracts	Reg'd Area (sqft)	Reg'd Area (sqft)	% of Existing GLA	% of New GLA	Reg'd Rest P.S.F.	RCD Date	Expiration Date	Possible Rent Categories	Year Ending											
									Dec-04	Dec-05	Dec-06	Dec-07	Dec-08	Dec-09	Dec-10	Dec-11	Dec-12	Dec-13	Dec-14	
EXISTING AGREEMENTS																				
Stony Brook	100,700		0%	2.73	1.31.2007	-		35,667	275,000	275,000	24,110	-	-	-	-	-	-	-		
Stony Brook	100,700			6.84	1.31.2007	-		283,733	520,828	584,210	215,000	-	-	-	-	-	-	-		
Subtotal: Another Tract								319,400	801,828	859,210	343,110	-	-	-	-	-	-	-		
Office																				
1117 (containing entire 1st floor) New Tract	6,079	8,079	80.72%	7%	30.00	01-2009	4.5 months FR	76,367	237,500	79,180	34,940	-	-	-	-	-	-	-		
Monell Health 1st-4th flrs	2,829	2,829	3.71%	1%	15.00	12-31-2010	4.5 months FR	14,226	44,095	46,485	48,242	50,236	52,297	54,278	-	-	-	-		
Monell Health 1st flrs 6th Monell Health 1st flrs 6th Monell Health 1st flrs 6th	4,184	4,184	5.33%	2%	18.00	03-26-2010	4.5 months FR	21,200	64,480	67,618	69,898	72,300	75,200	77,984	81,384	84,702	88,030	91,358		
Phonix Program (offices) Phonix Program (offices) Subtotal: Existing Office	1,812	1,812	2.32%	2%	18.00	4-30-2009	4.5 months FR	8,636	24,204	21,324	22,137	23,064	23,996	24,932	25,868	26,804	27,740	28,676		
Subtotal: Office Tracts	10,704	15,884	14.74%	6.67%				118,233	366,178	314,804	179,807	147,826	167,942	176,942	188,218	196,742	208,018	217,014		
New Office Tracts																				
4th floor 4th floor - not at Monell Health and Phonix's	3,734	7,259	8%	30.00	11-2009	4.5 months FR	-	-	-	1,251,029	1,072,000	1,092,304	1,112,364	1,132,424	1,152,484	1,172,544	1,192,604			
8th floor 8th floor 8th floor 8th floor 8th floor 8th floor 8th floor 8th floor 8th floor	4,404	11,234	3%	30.00	01-2009	4.5 months FR	-	-	315,492	431,900	431,600	431,300	431,000	430,700	430,400	430,100	429,800			
10th floor 10th floor 10th floor 10th floor 10th floor 10th floor 10th floor 10th floor 10th floor	4,562	11,332	3%	30.00	01-2009	4.5 months FR	-	-	179,584	174,200	173,800	173,400	173,000	172,600	172,200	171,800	171,400			
12th floor 12th floor 12th floor 12th floor 12th floor 12th floor 12th floor 12th floor 12th floor	4,562	11,332	3%	30.00	12-2-2009	4.5 months FR	-	-	35,400	431,300	430,900	430,500	430,100	429,700	429,300	428,900	428,500			
14th floor 14th floor 14th floor 14th floor 14th floor 14th floor 14th floor 14th floor 14th floor	4,562	11,332	3%	30.00	12-1-2009	4.5 months FR	-	-	25,400	430,900	430,500	430,100	429,700	429,300	428,900	428,500	428,100			
Subtotal: New Office	10,186	37,544	23.04%					-	-	2,002,000	1,744,800	1,763,804	1,782,808	1,801,812	1,820,816	1,839,820	1,858,824			
Subtotal: Office Tracts	19,890	53,428	47.78%					118,233	367,178	314,804	179,807	147,826	167,942	176,942	188,218	196,742	208,018	217,014		
Res. Retail Tracts																				
Commercial	33,508	1.7%	32.28	01-2008	-	-	-	451,344	1,603,820	1,603,820	1,683,820	1,683,820	1,683,820	1,683,820	1,683,820	1,683,820	1,683,820	1,683,820		
Stores - Liquor (ground floor)	602	0%	22.28	01-2008	-	-	-	11,063	28,775	28,775	28,775	28,775	28,775	28,775	28,775	28,775	28,775			
Stores - Liquor (upper ground floor)	422	0%	22.28	01-2008	-	-	-	5,669	13,617	13,617	13,617	13,617	13,617	13,617	13,617	13,617	13,617			
Stony Brook (ground floor)	34,472	1.7%	32.28	01-2008	-	-	-	408,996	1,328,228	1,328,228	1,328,228	1,328,228	1,328,228	1,328,228	1,328,228	1,328,228	1,328,228			
Subtotal: Retail	40,002	1.7%	32.28	01-2008	-	-	-	465,672	1,670,665	1,670,665	1,726,140	1,726,140	1,726,140	1,726,140	1,726,140	1,726,140	1,726,140			
Walgreens (ground floor)	44,875	0%	100.00	01-2008	-	-	-	295,728	1,280,000	1,280,000	1,280,000	1,280,000	1,280,000	1,280,000	1,280,000	1,280,000	1,280,000			
Home 2 - Proposed Dallas BRK	802	2%	100.00	01-2008	-	-	-	133,551	403,800	403,800	403,800	403,800	403,800	403,800	403,800	403,800	403,800			
Home 3 - Proposed ALM Ground Floor	802	2%	100.00	01-2008	-	-	-	33,151	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000			
Subtotal: Retail	46,281	2%	100.00	01-2008	-	-	-	562,462	2,064,200	2,064,200	2,064,200	2,064,200	2,064,200	2,064,200	2,064,200	2,064,200	2,064,200			
Home 1 - Proposed Dallas BRK	4,013	2%	31.00	01-2008	-	-	-	46,281	140,215	140,215	140,215	140,215	140,215	140,215	140,215	140,215	140,215			
Subtotal: Retail	12,798	2%	31.00	01-2008	-	-	-	92,562	280,430	280,430	280,430	280,430	280,430	280,430	280,430	280,430	280,430			
24 Hour Fitness	31,441	10%	30.00	11-2-2008	-	-	-	186,062	1,171,676	1,171,676	1,171,676	1,171,676	1,171,676	1,171,676	1,171,676	1,171,676	1,171,676			
24 Hour Fitness-Lobby (Ground Floor)	790	0%	20.00	11-2-2008	-	-	-	3,377	21,456	21,456	21,456	21,456	21,456	21,456	21,456	21,456	21,456			
24 Hour Fitness - Day, N.E. (Commercial)	117	0%	10.00	11-2-2008	-	-	-	-	-	-	-	-	-	-	-	-	-			
24 Hour Fitness - Day, S.W. (Commercial)	117	0%	10.00	11-2-2008	-	-	-	-	-	-	-	-	-	-	-	-	-			
24 Hour Fitness - Egn. (2nd floor)	222	0%	10.00	11-2-2008	-	-	-	-	-	-	-	-	-	-	-	-	-			
24 Hour Fitness - Egn. (3rd floor)	222	0%	10.00	11-2-2008	-	-	-	-	-	-	-	-	-	-	-	-	-			
Subtotal: Retail Tracts	12,798	2%	31.00	01-2008	-	-	-	92,562	280,430	280,430	280,430	280,430	280,430	280,430	280,430	280,430	280,430			
Subtotal: Retail Tracts	12,798	2%	31.00	01-2008	-	-	-	92,562	280,430	280,430	280,430	280,430	280,430	280,430	280,430	280,430	280,430			
Subtotal: Retail Tracts	12,798	2%	31.00	01-2008	-	-	-	92,562	280,430	280,430	280,430	280,430	280,430	280,430	280,430	280,430	280,430			
Total	117,108	247,947	211.88%	100%				493,897	1,847,066	1,847,066	2,223,917	2,223,917	2,223,917	2,223,917	2,223,917	2,223,917	2,223,917	2,223,917		

Notes:
 - Commercial rates based on schedule.
 - All expirations, vacancies and inclusions based on leaseable gross SF.
 - Annual increase of 5%
 - HP's contains with current terms of 2.0%
 - Monell Health and Phonix contain terms of 4.0%
New Office Assumptions:
 - Office Rent
 - Rent based on leaseable gross SF.
 - Office space two factor
 - Annual increase of 2.0%
Retail Assumptions:
 - Retail 2: Added the 2.0% of the Retail 1.
 - Office: Based on 4.0% Office BRK
 - For non-leased space, assume a 3% increase.
 100%

CONTROLLED ACCOUNT AGREEMENT

See Attached

FORM OF
CONTROLLED ACCOUNT AGREEMENT

Dated: as of _____, 200_

among

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
FORDHAM PLACE OFFICE, LLC
a Delaware limited liability company

jointly and severally, individually and collectively, as Borrower

and

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

and

as Depository Bank

CONTROLLED ACCOUNT AGREEMENT

CONTROLLED ACCOUNT AGREEMENT (this "Agreement"), dated as of _____, 200__, among ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC, a Delaware limited liability company (individually and collectively, jointly and severally, the "Borrower"), EUROHYPO AG, NEW YORK BRANCH, as Administrative Agent for the lenders referred to below (in such capacity, together with its successors in such capacity, the "Administrative Agent"), and [_____], a [_____] (the "Depository Bank").

WITNESSETH:

WHEREAS, Borrower, certain lenders (collectively, the "Lenders") and the Administrative Agent are parties to that certain Building Loan Agreement (the "BLA") and Acquisition and Project Loan Agreement (the "APLA"), each dated the date hereof (the APLA, together with the BLA, each as the same may be modified and supplemented and in effect from time to time, being herein called the "Loan Agreement"); and, except as otherwise herein expressly provided, all terms defined in the Loan Agreement are being used herein as defined therein), which Loan Agreement provides, among other things, for Loans to be made by the Lenders to Borrower in an aggregate principal amount not exceeding \$95,270,000.00 finance the construction for the redevelopment of the existing six-story building into a mixed-used retail/office building consisting of (i) approximately 125,000 square feet of retail space and (ii) approximately 160,000 square foot, fourteen-story, Class A office tower, located at 400 East Fordham Road, Bronx (the "Premises"). The Loans are to be evidenced by, and repayable with interest thereon in accordance with the Notes in the aggregate principal amount of \$95,270,000.00 .

WHEREAS, pursuant to the Loan Agreement, the Borrower has granted to the Administrative Agent (on behalf of the Lenders) a security interest in all of the Borrower's right, title and interest in, to and under certain accounts, including the Controlled Account, described below;

WHEREAS, in order to fulfill all of the Borrower's obligations under the Loan Agreement, the Borrower has agreed that all sums required to be deposited by the Borrower directly into a "Controlled Account" (as defined in and required pursuant to the Loan Agreement) will be deposited directly into the Controlled Account described below, which has been or will be an account established by the Borrower with the Depository Bank.

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. DEFINITIONS

Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement. As used herein, the following terms shall have the following definitions:

“Administrative Agent” shall have the meaning assigned to such term in the preamble of this Agreement.

“Agreement” shall mean this Controlled Account Agreement among the Borrower, the Depository Bank and the Administrative Agent, as amended, supplemented or otherwise modified from time to time.

“Borrower” shall have the meaning assigned to such term in the preamble of this Agreement.

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which federally insured depository institutions in the state of New York and the state where the branch of the Depository Bank where the Controlled Account is located are authorized or obligated by law, governmental decree or executive order to be closed.

“Collateral” shall have the meaning assigned to such term in Section 3.1.

“Controlled Account” shall have the meaning assigned to such term in Section 2.1 (a).

“Depository Bank” shall mean _____, subject to the terms and provisions of Section 4.4(c).

“Eligible Account” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (i) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (ii) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least \$250,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“Eligible Institution” shall mean a depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P and P-1 by Moody’s in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “AA” by S&P and “Aa2” by Moody’s).

“Obligations” shall have the meaning assigned to such term in Section 3.1.

“Rating Agencies” shall mean, collectively, S&P and Moody’s or any other nationally-recognized statistical rating agency which has been approved by the Administrative Agent.

“UCC” shall have the meaning assigned to such term in Section 3.1(a)(iii).

II. THE ACCOUNT

Section 2.1 Establishment of Account. The Borrower acknowledges and confirms that the Borrower has established account no. _____ with the branch of the Depository Bank located at _____, into which the Borrower shall deposit, or cause to be deposited, all sums required to be deposited in a “Controlled Account” pursuant to the Loan Agreement (the “Controlled Account”);

Section 2.2 Deposits into the Controlled Account. The Borrower represents, warrants and covenants that:

(a) The Borrower shall cause all sums required to be deposited in a “Controlled Account” pursuant to the Loan Agreement to be deposited directly into the Controlled Account.

(b) There are no accounts other than the Controlled Account required or permitted to be maintained by the Borrower pursuant to this Agreement and the Loan Agreement maintained by the Borrower or any other Person into which sums required to be deposited into a “Controlled Account” pursuant to the Loan Agreement are deposited. So long as the Obligations shall be outstanding and until the termination of the Commitments, neither the Borrower nor any other Person shall open any other such account for the deposit of sums required to be held in a “Controlled Account” under the Loan Agreement.

Section 2.3 Account Name. The Controlled Account shall be in the name of the Administrative Agent; provided, however, that in the event the Administrative Agent is replaced in accordance with the terms of the Loan Agreement, the Depository Bank, at the Administrative Agent’s request, shall change the name of the Controlled Account to the name of the replacement Administrative Agent.

Section 2.4 Eligible Accounts/Characterization of Accounts. The Controlled Account shall be maintained as an Eligible Account. The Controlled Account shall be treated as a “deposit account” as such term is defined in Section 9-102(a) of the UCC.

Section 2.5 Interest. Sums on deposit in the Controlled Account shall be maintained as cash, demand deposits or time deposits having terms not in excess of thirty (30) days. Provided that an Event of Default shall not have occurred and be continuing, the Borrower shall have the right to direct the Administrative Agent to instruct the Depository Bank to invest sums in demand deposits or time deposits having terms not in excess of thirty (30) days; provided, however, that in no event shall the demand deposits or time deposits have a maturity date that is later than the date on which the invested sums are required for payment of an obligation pursuant to the Loan Agreement. Absent express direction from the Borrower, sums on deposit in the Controlled Account shall be uninvested and maintained as cash. Any interest or income earned shall be for the benefit of the Borrower and subject to the rights of the Administrative Agent

hereunder shall be added to and shall be deposited into the Controlled Account. The Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to income earned unless the Administrative Agent is entitled, as owner, to the income earned. The Controlled Account shall be assigned the federal tax identification number of the Borrower (which number is _____) for all purposes hereunder.

Section 2.6 Sole Dominion and Control. Prior to payment in full of the Obligations or termination of the Commitments, the Borrower acknowledges and agrees that the Controlled Account is subject to the sole dominion, control and discretion of the Administrative Agent and its authorized agents or designees. Prior to payment in full of the Obligations or the termination of the Commitments, the Borrower shall not have the right of withdrawal with respect to the Controlled Account; however, so long as no Event of Default exists, the Administrative Agent will permit the withdrawal of funds from the Controlled Account as provided in the Loan Agreement. Prior to payment in full of the Obligations or termination of the Commitments, the Depository Bank agrees to comply with the instructions of the Administrative Agent with respect to the Controlled Account without the further consent of the Borrower, except as provided in Section 2.5.

III. PLEDGE OF ACCOUNTS

Section 3.1 Security for Obligations. (a) To secure the full and punctual payment and performance of all obligations of the Borrower now or hereafter existing with respect to the Loans, whether for principal, interest, fees, expenses or otherwise, and all obligations of the Borrower now or hereafter existing under the Loan Agreement, the Notes, the Mortgage, this Agreement and all other Loan Documents (all such obligations, collectively, the "Obligations"), the Borrower hereby grants to the Administrative Agent (on behalf of the Lenders) a first priority continuing security interest in and to the following property of the Borrower, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the "Collateral"):

(i) the Controlled Account and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Controlled Account, including, without limitation, all deposits or wire transfers made to the Controlled Account;

(ii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing; and

(iii) to the extent not covered by clauses (i) or (ii) above, all "proceeds" (as defined under Article 9 of the Uniform Commercial Code as in effect in the State of New York (the "UCC")) of any or all of the foregoing.

(b) The Administrative Agent shall have with respect to the Collateral, in addition to the rights and remedies herein set forth, all of the rights and remedies available to a secured party under the UCC, as if such rights and remedies were fully set forth herein.

Section 3.2 Financing Statement; Further Assurances. The Borrower authorizes the Administrative Agent to execute and deliver such financing statements and other documents as the Administrative Agent may reasonably require to perfect the security interests granted by this Agreement. The Borrower agrees that at any time and from time to time, at the expense of the Borrower, the Borrower will promptly execute and deliver all further instruments and documents, and take all further action that the Depository Bank or the Administrative Agent may reasonably request in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Depository Bank or the Administrative Agent to exercise and enforce their respective rights and remedies hereunder with respect to any Collateral.

Section 3.3 Termination of Agreement. This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until payment in full of the Obligations and termination of the Commitments. Upon payment and performance in full of the Obligations and termination of the Commitments, this Agreement shall terminate and the Borrower shall be entitled to the return, upon its request and at its expense, of such of the Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof, and the Administrative Agent shall execute such instructions to the Depository Bank as may be reasonably requested by the Borrower to evidence such termination and the release of the lien hereof.

IV. RIGHTS AND DUTIES OF LENDER AND ADMINISTRATIVE AGENT

Section 4.1 Reasonable Care. Beyond the exercise of reasonable care in the custody thereof or as otherwise expressly provided herein, neither the Depository Bank nor the Administrative Agent shall have any duty as to any Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any Person or otherwise with respect thereto. The Depository Bank and the Administrative Agent each shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Depository Bank or the Administrative Agent, acting prudently, accords its own property, it being understood that the Administrative Agent shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in value thereof, by reason of the act or omission of the Administrative Agent, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from the Administrative Agent's gross negligence or willful misconduct; provided that nothing in this Article IV shall be deemed to relieve the Depository Bank from the duties and standard of care which, as a commercial bank, it generally owes to depositors.

Section 4.2 Indemnity. The Depository Bank, in the discharge of its duties and responsibilities hereunder, shall be responsible for the performance only of such duties as are specifically set forth herein, and no duty shall be implied from any provision hereof. The Depository Bank shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. The Borrower shall indemnify and hold the Depository Bank and the Administrative Agent harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Depository Bank or the Administrative Agent in connection with the transactions contemplated hereby, except to the extent that such loss or damage results from the Depository Bank's or the Administrative Agent's gross negligence or willful misconduct.

Section 4.3 Reliance. The Depository Bank shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature reasonably believed by it to be genuine, and it may be assumed that any person purporting to act on behalf of any Person giving any of the foregoing in connection with the provisions hereof has been duly authorized to do so. The Depository Bank may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith. The Depository Bank shall not be liable for any act or omission done or omitted to be done by the Depository Bank in reliance upon any instruction, direction or certification received by the Depository Bank and done or omitted to be done without gross negligence or willful or reckless misconduct.

Section 4.4 Resignation of the Depository Bank. (a) The Depository Bank shall have the right to resign as the Depository Bank hereunder upon thirty (30) days' prior written notice to the Borrower and the Administrative Agent, and in the event of such resignation, the Borrower shall appoint a successor Depository Bank reasonably acceptable to the Administrative Agent which must be an Eligible Institution. No such resignation by the Depository Bank shall become effective until a successor Depository Bank shall have accepted such appointment and executed an instrument by which it shall have assumed all of the rights and obligations of the Depository Bank hereunder. If no such successor Depository Bank is appointed within sixty (60) days after receipt of the resigning Depository Bank's notice of resignation, the resigning Depository Bank may petition a court for the appointment of a successor Depository Bank. Notwithstanding the foregoing, if an Event of Default exists, any successor Depository Bank may be selected by the Administrative Agent in its sole and absolute discretion, without the approval or consent of Borrower.

(b) In connection with any resignation by the Depository Bank, (i) the resigning Depository Bank shall, at the sole and reasonable cost of the Borrower, (A) duly assign, transfer and deliver to the successor Depository Bank this Agreement and all sums held by it hereunder, (B) execute such financing statements and other instruments as may be necessary to assign to the successor Depository Bank the security interest in the Collateral existing in favor of the resigning Depository Bank hereunder and to otherwise give effect to such succession and (C) take such other actions as may be reasonably required by the Borrower, the Administrative Agent or the successor Depository Bank in connection with the foregoing and (ii) the successor Depository Bank shall establish in its name, as secured party, cash collateral accounts, which shall become the Controlled Account for purposes of this Agreement upon the succession of such Depository Bank.

(c) If at any time the Depository Bank ceases to be an Eligible Institution, the Administrative Agent at its sole discretion and sole cost shall have the right, upon thirty (30) days' notice to the Depository Bank and the Borrower, to substitute the Depository Bank with a successor Depository Bank that satisfies the requirements of an Eligible Institution; provided that such successor Depository Bank shall perform the duties of the Depository Bank pursuant to the terms of this Agreement. So long as no Event of Default exists, such successor Depository Bank shall be subject to Borrower's approval, not to be unreasonably withheld.

Section 4.5 Administrative Agent Appointed Attorney-In-Fact. The Borrower hereby irrevocably constitutes and appoints the Administrative Agent as the Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any reasonably necessary instruments and to exercise and enforce every right, power, remedy, option and privilege of the Borrower with respect to the Collateral in accordance with the Loan Agreement, and do in the name, place and stead of the Borrower, all such acts, things and deeds for and on behalf of and in the name of the Borrower, which the Borrower could or might do or which the Depository Bank or the Administrative Agent may deem necessary or desirable to more fully vest in the Administrative Agent the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest.

Section 4.6 Acknowledgment of Lien/Offset Rights. Prior to payment in full of the Obligations and termination of the Commitments, (a) the Controlled Account shall be held by the Depository Bank in the name of the Administrative Agent, (b) all funds held in the Controlled Account shall be held for the benefit of the Administrative Agent, (c) the Borrower has granted to the Administrative Agent (on behalf of the Lenders) a first priority security interest in the Collateral, and (d) the Depository Bank shall not disburse any funds from the Controlled Account except as provided herein. The Depository Bank hereby waives any right of offset, banker's lien or similar rights against, or any assignment, security interest or other interest in, the Collateral.

V. REMEDIES

Section 5.1 Remedies. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, in addition to any rights and remedies the Administrative Agent has under the Loan Agreement:

(a) without notice to the Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Collateral against the Obligations or any part thereof;

(b) exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC and/or under any other applicable law; and

(c) demand, collect, take possession of, receive, instruct the Depository Bank to release, withdraw, settle, compromise, adjust, sue for, foreclose or realize upon the Collateral (or any portion thereof) as the Administrative Agent may determine in its sole discretion.

Section 5.2 Waiver. Except to the extent otherwise provided in this Agreement or in the Loan Agreement, the Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind in connection with this Agreement or the Collateral. The Borrower acknowledges and agrees that ten (10) days' prior written notice of the time and place of any public sale of the Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to the Borrower within the meaning of the UCC.

VI. MISCELLANEOUS

Section 6.1 Transfers and Other Liens. Except as permitted by the Loan Agreement, the Borrower agrees that it will not (i) sell or otherwise dispose of any of the Collateral or (ii) create or permit to exist any Lien upon or with respect to all or any of the Collateral, except for the Lien granted under this Agreement.

Section 6.2 Administrative Agent's Right to Perform Borrower's Obligations; No Liability of Administrative Agent. If the Borrower fails to perform any of the covenants or obligations contained herein, and such failure shall continue for a period ten (10) Business Days after the Borrower's receipt of written notice thereof from the Administrative Agent, the Administrative Agent may itself perform, or cause performance of, such covenants or obligations, and the reasonable expenses of the Administrative Agent incurred in connection therewith shall be payable by the Borrower to the Administrative Agent. Notwithstanding anything contained herein or the Administrative Agent's exercise of any of its rights or remedies hereunder, under the Loan Documents or otherwise at law or in equity, neither the Administrative Agent nor any Lender shall be deemed to be a mortgagee-in-possession nor shall the Administrative Agent or any Lender be subject to any liability with respect to the Collateral or otherwise based upon any claim of lender liability except to the extent that such loss or damage results from the Depository Bank's, the Administrative Agent's or any Lender's gross negligence or willful misconduct.

Section 6.3 No Waiver. Subject to Section 5.3, the rights and remedies provided in this Agreement and the other Loan Documents are cumulative and may be exercised independently or concurrently, and are not exclusive of any other right or remedy provided at law or in equity. No failure to exercise or delay by the Administrative Agent or the Lenders in exercising any right or remedy hereunder or under the Loan Documents shall impair or prohibit the exercise of any such rights or remedies in the future or be deemed to constitute a waiver or limitation of any such right or remedy or acquiescence therein. Every right and remedy granted to the Administrative Agent hereunder or by law may be exercised by the Administrative Agent at any time and from time to time, and as often as the Administrative Agent may deem it expedient. Any and all of the Administrative Agent's rights with respect to the lien and security interest granted hereunder shall continue unimpaired, and the Borrower shall be and remain obligated in accordance with the terms hereof, notwithstanding (a) any proceeding of the Borrower under the United States Bankruptcy Code or any bankruptcy, insolvency or reorganization laws or statutes of any state, (b) the release or substitution of Collateral at any time, or of any rights or interests therein (unless Borrower has paid in full all of the Obligations) or (c) any delay, extension of time, renewal, compromise or other indulgence granted by the Administrative Agent in the event of any default, with respect to the Collateral or otherwise hereunder. No delay or extension of time by the Administrative Agent in exercising any power of sale, option or other right or remedy hereunder, and no notice or demand which may be given to or made upon the Borrower by the Administrative Agent, shall constitute a waiver of such power of sale, option or other right or remedy, or limit, impair or prejudice the Administrative Agent's right, without notice or demand, to take any action against the Borrower or to exercise any other power of sale, option or any other right or remedy.

Section 6.4 Expenses. The Borrower shall pay to the Administrative Agent and/or the Administrative Agent's counsel within ten (10) Business Days of demand, from time to

time, all reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees and disbursements, and transfer, recording and filing fees, taxes and other charges) actually incurred by the Administrative Agent in connection with the creation or perfection of any lien or security interest granted hereby or in connection with the performance by the Depository Bank of its obligations under this Agreement. Standard and customary fees and charges associated with the Controlled Account shall be included on a monthly account analysis statement which the Depository Bank shall submit to the Borrower for the Borrower's payment, which account analysis statements shall show all credits and debits to the Controlled Account for the reporting period covered by such statements. This statement shall set forth the fees and charges payable for such month for which the Depository Bank is entitled to reimbursement and shall be accompanied by reasonably detailed supporting documentation. If the Borrower fails to pay the fees and charges payable by the Borrower pursuant hereto the Depository Bank shall be entitled to charge the Controlled Account for such fees and expenses as indicated by the analysis statement.

Section 6.5 Entire Agreement. This Agreement constitutes the entire and final agreement between Depository Bank, on one hand, and Borrower and the Administrative Agent, on the other hand, with respect to the subject matter hereof, Borrower and the Administrative Agent will continue to be bound by the other Loan Documents as well. This Agreement may not be changed, terminated or otherwise varied, except by a writing duly executed by the parties.

Section 6.6 No Waiver. No waiver of any term or condition of this Agreement, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given.

Section 6.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 6.8 Notices. All notices, requests, demands, statements, authorizations, approvals, directions, consents and other communications provided for herein shall be given or made in writing and shall be deemed sufficiently given or served for all purposes as of the date (a) when hand delivered (provided that delivery shall be evidenced by a receipt executed by or on behalf of the addressee), (b) three (3) days after being sent by postage pre-paid registered or certified mail, return receipt requested, (c) one (1) Business Day after being sent by reputable overnight courier service (with delivery evidenced by written receipt), or (d) when sent by facsimile, with confirmation and a copy sent by first class mail, in each case addressed to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. The Borrower and the Depository Bank shall only be required to send notices, requests, demands, statements, authorizations, approvals, directions, consents and other communications to the Administrative Agent on behalf of all of the Lenders.

The Administrative Agent, the Borrower or the Depository Bank may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Address for Notices:

If to the Administrative Agent:

Eurohypo AG, New York Branch
1114 Avenue of the Americas
New York, New York 10036
Attention: Legal Director
Telecopier No.: (866) 267-7680

With a copy to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas
New York, New York 10036
Attention: Head of Portfolio Operations
Telecopier No.: (866) 267-7680

- and -

Riemer & Braunstein LLP
7 Times Square, Suite 2506
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

If to Borrower:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters
Telecopier No.: (914) 428-3646

With copies to:

[]
[]
[]
[]

Attention: []
Telecopier No.: []

If to the Depository Bank:

[_____]
[_____]
[_____]
[_____]

Attention: [_____]
Telecopier No.: [_____]

With a copy to:

[_____]
[_____]
[_____]
[_____]

Attention: [_____]
Telecopier No.: [_____]

Section 6.9 Captions. All captions in this Agreement are included herein for convenience of reference only and shall not constitute part of this Agreement for any other purpose.

Section 6.10 Governing Law. This Agreement shall be governed by and construed and enforced in all respects in accordance with the laws of the State of New York.

Section 6.11 Counterparts. This Agreement may be executed in any number of counterparts, all of which shall be deemed to comprise one and the same original instrument.

Section 6.12 Termination. This Agreement shall terminate on the payment in full of the Obligations.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

BORROWER:

ACADIA-PA EAST FORDHAM
ACQUISITIONS, LLC, a Delaware limited
liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

FORDHAM PLACE OFFICE LLC, a
Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

ADMINISTRATIVE AGENT:

EUROHYPO AG, NEW YORK BRANCH

By: _____
Name:
Title:

By: _____
Name:
Title:

DEPOSITORY BANK:

By: _____
Name:
Title:

1037608.1

ACADIA STRATEGIC OPPORTUNITY FUND III LLC,
A DELAWARE LIMITED LIABILITY COMPANY
As Borrower

ACADIA REALTY ACQUISITION III LLC,
A DELAWARE LIMITED LIABILITY COMPANY
As Managing Member

ACADIA REALTY LIMITED PARTNERSHIP,
A DELAWARE LIMITED PARTNERSHIP
As Guarantor

ACADIA INVESTORS III, INC.,
A MARYLAND CORPORATION
As Pledgor

REVOLVING CREDIT AGREEMENT

BANK OF AMERICA, N.A.
As Administrative Agent

BANC OF AMERICA SECURITIES LLC
As Sole Lead Arranger and Sole Book Manager

YC SUSI TRUST,
As Conduit Lender

BANK OF AMERICA, N.A.
As an Administrator, Alternate Lender and Managing Agent
and
The Other Conduit Lenders, Administrators,
Alternate Lenders and Managing Agents
From Time to Time Party Hereto

OCTOBER 10, 2007

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REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT (together with all amendments and modifications hereof and supplements and attachments hereto, this "**Credit Agreement**") is dated as of October 10, 2007 by and among **ACADIA STRATEGIC OPPORTUNITY FUND III LLC**, a Delaware limited liability company (the "**Borrower**"), **ACADIA REALTY ACQUISITION III LLC**, a Delaware limited liability company (the "**Managing Member**"), **ACADIA REALTY LIMITED PARTNERSHIP**, a Delaware limited partnership (the "**Guarantor**") **ACADIA INVESTORS III, INC.**, a Maryland corporation (the "**Pledgor**"), **YC SUSHI Trust**, as Conduit Lender, **BANK OF AMERICA, N.A.**, a national banking association (in its individual capacity, "**Bank of America**"), as administrative agent (together with any successor appointed pursuant to **Section 13.9** below, the "**Administrative Agent**") for the Lenders, as an Alternate Lender, as an Administrator and as a Managing Agent, and each of the other Persons from time to time party hereto as Lenders, Managing Agents and Administrators (all such terms, as hereinafter defined).

A. Borrower, Managing Member, Guarantor and Pledgor have requested that Lenders make loans and cause the issuance of letters of credit to Borrower and Qualified Borrowers (as hereinafter defined) for the principal purposes of providing working capital to the Borrower; financing the costs and other expenses to be incurred by Borrower in connection with making investments permitted under the Operating Agreement (as hereinafter defined); and financing the costs of other undertakings by Borrower permitted under the Operating Agreement; and

B. Lenders are willing to lend funds and to cause the issuance of letters of credit upon the terms and subject to the conditions set forth in this Credit Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. DEFINITIONS

1.1. **Defined Terms.** For the purposes of this Credit Agreement, unless otherwise expressly defined, the following terms shall have the respective meanings assigned to them in this **Section 1** or in the Section or recital referred to:

"**Account Assignment**" means that certain assignment of the Collateral Account substantially in the form of **Exhibit F**, dated the date hereof, executed by Borrower in favor of Administrative Agent for the benefit of the Secured Parties.

"**Adequately Capitalized**" means in compliance with the capital standards for bank holding companies as described in the Bank Holding Company Act of 1956, as amended, and regulations promulgated thereunder.

"**Administrative Agent**" is defined in the first paragraph hereof.

*Revolving Credit Agreement
Acadia Strategic Opportunity Fund III LLC*

- "Administrative Agent's Account" means the account designated from time to time by the Administrative Agent for payments by the Borrower Parties pursuant to this Credit Agreement.

- "Administrative Agent's Office" means Administrative Agent's address set forth on **Schedule 14.7** or such other address as Administrative Agent may from time to time notify the Borrower and the Lenders in writing.

- "Administrator" means: (a) with respect to YC SUSI, Bank of America or an Affiliate thereof; and (b) with respect to any other Conduit Lender, the Person designated by such Conduit Lender as its "Administrator", which Person becomes a party to this Credit Agreement in such capacity.

- "Affiliate" of any Person means any other Person that, directly or indirectly, controls or is controlled by, or is under common control with, such Person. For the purpose of this definition, "control" and the correlative meanings of the terms "controlled by" and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting shares or partnership interests or by contract or otherwise.

- "Agent-Related Persons" means each Agent, together with its Affiliates (including, in the case of Bank of America in its capacity as the Administrative Agent, the Arranger), and the officers, directors, employees, agents and attorneys-in-fact of such Persons and their respective Affiliates.

- "Agents" means, collectively, Administrative Agent, Letter of Credit Issuer, Administrators, Managing Agents, the Arranger and any successors and assigns in such capacities.

- "Alternate Lender Percentage" means, with respect to any Lender Group, at any time, a fraction, expressed as a percentage, the numerator of which is the portion of the Loans funded by the Alternate Lenders of such Lender Group and the denominator of which is the aggregate Loans at such time of such Lender Group; *provided that at all times on and after the first Assignment Date occurring on or after the Conduit Investment Termination Date for the Conduit Lender related to such Lender Group, the Alternate Lender Percentage for such Lender Group means 100%.*

- "Alternate Lender Pro Rata Share" means, with respect to each Alternate Lender and any Lender Group, the percentage obtained from the fraction: (a) the numerator of which is the Commitment of such Alternate Lender; and (b) the denominator of which is the aggregate Commitments of all Alternate Lenders in the related Lender Group.

- "Alternate Lenders" means: (a) for the YC SUSI Lender Group, Bank of America and any assignees thereof that shall become party hereto pursuant to **Section 7** or **Section 14.12**; and (b) for any other Lender Group, the "Alternate Lenders" specified therefore who become parties hereto and any assignees thereof that shall become party hereto pursuant to **Section 7** or **Section 14.12**.

- *Revolving Credit Agreement
Acadia Strategic Opportunity Fund III LLC*

"Alternate Rate" means, for any Interest Period for any Portion of Loans for any Lender Group, an interest rate *per annum* as provided in the Fee Letter above the LIBOR Rate for such Interest Period; *provided, however, that in the case of:*

- (a) any Interest Period of one to (and including) 14 days;
- (b) any Interest Period which commences prior to the related Managing Agent receiving at least three (3) Business Days notice thereof; or
- (c) any Interest Period relating to a Portion of Loans which is less than \$5,000,000;

the "Alternate Rate" for each such Interest Period shall be an interest rate *per annum* equal to the Base Rate in effect on each day of such Interest Period. The "Alternate Rate" for any date on or after the occurrence of an Event of Default or the Maturity Date shall be the Default Rate.

"Applicable Margin" has the meaning provided in the Fee Letter.

"Applicable Requirement" means, for any Included Investor that is (or whose Credit Provider, if applicable, is): (a) a Bank Holding Company, Adequately Capitalized status or better and a Rating of BBB/Baa2 or higher; (b) an insurance company, a Best's Rating of A- or higher and a Rating of BBB/Baa2 or higher; (c) an ERISA Investor, or the trustee or nominee of an ERISA Investor, in addition to the Sponsor's Rating of BBB/Baa2 or higher, a minimum Funding Ratio for the related pension fund based on the Rating of the Sponsor of the related pension fund as follows:

<u>Sponsor Rating</u>	<u>Minimum Funding Ratio</u>
<u>A-/A3 or higher</u>	<u>No minimum</u>
<u>BBB+/Baa1</u>	<u>90%</u>
<u>BBB/Baa2</u>	<u>95%</u>

(d) a Governmental Plan Investor, or the Responsible Party with respect to such Governmental Plan Investor, in addition to the Responsible Party's Rating of BBB/Baa2 or higher, a minimum Funding Ratio for the pension fund based on the Rating of the Responsible Party as follows:

<u>Responsible Party Rating</u>	<u>Minimum Funding Ratio</u>
<u>A-/A3 or higher</u>	<u>No minimum</u>
<u>BBB+/Baa1</u>	<u>90%</u>
<u>BBB/Baa2</u>	<u>95%;</u>

and (e) otherwise a Rated Investor, a Rating of BBB/Baa2 or higher.

The first Rating indicated in each case above is the S&P Rating and the second Rating indicated in each case above is the Moody's Rating. In the event that the S&P and Moody's Ratings are not equivalent, then the Applicable Requirement shall be based on the lower of the two. If any such Person has only one Rating, from either S&P or Moody's, then that Rating shall apply.

- "Application and Agreement for Letter of Credit" means an application and agreement for standby letter of credit by, between and among Borrower and a Qualified Borrower, on the one hand, and the Letter of Credit Issuer, on the other hand, in a form acceptable to the Letter of Credit Issuer (and customarily used by it in similar circumstances) and conformed to the terms of this Credit Agreement, either as originally executed or as it may from time to time be supplemented, modified, amended, renewed, or extended, *provided, however*, to the extent that the terms of such Application and Agreement are inconsistent with the terms of this Credit Agreement, the terms of this Credit Agreement shall control.

- "Approved Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business, 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.

- "Arranger" is defined in the preamble to this Credit Agreement.

- "Assignee" is defined in **Section 14.12(b)** hereof.

- "Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

- "Assignment Amount" means, with respect to an Alternate Lender at the time of any assignment pursuant to **Section 7.1** by any Conduit Lender in such Alternate Lender's Lender Group, an amount equal to the least of: (a) such Alternate Lender's Alternate Lender Pro Rata Share of the Obligations requested by such Conduit Lender to be assigned at such time; (b) such Alternate Lender's unused Commitment (*minus* the sum of (i) the unrecovered principal amount of such Alternate Lender's investments in such Obligations pursuant to the Program Support Agreement to which it is a party and (ii) such Alternate Lender's Alternate Lender Pro Rata Share of the applicable Lender Group Percentage of the Letter of Credit Liability); and (c) in the case of an assignment on or after the Conduit Investment Termination Date for the Conduit Lender related to such Lender Group, (i) such Alternate Lender's Alternate Lender Pro Rata Share of the applicable Conduit Lender Percentage of the Lender Group Percentage of the Borrowing Base minus (ii) such Alternate Lender's Alternate Lender Pro Rata Share of the applicable Lender Group Percentage of the Letter of Credit Liability.

- "Assignment and Assumption Agreement" means the agreement contemplated by **Section 14.12(b)** hereof, pursuant to which any Lender assigns all or any portion of its rights and obligations hereunder, which agreement shall be substantially in the form of *Exhibit M* attached hereto.

- "Assignment Date" is defined in **Section 7.1(a)** hereof.

- "Assignment Fee" is defined in **Schedule 14.12(b)** hereto.

- "Attorney Costs" means and includes all reasonable fees and disbursements of any law firm or other external counsel and the allocated cost of internal legal services and all disbursements of internal counsel.

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"Auto-Extension Letter of Credit" is defined in Section 2.5(b)(iii).

"Availability Period" means the period commencing on the Closing Date and ending on the Maturity Date.

"Available Loan Amount" means, at any time, the lesser of (a) the Facility Amount at such time; or (b) the Borrowing Base at such time.

"Bank Holding Company" means a "bank holding company" as defined in Section 2(a) of the Bank Holding Company Act of 1956, as amended, or a non-bank subsidiary of such bank holding company.

"Bank of America" is defined in the preamble to this Credit Agreement.

"Base Rate" means, for any day for any Portion of Loans for any Lender Group, a fluctuating rate per annum equal to the higher of: (a) the Federal Funds Rate for such day, plus the Applicable Margin; and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate", plus the Applicable Margin. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Best's Rating" means a "Best's Rating" by A.M. Best Company.

"Borrower" is defined in the preamble to this Credit Agreement.

"Borrower and Managing Member Security Agreement" means that certain Security Agreement, substantially in the form of Exhibit E, executed and delivered by Borrower and Managing Member in favor of Administrative Agent for the benefit of Secured Parties.

"Borrower Guaranty" means an unconditional guaranty of payments in the form of Exhibit N attached hereto, enforceable against Borrower for the payment of a Qualified Borrower's debt or obligation to Secured Parties; and "Borrower Guaranties" means such guaranties, collectively.

"Borrower Parties" means Borrower and each Qualified Borrower; and "Borrower Party" means any of them.

"Borrowing" means a disbursement made by Lenders with respect to Loans hereunder (including any reimbursement of the Letter of Credit Issuer following a draw on a Letter of Credit) and "Borrowings" means the plural thereof.

"Borrowing Base" means the sum of (a) ninety percent (90%) of the Eligible Available Contributions of the Included Investors at such time; and (b) sixty-five percent (65%) of the Eligible Available Contributions of the Designated Investors at such time.

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“Borrowing Base Certificate” means the certificate setting forth the calculation of the Borrowing Base in the form of Exhibit H.

“Borrowing Base Deficit” means, on any date of determination, the amount (if any) by which: (a) the Principal Obligation is in excess of (b) the Borrowing Base.

“Business Day” means any day of the year except 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 of New York or the city of Charlotte, North Carolina.

“Capital Call” means a call upon all or any of the Investors for payment of all or any portion of their Unfunded Capital Commitments pursuant to and in accordance with the terms of the Stockholders Agreement, the Partnership Agreement and/or the Operating Agreement, as applicable.

“Capital Call Notice” means any notice sent to an Investor for the purpose of making a Capital Call.

“Capital Call Notice Date” is defined in Section 5.2(c) hereof.

“Capital Commitment” means the commitment of each Investor to fund Capital Contributions, directly or indirectly, to a Credit Party in the amount set forth in, and pursuant to the terms of, the Stockholders Agreement, the Partnership Agreement and/or the Operating Agreement, as applicable.

“Capital Contribution” means for any Investor, any contribution of capital made to Borrower or the Pledgor, as applicable, in response to a Capital Call Notice.

“Capital Contributions Pledge Agreement” means that certain Capital Contributions Pledge Agreement, dated as of the date hereof executed and delivered by Pledgor in favor of Administrative Agent on behalf of the Secured Parties, as the same may be amended, supplemented or otherwise modified from time to time with the consent of Administrative Agent, the Letter of Credit Issuer, and the Lenders to the extent expressly required hereby, which agreement shall be substantially in the form of Exhibit L attached hereto.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee which, in accordance with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person and the amount of such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateralize” is defined in Section 2.5(g)(ii) hereof.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System.

“Change in Law” means the occurrence, after the date of this Credit Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

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- "Closing Date" means the date on which all of the conditions precedent set forth in **Section 8.1** hereof are satisfied or waived.

- "Code" means the Uniform Commercial Code as adopted in the State of New York and any other state, which governs creation or perfection (and the effect thereof) of security interests in any collateral for the Obligations.

- "Collateral" is defined in **Section 5.1(a)** hereof.

- "Collateral Account" is defined in **Section 5.2(a)**.

- "Collateral Documents" means the security agreements, financing statements, assignments and other documents and instruments from time to time executed and delivered pursuant to this Credit Agreement and any documents or instruments amending or supplementing the same, including, without limitation, the Borrower and Managing Member Security Agreement, the Capital Contributions Pledge Agreement and the Account Assignment.

- "Commercial Paper" means, with respect to a Conduit Lender, the promissory notes issued or to be issued by such Conduit Lender (or its related commercial paper issuer if such Conduit Lender does not itself issue commercial paper) in the commercial paper market.

- "Commitment" means, with respect to each Alternate Lender, as the context requires, the commitment of such Alternate Lender to make Loans (including Loans funding draws under Letters of Credit) and to pay Assignment Amounts in accordance herewith in an amount not to exceed the amount set forth opposite such Alternate Lender's name on **Schedule 1.1** hereof and the heading "Commitment" (or, in the case of an Alternate Lender which becomes a party hereto pursuant to an Assignment and Assumption Agreement entered into pursuant to the terms hereof, as set forth in such Assignment and Assumption Agreement); *minus* the amount of any Commitment or portion thereof assigned by such Alternate Lender pursuant to an Assignment and Assumption Agreement entered into pursuant to the terms hereof; *plus* the amount of any increase to such Alternate Lender's Commitment consented to by such Alternate Lender prior to the time of determination; *provided, however*, that, to the extent that the Facility Amount is reduced or otherwise declines, the aggregate of the Commitments of all the Alternate Lenders shall decline by a like amount and the Commitment of each Alternate Lender shall decline in proportion thereto.

- "Compliance Certificate" is defined in **Section 10.1(d)**.

- "Concentration Limit" has the meaning provided in the definition of "Inclusion Percentage".

- "Conduit Assignee" means any special purpose entity that finances its activities directly or indirectly through asset backed commercial paper and is administered by an Administrator or any of its Affiliates and designated by such Administrator from time to time to accept an assignment from the applicable Conduit Lender of all or a portion of its Loans and other interests hereunder.

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“Conduit Collateral Agent” means, with respect to any Conduit Lender, the “Collateral Agent” (if any) with respect to such Conduit Lender’s commercial paper program.

“Conduit Investment Termination Date” means, with respect to any Conduit Lender, the date of the delivery by such Conduit Lender to the Borrower of written notice that such Conduit Lender elects, in its sole discretion, not to make any further Loans or participate in any further Letters of Credit hereunder.

“Conduit Lender” means: (a) YC SUSHI and any permitted Conduit Assignee thereof; and (b) any other Person that shall become a party to this Credit Agreement as a “Conduit Lender” pursuant to the terms hereof; and, subject to the terms and conditions of this Credit Agreement, their respective successors and assigns (but not any Participant who is not otherwise a party to this Credit Agreement).

“Conduit Lender Percentage” means, with respect to any Conduit Lender, at any time, 100%, less the Alternate Lender Percentage of such Conduit Lender’s Lender Group at such time.

“Constituent Documents” means, for any entity, its constituent or organizational documents, including: (a) in the case of a limited partnership, its certificate of registration as a limited partnership and its limited partnership agreement; (b) in the case of a limited liability company, its certificate of formation or organization and its operating agreement or limited liability company agreement; (c) in the case of a corporation, its articles or certificate of incorporation and its bylaws; and (d) in the case of a joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation with the secretary of state or other department in the state or jurisdiction of its formation, in each case as amended from time to time.

“Controlled Group” means: (a) the controlled group of corporations as defined in Section 1563 of the Internal Revenue Code; or (b) the group of trades or businesses under common control as defined in Section 414(c) of the Internal Revenue Code, in each case of which any Borrower Party is a part or may become a part.

“CP Rate” means, for any Interest Period for any Portion of Loans funded by a Conduit Lender (or its related commercial paper issuer if such Conduit Lender does not itself issue commercial paper) of a Lender Group by issuing Commercial Paper, the per annum rate equivalent to the sum of (a) the Used Fee, (b) the Dealer Fee, and (c) the weighted average cost (as determined by the applicable Administrator and including incremental carrying costs incurred with respect to Commercial Paper maturing on dates other than those on which corresponding funds are received by such Conduit Lender, other borrowings by such Conduit Lender (other than under any Program Support Agreement) and any other costs associated with the issuance of Commercial Paper) of or related to the issuance of Commercial Paper that are allocated, in whole or in part, by such Conduit Lender or the applicable Administrator to fund or maintain such Portion of Loans (and which may be also allocated in part to the funding of other assets of such Conduit Lender); provided, however, that if any component of such rate is a discount rate, in calculating the “CP Rate” for such Portion of Loans for such Interest Period, such Conduit Lender shall for such component use the rate resulting from converting such discount rate to an interest bearing equivalent rate per annum.

“Credit Agreement” is defined in the preamble hereto.

“Credit Parties” means Borrower, each Qualified Borrower, Managing Member, Guarantor and Pledgor; “Credit Party” means any one of them.

“Credit Party Claims” is defined in Section 5.4 hereof.

“Credit Provider” means a Person providing a guaranty, in form and substance reasonably acceptable to Administrative Agent, of the obligations of an Included Investor to make Capital Contributions to a Credit Party, or, under the applicable Investor Letter, to Administrative Agent for the benefit of the Secured Parties.

“Current Party” is defined in Section 14.13.

“Dealer Fee” has the meaning provided in the Fee Letter.

“Debtor Relief Laws” means any applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, fraudulent conveyance, reorganization, or similar laws affecting the rights, remedies, or recourse of creditors generally, including without limitation the United States Bankruptcy Code and all amendments thereto, as are in effect from time to time during the term of the Loans.

“Default Rate” has the meaning provided in the Fee Letter.

“Defaulting Alternate Lender” means any Alternate Lender that: (a) has failed to make its Pro Rata Share of any advance required to be made in respect of Loans or any disbursement by the Letter of Credit Issuer in respect of Loans or Letters of Credit, respectively; (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date when due, unless the subject of a good faith dispute; or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

“Defaulting Investor” is defined in Section 2.1(c) hereof.

“Designated Exclusion Event” means that, at any time, either: (a) five (5) Designated Investors are Defaulting Investors, or (b) Designated Investors with an aggregate Unfunded Capital Commitment greater than 10% of the total aggregate Unfunded Capital Commitment of all Investors are Defaulting Investors, provided, that for purposes of determining a Designated Exclusion Event, any (i) Designated Investor that becomes a Defaulting Investor but that is replaced by the Credit Parties with a new Designated Investor, or (ii) whose obligations are transferred to any existing Designated Investor or Included Investor in accordance with the terms of this Credit Agreement and the Operating Agreement or Stockholders Agreement, as applicable, shall not be counted.

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- “Designated Investor” means any Investor (other than an Included Investor); (a) that has been so designated by 100% of the Lenders (in their sole discretion) as a Designated Investor, as evidenced in writing executed by Administrative Agent; and (b) that has delivered to Administrative Agent the information and documents required under **Section 8.1(p)**; *provided* that, from and after the occurrence of an Investor’s Effective Removal Date, the Investor shall no longer be a Designated Investor until such time as all Exclusion Events affecting such Investor have been cured and such Investor shall have been approved again as a Designated Investor in the sole and absolute discretion of the Required Lenders. Designated Investors approved as such as of the Closing Date are as set forth on **Exhibit A**.

- “Dollars” and the sign “\$” means lawful currency of the United States of America.

- “Downgrade Collateral Account” is defined in **Section 7.2(a)** hereof.

- “Downgrade Draw” is defined in **Section 7.2(a)** hereof.

- “Effective Removal Date” means, with respect to any Investor, fifteen (15) Business Days following the occurrence of an Exclusion Event with respect to such Investor.

- “Eligible Assignee” means: (a) a Lender or Program Support Provider; (b) an Affiliate of a Lender or an Approved Fund with respect to a Lender; and (c) any other Person approved by: (i) Administrative Agent and, (ii) unless an Event of Default exists and is continuing at the time any assignment is effected in accordance with **Section 14.12(b)** hereof, Borrower, each such approval not to be unreasonably withheld or delayed by Borrower or Administrative Agent, as applicable, and such approval to be deemed given by Borrower if no objection is received by the assigning Lender and Administrative Agent from Borrower within five (5) Business Days after notice of such proposed assignment has been provided by the assigning Lender to Borrower; *provided, however*, that no Credit Party or Affiliate of any Credit Party shall qualify as an “Eligible Assignee.”

- “Eligible Available Contributions of the Designated Investors” means, as of any date, an amount equal to the sum of the products of (a) the Inclusion Percentage for each Designated Investor multiplied by (b) the Unfunded Capital Commitment of such Designated Investor, *provided*, that at any time a Designated Exclusion Event has occurred and is continuing, the Eligible Available Contributions of all Designated Investors shall be zero.

- “Eligible Available Contributions of the Included Investors” means, as of any date, an amount equal to the sum of the products of (a) the Inclusion Percentage for each Included Investor multiplied by (b) the Unfunded Capital Commitment of such Included Investor.

- “Environmental Complaint” means any complaint, order, demand, citation or notice threatened or issued in writing to any Credit Party by any Person with regard to air emissions, water discharges, Releases, or disposal of any Hazardous Material, noise emissions or any other environmental, health or safety matter affecting any Credit Party or any of their Properties.

"Environmental Laws" means: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Re-authorization Act of 1986, 42 U.S.C. §9601 *et seq.*; (b) the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 *et seq.*; (c) the Clean Air Act, 42 U.S.C. §7401 *et seq.*, as amended by the Clean Air Act Amendments of 1990; (d) the Clean Water Act of 1977, 33 U.S.C. §1251 *et seq.*; (e) the Toxic Substances Control Act, 15 U.S.C.A. §2601 *et seq.*; (f) all other federal, state and local laws, or ordinances, regulations or policies relating to pollution or protection of human health or the environment including without limitation, air pollution, water pollution, noise control, or the use, handling, discharge, disposal or Release or recovery of on-site or off-site Hazardous Materials, as each of the foregoing may be amended from time to time, applicable to any Credit Party, and (g) any and all regulations promulgated under or pursuant to any of the foregoing statutes.

"Environmental Liability" means any written claim, demand, obligation, cause of action, accusation or allegation, or any order, violation, damage (including, without limitation, to any Person, property or natural resources), injury, judgment, penalty or fine, cost of enforcement, cost of remedial action, cleanup, restoration or any other cost or expense whatsoever, including Attorney Costs and disbursements resulting from the violation or alleged violation of any Environmental Law or the imposition of any Environmental Lien or otherwise arising under any Environmental Law or resulting from any common law cause of action asserted by any Person.

"Environmental Lien" means a Lien in favor of any Governmental Authority: (a) under any Environmental Law; or (b) for any liability or damages arising from, or costs incurred by, any Governmental Authority in response to the Release or threatened Release of any Hazardous Material.

"Environmental Requirement" means any Environmental Law, agreement, or restriction, as the same now exists or may be changed, amended, or come into effect in the future, which pertains to health, safety, or the environment, including, but not limited to ground, air, water, or noise pollution, or underground or aboveground tanks.

"Equity Interest" means, (a) with respect to any member of Borrower, its Membership Interest, and (b) with respect to any Stockholder, its Stockholder Interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder by any Governmental Authority, as from time to time in effect.

"ERISA Investor" means an Investor that is (a) an "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) subject to Title I of ERISA, (b) any "plan" defined in Section 4975(e) of the Code other than a governmental plan, (c) a group trust, as described in Revenue Ruling 81-100, or (d) a partnership or commingled account of a fund, or any other entity, whose assets include or are deemed to include the assets of one or more such employee benefit plans subject to Title I of ERISA, as determined under Section 2510.3-101 or Section 2550.401c-1 of the regulations of the United States Department of Labor or under any other relevant legal authority.

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“Event of Default” is defined in Section 12.1 hereof.

“Excluded Taxes” means, with respect to any Tax Indemnified Party or any other recipient of any payment to be made by or on account of any obligation of any Credit Party hereunder: (a) taxes imposed on or measured by its net income (however denominated), 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 such Tax Indemnified Party or recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located; (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which such Credit Party is located; and (c) in the case of a Foreign Person (other than an assignee pursuant to a request by the Borrower under Section 14.14), any withholding tax that (i) is attributable to such Foreign Person’s failure or inability (other than as a result of a Change in Law) to comply with Section 4.1(e), or (ii) is imposed on amounts payable to such Foreign Person at the time such Foreign Person becomes a party hereto (or designates a new Lending Office) except to the extent of the additional amounts, if any, that such Foreign Person (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive from the Borrower with respect to such withholding tax pursuant to Section 4.1(a).

“Exclusion Event” is defined in Section 2.1(c) hereof.

“Facility Amount” means an amount equal to \$75,000,000 as it may be reduced by Borrower pursuant to Section 3.6, or increased pursuant to Section 2.12 (not to exceed the Maximum Commitment).

“Facility Increase Request” means the notice in the form of Exhibit G pursuant to which Borrower requests an increase of the Commitments in accordance with Section 2.12.

“Federal Funds Rate” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) 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 of New York 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 charged to the Administrative Agent on such day on such transactions as determined by it.

“Fee Letter” shall mean, collectively, each separate letter agreement by and among Borrower and each Managing Agent and/or Administrative Agent, together with all amendments and modifications thereof.

“Foreign Person” means, with respect to any Credit Party, any Tax Indemnified Party that is a resident of or organized under the laws of a jurisdiction other than that in which such Credit Party is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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“Funding Ratio” means: (a) for a Governmental Plan Investor, the actuarial present value of the assets of the plan over the actuarial present value of the plan’s total benefit liabilities, as reported in such plan’s audited financial statements; and (b) for an ERISA Investor, the funded current liability percentage reported on Schedule B to the most recent Form 5500 filed by such plan with the United States Department of Labor.

“Generally Accepted Accounting Principles” or “GAAP” means those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the date hereof, so as to properly reflect the financial position of such Person, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

“Governmental Authority” means any foreign governmental authority, the United States of America, any State of the United States of America, and any subdivision of any of the foregoing, and any agency, department, commission, board, authority or instrumentality, bureau or court having jurisdiction over any Credit Party, any Agent, any Lender or the Letter of Credit Issuer, or any of their respective businesses, operations, assets, or properties.

“Governmental Plan Investor” means an Investor that is a pension plan and that is a governmental plan as defined in Section 3(32) of ERISA.

“Guaranteed Obligations” means those obligations guaranteed by the Guarantor pursuant to the Guaranty of Capital.

“Guarantor” is defined in the preamble to this Credit Agreement.

“Guaranty” means the guaranty of the Guarantor made pursuant to the Guaranty of Capital.

“Guaranty Obligations” means, with respect to any Person, without duplication, any obligations (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent: (a) to purchase any such Indebtedness or other obligation or any property constituting security therefor; (b) to advance or provide funds or other support for the payment or purchase of such Indebtedness or obligation or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, maintenance agreements, comfort letters, take or pay arrangements, put agreements or similar agreements or arrangements) for the benefit of the holder of Indebtedness of such other Person; (c) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Indebtedness; or (d) to otherwise assure or hold harmless the owner of such Indebtedness or obligation against loss in respect thereof.

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"Guaranty of Capital" means that certain Guaranty of Capital, substantially in the form of **Exhibit P**, dated as of the date hereof, executed by Guarantor in favor of Administrative Agent on behalf of the Secured Parties.

"Hazardous Material" means any substance, material, or waste which is or becomes regulated, under any Environmental Law, as hazardous to public health or safety or to the environment, including, but not limited to: (a) any substance or material designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, as amended, 33 U.S.C. §1251 *et seq.*, or listed pursuant to Section 307 of the Clean Water Act, as amended; (b) any substance or material defined as "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 *et seq.*; (c) any substance or material defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 *et seq.*; or (d) petroleum, petroleum products and petroleum waste materials.

"Hedging Agreements" means, collectively, interest rate protection agreements, foreign currency exchange agreements, commodity purchase or option agreements or other interest or exchange rate or commodity price hedging agreements, in each case, entered into or purchased by Borrower.

"Honor Date" is defined in **Section 2.5(c)(i)** hereof.

"Implicit Borrowing Base Deficit" means, on any date of determination, the amount (if any) by which: (a) the aggregate Principal Obligation is in excess of (b) the Borrowing Base (*provided that, for purposes of this definition, the Borrowing Base shall be calculated as if each Effective Removal Date related to each Exclusion Event shall have occurred*).

"Included Investor" means an Investor: (a) that has, or that has a Credit Provider that has, met the Applicable Requirement for such Investor and that has been designated on the Closing Date by Administrative Agent as an "Included Investor"; (b) that has delivered to Administrative Agent the information and documents required under **Section 8.1(p)**; and (c) for Investors being added to the Borrowing Base as an "Included Investor" after the Closing Date, satisfaction of the requirements in **clauses (a) and (b) above and (i) in the case of a Rated Investor, with the consent of the Administrative Agent, acting alone (which shall not be unreasonably withheld) as evidenced in a writing executed by Administrative Agent, and (ii) in the case of a Non-Rated Investor, with the consent of 100% of the Lenders, as evidenced in a writing executed by Administrative Agent; provided that a Defaulting Investor shall no longer be an Included Investor until such time as all Exclusion Events affecting such Investor have been cured and such Investor shall have been approved in writing as an Included Investor in the sole and absolute discretion of Administrative Agent, the Letter of Credit Issuer, and all of the Lenders. Included Investors approved as such on the Closing Date are as set forth on Exhibit A.**

"Inclusion Percentage" means, (a) with respect to each Included Investor and each Designated Investor, the highest percentage (up to 100%) which results in an aggregate amount of Unfunded Capital Commitment of such Investor at such time not exceeding the applicable Concentration Limit (as set forth below) for such Investor as a percentage of the total aggregate Unfunded Capital Commitment of all Investors at such time;

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Rating ⁽¹⁾	<u>Concentration Limit (as a percentage of the total aggregate Unfunded Capital Commitment of all Investors)</u>
AAA/Aaa	15.0%
AA-/Aa3	15.0%
A-/A3 or higher	10.0%
BBB/Baa2 or higher	5.0%
Non-Rated Included Investors ⁽²⁾	15.0%
Designated Investors ⁽³⁾	2.0%

⁽¹⁾ _____ Is the lower of the Rating of the Investor (or its Credit Provider, if applicable) as issued by either Standard & Poor's or Moody's. If any Investor has only one Rating from either Standard & Poor's or Moody's, then that Rating shall apply. For any Investor that is an unrated subsidiary of a parent with a Rating, a guaranty from the rated parent entity is required in order to apply the Concentration Limit applicable to the rated parent.

⁽²⁾ _____ In the aggregate may not exceed 50% of the total aggregate Unfunded Capital Commitment of all Investors at any time.

⁽³⁾ _____ In the aggregate may not exceed 45% of the total aggregate Unfunded Capital Commitment of all Investors at any time.

(b) _____ notwithstanding anything in *clause (a)* of this definition to the contrary, so long as Yale University and/or any of its affiliates qualifies as an Included Investor and has a Rating of AAA/Aaa, its Concentration Limit (collectively with any affiliates) will be 17%.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties and similar instruments;
- (c) all net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);
- (e) all indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being acquired by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Capital Leases and Synthetic Lease Obligations; and

(g) all Guaranty Obligations of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” is defined in Section 14.6(b) hereof.

“Interest Component” means, with respect to a Conduit Lender, at any time of determination, the aggregate for all Related Commercial Paper of such Conduit Lender at such time of: (a) with respect to any Commercial Paper issued on an interest bearing basis, the interest payable on such Commercial Paper at its maturity (including any dealer commissions); and (b) with respect to any Commercial Paper issued on a discount basis, the portion of the face amount of such Commercial Paper representing the discount incurred in respect thereof (including any dealer commissions).

“Interest Period” means, (a) with respect to any Portion of Loans funded by the issuance of Commercial Paper, (i) initially the period commencing on (and including) the date of the initial purchase or funding of such Portion of Loans and ending on (and including) the last day of the current calendar month, and (ii) thereafter, each period commencing on (and including) the first day after the last day of the immediately preceding Interest Period for such Portion of Loans and ending on (and including) the last day of the current calendar month; and (b) with respect to any Portion of Loans not funded by the issuance of Commercial Paper, (i) initially the period commencing on (and including) the date of the initial purchase or funding of such Portion of Loans and ending on (but excluding) the next following Settlement Date, and (ii) thereafter, each period commencing on (and including) a Settlement Date and ending on (but excluding) the next following Settlement Date; provided, that

(A) any Interest Period with respect to any Portion of Loans which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day; provided, however, if Yield in respect of such Interest Period is computed by reference to the LIBOR Rate, and such Interest Period would otherwise end on a day which is not a Business Day, and there is no subsequent Business Day in the same calendar month as such day, such Interest Period shall end on the next preceding Business Day;

(B) in the case of any Interest Period for any Portion of Loans which commences before the Maturity Date and would otherwise end on a date occurring after the Maturity Date, such Interest Period shall end on (but exclude) such Maturity Date and the duration of each Interest Period which commences on or after the Maturity Date shall be of such duration as shall be selected by the applicable Managing Agent; and

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(C) _____ any Interest Period in respect of which Yield is computed by reference to the CP Rate may be terminated at the election of applicable Managing Agent, in which case the Portion of Loans allocated to such terminated Interest Period shall be allocated to a new Interest Period commencing on (and including) the date of such termination and ending on (but excluding) the next following Settlement Date, and shall accrue Yield at the Alternate Rate.

“**Internal Revenue Code**” means the United States Internal Revenue Code of 1986, as amended.

“**Investment Period**” has the meaning provided in the Operating Agreement.

“**Investor**” means each of Managing Member, Pledgor, any other member of Borrower or Stockholder of Pledgor, as applicable.

“**Investor Letter**” is defined in Section 5.1(b) hereof.

“**Investor Documents**” means the Operating Agreement, the Stockholders Agreement, each Investor Letter, and any amendments or supplements thereto or modifications thereof, executed or delivered pursuant to the terms thereof and this Credit Agreement, and any additional documents delivered in connection with any such amendment, supplement or modification.

“**ISP**” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“**Issuer Documents**” means with respect to any Letter of Credit, the Request for Letter of Credit, the Application and Agreement for Letter of Credit, and any other document, agreement and instrument entered into by the Letter of Credit Issuer and a Borrower Party or in favor of the Letter of Credit Issuer and relating to any such Letter of Credit.

“**L/C Advance**” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing. All L/C Advances shall be denominated in Dollars.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Borrowing. All L/C Borrowings shall be denominated in Dollars.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

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“Lender” means each Conduit Lender and each Alternate Lender, as the context may require, and collectively, the “Lenders”.

“Lender Group” means each of: (a) the YC SUSTI Lender Group; and (b) any other “Lender Group” from time to time party hereto in accordance with the terms hereof as designated by the Managing Agent of such group.

“Lender Group Percentage” means, for any Lender Group, the percentage equivalent (carried out to five decimal places) of a fraction the numerator of which is the aggregate Commitments or Principal Obligation, as applicable, of all Lenders in such Lender Group and the denominator of which is the aggregate Commitments or Principal Obligation, as applicable, of all Lenders in all Lender Groups.

“Lender Party” is defined in Section 13.1(a) hereof.

“Lending Office” means, as to any Lender, the office or offices of such Lender (or an affiliate of such Lender) identified on Schedule 14.7, or such other office or offices as a Lender may from time to time notify Borrower and Administrative Agent.

“Letter of Credit” means a standby letter of credit issued by the Letter of Credit Issuer pursuant to Section 2.5 hereof in the form of Exhibit D-2 hereto (or such other form as approved by the Letter of Credit Issuer) in Dollars either as originally issued or as the same may, from time to time, be amended or otherwise modified or extended.

“Letter of Credit Expiration Date” means the day that is the earlier of: (a) fifteen (15) days prior to the Stated Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day); or (b) the date upon which Administrative Agent declares the Obligations due and payable after the occurrence of an Event of Default.

“Letter of Credit Fees” is defined in Section 2.10 hereof.

“Letter of Credit Issuer” means Bank of America, or any Lender or Affiliate of such Lender so designated, and which accepts such designation, by Administrative Agent and approved by Borrower.

“Letter of Credit Liability” means the aggregate amount of the undrawn face amount of all outstanding Letters of Credit plus the amount drawn under Letters of Credit for which the Letter of Credit Issuer and Lenders, or any one or more of them, have not yet received payment or reimbursement (in the form of a conversion of such liability to Loans, or otherwise) as required pursuant to Section 2.5. For all purposes of this Credit Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

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"Letter of Credit Sublimit" means, at any time, seventy-five percent (75%) of the Facility Amount at such time.

"LIBOR Rate" means, for any Interest Period for any Portion of Loans for any Lender Group, a rate per annum determined by Administrative Agent pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{London Interbank Offered Rate}}{1.00 - \text{Eurocurrency Reserve Percentage}}$$

where,

"London Interbank Offered Rate" means, for such Interest Period:

(a) the rate per annum (carried out to the fifth decimal place) equal to the rate that appears on the page of the Telerate Screen that displays an average British Bankers Association Interest Settlement Rate (such page currently being page number 3750) for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(b) in the event that the rate referenced in the preceding subsection (a) does not appear on such page or service or such page or service shall cease to be available, the rate per annum (carried to the fifth decimal place) equal to the rate determined by Administrative Agent to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period, or

(c) in the event the rates referenced in the preceding subsections (a) or (b) are not available, the rate per annum determined by Administrative Agent as the rate of interest at which deposits in Dollars (for delivery on the first day of such Interest Period) in same day funds in the approximate amount of the applicable Portion of Loans to be funded by reference to the LIBOR Rate and with a term equivalent to such Interest Period would be offered by its London Branch to major banks in the offshore interbank market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; and

"Eurocurrency Reserve Percentage" means, for any day during any Interest Period, the maximum effective reserve percentage (expressed as a decimal, carried out to the fifth decimal place) in effect on such date, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor), as such regulation may be amended from time to time or any successor regulation, for determining the maximum reserve requirement (including any supplemental, emergency, or marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities"). The LIBOR Rate shall be adjusted automatically on and as of the effective date of any change in the Eurocurrency Reserve Percentage.

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- “Lien” means any lien, mortgage, security interest, tax lien, pledge, encumbrance, or conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

- “Liquidity Commitment” means an amount equal to 102% of the Facility Amount in effect from time to time.

- “Loan” means an extension of credit by a Lender to a Borrower Party pursuant to the terms and conditions of this Credit Agreement, and “Loans” means the plural thereof. All Loans shall be denominated in Dollars.

- “Loan Amount” is defined in Section 2.3(g) hereof.

- “Loan Date” is defined in Section 2.3(a) hereof.

- “Loan Deficit” is defined in Section 2.3(h) hereof.

- “Loan Documents” means this Credit Agreement, the Notes (including any renewals, extensions, re-issuances and refundings thereof), each Application and Agreement for Letter of Credit, each of the Collateral Documents, the Guaranty of Capital, each Assignment and Assumption Agreement and such other agreements and documents, and any amendments or supplements thereto or modifications thereof, executed or delivered pursuant to the terms of this Credit Agreement or any of the other Loan Documents and any additional documents delivered in connection with any such amendment, supplement or modification.

- “Loan Notice” means any notice substantially in the form of Exhibit C, containing the information specified therein, executed and delivered by a Borrower Party.

- “Managing Agent” means, with respect to any Lender Group, the Person acting as Managing Agent therefor and designated as such on the signature pages hereto or in the assignment pursuant to which such Lender Group becomes a party hereto, and its successors and assigns.

- “Managing Member” is defined in the preamble to this Credit Agreement.

- “Margin Stock” shall have the meaning assigned to such term in Regulation U.

- “Material Adverse Effect” means any circumstances or events which could reasonably be expected to: (a) have any material adverse effect upon the validity, performance, or enforceability of any of the Loan Documents executed by Borrower, any Qualified Borrower, Managing Member, Guarantor or Pledgor; (b) materially impair the ability of Borrower, Managing Member, Guarantor or Pledgor, or any one of them, to fulfill their respective obligations under the Loan Documents; (c) cause an Event of Default; or (d) impair, impede, or jeopardize, in any material respect, the obligation or the liability of Borrower, Managing Member, Guarantor or Pledgor to fulfill its obligations under the Operating Agreement, Stockholders Agreement or Partnership Agreement, as applicable.

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"Maturity Date" means the earliest of: (a) the Stated Maturity Date; (b) the date upon which Administrative Agent declares the Obligations due and payable after the occurrence of an Event of Default; (c) the date upon which Borrower terminates the Commitments pursuant to **Section 3.6** hereof or otherwise and (d) fifteen (15) Business Days prior to the end of the Investment Period.

"Maximum Commitment" means an amount equal to \$300,000,000, as it may be reduced by Borrower pursuant to **Section 3.6**.

"Maximum Rate" means, on any day, the highest rate of interest (if any) permitted by applicable law on such day.

"Membership Interest" means, with respect to any member of Borrower, the equity interest of such member in Borrower.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Non-Defaulting Alternate Lender" is defined in **Section 2.3(h)** hereof.

"Non-Extension Notice Date" is defined in **Section 2.5(b)(iii)** hereof.

"Non-Rated Investor" means an Investor that is not a Rated Investor.

"Non-Rated Included Investor" means an Included Investor that is not a Rated Investor.

"Notes" means the promissory notes provided for in **Section 3.1** hereof, and all promissory notes delivered in substitution or exchange therefor, as such notes may be amended, restated, reissued, extended or modified, and the Qualified Borrower Notes; and "Note" means any one of the Notes.

"Obligations" means all present and future indebtedness, obligations, and liabilities of any Credit Party to any of the Secured Parties, and all renewals and extensions thereof (including, without limitation, Loans, Letters of Credit Liability, or both), or any part thereof, arising pursuant to this Credit Agreement (including, without limitation, the indemnity provisions hereof) or represented by the Notes and each Application and Agreement for Letter of Credit, and all interest accruing thereon, and Attorney Costs incurred in the enforcement or collection thereof, regardless of whether such indebtedness, obligations, and liabilities are direct, indirect, fixed, contingent, joint, several, or joint and several; together with all indebtedness, obligations, and liabilities of any Credit Party to any of the Secured Parties evidenced or arising pursuant to any of the other Loan Documents, and all renewals and extensions thereof, or any part thereof.

"Operating Agreement" means that certain Operating Agreement of Borrower, by and among Managing Member and Pledgor dated as of May 15, 2007, as supplemented by that certain pledge agreement, dated as of May 15, 2007, from Pledgor to Borrower, as each may be restated, modified, amended or supplemented from time to time, with the consent of Administrative Agent, the Letter of Credit Issuer, and the Lenders to the extent expressly required hereby.

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“Operating Company” means an “operating company” within the meaning of 29 C.F.R. §2510.3-101(c) of the regulations of the United States Department of Labor.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Credit Agreement or any other Loan Document.

“Participant” is defined in Section 14.12(f).

“Partnership Agreement” means that certain Agreement of Limited Partnership of Guarantor, dated as of May 13, 2003, as previously restated, modified, amended or supplemented from time to time, with the consent of the Administrative Agent, the Letter of Credit Issuer and the Lenders to the extent expressly required hereby.

“Pending Capital Call” means any Capital Call that has been made upon the Investors and that has not yet been funded by the applicable Investor, but with respect to which such Investor is not in default.

“Person” means an individual, sole proprietorship, joint venture, association, trust, estate, business trust, corporation, limited liability company, nonprofit corporation, partnership, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

“Plan” means any plan, including single employer and multi-employer plans to which Section 4021(a) of ERISA applies, or any retirement medical plan, each as established or maintained for employees of Borrower or any member of the Controlled Group to which Section 4021(a) of ERISA applies.

“Plan Asset Regulations” means 29 C.F.R §2510.3-101, et seq.

“Plan Assets” means “plan assets” within the meaning of the Plan Asset Regulations.

“Pledgor” is defined in the first paragraph hereof.

“Portion of Loan” is defined in Section 2.4 hereof.

“Potential Default” means any condition, act, or event which, with the giving of notice or lapse of time or both, would become an Event of Default.

“Principal Obligation” means the sum of: (a) the aggregate outstanding principal amount of the Loans; plus (b) the Letter of Credit Liability.

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“Pro Rata Share” means, with respect to each Lender, the percentage obtained from the fraction: (a) (i) the numerator of which is the Commitment of such Lender; and (ii) the denominator of which is the aggregate Commitments of all Lenders; or (b) in the event the Commitments are zero (0): (i) the numerator of which is the Principal Obligation outstanding with respect to such Lender; and (ii) the denominator of which is the total Principal Obligation outstanding.

“Program Support Agreement” means and includes, with respect to any Conduit Lender, any agreement entered into by any Program Support Provider providing for the issuance of one or more letters of credit for the account of such Conduit Lender (or any related commercial paper issuer that finances such Conduit Lender), the issuance of one or more surety bonds for which such Conduit Lender (or such related issuer) is obligated to reimburse the applicable Program Support Provider for any drawings thereunder, the sale by such Conduit Lender (or such related issuer) to any Program Support Provider of its interests hereunder (or portions thereof or participations therein) or the making of loans or other extensions of credit to such Conduit Lender (or such related issuer) in connection with such Conduit Lender’s (or such related issuer’s) commercial paper program, together with any letter of credit, surety bond or other instrument issued thereunder.

“Program Support Provider” means and includes, with respect to any Conduit Lender, any Person now or hereafter extending credit or having a commitment to extend credit to or for the account of, or to make purchases from, such Conduit Lender (or any related commercial paper issuer that finances such Conduit Lender) or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such Conduit Lender’s (or such related issuer’s) commercial paper program.

“Prohibited Event” is defined in Section 4.7.

“Property” means any real property, improvements thereon and any leasehold or similar interest in real property which is owned, directly or indirectly, by any Borrower Party, or secures any investment of any Borrower Party.

“Qualified Borrower” means any entity, which entity may be organized in the United States or outside of the United States, in which Borrower owns a direct or indirect ownership interest or through which Borrower will acquire an investment, the indebtedness of which entity can be guaranteed by Borrower pursuant to the terms of the Operating Agreement, and which entity has executed a Qualified Borrower Note and in respect of which entity Borrower has executed a Borrower Guaranty.

“Qualified Borrower Letter of Credit Note” means a letter of credit note executed and delivered by a Qualified Borrower, in the form of Exhibit B-3 attached hereto, the payment of which is guaranteed by Borrower pursuant to a Borrower Guaranty, as such note may be amended, restated, reissued, extended or modified.

“Qualified Borrower Notes” means the Qualified Borrower Promissory Notes and the Qualified Borrower Letter of Credit Notes, and “Qualified Borrower Note” means any one of them, as such note may be amended, restated, reissued, extended or modified.

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- “Qualified Borrower Promissory Note” means a promissory note executed and delivered by a Qualified Borrower, in the form of **Exhibit B-2** attached hereto, the payment of which is guaranteed by Borrower pursuant to a Borrower Guaranty.

- “Rate Type” means the LIBOR Rate, the Base Rate or the CP Rate.

- “Rated Investor” means any Investor that has a Rating (or that has a Credit Provider, Sponsor, or Responsible Party that has a Rating).

- “Rating” means, for any Person, its senior unsecured debt rating (or equivalent thereof, such as, but not limited to, a corporate credit rating, issuer rating/insurance financial strength rating (for an insurance company), general obligation rating (for a governmental entity), or revenue bond rating (for an educational institution)) from either of S&P or Moody’s.

- “Register” is defined in **Section 14.12(e)** hereof.

- “Regulation T,” “Regulation U,” and “Regulation X” means Regulation T, U, or X, as the case may be, of the Board of Governors of the Federal Reserve System, from time to time in effect, and shall include any successor or other regulation relating to reserve requirements or margin requirements, as the case may be, applicable to member banks of the Federal Reserve System.

- “Related Commercial Paper” means, with respect to any Conduit Lender, at any time of determination, Commercial Paper of such Conduit Lender (or its related commercial paper issuer) the proceeds of which are then allocated by the Administrator of such Conduit Lender (or its related commercial paper issuer) as the source of funding the acquisition or maintenance of its Principal Obligation hereunder.

- “Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration of Hazardous Materials into the environment, or into or out of any Property, including the movement of any Hazardous Material through or in the air, soil, surface water, groundwater, of any Property.

- “Request for Letter of Credit” means a request for the issuance of a Letter of Credit substantially in the form of **Exhibit D-1** hereto.

- “Required Lenders” means: (a) Alternate Lenders (other than Defaulting Alternate Lenders) holding an aggregate of more than fifty (50%) of the aggregate Commitments of all Alternate Lenders (other than Defaulting Alternate Lenders); or (b) at any time that the Available Loan Amount is zero (0), Alternate Lenders (other than Defaulting Alternate Lenders) owed an aggregate of more than fifty (50%) of the Principal Obligation outstanding and payable to all Lenders (other than Defaulting Alternate Lenders) at such time (including, for purposes of such calculation, each Alternate Lender’s Alternate Lender Pro Rata Share of that portion of the Principal Obligations outstanding and payable to the Conduit Lender in its Lender Gro up).

- “Responsible Officer” means: (a) in the case of a corporation, its president, senior vice president, any vice president or treasurer, and, in any case where two Responsible Officers are acting on behalf of such corporation, the second such Responsible Officer may be a secretary or assistant secretary; (b) in the case of a limited partnership, the Responsible Officer of the general partner, acting on behalf of such general partner in its capacity as general partner; and (c) in the case of a limited liability company, the chief executive officer, president, general counsel, chief financial officer, or senior vice president of the managing member, acting on behalf of such managing member in its capacity as managing member.

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- “Responsible Party” means, for any Governmental Plan Investor: (a) if the state under which the Governmental Plan Investor operates is obligated to fund the Governmental Plan Investor and is liable to fund any shortfalls, the state; and (b) otherwise, the Governmental Plan Investor itself.

- “S&P” means Standard & Poor’s Rating Services, a division of the McGraw & Hill Companies, Inc. and any successor thereto.

- “Secured Parties” means, collectively, the Lenders, Agents, Arranger, Letter of Credit Issuer, Program Support Providers, Conduit Collateral Agents and Indemnitees, and “Secured Party” means any of the foregoing.

- “Settlement Date” means the 12th day of each month (or, if such day is not a Business Day, on the next succeeding Business Day); provided that after the Maturity Date, any Business Day selected from time to time by Administrative Agent shall be a Settlement Date.

- “Solvent” means, with respect to any Person as of a particular date, that on such date: (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business; (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course; (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage; (d) the fair value of the assets of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person; and (e) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured.

- “Sponsor” of an ERISA Investor means a sponsor as that term is understood under ERISA, specifically, the entity that established the plan and is responsible for the maintenance of the plan and, in the case of a plan that has a sponsor and participating employers, the entity that has the ability to amend or terminate the plan.

- “Stockholder” means a holder of shares of the equity interests of Pledgor.

- “Stockholders Agreement” means the Stockholders Agreement of Pledgor, dated as of May 15, 2007, as the same may be amended, restated, supplemented or otherwise modified from time to time with the consent of Administrative Agent, the Letter of Credit Issuer, and the Lenders to the extent expressly required hereby.

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- "Stockholders Interest" means, with respect to any Stockholder, its equity interest in Pledgor.

- "Stated Maturity Date" means October 10, 2011.

- "Subsequent Investor" is defined in Section 11.5(c) hereof.

- "Swap Contract" means: (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement; and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, including any such obligations or liabilities under any such master agreement.

- "Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts: (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s); and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

- "Synthetic Lease Obligation" means the monetary obligation of a Person under: (a) a so-called synthetic, off-balance sheet or tax retention lease; or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

- "Tax Indemnified Parties" means, collectively, the Letter of Credit Issuer, the Lenders, Agents, the Program Support Providers and Conduit Collateral Agents, and "Tax Indemnified Party" means any of the foregoing.

- "Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

- "UCC" is defined in Section 8.1.

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“Unfunded Capital Commitment” means, with respect to any Investor at any time: (a) such Investor’s Capital Commitment at such time, excluding (1) any Capital Commitment subject to a Pending Capital Call and (2) returns of Capital Contributions, unless a confirmation certificate in form and substance satisfactory to the Administrative Agent has been received by the Administrative Agent from a Credit Party, reporting the returned Capital Contributions and providing the amounts of the remaining unfunded Capital Commitments of the Investors; minus (b) such Investor’s aggregate Capital Contributions made prior to such time.

“Unreimbursed Amount” is defined in Section 2.5(c)(i) hereof.

“Used Fee” has the meaning provided in the Fee Letter.

“YC SUSI” means YC SUSI Trust, a Delaware Statutory Trust.

“YC SUSI Alternate Lenders” means the Alternate Lenders in the YC SUSI Lender Group, as set forth on the signature pages hereto or the applicable Assignment and Assumption Agreement.

“YC SUSI Lender Group” means YC SUSI, any permitted Conduit Assignee thereof, the YC SUSI Alternate Lenders from time to time party hereto and Bank of America, as Managing Agent.

“Yield” means, the sum of:

(a) _____ for any Portion of Loans for any Lender Group during any Interest Period to the extent a Conduit Lender funds such Portion of Loans through the issuance of Commercial Paper (directly or indirectly through a related commercial paper issuer);

$$\frac{\text{CPR} \times \text{L} \times \text{D}}{360}$$

(b) _____ for any Portion of Loans funded by the Alternate Lenders and for any Portion of Loans for any Lender Group to the extent the related Conduit Lender does not fund such Portion of Loans through the issuance of Commercial Paper (directly or indirectly through a related commercial paper issuer);

$$\frac{\text{AR/BR} \times \text{L} \times \text{D}}{360}$$

where:

AR/BR = the Alternate Rate or Base Rate, as applicable, for such Portion of Loans for such Interest Period;

CPR = the CP Rate for such Portion of Loans for such Interest Period (as determined by each applicable Administrator on or prior to the fifth Business Day of the calendar month next following such Interest Period);

D = the actual number of days during such Interest Period, and

L = the amount of such Portion of Loans during such Interest Period;

provided that no provision of this Credit Agreement shall require the payment or permit the collection of Yield in excess of the Maximum Rate; and provided, further, that at all times during the existence of an Event of Default or after the Maturity Date, Yield for all Portions of Loans shall accrue at the Default Rate. Without limiting the obligation of any Borrower Party to pay interest pursuant to Section 3.3, Yield shall include interest pursuant to Section 3.3 on the Principal Obligation and all other Obligations not paid or deposited when due under this Credit Agreement or under the Notes.

1.2. Other Definitional Provisions.

(a) All terms defined in this Credit Agreement shall have the above-defined meanings when used in the Notes or any other Loan Documents or any certificate, report or other document made or delivered pursuant to this Credit Agreement, unless otherwise defined in such other document.

(b) Defined terms used in the singular shall import the plural and vice versa.

(c) The words "hereof," "herein," "hereunder," and similar terms when used in this Credit Agreement shall refer to this Credit Agreement as a whole and not to any particular provisions of this Credit Agreement.

(d) The term "including" is by way of example and not limitation. The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(e) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(f) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Credit Agreement or any other Loan Document.

(g) Unless otherwise specified in the Loan Documents, time references are to time in New York, New York.

1.3. Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the documents issued in connection therewith, but only to the extent such maximum face amount is in effect at such time.

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2. LOANS AND LETTERS OF CREDIT

2.1. The Commitment.

(a) **Committed Amount.** Subject to the terms and conditions herein set forth, including **Sections 8.1, 8.2** (if applicable) and **8.3**, Lenders having Commitments agree severally, during the Availability Period: (i) to extend to Borrower or any Qualified Borrower a revolving line of credit; and (ii) to participate in Letters of Credit issued by the Letter of Credit Issuer for the account of Borrower or any Qualified Borrower.

(b) **Limitation on Borrowings.** Notwithstanding anything to the contrary herein contained, Lenders shall not be required to advance any Borrowing or cause the issuance of any Letter of Credit hereunder if:

(i) after giving effect to such Borrowing or issuance of such Letter of Credit: (A) the Principal Obligation would exceed the Available Loan Amount; (B) the Letter of Credit Liability would exceed the Letter of Credit Sublimit; or (C) any Implicit Borrowing Base Deficit would exist; or

(ii) an Event of Default or a Potential Default exists.

(c) **Exclusion Events.** If any of the following events (each, an "Exclusion Event") shall occur with respect to any Designated Investor or any Included Investor or, if applicable, the Sponsor, Responsible Party, or Credit Provider of such Investor (such Investor hereinafter referred to as a "Defaulting Investor"):

(i) it shall: (A) apply for or consent to the appointment of a receiver, trustee, custodian, intervenor, or liquidator of itself or of all or a substantial part of its assets; (B) file a voluntary petition as debtor in bankruptcy or admit in writing that it is unable to pay its debts as they become due; (C) make a general assignment for the benefit of creditors; (D) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any Debtor Relief Laws; (E) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization, or insolvency proceeding; or (F) take any personal, partnership, limited liability company, corporate or trust action, as applicable, for the purpose of effecting any of the foregoing;

(ii) an order, order for relief, judgment, or decree shall be entered by any court of competent jurisdiction or other competent authority approving a petition seeking such Person's reorganization or appointing a receiver, custodian, trustee, intervenor, or liquidator of such Person or of all or substantially all of its assets, and such order, judgment, or decree shall continue unstayed and in effect for a period of sixty (60) days;

(iii) any final judgment(s) for the payment of money which in the aggregate exceed fifteen percent (15%) of its net worth shall be rendered against such Person, and such judgment or judgments shall not be satisfied or discharged at least ten (10) days prior to the date on which any of its assets could be lawfully sold to satisfy such judgment;

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(iv) such Investor shall repudiate, challenge, or declare unenforceable its obligation to make contributions to the capital of the applicable Credit Party pursuant to its Capital Commitment or a Call Notice; shall otherwise disaffirm any material provision of the Operating Agreement, the Stockholders Agreement or the Partnership Agreement, as applicable; or shall otherwise disaffirm any material provision of its Investor Letter; or a court of competent jurisdiction finds such Capital Commitment or the obligations under its Investor Letter unenforceable;

(v) such Investor shall fail to make a contribution to the capital of the applicable Credit Party when required pursuant to a Call Notice, subject to any applicable notice or cure periods, or shall otherwise be in material default under the Operating Agreement, the Stockholders Agreement, its Investor Letter or any Loan Document, following any applicable notice requirements or cure periods;

(vi) any representation or warranty made under its Investor Letter or any Loan Documents executed by such Person shall prove to be untrue or inaccurate in any material respect, as of the date on which such representation or warranty is made, and such Person shall fail to cure the adverse effect of the failure of such representation or warranty within thirty (30) days after written notice thereof is delivered by Administrative Agent to Borrower and to such Person;

(vii) such Investor shall transfer its Equity Interest in Borrower or Pledgor, as applicable, in violation of this Credit Agreement;

(viii) default shall occur in the performance by it of any of the covenants or agreements contained in its Investor Letter, the Operating Agreement, the Stockholders Agreement or the Partnership Agreement (except, in each case, as otherwise specifically addressed in this Section 2.1(c), in which case no grace period beyond any provided for herein shall apply) and such default shall continue uncured to the satisfaction of Administrative Agent for a period of thirty (30) days after written notice thereof has been given by Administrative Agent to Borrower and to such Investor;

(ix) in the case of each Included Investor that is a Rated Investor, it shall fail to maintain the Applicable Requirement for such Investor required in the definition of Applicable Requirement in Section 1 hereof;

(x) in the case of any Non-Rated Included Investor, such Investor shall fail to maintain a net worth (determined in accordance with Generally Accepted Accounting Principles), measured at the end of each fiscal year of such Person, of at least seventy-five percent (75%) of the initial net worth of such Investor, Sponsor, Responsible Party, or Credit Provider measured at the end of the fiscal year preceding the designation of such Investor as an Included Investor hereunder; or

(xi) in the case of each Designated Investor and Non-Rated Included Investor, following the occurrence of an event which materially adversely affects the ability of such Investor to fulfill its obligations under the Operating Agreement or the Stockholders Agreement, as applicable, and the Required Lenders elect to declare the occurrence of an Exclusion Event with respect to such Investor,

then as of the Effective Removal Date for such Exclusion Event, such Investor shall no longer be a Designated Investor or an Included Investor, as applicable, and Administrative Agent and the Borrower Parties shall treat such Defaulting Investor's Capital Commitment and Unfunded Capital Commitment as zero (0) for purposes of: (A) calculating the aggregate Unfunded Capital Commitment of the Designated Investors or Included Investors, as applicable, with respect to this Credit Agreement; (B) calculating the Available Loan Amount and Borrowing Base; and (C) calculating whether a mandatory prepayment is required to be made by Borrower pursuant to **Section 2.1(d)**.

(d) Mandatory Prepayment.

(i) **Excess Loans Outstanding.** If, on any day, the Principal Obligation exceeds the Available Loan Amount or if an Implicit Borrowing Base Deficit exists (including, without limitation, as a result of an Exclusion Event), then the Credit Parties shall pay on demand such excess or amount of Implicit Borrowing Base Deficit, as applicable, to Administrative Agent, for the benefit of Lenders, in immediately available funds (except to the extent any such excess is otherwise addressed by **Section 2.1(d)(ii)**): (A) promptly on demand (but in no event later than one (1) Business Day), to the extent such funds are available in the Collateral Account or another account maintained by Borrower; and (B) within fifteen (15) Business Days of demand to the extent that it is necessary for a Credit Party to issue Call Notices to fund such required payment (and the Credit Parties shall issue such Call Notices during such time, and shall pay such excess or amount of Implicit Borrowing Base Deficit, as applicable, immediately after the Capital Contributions relating to such Call Notice are received); provided that the amount of such excess shall be paid to Administrative Agent concurrently with the creation of such excess or deficit if it results from any willful act of any Credit Party. The Credit Parties hereby agree that Administrative Agent may withdraw from the Collateral Account any Capital Contributions deposited therein in respect of such Call Notices until the payment obligations required by this **Section 2.1(d)(i)** have been satisfied in full.

(ii) **Excess Letters of Credit Outstanding.** If any excess or amount of Implicit Borrowing Base Deficit, as applicable, calculated pursuant to **Section 2.1(d)(i)** is attributable to undrawn Letters of Credit, the Credit Parties shall Cash Collateralize the Letter of Credit Liability in the amount of such excess or Implicit Borrowing Base Deficit, as applicable, when required pursuant to the terms of **Section 2.1(d)(i)**, as security for such portion of the Obligations. Unless otherwise required by law, upon: (i) a change in circumstances such that the Principal Obligation no longer exceeds the Available Loan Amount; or (ii) the full and final payment of the Obligations, Administrative Agent shall return to the Credit Parties (or the applicable Qualified Borrower) any amounts remaining in said cash collateral account.

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(e) **Loans in Dollars.** Each Loan made pursuant to this Credit Agreement shall be both funded and payable in Dollars.

2.2. Revolving Credit Commitment. Subject to the terms and conditions herein set forth, each Alternate Lender severally agrees, on any Business Day during the Availability Period, to make Loans to Borrower or any Qualified Borrower at any time and from time to time in an aggregate principal amount up to such Lender's Commitment at any such time; *provided, however, that, after making such Loans: (a) such Lender's Pro Rata Share of the Principal Obligation would not exceed such Lender's Commitment as of such date; and (b) the Principal Obligation of such Lender's Lender Group would not exceed the aggregate Commitment of the Alternate Lenders in such Lender Group.* Subject to the foregoing limitation, the conditions set forth in **Section 8** and the other terms and conditions hereof, Borrower or any Qualified Borrower may borrow, repay without penalty or premium, and re-borrow hereunder, during the Availability Period. Each Borrowing pursuant to this **Section 2.2** shall be funded ratably by each Lender Group in accordance with its Lender Group Percentage. No Lender shall be obligated to fund any Loan if the interest rate applicable thereto under **Section 2.11** hereof would exceed the Maximum Rate in effect with respect to such Loan.

2.3. Borrowing Procedures.

(a) **Loan Notice.** The applicable Borrower Party may request a Loan hereunder by delivering to Administrative Agent, by electronic mail, facsimile or by telephone notice followed by the written confirmation via electronic mail or other evidence of writing, a Loan Notice, appropriately completed and signed by a Responsible Officer of such Borrower Party (and each Loan Notice submitted by a Qualified Borrower must be countersigned by a Responsible Officer of Borrower), no later than 11:00 a.m. at least two (2) Business Days prior to the proposed date of any Loan (including the initial Loan). Each such Loan Notice shall specify: (i) the desired amount of such Loan, which shall be (a) at least \$500,000 at all times when there is only one Alternate Lender party hereto, and (b) at least \$1,000,000 at all times when there are two or more Alternate Lenders party hereto; (ii) the desired date of such Loan (the "**Loan Date**"), which shall be a Business Day; and (iii) such other information as is required by the form of such Loan Notice. Each Loan Notice submitted by such Borrower Party shall be deemed to constitute a representation and warranty by the applicable Borrower Party that: (i) the representations and warranties set forth in **Section 9** hereof are true and correct in all material respects on and as of the date of such Loan Notice, with the same force and effect as if made on and as of such date (except to the extent of changes in facts or circumstances that have been disclosed to the Administrative Agent and do not constitute an Event of Default or a Potential Default under this Credit Agreement or any other Loan Document); (ii) no Event of Default or, to its knowledge, Potential Default exists and is continuing at such date; (iii) the conditions specified in **Sections 8.1, 8.2** (if applicable) and **8.3**, have been or will be satisfied as of the Loan Date; and (iv) after giving effect to such Borrowing, the Principal Obligation will not exceed the Available Loan Amount as of such date. No Loan Notice shall be valid hereunder for any purpose unless it shall have been accompanied or preceded by the information and other documents required to be delivered in accordance with this **Section 2.3**. ☐ 0: All Loans hereunder shall be made by each Lender Group on a *pro rata* basis based on the Lender Group Percentage of each Lender Group.

(b) **Further Information.** Each Loan Notice shall be accompanied or preceded by: (A) a Borrowing Base Certificate dated the date of such Loan Notice; and (B) such documents as are required to satisfy any applicable conditions precedent as provided in **Section 8.2**.

(c) **Notification of Conduit Lender.** Administrative Agent will promptly notify each Managing Agent of Administrative Agent's receipt of any Loan Notice, and each Managing Agent will promptly notify each of the Lenders in its Lender Group. If the Loan Notice is received prior to the Conduit Investment Termination Date for a Conduit Lender, such Conduit Lender (or its Administrator on its behalf) shall instruct Administrative Agent to accept or reject such Loan Notice by notice given to Administrative Agent and the applicable Borrower Party by telephone or facsimile by no later than the close of its business on the later of the Business Day of its receipt of any such Loan Notice or the Business Day prior to the applicable Loan Date.

(d) **Loan Notice Irrevocable.** Each Loan Notice shall be irrevocable and binding on such Borrower and any applicable Qualified Borrower, and Borrower (and, if applicable, the Qualified Borrower) shall indemnify Lenders against any cost, loss, or expense incurred by Lenders, or any of them, as a result of any failure to fulfill, on or before the date specified in the Loan Notice, the conditions to such Borrowing set forth herein, including, without limitation, any cost, loss, or expense incurred by reason of the liquidation or redeployment of the deposits or other funds acquired by Lenders, or any of them, to fund the Borrowing to be made by Lenders as a part of such Borrowing when such Borrowing, as a result of such failure, is not made on such date (including, in the case of a Conduit Lender, pursuant to a Program Support Agreement), except with respect to a Borrowing for a Loan at the Base Rate, as to which Borrower shall not be required to indemnify Lenders against such costs, losses or expenses incurred by Lenders as a result of such liquidation or redeployment of funds. A certificate of Administrative Agent setting forth the amount of any such cost, loss or expense, and the basis for the determination thereof and the calculation thereof, shall be delivered to Borrower and the applicable Qualified Borrower and shall, in the absence of a manifest error, be conclusive and binding.

(e) **Alternate Lender's Commitment.** At no time will any Conduit Lender have any obligation to fund a Loan or participate in any Letter of Credit. At all times on and after the Conduit Investment Termination Date for a Conduit Lender or if a Conduit Lender has failed for whatever reason to fund its portion of a Borrowing in full, all Loans and participations in Letters of Credit shall be made by the Alternate Lenders of the related Lender Group. At any time when a Conduit Lender has rejected a request for Loan (it being understood that if a Conduit Lender does not fund any Loan in relation to which all of the conditions precedent set forth in **Section 8.2** (if applicable) and **Section 8.3** have been satisfied on the date set forth in the applicable Loan Notice, such Conduit Lender shall be deemed to have rejected the request for Loan), the related Managing Agent shall so notify the related Alternate Lenders and such Alternate Lenders shall make such Loan, on a *pro rata* basis, in accordance with their respective Alternate Lender Pro Rata Shares. Notwithstanding anything contained in this **Section 2.3(e)** or elsewhere in this Credit Agreement to the contrary, no Alternate Lender shall be obligated to provide Administrative Agent or any Borrower Party with funds in connection with a Loan in an amount that would result in the sum of the portion of the Loans then funded by it plus such Alternate Lender's Alternate Lender Pro Rata Share of the applicable Lender Group Percentage of the Letter of Credit Liability exceeding its Commitment then in effect (minus the unrecovered principal amount of such Alternate Lender's investments in the Principal Obligation pursuant to the Program Support Agreement to which it is a party). The obligation of each Alternate Lender to remit its Alternate Lender Pro Rata Share of any such Loan requested of its Lender Group shall be several from that of each other Alternate Lender, and the failure of any Alternate Lender to so make such amount available to Administrative Agent shall not relieve any other Alternate Lender of its obligation hereunder.

(f) Payment of Loan. On any Loan Date, each Conduit Lender or each Alternate Lender, as the case may be, shall remit its share of the aggregate amount of such Loan to Administrative Agent, by wire transfer of immediately available funds to Administrative Agent for the account of the appropriate Borrower Party no later than 12:00 noon. Administrative Agent shall in turn forward the same in immediately available funds to the appropriate Borrower Party's account at Administrative Agent specified in the Loan Notice, or, if requested by the applicable Borrower Party in the Loan Notice, wire transfer such funds as requested.

(g) Managing Agents May Advance Funds. Unless a Managing Agent shall have received notice from any Lender in its Lender Group that such Person will not make its share of any Loan available on the applicable Loan Date therefor (for purposes of this paragraph only, the "Loan Amount"), such Managing Agent may (but shall have no obligation to) make any such Lender's share of any such Loan available to the applicable Borrower Party in anticipation of the receipt by such Managing Agent of such Loan Amount from the applicable Lender. To the extent any such Lender fails to remit such Loan Amount to such Managing Agent after any such advance by such Managing Agent on such Loan Date, such Lender shall be required to pay such Loan Amount for its own account, together with interest thereon at a per annum rate equal to the Federal Funds Rate to such Managing Agent upon its demand therefor. If such Lender does not pay such Loan Amount together with such interest, such Managing Agent will promptly notify the Borrower, and Borrower shall immediately pay such Loan Amount to Administrative Agent (for distribution to the applicable Managing Agent), together with interest thereon from the applicable Loan Date through the date such Loan Amount is repaid to Administrative Agent promptly on demand, to the extent such funds are available in the Collateral Account; and otherwise, to the extent that it is necessary for Borrower to issue Call Notices to fund such required payment, within fifteen (15) Business Days after Administrative Agent's demand (but, in any event, the Credit Parties shall issue such Call Notices and shall make such payment promptly after the related Capital Contributions are received); or (ii) from any Qualified Borrower (as applicable), promptly on demand; in each case, together with interest at a rate per annum equal to the rate applicable to the requested Borrowing for the period commencing on the borrowing date and ending on (but excluding) the date Administrative Agent recovers the amount from Borrower. Until such amount shall be repaid, such amount shall be deemed to be a Loan funded by the applicable Managing Agent and such Managing Agent shall be deemed to be the owner of such Loan. Upon the payment of such amount to Administrative Agent by such Lender, such payment shall constitute such Person's payment of its share of the applicable Loan.

(h) **Defaulting Alternate Lender.** If, by 2:00 p.m. on any Loan Date or Assignment Date, as applicable, whether or not any Managing Agent has advanced the amount of the applicable Loan or paid the applicable Assignment Amount, one or more Alternate Lenders in a Lender Group (each, a “**Defaulting Alternate Lender**”, and each Alternate Lender other than any Defaulting Alternate Lender being referred to as a “**Non-Defaulting Alternate Lender**”) fails to make its share of any Loan available to Administrative Agent pursuant to **Section 2.3(f)** or any Assignment Amount payable by it pursuant to **Section 7.1** (the aggregate amount not so made available to Administrative Agent being herein called in either case the “**Loan Deficit**”), then such Alternate Lender’s Managing Agent shall, by no later than 2:30 p.m. on the applicable Loan Date or the applicable Assignment Date, as the case may be, instruct each Non-Defaulting Alternate Lender in such Lender Group to pay, by no later than 3:00 p.m. on such date, in immediately available funds, to the account designated by Administrative Agent, an amount equal to the lesser of: (i) such Non-Defaulting Alternate Lender’s proportionate share (based upon the relative Commitments of the Non-Defaulting Alternate Lenders) of the Loan Deficit with respect to such Lender Group; and (ii) its unused Commitment. A Defaulting Alternate Lender shall forthwith, upon demand, pay to its related Managing Agent for the ratable benefit of the Non-Defaulting Alternate Lenders all amounts paid by each Non-Defaulting Alternate Lender on behalf of such Defaulting Alternate Lender, together with interest thereon, for each day from the date a payment was made by a Non-Defaulting Alternate Lender until the date such Non-Defaulting Alternate Lender has been paid such amounts in full, at a rate *per annum* equal to the Default Rate. In addition, if, after giving effect to the provisions of the immediately preceding sentence, any Loan Deficit with respect to any Assignment Amount continues to exist, each such Defaulting Alternate Lender shall pay interest to the related Managing Agent, for the account of the related Conduit Lender, on such Defaulting Alternate Lender’s portion of such remaining Loan Deficit, at a rate *per annum*, equal to the Default Rate, for each day from the applicable Assignment Date until the date such Defaulting Alternate Lender shall pay its portion of such remaining Loan Deficit in full to such Conduit Lender.

(i) **Intent to Fund.** Subject to **Section 2.4**, each Conduit Lender confirms with Borrower that it intends to fund all Loans hereunder through the issuance of its Commercial Paper to the extent reasonably available prior to the occurrence of an Event of Default or Potential Default.

2.4. Determination of Yield and Interest Periods. For purposes of determining the Interest Period applicable to each Loan and of calculating Yield with respect thereto, each applicable Managing Agent shall allocate the Loans of the Lenders in its Lender Group to tranches (each a "Portion of Loan"). Any Portion of Loan funded by a Conduit Lender may from time to time be funded through the issuance of Commercial Paper or pursuant to a Program Support Agreement, in the sole discretion of such Conduit Lender. Any Portion of Loan funded by the Alternate Lenders or the applicable Program Support Providers shall accrue Yield at the Alternate Rate or Base Rate, as selected by the Borrower. Any Portion of Loan funded by the Conduit Lenders through the issuance of Commercial Paper shall accrue Yield at the applicable CP Rate. At any time, each Portion of Loan shall have only one Interest Period and one Rate Type. The aggregate Portions of Loans of each Lender Group at all times shall be equal to the Loans of such Lender Group, and at any time when the Loans are not divided into two or more portions, the term "Portion of Loans" shall mean 100% of the Loans of such Lender Group.

2.5. Letters of Credit.

(a) Letter of Credit Commitment.

(i) Subject to the terms and conditions hereof, on any Business Day during the Availability Period: (A) the Letter of Credit Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.5: (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars for the account of a Borrower Party, in aggregate face amounts that shall be not less than \$500,000 (provided, however, three (3) Letters of Credit for amounts less than \$500,000 may be issued each calendar year), as a Borrower Party may request, and to amend or extend Letters of Credit previously issued by it; and (2) to honor drawings under the Letters of Credit; and (B) the Alternate Lenders severally agree to participate in Letters of Credit issued for the account of a Borrower Party and any drawings thereunder; provided that after giving effect to an issuance of a Letter of Credit: (1) the Principal Obligation will not exceed the Available Loan Amount on such date; (2) no Implicit Borrowing Base Deficit shall exist and (3) the Letter of Credit Liability will not exceed the Letter of Credit Sublimit. Within the foregoing limits, and subject to the terms and conditions hereof, a Borrower Party's ability to obtain Letters of Credit shall be fully revolving, and accordingly a Borrower Party may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. The Letter of Credit Issuer shall have the right to approve the form of Letter of Credit requested.

(ii) The Letter of Credit Issuer shall not issue or extend any Letter of Credit, if: (A) subject to Section 2.5(b)(iii), the expiration date of such Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Letter of Credit Issuer has approved such expiry date in its sole discretion; or (B) the expiration date of such Letter of Credit would occur after the date fifteen (15) Business Days prior to the Stated Maturity Date, unless the Borrower or applicable Qualified Borrower shall Cash Collateralize the then-outstanding Letter of Credit Liability in respect of such Letter of Credit fifteen (15) Business Days prior to the then-applicable Stated Maturity Date, and such Letter of Credit has an expiration date that is not later than twelve (12) months following the Stated Maturity Date.

(iii) The Letter of Credit Issuer shall be under no obligation to issue any Letter of Credit if: (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Letter of Credit Issuer from issuing such Letter of Credit, or any Law applicable to the Letter of Credit Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Letter of Credit Issuer shall prohibit, or request that the Letter of Credit Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Letter of Credit Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Letter of Credit Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Letter of Credit Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Letter of Credit Issuer in good faith deems material to it; (B) the issuance of such Letter of Credit would violate any Laws or one or more policies of the Letter of Credit Issuer; (C) such Letter of Credit is to be denominated in a currency other than Dollars; (D) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or (E) a default of any Lender's obligations to fund hereunder exists or any Lender is at such time a Defaulting Alternate Lender hereunder, unless the Letter of Credit Issuer has entered into satisfactory arrangements with the Borrower Parties or such Lender to eliminate the Letter of Credit Issuer's risk with respect to such Lender.

(iv) The Letter of Credit Issuer shall be under no obligation to amend any Letter of Credit if: (A) the Letter of Credit Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof; or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of a Borrower Party delivered to the Letter of Credit Issuer (with a copy to Administrative Agent) in the form of a Request for Letter of Credit and an Application and Agreement for Letter of Credit, together with a Borrowing Base Certificate, each appropriately completed and signed by a Responsible Officer of such Borrower Party. Such Request for Letter of Credit must be received by the Letter of Credit Issuer and Administrative Agent not later than 11:00 a.m. at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be, of any Letter of Credit (or such later date and time as Administrative Agent and the Letter of Credit Issuer may agree in a particular instance in their sole discretion). In the case of a request for an initial issuance of a Letter of Credit, such Request for Letter of Credit shall specify in form and detail satisfactory to the Letter of Credit Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Letter of Credit Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, the related Request for Letter of Credit shall specify in form and detail satisfactory to the Letter of Credit Issuer: (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the Letter of Credit Issuer may reasonably require. Additionally, the applicable Borrower Party shall furnish to the Letter of Credit Issuer and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the Letter of Credit Issuer or Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Request for Letter of Credit, the Letter of Credit Issuer will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has received a copy of such Request for Letter of Credit from a Borrower Party and, if not, the Letter of Credit Issuer will provide Administrative Agent with a copy thereof. The Letter of Credit Issuer shall also promptly notify each Managing Agent (which in turn shall promptly notify each Lender in its Lender Group) of the Request for Letter of Credit and the terms thereof. Unless the Letter of Credit Issuer has received written notice from any Lender, Administrative Agent or any Borrower Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in **Section 8** shall not then be satisfied, then, subject to the terms and conditions hereof, the Letter of Credit Issuer shall, on the requested date, issue a Letter of Credit for the account of such Borrower Party or enter into the applicable amendment, as the case may be, in each case in accordance with the Letter of Credit Issuer's usual and customary business practices.

(iii) If a Borrower Party so requests in any applicable Request for Letter of Credit, the Letter of Credit Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); provided that any such Auto-Extension Letter of Credit must permit the Letter of Credit Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a Business Day (the **R 20:Non-Extension Notice Date**) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Letter of Credit Issuer, a Borrower Party shall not be required to make a specific request to the Letter of Credit Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Letter of Credit Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the Letter of Credit Issuer shall not permit any such extension if: (A) the Letter of Credit Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of **clause (ii) or (iii) of Section 2.5(a)** or otherwise); or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date: (1) from Administrative Agent that the Required Lenders have elected not to permit such extension; or (2) from Administrative Agent, any Lender or any Borrower Party that one or more of the applicable conditions specified in **Section 8.2** and, if applicable, **Section 8.3**, is not then satisfied, and in each such case directing the Letter of Credit Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Letter of Credit Issuer will also deliver to the applicable Borrower Party and Administrative Agent and each Managing Agent a true and complete copy of such Letter of Credit or amendment.

(v) Whenever the Letter of Credit Issuer issues a Letter of Credit, each Alternate Lender shall, automatically and without further action of any kind upon the effective date of issuance of such Letter of Credit, have irrevocably: (i) agreed to acquire a participation interest therein in an amount equal to its Alternate Lender Pro Rata Share of its Lender Group Percentage of the Letter of Credit Liability attributable to such Letter of Credit and (ii) committed to make a Loan hereunder equal to its Alternate Lender Pro Rata Share of its Lender Group Percentage of the applicable reimbursement amount in the event that such Letter of Credit is subsequently drawn and such drawn amount shall not have been reimbursed by a Borrower Party up on such draw or a Loan with respect to such unreimbursed draw is not made by such Alternate Lender's related Conduit Lender. In the event that any Letter of Credit expires or is surrendered to the Letter of Credit Issuer without being drawn (in whole or in part) then, in such event, the foregoing commitment to make Loans with respect to draws under such Letter of Credit shall expire with respect to such Letter of Credit and the Letter of Credit Liability shall automatically reduce by the amount of the Letter of Credit which is no longer outstanding. Each Lender shall share in all rights and obligations resulting therefrom, in accordance with such participation interest, including, without limitation: (i) the right to receive from Administrative Agent its share of any reimbursement of the amount of each draft drawn under each Letter of Credit, including any interest payable with respect thereto; (ii) the right to receive from the Letter of Credit Issuer its share of the Letter of Credit Fees pursuant to **Section 2.10** hereof; (iii) the right to receive from the Letter of Credit Issuer its additional costs pursuant to **Section 4** hereof; and (iv) the obligation to reimburse Administrative Agent in the form of a Loan to the applicable Borrower Party hereunder upon receipt of notice of any payment by the Letter of Credit Issuer.

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(c) Drawings and Reimbursements; Funding of Participation.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the Letter of Credit Issuer shall notify the applicable Borrower Party and Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the Letter of Credit Issuer under a Letter of Credit (each such date, an "**Honor Date**"), the applicable Borrower Party shall reimburse the Letter of Credit Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If a Borrower Party fails to so reimburse the Letter of Credit Issuer by such time, the Administrative Agent shall promptly notify each Managing Agent of the Honor Date, the amount of the unreimbursed drawing (the "**Unreimbursed Amount**"), and the amount of such Lender Group's Lender Group Percentage thereof. Each such notice by the Letter of Credit Issuer shall be treated as a Loan Notice by the applicable Borrower Party. In such event, the applicable Borrower Party shall be deemed to have requested a Borrowing to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in **Section 2.3**, but subject to the amount of the unutilized portion of the Available Loan Amount and the conditions set forth in **Section 8.2**, if applicable, and **Section 8.3** (other than the delivery of a Loan Notice). Any notice given by the Letter of Credit Issuer or Administrative Agent pursuant to this **Section 2.5(c)(i)** may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) If the Letter of Credit Issuer so notifies a Managing Agent prior to 11:00 a.m. on any Business Day, such Managing Agent's related Lender Group shall make available to Administrative Agent, for the account of the Letter of Credit Issuer, its Lender Group Percentage of the Unreimbursed Amount by 4:30 p.m. on such Business Day (or a subsequent day specified by Administrative Agent) in immediately available funds. If the Letter of Credit Issuer so notifies a Managing Agent after 11:00 a.m. on any Business Day, such Managing Agent's related Lender Group shall make available to Administrative Agent for the account of the Letter of Credit Issuer its Lender Group Percentage of the Unreimbursed Amount by 12:00 noon on the next Business Day (or a subsequent day specified by Administrative Agent) in immediately available funds. If any amounts have been deposited into a segregated interest-bearing cash collateral account for the purpose of Cash Collateralizing the Letter of Credit Liability, the Letter of Credit Issuer shall use such funds to satisfy any drawings under the Letters of Credit prior to notifying the Managing Agents of the need for a Loan with respect thereto. Lenders may conclusively rely on the Letter of Credit Issuer as to the amount due Administrative Agent by reason of any draft of a Letter of Credit or due the Letter of Credit Issuer under any Application and Agreement for Letter of Credit. If any payment received by Administrative Agent pursuant to this **Section 2.5(c)** is required to be returned under any of the circumstances described in **Section 14.4**, each Alternate Lender shall pay to Administrative Agent for the account of the Letter of Credit Issuer its Alternate Lender Pro Rata Share of the related Lender Group Percentage thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing because the conditions set forth in **Section 8.2**, if applicable, and **Section 8.3**, cannot be satisfied or for any other reason, the applicable Borrower Party shall be deemed to have incurred from the Letter of Credit Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender Group's payment to Administrative Agent for the account of the Letter of Credit Issuer pursuant to **Section 2.5(c)(i)** shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from the applicable Lenders in such Lender Group in satisfaction of its participation obligation under this **Section 2.5**.

(iv) Until each applicable Lender in each Lender Group funds its Loan or L/C Advance pursuant to this **Section 2.5(c)** to reimburse the Letter of Credit Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender Group's Lender Group Percentage of such amount shall be solely for the account of the Letter of Credit Issuer.

(v) Each Alternate Lender's obligation to make Loans or L/C Advances to reimburse the Letter of Credit Issuer for amounts drawn under Letters of Credit, as contemplated by this **Section 2.5(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including: (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Letter of Credit Issuer, any Credit Party, or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Potential Default or Event of Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Alternate Lender's obligation to make Loans pursuant to this **Section 2.5(c)** is subject to the conditions set forth in **Section 8.2**, if applicable, and **Section 8.3** (other than delivery of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligations of any Credit Party to reimburse the Letter of Credit Issuer for the amount of any payment made by the Letter of Credit Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Alternate Lender fails to make available to Administrative Agent for the account of the Letter of Credit Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.5(c)** by the time specified in **Section 2.5(c)(ii)**, the Letter of Credit Issuer shall be entitled to recover from such Alternate Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Letter of Credit Issuer at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Letter of Credit Issuer submitted to any Alternate Lender (through Administrative Agent) with respect to any amounts owing under this **clause (vi)** shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the Letter of Credit Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.5(c), if Administrative Agent receives for the account of the Letter of Credit Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of cash collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by Administrative Agent.

(ii) If any payment received by Administrative Agent for the account of the Letter of Credit Issuer pursuant to Section 2.5(c)(i) is required to be returned under any of the circumstances described in Section 14.4 (including pursuant to any settlement entered into by the Letter of Credit Issuer in its discretion), each Alternate Lender shall, and each Conduit Lender may (and if a Conduit Lender does not, the Alternate Lenders in its Lender Group shall), pay to Administrative Agent for the account of the Letter of Credit Issuer its Pro Rata Share thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

(e) **Obligations Absolute.** The obligations of the applicable Borrower Party to reimburse the Letter of Credit Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Credit Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Credit Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that any Borrower Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Letter of Credit Issuer or any other Person, whether in connection with this Credit Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the Letter of Credit Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Letter of Credit Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower Party.

The applicable Borrower Party shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with such Borrower Party's instructions or other irregularity, such Borrower Party will immediately notify the Letter of Credit Issuer. The applicable Borrower Party shall be conclusively deemed to have waived any such claim against the Letter of Credit Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of Letter of Credit Issuer.** Each Lender and each Borrower Party agree that, in paying any drawing under a Letter of Credit, the Letter of Credit Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Letter of Credit Issuer, any Agent-Related Person nor any of the respective correspondents, participants or assignees of the Letter of Credit Issuer shall be liable to any Lender for: (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or related Request for Letter of Credit. Each Borrower Party hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude any Borrower Party's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Letter of Credit Issuer, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of the Letter of Credit Issuer, shall be liable or responsible for any of the matters described in *clauses (f) through (v) of Section 2.5(e)*; *provided, however*, that anything in such clauses to the contrary notwithstanding, a Borrower Party may have a claim against the Letter of Credit Issuer, and the Letter of Credit Issuer may be liable to such Borrower Party, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower Party which such Borrower Party proves were caused by the Letter of Credit Issuer's willful misconduct or gross negligence or the Letter of Credit Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the Letter of Credit Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Letter of Credit Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) **Cash Collateral.** Upon the request of Administrative Agent if: (A) the Letter of Credit Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing; or (B) an Event of Default has occurred and is continuing; or (C) as of the Letter of Credit Expiration Date, any Letter of Credit for any reason remains outstanding and partially or wholly undrawn, then the Borrower Parties shall immediately Cash Collateralize the then-outstanding amount of the Letter of Credit Liability (determined as of the date of the such Event of Default or Letter of Credit Expiration Date, as the case may be).

(i) In addition, if Administrative Agent notifies the Borrower Parties at any time that the outstanding amount of the Letter of Credit Liability at such time exceeds 100% of the Letter of Credit Sublimit then in effect, then the Credit Parties shall Cash Collateralize the Letter of Credit Liability in an amount equal to the amount by which the outstanding amount of the Letter of Credit Liability exceeds the Letter of Credit Sublimit: (A) promptly upon receipt of such notice (but in no event later than two (2) Business Days thereafter), with proceeds from a Borrowing hereunder, up to the Available Loan Amount at such time; and (B) within fifteen (15) Business Days of receipt of such notice to the extent that it is necessary for the Credit Parties to issue Call Notices to fund such required payment (after giving effect to the preceding clause (A)), (and the Credit Parties shall issue such Call Notices during such time, and shall prepay such Loans or Cash Collateralize the Letter of Credit Liability, or both, immediately after the Capital Contributions relating to such Call Notices are received).

(ii) Sections 2.1(d)(ii) and 3.6 set forth certain additional requirements to deliver cash collateral hereunder. For purposes of this Section 2.5, and such other Sections, "**Cash Collateralize**" means to pledge and deposit with or deliver to Administrative Agent, for the benefit of the Letter of Credit Issuer and the Lenders, as collateral for the Letter of Credit Liability, cash or deposit account balances in Dollars pursuant to documentation in form and substance satisfactory to Administrative Agent and the Letter of Credit Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. Each Borrower Party hereby grants to Administrative Agent, for the benefit of the Letter of Credit Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, interest bearing deposit accounts at Bank of America (provided that: (x) any interest accrued on any such deposit account shall be payable to Borrower only upon the full and final payment of the Obligations; and (y) upon the occurrence of an Event of Default, any such interest accrued to the date thereof shall be applied as additional compensation to Lenders).

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(h) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Documents, the terms hereof shall control.

(i) Applicability of ISP98. Unless otherwise expressly agreed by the Letter of Credit Issuer and a Borrower Party when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

2.6. Payment of Borrower Guaranty. In consideration of Lenders' agreement to advance funds to a Qualified Borrower, to cause Letters of Credit to be issued for the account of a Qualified Borrower, and to accept Borrower Guaranties in support thereof, Borrower hereby authorizes, empowers, and directs the Administrative Agent, for the benefit of itself and the other Secured Parties, within the limits of the Available Loan Amount, to disburse directly to Lenders, with notice to Borrower, in immediately available funds, an amount equal to the amount due and owing under any Qualified Borrower Note or any Borrower Guaranty, together with all interest, reasonable costs and expenses and fees due to Lenders pursuant thereto, as a Borrowing hereunder; in the event Administrative Agent shall have not received payment of such Obligation when due. Administrative Agent will promptly notify Borrower of any disbursement made to Lenders pursuant to the terms hereof, provided that the failure to give such notice shall not affect the validity of the disbursement. Any such disbursement made by Administrative Agent to Lenders shall be deemed to be a Loan, and Borrower shall be deemed to have given to Administrative Agent, in accordance with the terms and conditions of Section 2.3(a), a Loan Notice with respect thereto. Administrative Agent may conclusively rely on Lenders as to the amount of any such Obligation due to Lenders, absent manifest error.

2.7. Use of Proceeds and Letters of Credit. The proceeds of the Loans and the Letters of Credit shall be used solely for the purposes permitted under the Operating Agreement, the Stockholders Agreement and the Constituent Documents of the Qualified Borrowers. None of the Lenders, Agents or Administrative Agent shall have any liability, obligation, or responsibility whatsoever with respect to any Borrower Party's use of the proceeds of the Loans or the Letters of Credit, and none of the Lenders, Agents or Administrative Agent shall be obligated to determine whether or not any Borrower Party's use of the proceeds of the Loans or the Letters of Credit are for purposes permitted under the Operating Agreement, the Stockholders Agreement or such Constituent Documents. Nothing, including, without limitation, any Borrowing, or any issuance of any Letter of Credit, or acceptance of any other document or instrument, shall be construed as a representation or warranty, express or implied, to any party by any Agent, Lender or the Administrative Agent as to whether any investment by Borrower or any Qualified Borrower is permitted by the terms of the Operating Agreement, the Stockholders Agreement or the Constituent Documents of any Qualified Borrower.

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2.8. Administrative Agent and Arranger Fees. Borrower shall pay to Administrative Agent and Arranger fees in consideration of the arrangement of the Commitments and administration of this Credit Agreement, which fees shall be payable in amounts and on the dates agreed to between Borrower and Administrative Agent in the Fee Letter.

2.9. Unused Facility Fee. In addition to the payments provided for in Section 3 hereof, Borrower shall pay to Administrative Agent, for the account of each Lender Group, in accordance with its Lender Group Percentage, an unused facility fee on the daily amount of the Liquidity Commitment minus the daily amount of the Principal Obligation at a rate per annum provided in the Fee Letter, payable in arrears on each Settlement Date. Borrower and Lenders acknowledge and agree that unused fees payable hereunder are *bona fide* unused fees and are intended as reasonable compensation to Lenders for committing to make funds available to Borrower as described herein and for no other purposes.

2.10. Letter of Credit Fees. The Borrower Parties shall pay letter of credit fees (the "Letter of Credit Fees") to the Letter of Credit Issuer and Administrative Agent in the amounts and on the dates as set forth in the Fee Letter.

2.11. Computation of Interest and Fees. All computations of interest for Loans calculated by reference to the Base Rate, when the Base Rate is determined by Bank of America's "*prime rate*" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan from and including the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 3.4, bear interest for one day.

2.12. Increase in the Facility Amount.

(a) Additional Increase. Administrative Agent shall, at the request of Borrower (not more than three (3) times), increase the Facility Amount to the amount requested by Borrower by increasing the Commitment of the Alternate Lenders (each, an "Increasing Lender"), subject to the following conditions:

(i) Borrower shall have delivered to Administrative Agent the Facility Increase Request at least three (3) Business Days prior to the date of increase;

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(ii) After giving effect to the increase in the Commitment of each Increasing Lender, the aggregate amount of Alternate Lenders' Commitments will not exceed the Maximum Commitment;

(iii) Each increase in the aggregate amount of Alternate Lenders' Commitments shall be in a minimum amount of \$50,000,000;

(iv) No Event of Default or Potential Default has occurred and is continuing or would result from such increase in the Alternate Lenders' Commitments; and

(v) Borrower shall have paid the applicable fees in accordance with the applicable Fee Letter on or prior to the date of increase.

(b) Consent of Alternate Lenders. Subject to the satisfaction of the conditions for such an increase in this **Section 2.12**, each Alternate Lender agrees to increase its Commitments pro rata in the event of an increase of the Facility Amount pursuant to this **Section 2.12**.

(c) Amendments. If Administrative Agent deems it advisable in its sole discretion, Borrowers and each Lender agree to execute an amendment to this Credit Agreement, in form and substance reasonably acceptable to Administrative Agent and Borrower, to document an increase in the Facility Amount pursuant to this **Section 2.12**.

3. PAYMENT OF OBLIGATIONS

3.1. **Notes.** The Loans to be made by Lenders to Borrower hereunder shall be evidenced by promissory notes of Borrower. Each Note shall: (a) be in the amount of the applicable aggregate Commitments of the applicable Lender Group; (b) be payable to the order of the Managing Agent for such Lender Group; (c) bear interest in accordance with the provisions hereof; (d) be in the form of **Exhibit B-1** attached hereto (with blanks appropriately completed in conformity herewith); and (e) be made by the Borrower. The Loans to be made by Lenders to Qualified Borrowers hereunder shall be evidenced by a Qualified Borrower Promissory Note of each such Qualified Borrower. Each Qualified Borrower Promissory Note shall: (a) be in the amount of the applicable aggregate Loans of the applicable Lender Group to be advanced to such Qualified Borrower; (b) be payable to the order of the Managing Agent for such Lender Group; (c) bear interest in accordance with the provisions hereof; (d) be in the form of **Exhibit B-2** attached hereto (with blanks appropriately completed in conformity herewith); and (e) be duly executed by such Qualified Borrower. Each Borrower Party agrees, from time to time, upon the request of Administrative Agent or any applicable Managing Agent, to reissue new Notes, in accordance with the terms and in the form heretofore provided, to any Lender and any Assignee of such Lender in accordance with **Section 14.12(b)** hereof, in renewal of and substitution for the Note previously issued by such Borrower Party to the Managing Agent for the affected Lender Group, and such previously issued Notes shall be returned to the applicable Borrower Party marked "cancelled". Each Managing Agent shall, and is hereby authorized to, make a notation on the schedule attached to the Note of the date and the amount of each Loan and the date and amount of each payment of principal thereon, and prior to any transfer of the Note, such Managing Agent shall endorse the outstanding principal amount of the Note on the schedule attached thereto; *provided, however*, that failure to make such notation shall not limit or otherwise affect the obligations of any Borrower Party hereunder or under such Note to pay when due the aggregate unpaid principal amount of Obligations owing to the applicable Lender Group by such Borrower Party under this Credit Agreement, and to pay interest on the aggregate unpaid principal amount of Obligations (as so adjusted) and to pay any other amount owing hereunder or thereunder, in each case as provided herein.

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3.2. Payment of Obligations. The principal amount of the Obligations outstanding on the Maturity Date, together with all accrued but unpaid interest thereon, shall be due and payable on the Maturity Date.

3.3. Payment of Interest.

(a) Interest. Interest on each Borrowing and any portion thereof shall commence to accrue in accordance with the terms of this Credit Agreement and the other Loan Documents as of the date of the disbursement or wire transfer of such Borrowing by Administrative Agent, consistent with the provisions of **Section 2.4** and **2.11**, notwithstanding whether any Borrower Party received the benefit of such Borrowing as of such date and even if such Borrowing is held in escrow pursuant to the terms of any escrow arrangement or agreement. When a Borrowing is disbursed by wire transfer pursuant to instructions received from a Borrower Party, then such Borrowing shall be considered made at the time of the transmission of the wire, in accordance with the Loan Notice, rather than the time of receipt thereof by the receiving bank. With regard to the repayment of the Loans, interest shall continue to accrue on any amount repaid until such time as the repayment has been received in federal or other immediately available funds by Administrative Agent.

(b) Interest Payment Dates. Accrued and unpaid interest (i) on the Obligations shall be due and payable in arrears in Dollars on each Settlement Date and on the Maturity Date, (ii) on each other date of any reduction of the Principal Obligation hereunder, and (iii) with respect to any Obligation on which such Borrower Party is in default shall be due and payable at any time and from time to time following such default upon demand by Administrative Agent. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(c) Direct Disbursement. If, at any time, Administrative Agent or Letter of Credit Issuer shall not have received on the date due, any payment of interest upon the Loans or any fee described herein, Administrative Agent may direct the disbursement of funds from the Collateral Account to Lenders or Letter of Credit Issuer, in accordance with the terms hereof, to the extent available therein for payment of any such amount. If, at any such time, the amount available in the Collateral Account is not sufficient for the full payment of such amounts due, Administrative Agent may, without prior notice to or the consent of any Borrower Party, within the limits of the Available Loan Amount, disburse to Lenders, in accordance with the terms hereof, in immediately available funds an amount equal to the interest or fee due to Lenders, which disbursement shall be deemed to be a Loan pursuant to **Section 2.3** hereof, and Borrower shall be deemed to have given to Lenders in accordance with the terms and conditions of **Section 2.3** a Loan Notice with respect thereto.

3.4. Payments Generally. (a) All payments of principal of, and interest on, the Obligations under this Credit Agreement by any Borrower Party to or for the account of Lenders, or any of them, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff by such Borrower Party. Except as otherwise expressly provided herein, all payments by the Borrower Parties hereunder shall be made to Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the Administrative Agent's Account in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified here in. Funds received after 2:00 p.m. shall be treated for all purposes as having been received by Administrative Agent on the first Business Day next following receipt of such funds and any applicable interest or fees shall continue to accrue. Each Lender Group shall be entitled to receive its Lender Group Percentage (or other applicable share as provided herein) of each payment received by Administrative Agent hereunder for the account of Lenders on the Obligations. Each payment received by Administrative Agent hereunder for the account of a Lender Group shall be promptly distributed by Administrative Agent in accordance with the instructions provided by the Managing Agent for such Lender Group. If any payment to be made by any Borrower Party shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Borrower Deposits. The Borrower Parties shall deposit or cause to be deposited into the Administrative Agent's Account:

(i) On each Settlement Date, accrued and unpaid Yield for the applicable Interest Period;

(ii) On the specified Business Day with respect to a reduction of the Principal Obligation under Section 3.5 or Section 3.6, the amount of the reduction, accrued and unpaid Yield thereon to such Business Day and any other Obligations (other than Yield) with respect to such amount;

(iii) On each applicable Business Day determined in accordance with Section 2.1(d), an amount equal to the mandatory principal payment specified therein, accrued and unpaid Yield thereon to such Business Day and any other Obligation (other than Yield) with respect to such amount;

(iv) On each Settlement Date, any Obligations then due and payable other than Yield (without duplication); and

(v) On the Maturity Date, all accrued and unpaid Obligations (including Cash Collateralization of the Letter of Credit Liability that will remain outstanding after the Maturity Date).

(c) Order of Application. Upon the receipt by Administrative Agent of any payment with respect to the Obligations, Administrative Agent shall distribute the amount of such payment or deposit to the Persons, for the purposes and in the order of priority, set forth below:

(i) to Administrative Agent, the Managing Agents, the Administrator, the applicable Lenders and such other Persons as may be entitled to the distribution required by this clause (i), in payment of all costs, expenses, other fees (including Attorney Costs) and Obligations owed to such Persons other than Loans and Yield and other than the Cash Collateralization of the Letter of Credit Liability, *pro rata* based on entitlement;

(ii) to the applicable Managing Agents (on behalf of their related Lenders), *pro rata* based on the Lender Group Percentages of their respective Lender Groups in the Loans, accrued and unpaid Yield on all Portions of Loans for the related Interest Periods; and

(iii) first, to the applicable Managing Agents (on behalf of their related Lenders), *pro rata* based on the Lender Group Percentages of their respective Lender Groups in the Loans, in reduction of the aggregate outstanding Loans, and second, for deposit in the Administrative Agent's Account an amount necessary to Cash Collateralize the Letter of Credit Liability as required pursuant to Section 2.5.

3.5. Voluntary Prepayments. Any Borrower Party may, upon notice to Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided that*: (a) such notice must be received by Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to any date of prepayment of Loans; and (b) any prepayment of Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date (which shall be a Business Day) and amount of such prepayment. Administrative Agent will promptly notify each Managing Agent of its receipt of each such notice, and of the amount of such Managing Agent's Lender Group Percentage of such prepayment. If such notice is given by a Borrower Party, such Borrower Party shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 4 hereof. Each such prepayment shall be applied to the Obligations held by each Lender in accordance with its respective Pro Rata Share.

3.6. Reduction or Early Termination of Commitments. So long as no Loan Notice or Request for Letter of Credit is outstanding, Borrower may terminate the Commitments, or reduce the Facility Amount, by giving prior irrevocable written notice to Administrative Agent of such termination or reduction ten (10) Business Days prior to the effective date of such termination or reduction (which date shall be specified by Borrower in such notice): (a)(i) in the case of complete termination of the Commitments, upon prepayment of all of the outstanding Obligation, including, without limitation, all interest accrued thereon, in accordance with the terms of Section 3.5; or (ii) in the case of a reduction of the Facility Amount, upon prepayment of the amount by which the Principal Obligation exceeds the reduced Available Loan Amount resulting from such reduction, including, without limitation, payment of all interest accrued thereon, in accordance with the terms of Section 3.5, *provided, however*, that, except in connection with a termination of the Commitments, the Facility Amount may not be reduced such that, upon such reduction, the Available Loan Amount is less than the aggregate face amount of outstanding Letters of Credit; and (b) in the case of the complete termination of the Commitments, if any Letter of Credit Liability exists, Borrower shall immediately Cash Collateralize the then-outstanding amount of the Letter of Credit Liability, without presentment, demand, protest or any other notice of any kind, all of which are hereby waived. Unless otherwise required by law, upon the full and final payment of the Letter of Credit Liability, or the termination of all outstanding Letter of Credit Liability due to the expiration of all outstanding Letters of Credit prior to draws thereon, Administrative Agent shall return to Borrower or the applicable Qualified Borrower any amounts remaining in such cash collateral account, *provided, however*, that, so long as no Event of Default exists, to the extent individual Letters of Credit expire, Administrative Agent will return to Borrower or the applicable Qualified Borrower the corresponding amount of the expired Letter of Credit Liability. Notwithstanding the foregoing: (1) after any reduction of the Facility Amount by Borrower, the next subsequent reduction shall not occur until at least one month thereafter; (2) any reduction of the Facility Amount shall be in an amount equal to or greater than \$5,000,000; and (3) in no event shall a reduction by Borrower reduce the Facility Amount to \$10,000,000 or less (except for a termination of all the Commitments). Promptly after receipt of any notice of reduction or termination, Administrative Agent shall notify each Lender of the same. Any reduction of the Facility Amount shall reduce the Commitments of the Alternate Lenders on a *pro rata* basis.

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3.7. **Lending Office.** Each Lender may (a) designate its principal office or a branch, subsidiary or Affiliate of such Lender as its Lending Office (and the office to whose accounts payments are to be credited) for any Loan and (b) change its Lending Office from time to time by notice to Administrative Agent and Borrower. In such event, the Managing Agent for such Lender shall continue to hold the Note, if any, evidencing its loans for the benefit and account of such branch, subsidiary or Affiliate. Each Lender shall be entitled to fund all or any portion of its Commitment in any manner it deems appropriate, consistent with the provisions of **Section 2.4**.

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4. CHANGE IN CIRCUMSTANCES.

4.1. Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Borrower Party hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, *provided* that if any Borrower Party shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then: (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 4.1**) each Tax Indemnified Party receives an amount equal to the sum it would have received had no such deductions been made; (ii) the applicable Borrower Party shall make such deductions; and (iii) such Borrower Party shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) **Payment of Other Taxes by Borrower.** Without limiting the provisions of *subsection (a)* above, each Borrower Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) **Indemnification by Borrower Parties.** Each Borrower Party shall indemnify each Tax Indemnified Party, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this **Section 4.1**) paid by such Tax Indemnified Party and penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the applicable Borrower Party by a Tax Indemnified Party (with a copy to Administrative Agent), on its own behalf or on behalf of a Tax Indemnified Party, shall be conclusive absent manifest error.

(d) **Evidence of Payments.** As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Borrower Party to a Governmental Authority, such Borrower Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) **Gross Up.** If any Borrower Party shall be required to deduct or pay any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Secured Party, such Borrower Party shall also pay to Administrative Agent or to such Secured Party, as the case may be, at the time interest is paid, such additional amount that Administrative Agent or such Secured Party specifies is necessary to preserve the after-tax yield (after factoring in all taxes, including taxes imposed on or measured by net income) that Administrative Agent or such Secured Party would have received if such Taxes or Other Taxes had not been imposed.

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(f) **Selection of Lending Office.** If a Borrower Party is or is likely to be required to pay additional amounts to or for the account of any Lender pursuant to this **Section 4.1**, then such Lender will agree to use reasonable efforts to change the jurisdiction of its Lending Office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the good faith judgment of such Lender, is not otherwise materially disadvantageous to such Lender.

(g) **Treatment of Certain Refunds.** If any Tax Indemnified Party determines, in its reasonable discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower Parties or with respect to which any Borrower Party has paid additional amounts pursuant to this **Section 4.1**, it shall pay to such Borrower Party, an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower Party under this **Section 4.1 with respect to the Taxes or Other Taxes giving rise to such refund**), net of all out-of-pocket expenses of such Tax Indemnified Party, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that each Borrower Party, upon the request of such Tax Indemnified Party, agrees to repay the amount paid over to such Borrower Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Tax Indemnified Party in the event such Tax Indemnified Party is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require any Tax Indemnified Party to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower Parties or any other Person.

4.2. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its Lending Office to make, maintain, finance or fund Loans or other Obligations, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or to determine or charge interest rates based upon the LIBOR Rate, then, on notice thereof by such Lender to Borrower Parties through Administrative Agent, any obligation of such Lender to make or continue Loans or to convert Portions of Loans accruing Yield calculated by reference to the LIBOR Rate to Portions of Loans calculated by return to the Base Rate shall be suspended until such Lender notifies Administrative Agent and Borrower Parties that the circumstances giving rise to such determination no longer exist. Upon the prepayment of any such Loans, each Borrower Party shall also pay accrued interest on the amount so prepaid. 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.

4.3. Inability to Determine Rates. If the LIBOR Rate is at any time applicable and if Administrative Agent is unable to obtain on a timely basis the information necessary to determine the LIBOR Rate for any proposed Interest Period, then: (a) Administrative Agent shall forthwith notify the Lenders and each Borrower Party that the LIBOR Rate cannot be determined for such Interest Period; and (b) while such circumstances exist, none of the Managing Agents shall allocate any Portion of Loans with respect to Loans made during such period, or reallocate any Portion of Loans allocated to any then-existing Interest Period ending during such period, to a Interest Period with respect to which Yield is calculated by reference to the LIBOR Rate. If, with respect to any outstanding Interest Period, a Lender notifies the Administrative Agent that it is unable to obtain matching deposits based upon the London interbank market to fund its purchase or maintenance of such Portion of Loans or that the LIBOR Rate applicable to such Portion of Loans will not adequately reflect the cost to the Person of funding or maintaining such Portion of Loans for such Interest Period, then: (i) Administrative Agent shall forthwith so notify Borrower and the Lenders; and (ii) upon such notice and thereafter while such circumstances exist, the applicable Managing Agent shall not allocate any other Portion of Loans with respect to Loans made by such Lender during such period, or reallocate any Portion of Loans allocated to any Interest Period ending during such period, to an Interest Period with respect to which Yield is calculated by reference to the LIBOR Rate.

4.4. Increased Cost and Capital Adequacy.

(a) **Change in Law: Increased Cost.** If any Secured Party determines that as a result of the introduction of or any change in or in the interpretation of any Law, or such Secured Party's compliance therewith, there shall be any increase in the cost to such Secured Party of agreeing to make or making, funding or maintaining Loans or (as the case may be) issuing or participating in Letters of Credit (collectively, the "**Covered Matters**"), or its obligation to advance funds under a Program Support Agreement or otherwise in respect of Covered Matters, or a reduction in the amount received or receivable by such Secured Party in connection with any of the foregoing (excluding for purposes of this clause (a) any such increased costs or reduction in amount resulting from: (i) Taxes or Other Taxes (as to which Section 4.1 shall govern); (ii) changes in the basis of taxation of overall net income or overall gross income by the United States or any foreign jurisdiction or any political subdivision of either thereof under the Laws of which such Secured Party is organized or has its Lending Office; and (iii) reserve requirements utilized in the determination of the LIBOR Rate), then from time to time upon demand of such Secured Party (with a copy of such demand to the Administrative Agent), the Borrower Parties shall pay to such Secured Party such additional amounts as will compensate such Secured Party for such increased cost or reduction; (A) promptly on demand, to the extent that funds are available in the Collateral Account or any other account maintained by Borrower; and (B) otherwise, to the extent that it is necessary for Call Notices to be issued to fund such required payment, within fifteen (15) Business Days after demand (but in any event, the Credit Parties shall issue such Call Notices and shall make such payment immediately after the related Capital Contributions are received).

(b) **Change in Law: Capital Adequacy.** If any Secured Party determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, or compliance by such Secured Party (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Secured Party or any corporation controlling such Secured Party as a consequence of Covered Matters or its obligation to advance funds under a Program Support Agreement or otherwise in respect of Covered Matters (taking into consideration its policies with respect to capital adequacy and such Secured Party's desired return on capital), then from time to time upon demand of such Secured Party (with a copy of such demand to Administrative Agent), the applicable Borrower Parties shall pay to such Secured Party such additional amounts as will compensate such Secured Party for such reduction; provided, however, that such amounts shall not be duplicative of any amounts paid by such Borrower Party in the preceding clause (a); (A) promptly on demand, to the extent that funds are available in the Collateral Account or any other account maintained by such Borrower Party; and (B) otherwise, to the extent that it is necessary for Call Notices to be issued to fund such required payment, within fifteen (15) Business Days after demand (but in any event, the Credit Parties shall issue such Call Notices and shall make such payment after the related Capital Contributions are received).

4.5. Funding Losses. Upon demand of any Lender (with a copy to Administrative Agent) from time to time, the Borrower Parties shall promptly pay Administrative Agent for the account of such Lender, such amount or amounts as shall compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by such Lender (as determined by the applicable Managing Agent) as a result of (i) any reduction of any Portion of Loans other than on a date for which timely notice thereof was provided in accordance with Section 3.5 or (ii) any failure by a Borrower Party (for a reason other than the failure of such Lender to make a Loan) to pay, prepay or borrow any Loan on the date or in the amount notified by such Borrower Party, or (iii) any failure by any Borrower Party to make payment on any drawing under any Letter of Credit (or interest due thereon) on its scheduled due date, and, in the case of an event described in clause (i) or (ii) to include: (a) an amount equal to any loss or expense suffered by the applicable Lender during the period from the date of receipt of such repayment to the applicable Settlement Date (or if in respect of a reduction on a Settlement Date but without the requisite notice required by Section 3.5, to the maturity date of such Commercial Paper (or other financing source)); and (b) net of the income, if any, actually received by the recipient of such reduction from investing the proceeds of such reduction of such Portion of Loans.

4.6. Matters Applicable to all Requests for Compensation.

(a) Determination of Amount. A certificate of Administrative Agent or any Secured Party provided to Borrower claiming compensation under this Section 4 and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, Administrative Agent or such Secured Party may use any reasonable averaging and attribution methods.

(b) No Duplication. Any amount payable by the Borrower on account of Section 4.1, 4.4, or 4.5 shall not be duplicative of: (i) any amount paid under any other such sections, or (ii) any amounts included in the calculation of the LIBOR Rate. Notwithstanding anything to the contrary set forth in this Section 4, Borrower Parties shall be required to compensate the Lenders for amounts payable pursuant to Sections 4.1, 4.4 and 4.5 only to the extent Lenders are holding comparable borrowers liable for such amounts.

(c) Replacement of Lenders. If any Lender requests compensation under Section 4.4, or if any Borrower Party is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.1, Borrower may replace such Lender in accordance with Section 14.14.

(d) **Refund.** Any amount determined to be paid by the Borrower in error pursuant to this **Section 4** shall be, if no Event of Default has occurred and is continuing, promptly refunded to the Borrower, or applied to amounts owing hereunder, as the Borrower may elect.

(e) **Survival.** All of the Borrower Parties' obligations under this **Section 4** shall survive the termination of the Commitments and payment in full of all other Obligations hereunder.

4.7. Prohibited Event. In the event a Lender notifies the Administrative Agent that, subsequent to the Closing Date, such Lender or any of its Affiliates: (i) has become a fiduciary with respect to any ERISA Investor in connection with its investment in the Borrower, the Guarantor, the Pledgor or this transaction; or (ii) has acquired any discretionary authority or control with respect to any ERISA Investor's investment in any Credit Party, or renders any investment advice (within the meaning of 29 C.F.R. §2510.3-21(c)) with respect to such investment, the parties hereby agree that the event described in clause (i) or (ii) above (the "**Prohibited Event**") shall be deemed to have caused a prohibited transaction under Section 406(a) of ERISA or Section 4975(c)(1)(A), (B), (C) or (D) of the Code with respect to the transactions described in this Credit Agreement, and the parties to this Credit Agreement shall cooperate with each other to correct such prohibited transaction in accordance with Section 4975(f)(5) of the Co. de. NOTWITHSTANDING ANYTHING IN THIS CREDIT AGREEMENT TO THE CONTRARY, any such correction shall prevent the Lender from receiving any direct or indirect fees, loan repayments, or any other benefits from such ERISA Investor. If the Administrative Agent determines at any time in its reasonable discretion that any of the corrections described herein are insufficient to correct the prohibited transaction in accordance with Section 4975(f)(5) of the Internal Revenue Code, then the parties shall also cooperate to replace such affected Lender.

5. SECURITY

5.1. Liens and Security Interest

(a) **Capital Commitments and Capital Calls.** To secure performance by the Borrower Parties of the payment of each Note and the Obligations: (i) each of Borrower and Managing Member shall grant to Administrative Agent, for the benefit of each of the Secured Parties, an exclusive, perfected, first priority security interest and Lien in and to the Collateral Account pursuant to the Account Assignment; (ii) Borrower and Managing Member, to the extent of their respective interests therein, shall grant to Administrative Agent, for the benefit of Secured Parties, an exclusive, perfected, first priority security interest and Lien in and to the Capital Calls, Capital Commitments, Capital Contributions and their rights under the Operating Agreement, including, without limitation, any rights to make Capital Calls, receive payment of Capital Contributions and enforce the payment thereof pursuant to the Borrower and Managing Member Security Agreement and (iii) pursuant to the Capital Contributions Pledge Agreement, the Pledgor shall grant to Administrative Agent, for the benefit of each Secured Party, an exclusive, perfected, first priority security interest and Lien in all of the collateral described therein, including the Capital Calls, Capital Commitments, Capital Contributions and, without limitation, any rights to make Capital Calls, receive payment of Capital Contributions and enforce the payment thereof with respect to the Stockholders pursuant to the Stockholders Agreement (the collateral in clauses (i) through (iii) of this Section 5.1(a) being, collectively, the "**Collateral**"); and (v) Borrower, Managing Member and Pledgor shall deliver to Administrative Agent, or shall otherwise consent to the filing of, financing statements and other documents satisfactory to Administrative Agent. Administrative Agent acknowledges that the collateral for the Obligations does not include a security interest in any Equity Interest.

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(b) Investor Letters. Each Investor shall execute, in favor of Administrative Agent for the benefit of Secured Parties, an agreement in substantially the form attached hereto as Exhibit I (an "Investor Letter").

5.2. Collateral Account; Capital Calls.

(a) Collateral Account. In order to secure further the payment and performance of the Obligations and to effect and facilitate Secured Parties' right of offset: (i) the Credit Parties hereby irrevocably appoints Administrative Agent as subscription agent and the sole party entitled in the name of the applicable Credit Party upon the occurrence and during the continuance of an Event of Default, to make any Capital Calls upon the Investors pursuant to the terms of the Operating Agreement and/or the Stockholders Agreement, as applicable, and shall require that all Investors wire-transfer to Bank of America, N.A., ABA #026-009-593, for further credit to Account No. 1233060441, reference "Acadia Strategic Opportunity Fund III LLC Collateral Account" (the "Collateral Account"), all monies or sums paid or to be paid by any Investor to the capital of any Credit Party as Capital Contributions as and when Capital Contributions are called pursuant to the Call Notices. In addition, each Credit Party shall, upon receipt, deposit in the applicable Collateral Account described above, any payments and monies that such Credit Party receives directly from its Investors as Capital Contributions.

(b) No Duty. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that neither Administrative Agent, Letter of Credit Issuer, nor any other Secured Party undertakes any duties, responsibilities, or liabilities with respect to Capital Calls. None of them shall be required to refer to the Constituent Documents of any Credit Party or take any other action with respect to any other matter which might arise in connection with such Constituent Documents, the Operating Agreement, the Stockholders Agreement or any Capital Call. None of them shall have any duty to determine or inquire into any happening or occurrence or any performance or failure of performance of any Credit Party or of any Investor. None of them 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 the use of the proceeds thereof.

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(c) **Capital Calls.** In order that Secured Parties may monitor the Collateral and the Capital Commitments, no Credit Party shall issue any Call Notice or otherwise request, notify, or demand that any Investor make any Capital Contribution, without delivering to Administrative Agent (which delivery may be via facsimile) simultaneously with delivery of the Call Notices to any Investors ("**Call Notice Date**"), copies of the Call Notice for each Investor from whom a Capital Contribution is being sought. Concurrently with the delivery of any Call Notice, the Borrower shall deliver to Administrative Agent a Borrowing Base Certificate showing no Implicit Borrowing Base Deficit would exist at such time after application of the subject Capital Contributions in accordance with the terms of the Call Notice.

(d) **Use of Account; Capital Calls by Administrative Agent.** Borrower may request that Administrative Agent withdraw funds from the Collateral Account at any time or from time to time and disburse such funds as Borrower may direct, so long as at the time of such withdrawal or disbursement and after giving effect thereto: (i) there does not exist an Event of Default or Potential Default; and (ii) the Principal Obligation does not exceed the Available Loan Amount (unless, in the latter case), Borrower has directed that such disbursement be paid to Administrative Agent to repay such excess) and any request by Borrower for withdrawal from the Collateral Account shall be deemed a representation and warranty that the conditions set forth in the foregoing **clauses (i), (ii) and (iii)** have been satisfied. The Credit Parties hereby irrevocably authorize and direct the Secured Parties, acting through Administrative Agent, to withdraw from time to time funds from the Collateral Account for application to amounts not paid when due (after the passage of any applicable grace period) to the Secured Parties or any of them hereunder, under any Application and Agreement for Letter of Credit, under any Letter of Credit or under the Notes to the extent provided herein. Administrative Agent, on behalf of the Secured Parties, is hereby authorized, in the name of the Secured Parties or the name of any Credit Party, at any time or from time to time upon the occurrence and while an Event of Default exists, to notify any or all parties obligated to any Credit Party with respect to the Capital Commitments to make all payments due or to become due thereon directly to Administrative Agent on behalf of the Secured Parties, at a different account number, or to initiate one or more Capital Call Notices in order to pay the Obligations. With or without such general notification, when an Event of Default exists, Administrative Agent, on behalf of Secured Parties: (i) may make Capital Calls in the name of any Credit Party; (ii) may take or bring in any Credit Party's name or (or that of the Secured Parties) all steps, actions, suits, or proceedings deemed by Administrative Agent necessary or desirable to effect possession or collection of Capital Commitments; (iii) may complete any contract or agreement of any Credit Party in any way related to any of the Capital Commitments; (iv) may make allowances or adjustments related to the Capital Commitments; (v) may compromise any claims related to the Capital Commitments; (vi) may issue credit in its own name or the name of any Credit Party; or (vii) may exercise any right, privilege, power, or remedy provided to any Credit Party under the Constituent Documents of any Credit Party, the Operating Agreement, or the Stockholders Agreement relating to the right to call for Capital Contributions and to receive Capital Contributions. Regardless of any provision hereof, in the absence of gross negligence or willful misconduct by Administrative Agent or Secured Parties, none of Administrative Agent or Secured Parties shall ever be liable for failure to collect or for failure to exercise diligence in the collection, possession, or any transaction concerning, all or part of the Capital Call Notices, Capital Commitments, or any Capital Contributions, or sums due or paid thereon, nor shall they be under any obligation whatsoever to anyone by virtue of the security interests and Liens relating to the Capital Call Notices, Capital Commitments or any Capital Contributions. Administrative Agent shall give Borrower prompt notice of any action taken pursuant to this **Section 5.2(d)**, but failure to give such notice shall not affect the validity of such action or give rise to any defense in favor of any Credit Party with respect to such action.

(e) **Event of Default.** During the existence and continuance of an Event of Default, issuance by Administrative Agent on behalf of Secured Parties of a receipt to any Person obligated to pay any Capital Contribution to any Credit Party shall be a full and complete release, discharge, and acquittance to such Person to the extent of any amount so paid to Administrative Agent for the benefit of Secured Parties, so long as such amount shall not be invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person under any bankruptcy act or code, state or federal law, common law or equitable doctrine. Administrative Agent, on behalf of the Secured Parties, is hereby authorized and empowered, during the existence of and continuance of an Event of Default, on behalf of any Credit Party, to endorse the name of any Credit Party upon any check, draft, instrument, receipt, instruction, or other document, agreement or item, including, but not limited to, all items evidencing payment of a Capital Contribution of any Person to any Credit Party coming into Administrative Agent's or any Lender's possession, and to receive and apply the proceeds therefrom in accordance with the terms hereof. Administrative Agent on behalf of Secured Parties is hereby granted an irrevocable power of attorney, which is coupled with an interest, to execute all checks, drafts, receipts, instruments, instructions, or other documents, agreements, or items on behalf of any Credit Party, either before or after demand of payment on the Obligations but only during the existence and continuance of an Event of Default, as shall be deemed by Administrative Agent to be necessary or advisable, in the sole discretion, reasonably exercised, of Administrative Agent, to preserve the security interests and Liens in the Capital Commitments or to secure the repayment of the Obligations, and neither Administrative Agent nor Secured Parties shall incur any liability, in the absence of gross negligence or willful misconduct, in connection with or arising from its exercise of such power of attorney. The application by Secured Parties of such funds shall, unless Administrative Agent shall agree otherwise in writing, be the same as set forth in **Section 3.4**.

(f) **No Representations.** Neither Administrative Agent nor Secured Parties shall be deemed to make at any time any representation or warranty as to the validity of any Call Notice nor shall Administrative Agent or the Secured Parties be accountable for any Credit Party's use of the proceeds of any Capital Call Notice.

5.3. Agreement to Deliver Additional Collateral Documents. Each Credit Party shall deliver such security agreements, financing statements, assignments, and other collateral documents (all of which shall be deemed part of the "**Collateral Documents**"), in form and substance reasonably satisfactory to Administrative Agent, as Administrative Agent acting on behalf of the Secured Parties may reasonably request from time to time for the purpose of granting to, or maintaining or perfecting in favor of the Secured Parties, first and exclusive security interests in any of the Capital Call Notices and Capital Commitments, together with other assurances of the enforceability and priority of the Secured Parties' Liens and assurances of due recording and documentation of the Collateral Documents or copies thereof, as Administrative Agent may reasonably require to avoid material impairment of the liens and security interests granted or purported to be granted pursuant to this **Section 5**.

5.4. Subordination of All Credit Party Claims. As used herein, the term "Credit Party Claims" means all debts and liabilities of any Investor to any Credit Party, whether such debts and liabilities now exist or are hereafter incurred or arise, or whether the obligations of such Person thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or liabilities be evidenced by note, contract, open 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 any Credit Party (including, without limitation, by setoff pursuant to the terms of any applicable agreement). Credit Party Claims shall include without limitation all rights and claims of any Credit Party against an Investor under the Constituent Documents of such Person. At any time that the Principal Obligation exceeds the Available Loan Amount, and until the mandatory prepayment pursuant to Section 2.1(d) hereof in connection therewith, if any, shall be paid and satisfied in full, or, during the existence and continuation of an Event of Default, no Credit Party shall receive or collect, directly or indirectly any amount upon the Credit Party Claims, other than to obtain funds required to make any mandatory prepayment pursuant to Section 2.1(d).

Any Liens, security interests, judgment liens, charges, or other encumbrances upon an Investor's assets securing payment of Credit Party Claims, including, but not limited to, any liens or security interests on an Investor's Equity Interest, shall be and remain inferior and subordinate in right of payment and of security to any liens, security interests, judgment liens, charges, or other encumbrances upon an Investor's assets securing such Investor's obligations and liabilities to the Secured Parties pursuant to any of the Collateral Documents executed by such Investor, regardless of whether such encumbrances in favor of Borrower or a Qualified Borrower, Managing Member, the Pledgor or the Secured Parties presently exist or are hereafter created or attach. Without the prior written consent of Administrative Agent, no Credit Party shall: (a) exercise or enforce any creditor's, shareholder or partnership right it may have against an Investor; (b) 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 such Person; or (c) exercise any rights or remedies against an Investor under the Constituent Documents of such Person; provided that any action taken by Administrative Agent or the Secured Parties in Borrower's name, or any action taken by Borrower that is required under any Loan Document or to comply with any Loan Document, shall not be a violation of this Section 5.4.

6. [RESERVED]

7. ADDITIONAL ALTERNATE LENDER PROVISIONS

7.1. Assignment to Alternate Lenders.

(a) **Assignment Amounts.** At any time on or prior to the Stated Maturity Date, if the related Administrator on behalf of the applicable Conduit Lender so elects, by written notice to Administrative Agent, Borrower and its related Managing Agent, such Conduit Lender hereby assigns effective on the Assignment Date referred to below all or such portions as may be elected by such Conduit Lender of its interest in the Principal Obligation at such time to its Alternate Lenders pursuant to this **Section 7.1**; *provided, however*, that unless such assignment is an assignment of all such Conduit Lender's interest in the Principal Obligation in whole on or after its Conduit Investment Termination Date, no such assignment shall take place pursuant to this **Section 7.1** if an Event of Default described in **Section 12.1(n)** shall then exist; and *provided, further*, that no such assignment shall take place pursuant to this **Section 7.1** at a time when such Conduit Lender is subject to any proceedings under any Debtor Relief Laws. No further documentation or action on the part of such Conduit Lender, the Borrower, or the applicable Alternate Lenders shall be required to exercise the rights set forth in the immediately preceding sentence, other than the giving of the notice by the related Administrator on behalf of such Conduit Lender referred to in such sentence and the delivery by the related Managing Agent of a copy of such notice to each Alternate Lender in the Lender Group (the date of the receipt by Administrative Agent of any such notice being the "**Assignment Date**"). Each Alternate Lender hereby agrees, unconditionally and irrevocably and under all circumstances, without set-off, counterclaim or defense of any kind, to pay the full amount of its Assignment Amount on such Assignment Date to such Conduit Lender in immediately available funds in Dollars based on the assigning Conduit Lender's interest in the Principal Obligation, to an account designated by the related Managing Agent. Upon payment of its Assignment Amount, each such Alternate Lender shall acquire an interest in the Principal Obligation equal to its Alternate Lender Pro Rata Share thereof. Upon any assignment in whole by a Conduit Lender to its Alternate Lenders on or after its Conduit Investment Termination Date as contemplated hereunder, such Conduit Lender shall cease to make any additional Loans hereunder. At all times prior to its Conduit Investment Termination Date, nothing herein shall prevent a Conduit Lender from making a subsequent Loan hereunder, in its sole discretion, following any assignment pursuant to this **Section 7.1** or from making more than one assignment pursuant to this **Section 7.1**.

(b) **Additional Assignment Amounts.** The applicable Borrower Party may pay to Administrative Agent in Dollars, for the account of the related Managing Agent for the benefit of its Conduit Lender, in connection with any assignment by a Conduit Lender to its Alternate Lenders pursuant to this **Section 7.1**, an aggregate amount equal to all Yield to accrue through the end of the current Interest Period to the extent attributable to the portion of the Loans so assigned to the Alternate Lenders (as determined immediately prior to giving effect to such assignment), plus all Obligations then due, other than the Loans and other than any Yield described above, attributable to such portion of the Loans so assigned. If the applicable Borrower Party does not make payment of such amounts at or prior to the time of assignment by a Conduit Lender to its Alternate Lenders, such amount shall be paid by such Alternate Lenders to the Conduit Lender as additional consideration for the interests assigned to the Alternate Lenders and the amount of the "Loans" hereunder held by such Alternate Lenders shall be increased by an amount equal to the additional amount so paid by such Alternate Lenders.

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(c) **Administration of Agreement after Assignment from Conduit Lender to Alternate Lenders following the Conduit Investment Termination Date.** After any assignment in whole by a Conduit Lender to its Alternate Lenders pursuant to this **Section 7.1** at any time on or after its Conduit Investment Termination Date (and the payment of all amounts owing to such Conduit Lender in connection therewith), all rights of the related Administrator and the related Conduit Collateral Agent set forth herein shall be given to the applicable Managing Agent on behalf of its Alternate Lenders instead of such Administrator and Conduit Collateral Agent.

(d) **Payments to Administrative Agent.** After any assignment in whole by a Conduit Lender to its Alternate Lenders pursuant to this **Section 7.1** at any time on or after its Conduit Investment Termination Date, all payments to be made hereunder by a Borrower Party to Administrative Agent for the benefit of such Conduit Lender shall be made to the account specified by the applicable Managing Agent in writing to the Administrative Agent and the applicable Borrower Party.

(e) **Recovery of Loans.** In the event that the aggregate of the Assignment Amounts paid by the Alternate Lenders with respect to any Lender Group pursuant to this **Section 7.1** on any Assignment Date occurring on or after the Conduit Investment Termination Date for the related Conduit Lender is less than the Loans of such Conduit Lender on such Assignment Date, then to the extent that payments or deposits thereafter received and applied by Administrative Agent with respect to such Lender Group under **Section 3.4** in respect of Loans exceed the aggregate of the unrecovered Assignment Amounts and Loans funded by such Alternate Lenders, such excess shall be remitted by Administrative Agent to the related Managing Agent.

7.2. Downgrade of Alternate Lender.

(a) **Downgrades Generally.** If at any time on or prior to the Stated Maturity Date, the short-term debt rating of any Alternate Lender shall be "A-2" or "P-2" from S&P or Moody's, respectively, with negative credit implications, such Alternate Lender, upon request of the related Managing Agent, shall, within thirty (30) days of such request, assign its rights and obligations hereunder to another financial institution (which institution's short term debt shall be rated at least "A-2" or "P-2" from S&P or Moody's, respectively, and which shall not be so rated with negative credit implications and which is acceptable to such Conduit Lender and such Managing Agent). If the short-term debt rating of such Alternate Lender shall be "A-3" or "P-3", or lower, from S&P or Moody's, respectively, (or such rating shall have been withdrawn by S&P or Moody's), such Alternate Lender, upon request of the related Managing Agent, shall, within five (5) Business Days of such request, assign its rights and obligations hereunder to another financial institution (which institution's short-term debt shall be rated at least "A-2" or "P-2", from S&P or Moody's, respectively, and which shall not be so rated with negative credit implications and which is acceptable to such Conduit Lender and such Managing Agent). In either such case, if any such Alternate Lender shall not have assigned its rights and obligations under this Credit Agreement within the applicable time period described above (in either such case, the "**Required Downgrade Assignment Period**"), the Administrator on behalf of such Conduit Lender shall have the right to require such Alternate Lender to pay, in Dollars upon one (1) Business Day's notice at any time after the Required Downgrade Assignment Period (and each such Alternate Lender hereby agrees in such event to pay within such time) to the applicable Managing Agent an amount equal to such Alternate Lender's unused Commitment (without any deduction therefrom for such Alternate Lender's share of the Letter of Credit Liability) (a "**Downgrade Draw**") for deposit by such Managing Agent into an account, in the name of such Managing Agent (a "**Downgrade Collateral Account**"), which shall be in satisfaction of such Alternate Lender's obligations to make Loans and to pay its Assignment Amount upon an assignment from such Conduit Lender in accordance with **Section 7.1**; provided, however, that if, during the Required Downgrade Assignment Period, such Alternate Lender delivers a written notice to such Managing Agent of its intent to deliver a direct pay irrevocable letter of credit pursuant to this proviso in lieu of the payment required to fund the Downgrade Draw, then such Alternate Lender will not be required to fund such Downgrade Draw. If any Alternate Lender gives the applicable Managing Agent such notice, then such Alternate Lender shall, within one (1) Business Day after the Required Downgrade Assignment Period, deliver to such Managing Agent a direct pay irrevocable letter of credit in favor of such Managing Agent issued in Dollars, in an amount equal to the unused portion of such Alternate Lender's Commitment (without any deduction therefrom for such Alternate Lender's share of the Letter of Credit Liability), which letter of credit shall be issued through a United States office of a bank or other financial institution: (i) whose short-term debt ratings by S&P and Moody's are at least equal to the ratings assigned by such statistical rating organization to the Commercial Paper; and (ii) that is acceptable to such Conduit Lender and such Managing Agent. Such letter of credit shall provide that such Managing Agent may draw thereon for payment of any Loan or Assignment Amount payable by such Alternate Lender which is not paid hereunder when required, shall expire no earlier than the Stated Maturity Date and shall otherwise be in form and substance acceptable to such Managing Agent. If on any date the amount on deposit in the Downgrade Collateral Account or the maximum stated amount under any letter of credit so provided is less than the applicable Alternate Lender's share of the unused Commitment, upon one (1) Business Day's notice, such Alternate Lender will pay the amount of such shortfall to the applicable Managing Agent for deposit into the Downgrade Collateral Account or provide a substitute or additional direct pay irrevocable letter of credit to cover such shortfall.

(b) **Application of Funds in Downgrade Collateral Account.** If any Alternate Lender in any Lender Group shall be required pursuant to **subsection (a)** to fund a Downgrade Draw, then the related Managing Agent shall apply the monies in the Downgrade Collateral Account applicable to such Alternate Lender's share of Loans required to be made by the related Alternate Lenders, to any Assignment Amount payable by such Alternate Lender pursuant to **Section 7.1** at the times, in the manner and subject to the conditions precedent set forth in this Credit Agreement. The deposit of monies in such Downgrade Collateral Account by any Alternate Lender shall not constitute a Loan or the payment of any Assignment Amount (and such Alternate Lender shall not be entitled to interest on such monies except as provided below in this **Section 7.2(b)**), unless and until (and then only to the extent that) such monies are used to fund Loans or to pay any Assignment Amount pursuant to this **Section 7.2(b)**. The amount on deposit in such Downgrade Collateral Account shall be invested by the related Managing Agent in investments selected by such Managing Agent in its sole discretion and eligible in accordance with the applicable conduit program documents. Such Managing Agent shall remit to such Alternate Lender, on the last Business Day of each month, the interest income actually received thereon. Unless required to be released as provided below in this subsection, payments or deposits received by such Managing Agent in respect of such Alternate Lender's portion of the Loans shall be deposited in the Downgrade Collateral Account for such Alternate Lender. Amounts on deposit in such Downgrade Collateral Account shall be released to such Alternate Lender (or the stated amount of the letter of credit delivered by such Alternate Lender pursuant to **subsection (a)** above may be reduced) within one (1) Business Day after each Settlement Date following the Maturity Date to the extent that, after giving effect to the distributions made and received by the Lenders on such Settlement Date, the amount on deposit in such Downgrade Collateral Account would exceed the Alternate Lender's Alternate Lender Pro Rata Share (determined as of the day prior to the Maturity Date) of the sum of all Portions of Loans then funded by the related Conduit Lender, plus the related Interest Component, plus such Alternate Lender's Pro Rata Share of the Letter of Credit Liability. All amounts remaining in such Downgrade Collateral Account shall be released to such Alternate Lender no later than the Business Day immediately following the *earliest* of: (i) the effective date of any replacement of such Alternate Lender or removal of such Alternate Lender as a party to this Credit Agreement; (ii) the date on which such Alternate Lender shall furnish the related Managing Agent with confirmation that such Alternate Lender shall have short term debt ratings of at least "A-2" or "P-2" from S&P and Moody's, respectively, without negative credit implications; and (iii) the Stated Maturity Date. Nothing in this **Section 7.2** shall affect or diminish in any way any such downgraded Alternate Lender's Commitment to Borrower or its related Conduit Lender or such downgraded Alternate Lender's other obligations and liabilities hereunder and under the other Loan Documents.

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(c) Program Support Agreement Downgrade Provisions. Notwithstanding the other provisions of this Section 7.2, an Alternate Lender shall not be required to make a Downgrade Draw (or provide for the issuance of a letter of credit in lieu thereof) pursuant to Section 7.2(a) at a time when such Alternate Lender has a downgrade collateral account (or letter of credit in lieu thereof) established pursuant to the Program Support Agreement to which it is a party in an amount at least equal to its Commitment, and the related Managing Agent may apply monies in such downgrade collateral account in the manner described in Section 7.2(b) as if such downgrade collateral account were a Downgrade Collateral Account.

8. CONDITIONS PRECEDENT TO LENDING

8.1. Obligation of Lenders. The obligation of each Lender and the Letter of Credit Issuer to make the initial Loan and issue the first Letter of Credit hereunder is subject to Administrative Agent's receipt of the following:

(a) Credit Agreement. This Credit Agreement, duly executed and delivered by Borrower, Managing Member, Guarantor and Pledgor;

(b) Notes. Notes drawn to the order of each Managing Agent, duly executed and delivered by Borrower and Managing Member;

(c) Security Agreements. (i) The Borrower and Managing Member Security Agreement, duly executed and delivered by Borrower and Managing Member and (ii) any other security agreement or related document reasonably requested by Administrative Agent.

(d) Capital Contributions Pledge Agreement. (i) The Capital Contributions Pledge Agreement, duly executed and delivered by Pledgor; and (ii) any other similar agreement or related document reasonably requested by Administrative Agent.

(e) Guaranty of Capital. The Guaranty of Capital, duly executed and delivered by Guarantor.

(f) Account Documents. The Account Assignment, duly executed and delivered by Borrower;

(g) Financing Statements.

(i) searches of Uniform Commercial Code ("UCC") filings in each jurisdiction where a filing has been or would need to be made in order to perfect the Administrative Agent's security interest on behalf of the Secured Parties in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist, or, if necessary, copies of proper financing statements, if any, filed on or before the date hereof necessary to terminate all security interests and other rights of any Person in any Collateral previously granted; and

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(ii) duly authorized UCC financing statements and any amendments thereto, for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest on behalf of the Secured Parties in the Collateral;

(h) **Responsible Officer Certificates.** A certificate from a Responsible Officer of each Credit Party, stating that: (i) all of the representations and warranties contained in Section 9 hereof and the other Loan Documents made by such Credit Party are true and correct in all material respects as of such date (except to the extent of changes in facts or circumstances that have been disclosed to Lenders and do not constitute an Event of Default or, to its knowledge, a Potential Default under this Credit Agreement or any other Loan Document); and (ii) no event has occurred and is continuing, or would result from the Borrowing or issuance of the Letters of Credit, as applicable, which constitutes an Event of Default or, to its knowledge, a Potential Default;

(i) **Borrower's Operating Agreement.** A signed certificate of a Responsible Officer of Borrower who shall certify that attached thereto is a true and complete copy of the Operating Agreement of Borrower as in effect on the date hereof, together with certificates of existence and good standing (or other similar instruments) of Borrower as in effect on the date hereof;

(j) **Managing Member's Formation Documents.** A signed certificate of a Responsible Officer of Managing Member who shall certify that attached thereto are true and complete copies of the Constituent Documents of Managing Member, together with certificates of existence and good standing (or other similar instruments) of Managing Member as in effect on the date hereof;

(k) **Guarantor's Formation Documents.** A signed certificate of a Responsible Officer of Guarantor who shall certify that attached thereto are true and complete copies of the Constituent Documents of Guarantor together with certificates of existence and good standing (or other similar instruments) of Guarantor as in effect on the date hereof;

(l) **Pledgor's Formation Documents.** A signed certificate of a Responsible Officer of Pledgor who shall certify that attached thereto are true and complete copies of the Constituent Documents of Pledgor together with certificates of existence and good standing (or other similar instruments) of Pledgor as in effect on the date hereof;

(m) **Incumbency Certificate.** From each Credit Party, a signed certificate of a Responsible Officer, who shall certify the names of the Persons authorized, on the date hereof, to sign each of the Loan Documents and the other documents or certificates to be delivered pursuant to the Loan Documents on behalf of such Credit Party, together with the true signatures of each such Person. Administrative Agent may conclusively rely on such certificate until it shall receive a further certificate canceling or amending the prior certificate and submitting the signatures of the Persons named in such further certificate;

(n) **Opinions of Counsel.** (i) A favorable opinion of Robert Masters, Senior Vice President and General Counsel of each Credit Party, as counsel to each Credit Party; (ii) a favorable opinion of Berliner, Corcoran & Rowe, L.L.P., Maryland counsel to the Pledgor; and (iii) an opinion of Mayer Brown LLP, special counsel to the Administrative Agent; each covering such matters relating to the transactions contemplated hereby as reasonably requested by Administrative Agent, and substantially in a form acceptable to Administrative Agent;

(o) **ERISA Certificate.** A certificate from a Responsible Officer of the Credit Parties confirming that the assets of the Credit Parties do not constitute plan assets by reason of the fact that participation in the Credit Parties by "benefit plan investors" is not "significant", as such terms are defined in the Plan Asset Regulations;

(p) **Investor Documents.** Administrative Agent shall have received from each Included Investor and Designated Investor: (i) a duly executed Investor Letter; (ii) a copy of such Investor's duly executed signature page to the Operating Agreement or Stockholders Agreement, as applicable; and (iii) to the extent requested by Administrative Agent, true and complete copies of the organizational documents of each Investor, or other documentation in lieu thereof that is acceptable to Administrative Agent in its sole discretion. Administrative Agent may waive one or more of the foregoing requirements with respect to Designated Investors so long as Borrowers have made good faith efforts to obtain the same without success;

(q) **Fees; Costs and Expenses.** Payment of all fees and other amounts due and payable on or prior to the date hereof, including pursuant to the Fee Letter, and, to the extent invoiced, reimbursement or payment of all reasonable expenses required to be reimbursed or paid by Borrower hereunder, including the fees and disbursements invoiced through the date hereof of Administrative Agent's special counsel, Mayer Brown LLP;

(r) **Advisory Committee Required Vote.** Written evidence in form reasonably satisfactory to the Administrative Agent that the Advisory Committee (as defined in the Operating Agreement) has approved the Loans and Letters of Credit contemplated by this Credit Agreement and the other Loan Documents as contemplated in Section 4.1(b) of the Operating Agreement; and

(s) **Additional Information.** Such other information and documents as may reasonably be required by Administrative Agent and its counsel, including any "Know Your Customer" procedures as reasonably requested by the Lenders.

8.2. Qualified Borrower Loans and Letters of Credit. The obligation of Lenders to advance a Loan to a Qualified Borrower or to cause the issuance of a Letter of Credit for a Qualified Borrower is subject to the conditions that:

(a) Qualified Borrower Promissory Note. Administrative Agent shall have received a duly executed Qualified Borrower Promissory Note or Qualified Borrower Letter of Credit Note, as applicable, complying with the terms and provisions hereof;

(b) Authorizations of Qualified Borrower. Administrative Agent shall have received from the Qualified Borrower appropriate evidence of the authorization of the Qualified Borrower approving the execution, delivery and performance of the Qualified Borrower Promissory Note or the Qualified Borrower Letter of Credit Note, duly adopted by Qualified Borrower, as required by law or agreement, and accompanied by a certificate of an authorized Person of such Qualified Borrower stating that such authorizations are true and correct, have not been altered or repealed and are in full force and effect;

(c) Incumbency Certificate. Administrative Agent shall have received from the Qualified Borrower a signed certificate of the appropriate Responsible Officer of the Qualified Borrower which shall certify the names of the Persons authorized to sign the Qualified Borrower Promissory Note and the other documents or certificates to be delivered pursuant to the terms hereof by such Qualified Borrower, together with the true signatures of each such Person;

(d) Borrower Guaranty. Administrative Agent shall have received from Borrower a duly executed Borrower Guaranty complying with the terms and provisions hereof;

(e) Opinion of Counsel to Qualified Borrower. Administrative Agent shall have received a favorable opinion of counsel for the Qualified Borrower, in form and substance satisfactory to Administrative Agent and addressed to Administrative Agent, that: (i) the Qualified Borrower is duly organized and validly existing under the laws of the jurisdiction of its formation; (ii) the subject Qualified Borrower Note has been duly authorized, executed and delivered by the Qualified Borrower; (iii) the subject Qualified Borrower Note is a valid and binding obligation and agreement of such Qualified Borrower, enforceable in accordance with its terms, except to the extent that it may be limited by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally, by general equitable principles; and (iv) neither the execution nor delivery by Qualified Borrower of the subject Qualified Borrower Note, and, if applicable, the Application and Agreement for Letter of Credit, the performance by such Qualified Borrower of its obligations thereunder, nor the compliance by Qualified Borrower with the terms and provisions thereof, will: (A) contravene any provision of the general corporate law, or, if Qualified Borrower is a partnership or another type of entity, the Managing Membership Law or applicable law governing such entity, of the jurisdiction of formation of such Qualified Borrower, or the laws, statutes, rules or regulations of the State of New York or the United States of America to which Qualified Borrower is subject, or conflict with, or result in any breach of, any material agreement, mortgage, indenture, deed of trust or other instrument known to counsel to which Qualified Borrower or its properties may be subject, or result in the creation of any mortgage, lien, pledge or encumbrance in respect of any properties of Qualified Borrower; (B) contravene any judgment, decree, license, order or permit applicable to Qualified Borrower; or (C) violate any provision of the organizational documents of Qualified Borrower. Each Qualified Borrower hereby directs its counsel to prepare and deliver such legal opinion to Administrative Agent for the benefit of Lenders.

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8.3. All Loans and Letters of Credit. The obligation of Lenders to advance each Borrowing or the Letter of Credit Issuer to issue Letters of Credit hereunder is subject to the conditions that:

(a) Representations and Warranties. The representations and warranties set forth in Section 9 hereof are true and correct in all material respects on and as of the date of the advance of such Borrowing or issuance of such Letter of Credit, with the same force and effect as if made on and as of such date (except to the extent of changes in facts or circumstances that have been disclosed to Lenders and do not constitute an Event of Default or a Potential Default under this Credit Agreement or any other Loan Document);

(b) No Default. No event shall have occurred and be continuing, or would result from the Borrowing or the issuance of the Letter of Credit, which constitutes an Event of Default or a Potential Default;

(c) Loan Notice. Administrative Agent shall have received a Loan Notice or Request for Letter of Credit;

(d) Application. In the case of a Letter of Credit, the Letter of Credit Issuer shall have received an Application and Agreement for Letter of Credit executed by Borrower or the applicable Qualified Borrower and shall have countersigned the same; and

(e) Material Adverse Effect. No Material Adverse Effect has occurred and is continuing.

9. REPRESENTATIONS AND WARRANTIES. To induce Lenders to make the Loans and cause the issuance of Letters of Credit hereunder, each Credit Party represents and warrants to Lenders as to itself that:

9.1. Organization and Good Standing of Borrower. Borrower is a limited liability company duly organized and validly existing under the laws of the State of Delaware, has the requisite limited liability company power and authority to own its properties and assets and to carry on its business as now conducted, and is qualified to do business in each jurisdiction where the nature of the business conducted or the property owned or leased requires such qualification or where the failure to be so qualified to do business would have a Material Adverse Effect.

9.2. Organization and Good Standing of Managing Member. Managing Member is a limited liability company duly organized and validly existing under the laws of the State of Delaware, has the requisite limited liability company power and authority to own its properties and assets and to carry on its business as now conducted, and is qualified to do business in each jurisdiction where the nature of the business conducted or the property owned or leased requires such qualification or where the failure to be so qualified to do business would have a Material Adverse Effect.

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9.3. Organization and Good Standing of Guarantor. Guarantor is a limited partnership duly organized and validly existing under the laws of the State of Delaware, has the requisite limited partnership power and authority to own its properties and assets and to carry on its business as now conducted, and is qualified to do business in each jurisdiction where the nature of the business conducted or the property owned or leased requires such qualification or where the failure to be so qualified to do business would have a Material Adverse Effect.

9.4. Organization and Good Standing of Pledgor. Pledgor is a corporation incorporated and validly existing under the laws of the State of Maryland, has the requisite corporate power and authority to own its properties and assets and to carry on its business as now conducted, and is qualified to do business in each jurisdiction where the nature of the business conducted or the property owned or leased requires such qualification or where the failure to be so qualified to do business would have a Material Adverse Effect.

9.5. Authorization and Power. It has the partnership, limited liability company or corporate power, as applicable, and requisite authority to execute, deliver, and perform its respective obligations under this Credit Agreement, the Notes, and the other Loan Documents to be executed by it. It is duly authorized to, and has taken all partnership, limited liability company and corporate action, as applicable, necessary to authorize it to execute, deliver, and perform its respective obligations under this Credit Agreement, the Notes, and such other Loan Documents and is and will continue to be duly authorized to perform its respective obligations under this Credit Agreement, the Notes, and such other Loan Documents.

9.6. No Conflicts or Consents. None of the execution and delivery of this Credit Agreement, the Notes, or the other Loan Documents, the consummation of any of the transactions herein or therein contemplated, or the compliance with the terms and provisions hereof or with the terms and provisions thereof, will contravene or conflict, in any material respect, with any provision of law, statute, or regulation to which it is subject or any judgment, license, order, or permit applicable to it or any indenture, mortgage, deed of trust, or other agreement or instrument to which it is a party or by which it may be bound, or to which it may be subject. No consent, approval, authorization, or order of any court or Governmental Authority or third party is required in connection with the execution and delivery by it of the Loan Documents to which it is a party or to consummate the transactions contemplated hereby or thereby except for those that have been obtained.

9.7. Enforceable Obligations. This Credit Agreement, the Notes and the other Loan Documents to which it is a party are the legal and binding obligations of it, enforceable in accordance with their respective terms, subject to Debtor Relief Laws and equitable principles.

9.8. Priority of Liens. The Collateral Documents create, as security for the Obligations, valid and enforceable, exclusive, first priority security interests in and Liens on all of the Collateral in which it has any right, title or interest, in favor of Administrative Agent for the benefit of the Secured Parties, subject to no other Liens, except as enforceability may be limited by Debtor Relief Laws and equitable principles. Such security interests in and Liens on the Collateral in which it has any right, title, or interest shall be superior to and prior to the rights of all third parties in such Collateral, and, other than in connection with any future change in its name, identity or structure, or the location of its chief executive office, no further recordings or filings are or will be required in connection with the creation, perfection or enforcement of such security interests and Liens, other than the filing of continuation statements in accordance with applicable law. Each Lien referred to in this Section 9.7 is and shall be the sole and exclusive Lien on the Collateral in which it has any right, title or interest.

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9.9. **Financial Condition.** Each Borrower Party has delivered to Administrative Agent: (a) the most-recently available copies of the financial statements and reports described in Section 10.1; or, with respect to such requirement on the Closing Date, if such statements and reports are not then available (b) a *pro forma* balance sheet as of the Closing Date; in each case certified as true and correct in all material respects by a Responsible Officer of such Borrower Party. Such statements fairly present, in all material respects, the financial condition of such Borrower Party as of the applicable date of delivery, and have been prepared in accordance with GAAP, except as provided therein.

9.10. **Full Disclosure.** There is no material fact that any Credit Party has not disclosed to Administrative Agent in writing which would reasonably be expected to result in a Material Adverse Effect. No information heretofore furnished by any Credit Party in connection with this Credit Agreement, the other Loan Documents or any transaction contemplated hereby or thereby, contains any untrue statement of a material fact that would reasonably be expected to result in a Material Adverse Effect.

9.11. **No Default.** No event has occurred and is continuing which constitutes an Event of Default or a Potential Default.

9.12. **No Litigation.** There are no actions, suits, investigations or legal, equitable, arbitration or administrative proceedings pending, or to the knowledge of a Responsible Officer of it, threatened, against such Credit Party that would reasonably be expected to result in a Material Adverse Effect.

9.13. **Material Adverse Change.** No changes to it have occurred since the date of its most recent financial statements delivered to Lenders which would reasonably be expected to result in a Material Adverse Effect.

9.14. **Taxes.** To the extent that failure to do so would have a Material Adverse Effect, all tax returns required to be filed by it in any jurisdiction have been filed and all taxes, assessments, fees, and other governmental charges upon it or upon any of its respective properties, income or franchises have been paid prior to the time that such taxes could give rise to a lien thereon. There is no proposed tax assessment against it or any basis for such assessment which is material and is not being contested in good faith.

9.15. **Jurisdiction of Formation; Principal Office.** (a) The jurisdiction of formation of Borrower is Delaware; (b) the jurisdiction of formation of Managing Member is Delaware; (c) the jurisdiction of formation of Guarantor is Delaware; and (d) the jurisdiction of formation of Pledgor is Maryland.

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9.16. ERISA Compliance. It has not established nor does it maintain any Plan. (a) Each of Credit Party and Guarantor is an Operating Company; or (b) the underlying assets of each Credit Party do not otherwise constitute Plan Assets.

9.17. Compliance with Law. It is, to the best of its knowledge, in compliance in all material respects with all material laws, rules, regulations, orders, and decrees which are applicable to it or its properties, including, without limitation, Environmental Laws.

9.18. Hazardous Substances. To the knowledge of its Responsible Officers, it: (a) has not received any notice or other communication or otherwise learned of any Environmental Liability which would individually or in the aggregate reasonably be expected to have a Material Adverse Effect arising in connection with: (i) any non-compliance with or violation of the requirements of any Environmental Law by any Credit Party, or any permit issued under any Environmental Law to such Credit Party; or (ii) the Release or threatened Release of any Hazardous Material into the environment; and (b) to its knowledge, has threatened or actual liability in connection with the Release or threatened Release of any Hazardous Material into the environment which would individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

9.19. Insider. It is not an "executive officer," "director," or "person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10% of any class of voting securities" (as those terms are defined in 12 U.S.C. §375b or in regulations promulgated pursuant thereto) of any Lender, of a bank holding company of which any Lender is a subsidiary, or of any subsidiary, of a bank holding company of which any Lender is a subsidiary, of any bank at which any Lender maintains a correspondent account, or of any bank which maintains a correspondent account with any Lender.

9.20. Properties. Each Credit Party has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for any defects that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Credit Party owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by such Credit Party and its subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

9.21. Operating Structure. As of the date hereof, the sole Managing Member of Borrower is Managing Member. The only members of Borrower and the only Stockholders of Pledgor are set forth on Exhibit A attached hereto and incorporated herein by reference (or on a revised Exhibit A delivered to Administrative Agent in accordance with Section 11.5 hereof), and the Capital Commitment of each Investor is set forth on Exhibit A (or on such revised Exhibit A).

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9.22. **Capital Commitments and Contributions.** The aggregate amount of the Unfunded Capital Commitments of all Investors as of the date hereof is as set forth on *Exhibit A*. The aggregate amount of the Unfunded Capital Commitments of all Included Investors and Designed Investors (separately) as of the date hereof is as set forth on *Exhibit A*. There are no Capital Call Notices outstanding except as otherwise disclosed in writing to Administrative Agent. To its knowledge, no Investor is in default under the Operating Agreement, Partnership Agreement or Stockholders Agreement, as applicable. Prior to the date hereof, each Credit Party has satisfied all conditions to its rights to make a Capital Call, including any and all conditions contained in its Constituent Documents.

9.23. **Fiscal Year.** Its fiscal year is the calendar year.

9.24. **Investment Company Act.** It is not required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

9.25. **Margin Stock.** It is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Loan or Letter of Credit will be used: (a) to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock; (b) to reduce or retire any indebtedness which was originally incurred to purchase or carry any such Margin Stock; or (c) for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation T, U, or X. Neither it nor any Person acting on its behalf has taken or will take any action which might cause any Loan Document to violate Regulation T, U or X or any other regulation of the Board of Governors of the Federal Reserve System or to violate Section 7 of the Securities Exchange Act, in each case as now in effect or as the same may hereafter be in effect.

9.26. **Foreign Asset Control Laws.** Neither it nor any Affiliate thereof, and no Investor or, to its knowledge, Affiliate thereof, is a Person named on a list published by the Office of Foreign Assets Control ("OFAC") of the United States Treasury Department or is a Person with whom dealings are prohibited under any OFAC regulations. To its knowledge, no Investor's funds used in connection with this transaction are derived from illegal or suspicious activities.

9.27. **Brokers' Fees.** No Credit Party has dealt with any broker or finder with respect to the transactions contemplated by the Loan Documents or otherwise in connection with the Loan Documents.

9.28. **Solvency.** Each Credit Party is, and after consummation of the transactions contemplated by the Loan Documents will be, Solvent.

9.29. **Managing Member Representation.** Managing Member has received direct or indirect benefit from the Loans and Letters of Credit evidenced by the Obligations and the grant of the security interest in the collateral was a condition to granting such Loans and issuance of such Letters of Credit.

9.30. **Guarantor Representation.** Guarantor has received direct or indirect benefit from the Loans and Letters of Credit evidenced by the Obligations and the grant of the security interest in the collateral was a condition to granting such Loans and issuance of such Letters of Credit.

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9.31. **Pledgor Representation.** Pledgor has received direct or indirect benefit from the Loans and Letters of Credit evidenced by the Obligations and the grant of the security interest in the Collateral was a condition to granting such Loans and issuance of such Letters of Credit.

9.32. **Investments.** No investments made by any Credit Party or their subsidiaries, directly or indirectly, are in violation of, or would cause a default under, the terms of the Operating Agreement, the Partnership Agreement or the Stockholders Agreement.

9.33. **Investor Documents.** To the knowledge of each Credit Party after commercially reasonable inquiry, each Investor Letter and Stockholders Agreement, as applicable, have been duly authorized and executed by each Investor and constitute the legal, valid and binding obligations of each Investor, enforceable against each Investor in accordance with their terms.

9.34. **Advisory Committee.** The Credit Parties confirm that the members of the Advisory Committee (as defined in the Operating Agreement) as of the date hereof are Alan Forman, Verna Kuo, Susan Meaney, Denise Strack and Laudan Nabizadeh.

10. AFFIRMATIVE COVENANTS. So long as Lenders have any commitment to lend hereunder or the Letter of Credit Issuer has any obligation to cause the issuance of any Letters of Credit hereunder, and until payment in full of the Notes and the performance in full of the Obligations under this Credit Agreement and the other Loan Documents, Borrower and each other Credit Party, as applicable, each agrees that, unless Administrative Agent shall otherwise consent in writing based upon the approval of the Required Lenders (unless the approval of Administrative Agent alone or a different number of Lenders is expressly permitted below):

10.1. Financial Statements, Reports and Notices. Borrower shall deliver to Administrative Agent sufficient copies for each Lender of the following:

(a) **Annual Statements.** As soon as reasonably available and in any event within one hundred twenty (120) days after the end of each fiscal year of Borrower, audited, unqualified financial statements of Borrower, including a consolidated balance sheet of Borrower and its consolidated subsidiaries as of the end of such fiscal year and the related consolidated statements of operations for such fiscal year prepared by independent public accountants of nationally recognized standing;

(b) **Quarterly Statements.** As soon as available and in any event within sixty (60) days after the end of each quarter of each fiscal year of Borrower, an unaudited consolidated balance sheet of Borrower and its consolidated subsidiaries as of the end of such quarter and the related unaudited consolidated statements of operations for such quarter;

(c) **Borrowing Base Certificate.** Concurrently with the delivery of each Loan Notice or Request for Letter of Credit and each annual and quarterly report referenced in **Sections 10.1(a)** and **10.1(b)** hereof, and as of the last calendar day of any calendar month when no Borrowing has been made during such calendar month, a Borrowing Base Certificate signed by a Responsible Officer of Borrower and Managing Member: (i) setting forth the Capital Contributions and Unfunded Capital Commitments of all of the Investors and a calculation of the Available Loan Amount (all as of the end of the relevant period); (ii) specifying changes, if any, in the names of Investors; and (iii) listing Investors who have not delivered Investor Letters or with respect to Subsequent Investors, who have not satisfied the conditions of **Section 11.5(c)** hereof;

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(d) **Compliance Certificate.** Simultaneously with the delivery of the reports described in *clauses (a) and (b)* above, a compliance certificate (a "**Compliance Certificate**"), certified by a Responsible Officer of Borrower to be true and correct, substantially in the form of **Exhibit O** attached hereto (with blanks appropriately completed in conformity herewith); (i) stating that such officer is familiar with the terms and provisions of the Loan Documents; (ii) certifying that such financial statements fairly present the financial condition and the results of operations of the Borrower on the dates and for the periods indicated, on the basis of GAAP, subject, in the case of interim financial statements, to normally recurring year-end adjustments; (iii) stating that the Borrowers are in compliance with all covenants in **Section 10** hereof, including the covenants set forth in **Section 10.11**, and containing the calculations evidencing such compliance; (iv) stating whether any Event of Default or Potential Default exists on the date of such certificate and, if any Event of Default or Potential Default then exists, setting forth the details thereof and the action which the Credit Parties are taking or propose to take with respect thereto; (v) setting forth the Unfunded Capital Commitments of all Investors (breaking out Included Investors and Designated Investors) and a calculation of the Available Loan Amount (all as of the end of the relevant period); (vi) specifying changes, if any, in the name of any Investor or in the identity of any Investor, by merger or otherwise; and (vii) listing Investors which have been subject to an Exclusion Event.

(e) **ERISA Notices.** Promptly upon any Credit Party obtaining knowledge or a reasonable belief that its assets are, or are about to become, Plan Assets, such Credit Party shall deliver written notice thereof to Administrative Agent (an "**ERISA Event Notice**"), and shall, in such notice, or in subsequent written notices as events develop, notify Administrative Agent of any actions contemplated by in connection therewith. Each Credit Party shall, simultaneously with the delivery of any ERISA Notice to any Investors, deliver a copy of the same to Administrative Agent;

(f) **ERISA Certification.** Annually (to be delivered within forty-five (45) days following each annual valuation period of the Credit Parties and with the Compliance Certificate of Borrower pursuant to **Section 10.1(d)**), a certification from a Responsible Officer of the Credit Parties prepared in consultation with counsel that the assets of the Credit Parties do not constitute Plan Assets;

(g) **Reporting Relating to Investors.** Promptly upon the receipt thereof, copies of all financial statements, notices of default, notices relating in any way to an Investor's funding obligation and notices containing any reference to misconduct of any Credit Party, sent to or received by a Borrower and/or any Credit Party from an Investor; and

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(h) **Other Reporting.** Simultaneously with delivery to the Investors, copies of all other material financial statements, appraisal reports, notices, and other matters at any time or from time to time prepared by a Credit Party and furnished to the Investors, including, without limitation, any notice of default, notice of election or exercise of any rights or remedies under the Operating Agreement, the Partnership Agreement, the Stockholders Agreement, the Investor Letters or the Constituent Documents of any Credit Party, or any notices relating in any way to any Investor's Capital Commitment, and any notice relating in any way to the misconduct of any Credit Party.

10.2. **Payment of Taxes.** Each Credit Party will pay and discharge all taxes, assessments, and governmental charges or levies imposed upon it, upon its income or profits, or upon any property belonging to it before delinquent, if such failure would have a Material Adverse Effect; *provided, however*, that no Credit Party shall be required to pay any such tax, assessment, charge, or levy if and so long as the amount, applicability, or validity thereof shall currently be contested in good faith by appropriate proceedings and appropriate reserves therefor have been established.

10.3. **Maintenance of Existence and Rights.** Each Credit Party will preserve and maintain its existence. Each Credit Party shall further preserve and maintain all of its rights, privileges, and franchises necessary in the normal conduct of its business and in accordance with all valid regulations and orders of any Governmental Authority the failure of which would have a Material Adverse Effect.

10.4. **Notice of Default.** Each Credit Party will furnish to Administrative Agent, promptly upon becoming aware of the existence of any condition or event which constitutes an Event of Default or a Potential Default (including, without limitation, notice from the Investors of any Credit Party that the Investors intend to seek a "Cause Event" as defined in the Operating Agreement, Partnership Agreement and Stockholders Agreement, a written notice specifying the nature and period of existence thereof and the action which the Credit Parties are taking or propose to take with respect thereto. Each Credit Party shall promptly notify Administrative Agent in writing upon becoming aware: (a) that any Investor has violated or breached any material term of the Operating Agreement, Partnership Agreement or Stockholders Agreement, as applicable, or has become a Defaulting Investor; or (b) of the existence of any condition or event which, with the lapse of time or giving of notice or both, would cause an Investor to become a Defaulting Investor.

10.5. **Other Notices.** Each Credit Party will, promptly upon receipt of actual knowledge thereof by a Responsible Officer, notify Administrative Agent of any of the following events that would reasonably be expected to result in a Material Adverse Effect: (a) any change in the financial condition or business of such Credit Party; (b) any default by such Credit Party under any material agreement, contract, or other instrument to which such Credit Party is a party or by which any of its properties are bound, or any acceleration of the maturity of any material indebtedness owing by such Credit Party; (c) any uninsured claim against or affecting such Credit Party or any of its properties; (d) the commencement of, and any material determination in, any litigation with any third party or any proceeding before any Governmental Authority affecting such Credit Party; (e) any Environmental Complaint or any claim, demand, action, event, condition, report or investigation indicating any potential or actual liability of such Credit Party arising in connection with: (i) the non-compliance with or violation of the requirements of any Environmental Law or any permit issued under any Environmental Law; or (ii) the Release or threatened Release of any Hazardous Material into the environment; (f) the existence of any Environmental Lien on any Properties or assets of such Credit Party; (g) any material remedial action taken by any Credit Party in response to any order, consent decree or judgment of any Governmental Authority or any Environmental Liability; or (h) the listing of any of such Credit Party's Properties on CERCLIS to the extent that such Credit Party obtains knowledge of such listing, whether or not such listing would reasonably be expected to result in a Material Adverse Effect.

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10.6. Compliance with Loan Documents, Operating Agreement, Partnership Agreement and Stockholders Agreement. Unless otherwise approved in accordance with the terms of this Credit Agreement (which approval, by such terms, may require more or fewer Lenders than the Required Lenders), each Credit Party will promptly comply with any and all covenants and provisions of this Credit Agreement, the Notes, and all of the other Loan Documents executed by it. Each Borrower Party will use the proceeds of any Capital Call Notices only for such purposes as are permitted by its Constituent Documents.

10.7. Books and Records; Access. Each Credit Party will give any representative of Administrative Agent, Managing Agent or Lenders, or any of them, reasonable access during all business hours to, and permit representatives to examine, copy, or make excerpts from, any and all books, records, and documents in the possession of such Credit Party and relating to its affairs, and to inspect any of the properties of such Credit Party.

10.8. Compliance with Law. Each Credit Party will comply in all material respects with all material laws, rules, regulations, and all orders of any Governmental Authority, including, Environmental Laws and ERISA.

10.9. Insurance. Each Credit Party will maintain workmen's compensation insurance, liability insurance, and insurance on its present and future properties, assets, and business against such casualties, risks, and contingencies, and in such types and amounts, as are consistent with customary practices and standards of their industry and the failure of which to maintain could have a Material Adverse Effect.

10.10. Authorizations and Approvals. Each Credit Party will promptly obtain, from time to time at its own expense, all such governmental licenses, authorizations, consents, permits and approvals as may be required to enable such Credit Party to comply with its respective obligations hereunder, under the other Loan Documents, the Operating Agreement, the Partnership Agreement, the Stockholders Agreement and its respective Constituent Documents.

10.11. Maintenance of Liens. Each Credit Party shall perform all such acts and execute all such documents as Administrative Agent may reasonably request in order to enable the Secured Parties to report, file, and record every instrument that Administrative Agent may deem necessary in order to perfect and maintain the Secured Parties' Liens and security interests in the Collateral and otherwise to preserve and protect the rights of Secured Parties under the Collateral Documents.

10.12. Further Assurances. Each Credit Party will make, execute or endorse, and acknowledge and deliver or file or cause the same to be done, all such vouchers, invoices, notices, certifications, and additional agreements, undertakings, conveyances, transfers, assignments, financing statements, or other assurances, and take any and all such other action, as Administrative Agent may, from time to time, reasonably deem necessary in connection with this Credit Agreement or any of the other Loan Documents, the obligations of the Credit Parties hereunder or thereunder, or for better assuring and confirming unto Secured Parties all or any part of the security for any of such obligations anticipated herein.

10.13. Investor Financial and Rating Information. Each Credit Party shall request, from each Investor (without duplication), financial information required under the applicable Investor Letter, as agreed from time to time with Administrative Agent, and shall, upon receipt of such information, promptly deliver same to Administrative Agent, or shall promptly notify Administrative Agent of its failure to timely obtain such information. The Credit Parties will promptly notify Administrative Agent in writing (but in no event later than five (5) Business Days) after: (a) becoming aware of: (i) any decline in the Rating of any Included Investor, or decline in the capital status of any Included Investor that is a bank holding company, whether or not such change results in an Exclusion Event and (ii) any other Exclusion Event; and (b) becoming aware of the existence of any condition or event which, with the lapse of time or giving of notice or both, would cause an Exclusion Event.

10.14. Certain Included Investor Requirements. In addition to the other requirements of this Credit Agreement, each Included Investor that is: (i) organized under the laws of any jurisdiction other than the United States of America or any state thereof shall deliver to Administrative Agent a written submission to the jurisdiction of a United States Federal District Court and a United States state court with respect to any litigation arising out of or in connection with its Investor Letter or any Constituent Document of any Credit Party (each submission to be in form and substance reasonably satisfactory to Administrative Agent, including provisions relating to waiver of venue, waiver of defense of inconvenient forum, and consent to service of process; or (ii) a Governmental Authority or an instrumentality of a Governmental Authority or majority-owned by a Governmental Authority or otherwise entitled to any immunity in respect of any litigation in any jurisdiction, court or venue, shall deliver to Administrative Agent a written waiver (in form and substance reasonably satisfactory to Administrative Agent) of any such claim of immunity.

10.15. Covenants of Qualified Borrowers. The covenants and agreements of Qualified Borrowers hereunder shall be binding and effective only upon and after the execution and delivery of a Qualified Borrower Note by such Qualified Borrower.

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11. NEGATIVE COVENANTS. So long as Lenders have any commitment to lend hereunder or the Letter of Credit Issuer has any obligation to cause the issuance of any Letter of Credit hereunder, and until payment and performance in full of the Obligations under this Credit Agreement and the other Loan Documents, each Credit Party agrees that, without the written consent of Administrative Agent, based upon the approval of Required Lenders (unless the approval of Administrative Agent alone or a different number of Lenders is expressly permitted below);

11.1. Mergers. No Credit Party will merge or consolidate with or into any Person, unless such Credit Party is the surviving entity; *provided, however*, that any such merger (a) must be duly authorized under the Constituent Documents of the applicable Credit Party or the applicable managing member or general partner, as applicable, and (b) must not adversely affect the enforceability of the Capital Commitments and the Investor Letters of the Investors in the applicable Credit Party. No Credit Party will take any action to dissolve, terminate, or liquidate, including, without limitation, any action to sell or dispose of all or substantially all of its property.

11.2. Negative Pledge. Without the approval of all Lenders, no Credit Party will create or suffer to exist any Lien upon the Collateral, other than the first priority security interest in and upon the Collateral (or any portion thereof) to Administrative Agent for the benefit of the Secured Parties.

11.3. Fiscal Year and Accounting Method. Without the prior written consent of Administrative Agent alone (such approval not to be unreasonably withheld or delayed), no Credit Party will change its fiscal year or method of accounting.

11.4. Constituent Documents. Without the prior written consent of Administrative Agent consistent with this **Section 11.4**, no Credit Party shall alter, amend, modify, terminate, or change any provision of its Constituent Documents affecting such Credit Party's or the Investors' debts, duties, obligations, and liabilities, and the rights, titles, security interests, liens, powers and privileges of any Credit Party, Administrative Agent or Secured Parties, in each case relating to this Agreement, the Obligations, Capital Call Notices, Capital Commitments, Capital Contributions or Unfunded Capital Commitments; or amend the terms of *Articles V or XI* of the Operating Agreement or *Section 6* of the Stockholders Agreement (or comparable provisions regarding leverage) (each an "*adverse amendment*"); or suspend, reduce, excuse or terminate any Investor's Unfunded Commitments. With respect to any proposed amendment, modification or change to any Constituent Document, the applicable Credit Party shall notify Administrative Agent of such proposal. Administrative Agent shall determine, in its sole discretion (that is, the determination of the Lenders shall not be required) on Administrative Agent's good faith belief, whether such proposed amendment, modification or change to such Constituent Document is an adverse amendment, and shall use reasonable efforts to notify such Credit Party of its determination within five (5) Business Days of the date on which it received such notification pursuant to **Section 14.7**. If Administrative Agent determines that the proposed amendment is an adverse amendment, the approval of the Required Lenders and Administrative Agent will be required (unless the approval of all Lenders is required consistent with the terms of **Section 11.6**), and Administrative Agent shall promptly notify the Lenders of such request for such approval, distributing, as appropriate, the proposed amendment and any other relevant information provided by such Credit Party, to which the Lenders will respond to within ten (10) Business Days. If Administrative Agent determines that the proposed amendment is not an adverse amendment, such Credit Party may make such amendment without the consent of Lenders. Notwithstanding the foregoing, without the consent of Administrative Agent or the Lenders, such Credit Party may amend its Constituent Documents: (i) to admit new Investors to the extent permitted by this Credit Agreement; and (ii) to reflect transfers of interests permitted by this Credit Agreement.

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11.5. Transfer by, or Admission of, Investors.

(a) **Transfer of Equity Interest.** Any transfer of an Equity Interest: (i) by any Investor to any of its affiliates shall be made with prior written notice to Administrative Agent promptly upon any Credit Party being aware of such proposed transfer; and (ii) by any Investor to any other Person, with prior written notice to Administrative Agent at least twenty (20) Business Days prior to the proposed date of transfer, in each case provided that the transferee is not named on a list published by OFAC. In the event that the applicable transferee does not itself qualify as an Included Investor or Designated Investor or if the consummation of such transfer would require a mandatory prepayment pursuant to **Section 2.1(d)** for any reason, the Credit Parties will issue Capital Call Notices in an amount sufficient to cure such Implicit Borrowing Base Deficit and will pay the mandatory prepayment prior to permitting the consummation of any such transfer.

(b) **Admission of Investors.** No Credit Party shall admit any Person as an additional Investor without the prior written consent of Administrative Agent acting alone, such consent not to be unreasonably withheld.

(c) **Documentation Requirements.** Each Borrower shall require that: (i) any Person admitted as a substitute or new Included Investor or Designated Investor (whether due to a transfer by an existing Investor or otherwise), a "Subsequent Investor" shall, as a condition to such admission, deliver an Investor Letter and provide other documentation similar to that described in **Section 8.1(p)** satisfactory to Administrative Agent in its reasonable discretion; (ii) comply with all requirements herein for an Included Investor or Designated Investor, as applicable, and (iii) any existing Included Investor or Designated Investor that is a transferee from another Investor shall provide confirmation of its obligations under its Investor Letter with respect to any increase in its Capital Commitment relating to such transfer, and, to the extent not addressed in the documentation previously delivered by such Investor, evidence of its authority to assume such increased Capital Commitment, all as satisfactory to Administrative Agent in its reasonable discretion. Any substitute or new Investor that is unable to comply with the requirements of this **Section 11.5(c)** shall be a Non-Included Investor and be excluded from the Borrowing Base. In the event any Person is admitted as a Subsequent Investor, Borrowers will promptly deliver to Administrative Agent a revised **Exhibit A** to this Credit Agreement, containing the names and addresses of each Investor and the Capital Commitments of each.

11.6. Capital Commitments. No Credit Party shall: (a) without the prior written consent of Administrative Agent, which may be withheld in its sole discretion, cancel, reduce, excuse, suspend or defer the Capital Commitment of any non-Included Investor; and (b) without the prior written approval of Administrative Agent and all Lenders: (i) issue any Capital Call Notices other than as contemplated by Section 5.2(c); (ii) cancel, reduce, excuse, suspend or defer the Capital Commitment of any Included Investor or Designated Investor; or (iii) excuse any Investor from or permit any Investor to defer any Capital Contribution, if the proceeds from the related Capital Call Notice are to be applied to the Obligations hereunder.

11.7. ERISA Compliance. No Credit Party shall establish or maintain any Plan. Without the approval of all Lenders, no Credit Party will take any action that would cause its underlying assets to constitute Plan Assets.

11.8. Environmental Matters. Except for such conditions as are in or will promptly be brought into compliance with relevant Environmental Laws or otherwise would not reasonably be expected to result in a Material Adverse Effect, no Credit Party: (a) shall cause any Hazardous Material to be generated, placed, held, located or disposed of on, under or at, or transported to or from, any Property of any Credit Party in material violation of Environmental Law; or (b) shall permit any such Property to ever be used as a dump site or storage site (whether permanent or temporary) for any Hazardous Material in material violation of Environmental Law.

11.9. Dissolution. Without the prior written consent of the Administrative Agent and all Lenders, no Credit Party will take any action to dissolve or terminate any Credit Party.

11.10. Limitations on Dividends and Distributions.

(a) No Credit Party shall declare or pay any dividends or distributions except as permitted under its Constituent Documents.

(b) No Credit Party shall declare or pay any dividends or distributions if: (i) any Event of Default exists; or (ii) a Potential Default exists.

11.11. Limitation on Debt. (a) Borrower shall not, without the prior written consent of the Administrative Agent and the Required Lenders, incur, together with its Affiliates on a consolidated basis in accordance with GAAP, (i) aggregate Indebtedness (including the Obligations) in an amount in excess of that permitted under the Operating Agreement; or (ii) any recourse debt (other than its obligations under this Credit Agreement) in excess of twenty-five (25%) percent of amounts under Section 11.11(a)(i); and (b) Pledgor shall not incur any Indebtedness (other than its obligations under this Credit Agreement).

11.12. Limitation on Managing Member's Activities. The Managing Member shall not: (a) without the prior written consent of the Administrative Agent and the Required Lenders: (i) take any actions that will cause the Managing Member or the Borrower to dissolve, terminate, merge or consolidate; or (ii) create or suffer to exist any mortgage, pledge, lien, or other security interest upon its Membership Interest in Borrower; or (b) transfer its Membership Interest in Borrower without the prior written consent of Administrative Agent and the Required Lenders.

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11.13. Limitation on Pledgor's Activities. Pledgor shall not: (a) without the prior written consent of the Administrative Agent and the Required Lenders: (i) take any actions that will cause the Pledgor to dissolve, terminate, merge or consolidate; or (ii) create or suffer to exist any mortgage, pledge, lien, or other security interest upon its Membership Interest in Borrower; or (b) transfer its Membership Interest in Borrower without the prior written consent of Administrative Agent and the Required Lenders.

11.14. Limitation on Guarantor's Activities. Guarantor shall not: (a) without the prior written consent of the Administrative Agent and the Required Lenders: (i) take any actions that will cause the Guarantor or Acadia Realty Acquisition III LLC to dissolve, terminate, merge or consolidate; or (ii) create or suffer to exist any mortgage, pledge, lien, or other security interest upon its equity interest in Acadia Realty Acquisition III LLC or permit Acadia Realty Acquisition III LLC to create or suffer to exist any mortgage, pledge, lien, or other security interest upon its Membership Interest in Borrower; or (b) transfer its equity interest in Acadia Realty Acquisition III LLC or permit Acadia Realty Acquisition III LLC to transfer its Membership Interest in Borrower, in each case without the prior written consent of Administrative Agent and the Required Lenders.

11.15. Investor Withdrawal. No Credit Party shall take any action which would permit any Investor to withdraw (unless a prepayment is made such that no Implicit Borrowing Base Deficit would occur as a result of such withdrawal) from any Credit Party in accordance with the Operating Agreement, Partnership Agreement, or the Stockholders Agreement, as applicable.

12. EVENTS OF DEFAULT

12.1. Events of Default. An "Event of Default" shall exist if any one or more of the following events (herein collectively called "Events of Default") shall occur and be continuing:

(a) (i) Borrower or any Qualified Borrower shall fail to pay when due any principal of the Obligations; or (ii) any Credit Party or any Qualified Borrower shall fail to pay when due any interest on the Obligations or any fee, expense, or other payment required hereunder, including, without limitation, payment of cash for deposit as cash collateral as required hereunder, and such failure under this clause (ii) shall continue for one (1) Business Day thereafter (except for the failure to pay the Obligations in full on the Maturity Date for which no notice shall be required and except for the failure to prepay any amount required under Section 2.1(d) hereof for which no additional notice shall be required);

(b) any representation or warranty made by any Credit Party or any Qualified Borrower under this Credit Agreement, or any of the other Loan Documents executed by either of them, or in any certificate or statement furnished or made to Lenders or any of them by any Credit Party or any Qualified Borrower pursuant hereto or in connection herewith or with the Loans, shall prove to be untrue or inaccurate in any material respect as of the date on which such representation or warranty is made;

(c) default shall occur in the performance of any of the covenants or agreements contained herein (other than the covenants contained in Section 2.1(d) or Section 11), or of the covenants or agreements of any Credit Party or any Qualified Borrower contained in any other Loan Documents executed by such Person, and such default shall continue uncured to the satisfaction of Administrative Agent for a period of thirty (30) days after written notice thereof has been given by Administrative Agent to Borrower, unless it cannot be cured within thirty (30) days and provided the party is diligently proceeding to cure (provided that such thirty (30)-day cure period shall not apply respecting covenants of a Credit Party relating to notices to be given by a Credit Party, but a three (3)-day grace period shall apply);

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(d) default shall occur in the performance of the covenants or agreements of Borrower or any Qualified Borrower contained in Section 2.1(d) or Section 11;

(e) any of the Loan Documents executed by a Credit Party or any Qualified Borrower shall cease, in whole or in material part, to be legal, valid, binding agreements enforceable against the Credit Parties or such Qualified Borrower in accordance with the terms thereof or shall in any way be terminated or become or be declared ineffective or inoperative or shall in any way whatsoever cease to give or provide the respective liens, security interest, rights, titles, interest, remedies, powers, or privileges intended to be created thereby;

(f) default shall occur in the payment of any recourse indebtedness or Guaranty Obligation of Borrower or Guarantor (other than the Obligations), in an aggregate amount greater than or equal to \$10,000,000, and such default shall continue for more than the applicable period of grace, if any;

(g) any Credit Party shall: (i) apply for or consent to the appointment of a receiver, trustee, custodian, intervenor, or liquidator of itself or of all or a substantial part of its assets; (ii) file a voluntary petition in bankruptcy or admit in writing that it is unable to pay its debts as they become due; (iii) make a general assignment for the benefit of creditors; (iv) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any Debtor Relief Laws; (v) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or (vi) take partnership or corporate action for the purpose of effecting any of the foregoing;

(h) a case or proceeding shall be commenced, without application or consent of any Credit Party, in any court, seeking an order for relief under the Bankruptcy Code, to adjudicate if bankrupt or insolvent or seeking the liquidation, reorganization, debt arrangement, dissolution, winding up or composition or readjustment of debts of any Credit Party, the appointment of a trustee, receiver, custodian, liquidator, assignee or sequestor (or similar official) for such Person or all or substantially all of the assets of such Person, or any similar action with respect to such Person under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed, or unstayed or in effect, for a period of sixty (60) consecutive days or results in the entering of an order for relief or any such adjudication or appointment

~~(i) any final judgment(s) for the payment of money in excess of the sum of \$5,000,000 in the aggregate shall be rendered against any Credit Party and such judgment or judgments remain unsatisfied for a period of sixty (60) days or would reasonably be expected to have a Material Adverse Effect, unless covered by insurance or unless being appealed and the applicable Credit Party or such Qualified Borrower has posted a bond or cash collateral;~~

~~(j) Managing Member shall cease to be the sole Managing Member of Borrower or Managing Member shall be removed as the Managing Member of Borrower;~~

~~(k) Managing Member shall repudiate, challenge, or declare unenforceable its obligation to make contributions to the capital of Borrower pursuant to its Capital Commitments or shall otherwise disaffirm the provisions of the Operating Agreement;~~

~~(l) there shall occur any change in the condition (financial or otherwise) of any Credit Party which, in the reasonable judgment of Administrative Agent, has a Material Adverse Effect (it being understood that the occurrence of Exclusion Events in respect of one or more Investors is not, in and of itself, an event constituting a Material Adverse Effect);~~

~~(m) Pledgor shall repudiate, challenge, or declare unenforceable its obligation to make contributions to the capital of Borrower pursuant to its Capital Commitments or shall otherwise disaffirm the provisions of the Operating Agreement or shall repudiate, challenge, declare unenforceable or default under its obligations under the Capital Contributions Pledge Agreement;~~

~~(n) the removal of the Managing Member pursuant to Section 10.2(a) of the Operating Agreement or the removal of the Acadia D.R. Management Inc. pursuant to Section 5.2 of the Stockholders Agreement;~~

~~(o) Guarantor shall repudiate, challenge, declare unenforceable or default under its obligations under the Guaranty of Capital; or~~

~~(p) the Borrowing Base Deficit is greater than zero (0) and is not eliminated within one (1) Business Day.~~

~~**12.2. Remedies Upon Event of Default.** If an Event of Default shall have occurred and be continuing, then Administrative Agent may, and, upon the direction of the Required Lenders, shall: (a) suspend the Commitments of Lenders until such Event of Default is cured; (b) terminate the Commitment of Lenders hereunder; (c) declare the principal of, and all interest then accrued on, the Obligations to be forthwith due and payable (including the liability to fund the Letter of Credit Liability pursuant to **Section 2.5(g)** hereof), whereupon the same shall forthwith become due and payable without presentment, demand, protest, notice of default, notice of acceleration, or of intention to accelerate or other notice of any kind all of which each of Borrower, each Qualified Borrower and each other Credit Party hereby expressly waives, anything contained herein or in any other Loan Document to the contrary notwithstanding; (d) require that the Borrower Parties Cash Collateralize the Letter of Credit Liability; (e) exercise any right, privilege, or power set forth in **Section 5.2** hereof, including, but not limited to, the initiation of Capital Call Notices of the Capital Commitments; or (f) without notice of default or demand, pursue and enforce any of Administrative Agent's or Lenders' rights and remedies under the Loan Documents, or otherwise provided under or pursuant to any applicable law or agreement; *provided, however,* that if any Event of Default specified in **Section 12.1(g)** or **12.1(h)** hereof shall occur, the principal of, and all interest on, the Obligations shall thereupon become due and payable concurrently therewith, without any further action by Administrative Agent or Lenders, or any of them, and without presentment, demand, protest, notice of default, notice of acceleration, or of intention to accelerate or other notice of any kind, all of which each of Borrower, each Qualified Borrower and Guarantor hereby expressly waives.~~

12.3. Performance by Administrative Agent. Should any Credit Party or any fail to perform any covenant, duty, or agreement contained herein or in any of the Loan Documents, and such failure continues beyond any applicable cure period, Administrative Agent may, but shall not be obligated to, perform or attempt to perform such covenant, duty, or agreement on behalf of such Person. In such event, each Credit Party shall, at the request of Administrative Agent promptly pay any amount expended by Administrative Agent in such performance or attempted performance to Administrative Agent, together with interest thereon at the Default Rate from the date of such expenditure until paid. Notwithstanding the foregoing, it is expressly understood that neither any of the Agents nor any of the other Secured Parties assume any liability or responsibility for the performance of any duties any Credit Party, or any related Person hereunder or under any of the Loan Documents or other control over the management and affairs of any Credit Party, or any related Person, nor by any such action shall any of the Agents or any of the other Secured Parties be deemed to create a partnership arrangement with any Credit Party or any related Person.

13. AGENCY PROVISIONS

13.1. Appointment and Authorization of Agents.

(a) Authority. Each Lender (including any Person that is an assignee, participant, secured party or other transferee with respect to the interest of such Lender in any Principal Obligation or otherwise under this Credit Agreement) (collectively with such Lender, a "**Lender Party**") hereby irrevocably appoints, designates and authorizes each Agent (other than a Managing Agent for a different Lender Group) to take such action on its behalf under the provisions of this Credit Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms hereof and of the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere herein and in any other Loan Documents, no Agent shall have any duties or responsibilities, except those expressly set forth herein and therein, nor shall any Agent have or be deemed to have any fiduciary relationship with any Lender Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Credit Agreement or any of the other Loan Documents or otherwise exist against any 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 any 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.

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(b) **Release of Collateral.** The Secured Parties irrevocably authorize Administrative Agent, at Administrative Agent's option and in its discretion, to release any security interest in or Lien on any Collateral granted to or held by Administrative Agent: (i) upon termination of this Credit Agreement and the other Loan Documents, termination of the Commitments and all Letters of Credit (or the Cash Collateralization in full of all Letters of Credit), and payment in full of all Obligations, including all fees and indemnified costs and expenses that are then due and payable pursuant to the terms of the Loan Documents; and (ii) if approved by the requisite Lenders pursuant to the terms of **Section 14.1**. Upon the request of Administrative Agent, the Lenders will confirm in writing Administrative Agent's authority to release particular types or items of Collateral pursuant to this **Section 13.1(b)**.

(c) **Limitation on Beneficiaries.** The provisions of **Sections 13.1** through **13.8** and **Section 13.10** are solely for the benefit of the Administrative Agent, the Lenders, the Letter of Credit Issuer and the other Secured Parties, and no Credit Party shall have rights as a third party beneficiary of any of such provisions.

13.2. Delegation of Duties. Each Agent may execute any of its duties under this Credit Agreement or under the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of legal counsel, accountants, and other professionals concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

13.3. Exculpatory Provisions. No Agent-Related Person shall be liable for any action taken or omitted to be taken by it under or in connection herewith or in connection with any of the other Loan Documents or the transactions contemplated hereby (except for its own gross negligence or willful misconduct) or be responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any of the Credit Parties contained herein or in any of the other Loan Documents or in any certificate, report, document, financial statement or other written or oral statement referred to or provided for therein, or received by such Agent under or in connection herewith or in connection with the other Loan Documents, or enforceability or sufficiency of this Credit Agreement or any of the other Loan Documents, or for any failure of any Credit Party to perform its obligations hereunder or thereunder. No Agent-Related Person shall be responsible to any Lender to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or in the other Loan Documents or as to the use of the proceeds of the Loans or the use of the Letters of Credit or of the existence or possible existence of any Potential Default or Event of Default or to inspect the properties, books or records of the Credit Parties. The Agents are not trustees for the Lenders and owe no fiduciary duty to the Lender Groups. Each Lender recognizes and agrees that Administrative Agent shall not be required to determine independently whether the conditions described in **Sections 8.2(a)** or **8.2(b)** have been satisfied and, when Administrative Agent disburses funds to Borrower or a Qualified Borrower or the Letter of Credit Issuer causes Letters of Credit to be issued, it may rely fully upon statements contained in the relevant requests by a Borrower Party.

13.4. **Reliance on Communications.** The Agents shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, facsimile, telex or telephone message, statement, order 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, without limitation, counsel to any of the Credit Parties, independent accountants and other experts selected by the Agents with reasonable care). Each Agent may deem and treat each Lender as the owner of its interests hereunder for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with Administrative Agent in accordance with **Section 14.12(b)**. Each Agent shall be fully justified in failing or refusing to take any action under this Credit Agreement or under any of the other Loan Documents unless it shall first receive such advice or concurrence of the Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the 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. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any of the other Loan Documents in accordance with a request of the Required Lenders (or to the extent specifically required, all of the Lenders) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders (including their successors and assigns).

13.5. **Notice of Default.** No Agent shall be deemed to have knowledge or notice of the occurrence of any Potential Default or Event of Default hereunder unless such Agent has received notice from a Lender or a Borrower Party referring to the Loan Document, describing such Potential Default or Event of Default and stating that such notice is a "notice of potential default or event of default." Each Agent will notify the Lenders of its receipt of any such notice, and Administrative Agent shall take such action with respect to such Potential Default or Event of Default as shall be reasonably directed by the requisite Lenders and as is permitted by the Loan Documents; *provided, however*, that unless and until the Administrative Agent shall have 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 Potential Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

13.6. **Non-Reliance on Agents and Other Lenders.** Each Lender expressly acknowledges that no Agent-Related Person or Arranger nor any of their officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representations or warranties to it and that no act by any Agent-Related Person or Arranger hereafter taken, including any consent to any acceptance of any assignment or review of the affairs of any Borrower Party or any of its Affiliates, shall be deemed to constitute any representation or warranty by the Agent-Related Person or Arranger to any Lender. Each Lender, including any Lender by assignment, represents to each Agent and Arranger that it has, independently and without reliance upon any Agent-Related Person, any Arranger or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of each Credit Party (or its Affiliates) and all applicable bank regulatory laws related to the transactions contemplated hereby and made its own decision to make its Loans hereunder and enter into this Credit Agreement. Each Lender also represents that it shall, independently and without reliance upon any Agent-Related Person, any Arranger 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 analysis, appraisals and decisions in taking or not taking action under this Credit Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of any Borrower Party (or its Affiliates). Except for notices, reports and other documents expressly required to be furnished to the Lenders by Administrative Agent hereunder, neither any Agent nor any Arranger shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial or other conditions, prospects or creditworthiness of the Borrower Parties which may come into the possession of any Agent-Related Person or Arranger or any of their officers, directors, employees, agents, attorneys-in-fact or affiliates.

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13.7. Indemnification. Whether or not the transactions contemplated hereby are consummated, the Alternate Lenders shall indemnify, upon demand, each Agent-Related Person (to the extent not reimbursed by a Borrower Party and without limiting the obligation of the Borrower Parties to do so), ratably in accordance with the applicable Alternate Lender's respective Alternate Lender Pro Rata Share of its Lender Group's Lender Group Percentage, and hold harmless each Agent-Related Person from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including without limitation at any time following payment in full of the Obligations) be imposed on, incurred by or asserted against it in its capacity as such in any way relating to or arising out of this Credit Agreement or the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by it under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Person's gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction or related to another Lender Group's Managing Agent; provided, further, that no action taken in accordance with the directions of the Required Lenders or all Lenders, as applicable, shall be deemed to constitute gross negligence or willful misconduct for purposes of this **Section 13.7**. Without limitation of the foregoing, each Alternate Lender shall reimburse Administrative Agent, the Letter of Credit Issuer and its Managing Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Credit Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that such Agent is not reimbursed for such expenses by or on behalf of the Borrower Parties. The agreements in this **Section 13.7** shall survive the termination of the Commitments, payment of all of the Obligations hereunder and under the other Loan Documents or any documents contemplated by or referred to herein or therein, as well as the resignation or replacement of any Agent.

13.8. Agents in Their Individual Capacity. Each Agent (and any successor acting as an Agent) 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 Credit Party (or any of its subsidiaries or Affiliates) as though such Agent were not an Agent or a Lender hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding the Credit Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that such Agent shall be under no obligation to provide such information to them. With respect to the Loans made and Letters of Credit issued and all obligations owing to it, an Agent acting in its individual capacity shall have the same rights and powers under this Credit Agreement as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

13.9. Successor Agent. Any Agent may, at any time, resign upon twenty (20) days written notice to the Lenders and the Credit Parties. Upon any such resignation of the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent from any of the Alternate Lenders, in consultation with the Borrower. If no successor agent is appointed prior to the effective date of the resignation of the applicable Agent, then the retiring Agent may appoint, after consulting with the Lenders and the Borrower, a successor Agent from any of the Alternate Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall thereupon succeed to all the rights, powers and duties of the retiring Agent, and shall assume the duties and obligations of such retiring Agent, and the retiring Agent shall be discharged from its duties and obligations as Agent under this Credit Agreement and the other Loan Documents. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 13.9 and Sections 14.3 and 13.8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Credit Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the applicable Alternate Lenders shall perform all of the duties of the Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

13.10. No Other Duties, Etc. Anything herein to the contrary notwithstanding, no Agent shall have any powers, duties or responsibilities under this Credit Agreement or any of the other Loan Documents, except in its capacity, as applicable, as Administrative Agent, a Lender or the Letter of Credit Issuer hereunder.

13.11. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Liability 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 Credit Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Liability 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 the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties hereunder) allowed in such judicial proceeding; and

(b) 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 Secured Party to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Secured Party, 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 the Administrative Agent hereunder.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Secured Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Secured Party or to authorize Administrative Agent to vote in respect of the claim of any Secured Party in any such proceeding.

14. MISCELLANEOUS

14.1. **Amendments.** Neither this Credit Agreement nor any other Loan Document, nor any of the terms hereof or thereof, may be amended, waived, discharged or terminated, unless such amendment, waiver, discharge, or termination is in writing and signed by Administrative Agent, based upon the approval of the appropriate number of Lenders required hereunder, or such Lenders, on the one hand, and the Credit Parties, on the other hand; and, if the rights or duties of an Agent are affected thereby, by such Agent, provided that no such amendment, waiver, discharge, or termination shall, without the consent of:

(a) each Lender affected thereby;

(i) reduce or increase the amount or alter the term of the Commitment of such Lender, or alter the provisions relating to any fees (or any other payments) payable to such Lender;

(ii) extend the time for payment for the principal of or interest on the Obligations, or fees or costs, or reduce the principal amount of the Obligations (except as a result of the application of payments or prepayments), or reduce the rate of interest borne by the Obligations (other than as a result of waiving the applicability of the Default Rate), or otherwise affect the terms of payment of the principal of or any interest on the Obligations or fees or costs hereunder;

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(iii) release any Liens granted under the Collateral Documents, except as otherwise contemplated herein or therein, and except in connection with the transfer of interests in a Credit Party permitted hereunder or in any other Loan Documents;

(iv) release the Guaranty granted pursuant to the Guaranty of Capital or limit or otherwise modify the liability of Guarantor under any of the Loan Documents; and

(v) extend the Stated Maturity Date or Maturity Date;

(b) all Lenders:

(i) permit the cancellation, excuse or reduction of the Capital Commitment of any Included Investor or Designated Investor;

(ii) amend the definitions of (A) "Applicable Requirement"; (B) "Available Loan Amount"; (C) "Eligible Available Contributions of the Designated Investors"; (D) "Eligible Available Contributions of the Included Investors"; (E) "Included Investor"; (F) "Inclusion Percentage"; (G) "Designated Investor"; (H) "Unfunded Capital Commitment"; (I) "Borrowing Base"; or (J) "Exclusion Event";

(iii) change the percentages specified in the definition of Required Lenders or any other provision hereof specifying the number or percentage of Lenders which are required to amend, waive or modify any rights hereunder or otherwise make any determination or grant any consent hereunder;

(iv) consent to the assignment or transfer by a Credit Party of any of their respective rights and obligations under (or in respect of) the Loan Documents; or

(v) amend, waive or in any way modify or suspend any provision requiring the pro rata application of payments of the Obligations to Lenders; or

(vi) amend the terms of this Section 14.1.

Administrative Agent agrees that it will promptly notify the Managing Agents (who will in turn promptly notify the Lenders in its Lender Group) of any proposed modification or amendment to any Loan Document, and deliver drafts of any such proposed modification or amendment to the Managing Agents (who will in turn promptly deliver to the Lenders in its Lender Group), prior to the effectiveness of such proposed modification or amendment. Notwithstanding the above: (A) no provisions of Section 13 may be amended or modified without the consent of Administrative Agent; (B) no provisions of Section 2.5 may be amended or modified without the consent of the Letter of Credit Issuer; and (C) Sections 10 and 11 specify the requirements for waivers of the affirmative covenants and negative covenants listed therein, and any amendment to any provision of Section 10 or Section 11 shall require the consent of the Lenders that are specified therein as required for a waiver thereof. Any amendment, waiver or consent not specifically addressed in this Section 14.1 or otherwise shall be subject to the approval of Required Lenders.

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Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above and in **Section 11**: (1) each Lender is entitled to vote as such Lender sees fit on any reorganization plan that affects the Loans or the Letters of Credit, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersede the unanimous consent provisions set forth herein; (2) the Required Lenders may consent to allow a Borrower Party to use cash collateral in the context of a bankruptcy or insolvency proceeding; and (3) Administrative Agent may, in its sole discretion, agree to the modification or waiver of any of the other terms of this Credit Agreement or any other Loan Document or consent to any action or failure to act by any Credit Party, if such modification, waiver, or consent is of an administrative nature.

If Administrative Agent shall request the consent of any Lender to any amendment, change, waiver, discharge, termination, consent or exercise of rights covered by this Credit Agreement, and not receive such consent or denial thereof in writing within ten (10) Business Days of the making of such request by Administrative Agent, as the case may be, such Lender shall be deemed to have given its consent to the request.

14.2. Setoff. In addition to any rights and remedies of the Lenders provided by law, upon the occurrence and during the continuance of any Event of Default, each Lender is authorized at any time and from time to time, without prior notice to any Credit Party or any other obligor, any such notice being waived by each Credit Party (on its own behalf and on behalf of each obligor) 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) at any time held by, and other indebtedness at any time owing by, such Lender to or for the credit or the account of any Credit Party against any and all of the Obligations owing to such Lender, now or hereafter existing, irrespective of whether or not Administrative Agent or such Lender shall have made demand under this Credit Agreement or any other Loan Document and although such Obligations may be contingent or unmaturred. Each Lender agrees promptly to notify the applicable Credit Party and Administrative Agent after any such setoff 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.*

14.3. Sharing of Payments. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it or the participations in Letters of Credit held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, the receipt of any proceeds from a Capital Call or the exercise of any remedies under any Collateral Documents, 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 Loans made by them and/or such subparticipations in the participations in Letters of Credit held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such of Loans 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, 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 that such paying Lender's required repayment bears 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.* Each Credit Party 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 setoff, but subject to **Section 14.2**) with respect to such participation as fully as if such Lender were the direct creditor of the Credit Parties 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 14.3** and will in each case notify the 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 Credit 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. To the extent required to implement the sharing of payments under this **Section 14.3**, each Lender hereby authorizes and directs Administrative Agent to distribute any proceeds from Capital Calls or proceeds from the exercise of remedies under the Collateral Documents held by Administrative Agent to Lenders consistent with the terms of this **Section 14.3**.

14.4. **Payments Set Aside.** To the extent that any Credit Party makes a payment to Administrative Agent or any Lender, or Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff 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 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 setoff had not occurred, and (b) each Alternate 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.

14.5. **Waiver.** No failure to exercise, and no delay in exercising, on the part of Administrative Agent or Lenders, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and Lenders hereunder and under the Loan Documents shall be in addition to all other rights provided by law. No modification or waiver of any provision of this Credit Agreement, the Notes or any of the other Loan Documents, nor consent to departure therefrom, shall be effective unless in writing and no such consent or waiver shall extend beyond the particular case and purpose involved. No notice or demand given in any case shall constitute a waiver of the right to take other action in the same, similar or other instances without such notice or demand. Subject to the terms of this Credit Agreement, including **Section 14.1**, Administrative Agent acting on behalf of all Lenders (pursuant to the terms hereof), and the Credit Parties may from time to time enter into agreements amending or changing any provision of this Credit Agreement or the rights of Lenders or the Credit Parties hereunder, or may grant waivers or consents to a departure from the due performance of the obligations of the Credit Parties hereunder, any such agreement, waiver or consent made with such written consent of Administrative Agent being effective to bind all Lenders.

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14.6. Payment of Expenses.

(a) Borrower agrees to pay (within ten (10) days after the receipt of written notice from Administrative Agent) all out-of-pocket costs and expenses of Administrative Agent (including without limitation Attorney Costs) reasonably incurred by it in connection with the negotiation, preparation, execution and delivery of this Credit Agreement, the Notes, and the other Loan Documents and any and all amendments, modifications and supplements thereof or thereto, and, subject to no gross negligence or willful misconduct on the part of the Lenders, all out-of-pocket costs and expenses of Administrative Agent and the Secured Parties (including, without limitation, the Attorney Costs of Administrative Agent's and the Secured Parties' legal counsel) reasonably incurred by them in connection with the preservation, enforcement and modification of, and Administrative Agent's and the Secured Parties' rights under, this Credit Agreement, the Notes, and the other Loan Documents.

(b) Borrower agrees to indemnify Administrative Agent and each of Lenders and their respective directors, officers, employees, attorneys and agents (each such Person, including without limitation Administrative Agent and each of the Secured Parties, being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, actions, judgments, suits, disbursements, penalties, damages (other than consequential damages), liabilities and related expenses, including reasonable counsel fees and expenses, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of:

(i) the execution and delivery of this Credit Agreement or any other Loan Document or any agreement or instrument contemplated thereby,

(ii) the use or misuse of the proceeds of the Loans,

(iii) the fraudulent actions or misrepresentations of any Credit Party or its Affiliates in connection with the transactions contemplated by this Credit Agreement and the other Loan Documents,

(iv) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, or

(v) any claim, litigation, investigation or proceeding relating to the Investor Documents, whether or not any Indemnitee is a party thereto;

provided, however, that such indemnity shall not, with respect to a particular Indemnitee, apply to any such losses, claims, actions, judgments, suits, disbursements, penalties, damages, liabilities or related expenses to the extent arising from gross negligence or willful misconduct of such Indemnitee.

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(c) Borrower will indemnify Administrative Agent and each of the Lenders against any costs or losses actually incurred as a result of any voluntary or involuntary prepayments of any Loans on any date which is not a Settlement Date under the Credit Agreement and against any increased costs or reduced return due to changes in applicable regulations regarding withholding taxes, reserves, capital adequacy, or other similar regulations.

(d) In addition to and without limiting the foregoing, the Credit Parties hereby indemnify and hold the Indemnitees harmless from and against, and agree to reimburse any Indemnitee on demand for, and agree to defend the Indemnitees against, any and all Environmental Damages (as hereinafter defined), incurred by Administrative Agent or a Lender. WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNITEE WITH RESPECT TO ENVIRONMENTAL DAMAGES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (OR ANY OTHER) INDEMNITEE. HOWEVER, SUCH INDEMNITY SHALL NOT APPLY TO A PARTICULAR INDEMNITEE TO THE EXTENT THAT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT PARTICULAR INDEMNITEE.

The term "**Environmental Damages**" means all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including reasonable fees, costs and expenses of attorneys, consultants, contractors, experts and laboratories), of any and every kind or character, contingent or otherwise, matured or unmatured, known or unknown, direct or indirect, foreseeable or unforeseeable, made, incurred, suffered or brought at any time and from time to time and arising in whole or in part from:

(i) The presence of any Hazardous Material on any Property, or any escape, seepage, leakage, spillage, emission, release, discharge or disposal of any Hazardous Material on or from any Property, or the migration or release or threatened migration or release of any Hazardous Material to, from or through any Property; or

(ii) Any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Material by Borrower, or any party for whose actions Borrower is liable or in connection with any Property; or

(iii) The breach of any representation, warranty, covenant or agreement contained in **Section 9.16** (to the extent such breach relates to Environmental Requirements), **Section 9.18** or **Section 10.8** (to the extent such breach relates to Environmental Requirements), or **Section 11.8** of this Credit Agreement; or

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(iv) Any violation of any Environmental Requirement, regardless of whether any act, omission, event or circumstance giving rise to the violation constituted a violation at the time of the occurrence or inception of such act, omission, event or circumstance; or

(v) Any Environmental Liability with respect to any Property, or the filing or imposition of any Environmental Lien against any Property, because of, resulting from, in connection with, or arising out of any of the matters referred to in subsections (i) through (iv) preceding.

(d) The provisions of this Section 14.6 shall remain operative and in full force and effect regardless of the termination or expiration of the Availability Period, this Credit Agreement, or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of the Loans, the occurrence of the Maturity Date, the invalidity, illegality, or unenforceability of any term or provision of this Credit Agreement or any other Loan Document, or any investigation made by or on behalf of Lenders. All amounts due under this Section 14.6 shall be payable promptly on written demand there for.

14.7. Notice. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing (except where telephonic instructions or notices are expressly authorized herein to be given) and shall be deemed to be effective: (a) if by hand delivery, telecopy or other facsimile transmission, on the day, and at the time on which delivered to such party at the address or fax numbers specified below; (b) if by mail, on the day which it is received after being deposited, postage prepaid, in the United States registered or certified mail, return receipt requested, addressed to such party at the address specified below; or (c) if by FedEx or other reputable express mail service, on the next Business Day following the delivery to such express mail service, addressed to such party at the address set forth below; or (d) if by telephone, on the day and at the time reciprocal communication (i.e., direct communication between two or more persons, which shall not include voice mail messages) with one of the individuals named below occurs during a call to the telephone number or numbers indicated for such party below:

If to Borrower, Managing Member, Guarantor or Pledgor:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq.

If to Administrative Agent:

Bank of America, N.A., as Administrative Agent
NC1-027-19-01
214 North Tryon Street
Charlotte, North Carolina 28255
Attention: Dan Hattendorf
Telephone: (704) 388-3113
Facsimile: (704) 388-9211

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With a copy to:

Bank of America, N.A., as Administrative Agent
NC1-027-19-01
214 North Tryon Street
Charlotte, NC 28255
Attention: Brian Williams
Telephone: (704) 683-4747
Telecopy: (704) 968-1215

If to Lenders:

At the address and numbers set forth on Schedule 14.7.

Any party may change its address for purposes of this Credit Agreement by giving notice of such change to the other parties pursuant to this **Section 14.7**. With respect to any notice received by Administrative Agent from any Credit Party or any Investor not otherwise addressed herein, Administrative Agent shall notify Lenders promptly of the receipt of such notice, and shall provide copies thereof to Lenders. When determining the prior days notice required for any Loan Notice, Request for Letter of Credit, or other notice to be provided by a Credit Party, any Qualified Borrower or an Investor hereunder, the day the notice is delivered to Administrative Agent (or such other applicable Person) shall not be counted, but the day of the related Borrowing, issuance of Letter of Credit, or other relevant action shall be counted.

14.8. GOVERNING LAW. PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO THE CHOICE OF LAW PRINCIPLES THAT MIGHT OTHERWISE APPLY, EXCEPT TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION GOVERN THE CREATION, PERFECTION, VALIDITY, OR ENFORCEMENT OF LIENS UNDER THE COLLATERAL DOCUMENTS, AND THE APPLICABLE FEDERAL LAWS OF THE UNITED STATES OF AMERICA, SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS CREDIT AGREEMENT AND ALL OF THE OTHER LOAN DOCUMENTS.

14.9. Choice of Forum; Consent to Service of Process and Jurisdiction; Waiver of Trial by Jury. Any suit, action or proceeding against any Credit Party with respect to this Credit Agreement, the Notes or the other Loan Documents or any judgment entered by any court in respect thereof, may be brought in the courts of the State of New York, or in the United States Courts located in the Borough of Manhattan in New York City, pursuant to *Section 5-1402* of the New York General Obligations Law, as Lenders in their sole discretion may elect and each Credit Party hereby irrevocably submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. Each Credit Party hereby irrevocably consents to the service of process in any suit, action or proceeding in said court by the mailing thereof by Administrative Agent by registered or certified mail, postage prepaid, to the applicable address set forth in **Section 14.7**. Each Credit Party hereby irrevocably waives any objections which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Credit Agreement or the Notes brought in the courts located in the State of New York, Borough of Manhattan in New York City, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HERETO HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS CREDIT AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

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14.10. Invalid Provisions. If any provision of this Credit Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Credit Agreement, such provision shall be fully severable and this Credit Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Credit Agreement, and the remaining provisions of this Credit Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Credit Agreement, unless such continued effectiveness of this Credit Agreement, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Credit Agreement shall conflict with or be inconsistent with any provision of any of the other Loan Documents, then the terms, conditions and provisions of this Credit Agreement shall prevail.

14.11. Entirety and Amendments. The Loan Documents embody the entire agreement between the parties and supersede all prior agreements and understandings, if any, relating to the subject matter hereof and hereof, and this Credit Agreement and the other Loan Documents may be amended only by an instrument in writing executed by the parties hereto in accordance with the terms hereof.

14.12. Successors and Assigns.

(a) The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Credit Parties nor any Qualified Borrower may assign or otherwise transfer any of their respective 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 clause (b) of this Section 14.12; (ii) by way of participation in accordance with the provisions of clause (f) of this Section 14.12; or (iii) by way of pledge or assignment of a security interest subject to the restrictions of clause (b) of this Section 14.12 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (f) of this Section 14.12, and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees (each, an "Assignee") all or a portion of its rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this clause (b), participations in Letter of Credit Liability) at the time owing to it); provided that: (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans 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 with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) subject to each such assignment, determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption Agreement, as of the Trade Date, shall not be less than \$2,500,000, and, after such assignment, no Lender shall hold a Commitment of less than \$5,000,000; (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 Credit Agreement with respect to the Loans or the Commitment assigned; (iii) any assignment of a Commitment must be approved by Administrative Agent, the Letter of Credit Issuer, and, unless an Event of Default exists and is continuing, Borrower (such approval, in each case, not to be unreasonably withheld or delayed), unless the Person that is the proposed assignee is itself a Program Support Provider or a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); (iv) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption Agreement, together with a processing and recordation fee as set forth on Schedule 14.12(b), (except in the case of a transfer at the demand of Borrower under Section 14.12 hereof, in which case either Borrower or the transferee Lender shall pay such fee); and (v) each assignment made as a result of a demand by Borrower under Section 14.12 hereof shall be arranged by Borrower after consultation with Administrative Agent and shall be either an assignment of all of the rights and obligations of the assigning Lender under this Credit Agreement or an assignment of a portion of such rights and obligations made concurrently with another assignment or assignments that together constitute an assignment of all of the rights and obligations of the assigning Lender. Subject to acceptance and recording thereof by Administrative Agent pursuant to clause (e) of this Section 14.12, from and after the effective date specified in each Assignment and Assumption Agreement, the Eligible Assignee thereunder shall be a party to this Credit Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Credit Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Credit Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this Credit Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 4.1, 4.4, 4.5 and 14.6 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, each applicable Borrower Party (at its expense) shall execute and deliver a Note to the Managing Agent of the assignee, and the applicable existing Note or Notes shall be returned to the applicable Borrower Party. Any assignment or transfer by a Lender of rights or obligations under this Credit Agreement that does not comply with this subsection shall be treated for purposes of this Credit Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (f) of this Section 14.12.

(c) Without limiting the foregoing, a Conduit Lender may, from time to time, with prior or concurrent notice to Borrower and the Administrative Agent, in one transaction or a series of transactions, assign all or a portion of its interest in the Principal Obligation and its rights and obligations under this Agreement and any other Loan Documents to which it is a party to a Conduit Assignee. Upon and to the extent of such assignment by the Conduit Lender to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the assigned portion of the Principal Obligation, (ii) the related administrator for such Conduit Assignee will act as the Administrator for such Conduit Assignee, with all corresponding rights and powers, express or implied, granted to the Administrator hereunder or under the other Loan Documents, (iii) such Conduit Assignee (and any related commercial paper issuer, if such Conduit Assignee does not itself issue commercial paper) and their respective Program Support Provider(s) and other related parties shall have the benefit of all the rights and protections provided to the Conduit Lender and its Program Support Provider(s) herein and in the other Loan Documents (including any limitation on recourse against such Conduit Assignee or related parties, any agreement not to file or join in the filing of a petition to commence an insolvency proceeding against such Conduit Assignee, and the right to assign to another Conduit Assignee as provided in this paragraph), (iv) such Conduit Assignee shall assume all (or the assigned or assumed portion) of the Conduit Lender's obligations, if any, hereunder or any other Loan Document, and the Conduit Lender shall be released from such obligations, in each case to the extent of such assignment, and the obligations of the Conduit Lender and such Conduit Assignee shall be several and not joint, (v) all distributions in respect of the Principal Obligation assigned shall be made to the applicable Managing Agent, on behalf of the Conduit Lender and such Conduit Assignee on a *pro rata* basis according to their respective interests, (vi) the definition of the term "CP Rate" with respect to the portion of the Principal Obligation funded with commercial paper issued by the Conduit Lender from time to time shall be determined in the manner set forth in the definition of "CP Rate" applicable to the Conduit Lender on the basis of the interest rate or discount applicable to commercial paper issued by such Conduit Assignee (or the related commercial paper issuer, if such Conduit Assignee does not itself issue commercial paper) rather than the Conduit Lender, (vii) the defined terms and other terms and provisions of this Credit Agreement and the other Loan Documents shall be interpreted in accordance with the foregoing, and (viii) if requested by the Managing Agent or Administrator with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Managing Agent or such Administrator may reasonably request to evidence and give effect to the foregoing. No assignment by the Conduit Lender to a Conduit Assignee of all or any portion of its interest in the Principal Obligation shall in any way diminish the related Alternate Lenders' obligation under **Section 2.3** to fund any Loan not funded by the Conduit Lender or such Conduit Assignee or to acquire from the Conduit Lender or such Conduit Assignee all or any portion of its interest in the Principal Obligation pursuant to **Section 7.1**.

(d) In the event that a Conduit Lender makes an assignment to a Conduit Assignee in accordance with *clause (c)* above, the related Alternate Lenders: (i) if requested by the related Administrator, shall terminate their participation in the applicable Program Support Agreement to the extent of such assignment; (ii) if requested by the related Administrator, shall execute (either directly or through a participation agreement, as determined by such Administrator) the program support agreement related to such Conduit Assignee, to the extent of such assignment, the terms of which shall be substantially similar to those of the participation or other agreement entered into by such Alternate Lender with respect to the applicable Program Support Agreement (or which shall be otherwise reasonably satisfactory to the related Administrator); (iii) if requested by such Conduit Lender, shall enter into such agreements as requested by the Conduit Lender pursuant to which they shall be obligated to provide funding to such Conduit Assignee on the same terms and conditions as is provided for in this Agreement in respect of such Conduit Lender (or which agreements shall be otherwise reasonably satisfactory to Borrower and such Conduit Lender); and (iv) shall take such actions as the Administrator shall reasonably request in connection therewith.

(e) Administrative Agent, acting solely for this purpose as an agent of the Credit Parties, shall maintain at Administrative Agent's Office a copy of each Assignment and Assumption Agreement delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and Letter of Credit Liability owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and each Credit Party, Administrative Agent, Agents and the 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 Credit Agreement. The Register shall be available for inspection and copying by the Credit Parties, any Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Upon the consummation of any assignment in accordance with this *Section 14.12*, *Schedule 14.12(b)* shall automatically be deemed amended (to the extent required) by Administrative Agent to reflect the name and address of the applicable Assignee.

(f) Any Lender may at any time, without the consent of, or notice to, any Credit Party or Administrative Agent, sell participations to any Person (other than a natural person or any Credit Party or any Affiliate thereof) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in Letter of Credit Liability) owing to it); provided that: (i) such Lender's obligations under this Credit Agreement shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) each Credit Party, 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 Credit Agreement. 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 Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in *Section 14.1(a)*, *14.1(b)(ii)* or *14.1(b)(v)* that directly affects such Participant. Subject to *clause (g)* of this *Section 14.12*, each Borrower Party agrees that each Participant shall be entitled to the benefits of *Sections 4.1*, *4.4* and *4.5* to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to *clause (b)* of this *Section 14.12*. To the extent permitted by law, each Participant also shall be entitled to the benefits of the right of setoff under application law as though it were a Lender, provided such Participant agrees to be subject to *Sections 14.2* and *14.3* as though it were a Lender.

(g) A Participant shall not be entitled to receive any greater payment under Sections 4.1 or 4.4 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent.

(h) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit 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 such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to clause (b) above, Bank of America may, upon thirty (30) days' notice to the Borrower Parties and the Lenders, resign as Administrative Agent and Letter of Credit Issuer. In the event of any such resignation, Lenders shall appoint from among the Lenders a successor Administrative Agent and Letter of Credit Issuer hereunder (subject, except when an Event of Default exists, to the consent of Borrower, not to be unreasonably withheld); provided, however, that no failure by Lenders to appoint any such successor shall affect the resignation of Bank of America as Letter of Credit Issuer and Administrative Agent. If Bank of America resigns as Letter of Credit Issuer and Administrative Agent, it shall retain all the rights and obligations of the Letter of Credit Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Letter of Credit Issuer and all Letter of Credit Liability with respect thereto (including the right to require the Lenders to fund payment of any amount drawn under a Letter of Credit issued by Bank of America as Letter of Credit Issuer hereunder.

*Revolving Credit Agreement
Acadia Strategic Opportunity Fund III LLC*

14.13. Lender Default. If for any reason any Lender shall fail or refuse to abide by its obligations hereunder, and such Lender shall not have cured such failure or refusal within five (5) Business Days of its occurrence (a "Lender Default"), then, in addition to the rights and remedies that may be available to Administrative Agent, Lenders, or any Borrower Party at law or in equity, such Lender's right to vote on matters related to this Credit Agreement, and to participate in the administration of the Loans, the Letters of Credit, and this Credit Agreement, shall be suspended. Administrative Agent shall have the right, but not the obligation, in its sole discretion, to acquire at par all of such Lender's Commitment, including its Pro Rata Share in the Obligations under this Credit Agreement. In the event that Administrative Agent does not exercise its right to so acquire all of such Lender's interests, then each Lender that is not a Defaulting Alternate Lender (each, a "Current Party") shall then, thereupon, have the right, but not the obligation, in its sole discretion to acquire at par (or if more than one Current Party exercises such right, each Current Party shall have the right to acquire, *pro rata*) such Lender's Commitment, including its Pro Rata Share in the outstanding Obligations under this Credit Agreement.

14.14. Replacement of Lender. Following a demand by an Alternate Lender for payment of any amounts under Section 4.1 or 4.3, or if any Alternate Lender is a Defaulting Alternate Lender (in either case, an "Affected Lender"), Borrower may elect to replace such Affected Lender as an Alternate Lender party to this Credit Agreement with an Eligible Assignee procured by Borrower, *provided* that no Potential Default nor Event of Default shall have occurred and be continuing at the time of such replacement, and *provided further* that, concurrently with such replacement such Eligible Assignee shall agree to purchase for cash the Loans and other Obligations due to the Affected Lender pursuant to an Assignment and Assumption Agreement and to become an Alternate Lender for all purposes under this Credit Agreement and to assume all obligations of the Affected Lender to be terminated as of such date. Any such Affected Lender shall assign its rights and interests hereunder, such assignment to be effected in compliance with the requirements of Section 14.12(b) hereof. In the event that such an assignment occurs, the Eligible Assignee (i) if requested by the applicable Administrator, shall execute (either directly or through a participation agreement, as determined by the Administrator) a Program Support Agreement related to the applicable Conduit Lender, to the extent of such assignment, the terms of which shall be substantially similar to those of the participation or other agreement by the assigning Alternate Lender with respect to the applicable Program Support Agreement (or which shall be otherwise reasonably satisfactory to the applicable Administrator), and (ii) shall take such actions as the Agents shall reasonably request in connection therewith.

14.15. Maximum Interest. Regardless of any provision contained in any of the Loan Documents, Lenders shall never be entitled to receive, collect or apply as interest on the Obligations any amount in excess of the Maximum Rate, and, in the event that Lenders ever receive, collect or apply as interest any such excess, the amount which would be excessive interest shall be deemed to be a partial prepayment of principal and treated hereunder as such; and, if the principal amount of the Obligations is paid in full, any remaining excess shall forthwith be paid to the applicable Borrower Party. In determining whether or not the interest paid or payable under any specific contingency exceeds the Maximum Rate, each Borrower Party and Lenders shall, to the maximum extent permitted under applicable law: (a) characterize any nonprincipal payment as an expense, fee or premium rather than as interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread, in equal parts, the total amount of interest throughout the entire contemplated term of the Obligations so that the interest rate does not exceed the Maximum Rate; *provided that*, if the Obligations are paid and performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual period of existence thereof exceeds the Maximum Rate, Lenders shall refund to the applicable Borrower Party the amount of such excess or credit the amount of such excess against the principal amount of the Obligations and, in such event, Lenders shall not be subject to any penalties provided by any laws for contracting for, charging, taking, reserving or receiving interest in excess of the Maximum Rate. As used herein, the term "applicable law" shall mean the law in effect as of the date hereof; *provided, however*, that in the event there is a change in the law which results in a higher permissible rate of interest, then the Loan Documents shall be governed by such new law as of its effective date.

14.16. Headings. Section headings are for convenience of reference only and shall in no way affect the interpretation of this Credit Agreement.

14.17. Survival. All representations and warranties made by the Credit Parties and the Qualified Borrowers herein shall survive delivery of the Notes, the making of the Loans and the issuance of the Letters of Credit.

14.18. Integration. This Credit Agreement is intended by the parties as the final, complete and exclusive statement of the transactions evidenced by this Credit Agreement. All prior or contemporaneous promises, agreements and understandings, whether oral or written, are deemed to be superseded by this Credit Agreement, and no party is relying on any promise, agreement or understanding not set forth in this Credit Agreement.

14.19. Limited Liability of Investors. Except with respect to any expenses and losses arising from any Credit Party's intentional misrepresentation hereunder, fraud or willful misapplication of proceeds in contravention of this Credit Agreement, for which there shall be full recourse to such Credit Party, none of the Investors, including the Managing Member, shall have any personal, partnership, corporate or trust liability for the payment or performance of the Obligations. Nothing contained in this **Section 14.19** or in any of the other provisions of the Loan Documents shall be construed to limit, restrict, or impede the obligations, the liabilities, and indebtedness of Borrower, or of any Investor to make its Capital Contributions to Borrower, Managing Member, Guarantor or Pledgor, in accordance with the terms of the Operating Agreement, Partnership Agreement or the Stockholders Agreement, as applicable, or pursuant to the terms of such Investor's Investor Letter. Nothing contained in this **Section 14.19** shall be deemed to expressly or implicitly limit or modify the liability of each Qualified Borrower to Lenders under the Qualified Borrower Notes; *provided, however*, that such liability shall not extend beyond such Qualified Borrower and its properties and assets. Notwithstanding anything contained in this **Section 14.19**, the payment and performance of the Obligations shall be fully recourse to each Borrower Party and the payment and performance of the Guaranteed Obligations shall be fully recourse to the Guarantor and, in each case, their properties and assets.

*Revolving Credit Agreement
Acadia Strategic Opportunity Fund III LLC*

14.20. Confidentiality. Administrative Agent, each Managing Agent, each Administrator and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed: (a) to its and its Affiliates' respective partners, directors, officers, employees, representatives, advisors 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 and to use such Information only in connection with this facility); (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 Credit Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Credit Agreement or the enforcement of rights hereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section 13.21, to: (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Credit 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 credit derivative transaction relating to obligations of the Borrower Parties; (g) with the consent of the applicable Borrower; (h) to the extent such Information: (x) becomes publicly available other than as a result of a breach of this Section 14.20 or (y) becomes available to Administrative Agent, any Managing Agent, any Administrator or any Lender on a nonconfidential basis from a source other than a Credit Party; or (i) to the National Association of Insurance Commissioners or any other similar organization or any rating agency, Commercial Paper dealer, provider of credit enhancement or liquidity to such Conduit Lender or any Person providing financing to, or holding equity interest in, such Conduit Lender, any Program Support Provider, any Conduit Collateral Agent and to any officers, directors, employees, outside accountants and attorneys of any of the foregoing, provided that such recipient has been advised of the confidential nature of such information and agrees to be bound by the provisions of this Section 14.20. For the purposes of this Section 14.20, "Information" means all information received from any Credit Party, other than any such information that is available to Administrative Agent, any Managing Agent, any Administrator or any Lender on a nonconfidential basis prior to disclosure by such Person; provided that, in the case of information received from any Credit Party 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 14.20 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, Arranger, each Lender and Agent agrees not to disclose the identity of the Investors in connection with any public disclosure of the transaction contemplated hereby, such as in tombstones or marketing materials.

14.21. USA PATRIOT Act Notice. Each Lender and each Agent (for itself and not on behalf of any Lender) hereby notifies the Credit Parties 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 the Credit Parties, which information includes the name and address of the Credit Parties and other information that will allow such Lender or Agent, as applicable, to identify the Credit Parties in accordance with the Patriot Act.

14.22. Multiple Counterparts. This Credit Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties hereto may execute this Credit Agreement by signing any such counterpart.

14.23. No Bankruptcy Petition Against any Conduit Lender. Each Credit Party hereby covenants and agrees that, prior to the date which is one year and one day after the payment in full of all outstanding Commercial Paper or other rated indebtedness of a Conduit Lender, it will not institute against, or encourage, cooperate with or join any other Person in instituting against such Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the law of the United States or any state of the United States. The provisions of this Section 14.23 shall survive the termination of this Credit Agreement.

14.24. No Recourse Against any Conduit Lender. Notwithstanding anything to the contrary contained in this Credit Agreement, the obligations of each Conduit Lender under this Credit Agreement and all other Loan Documents are solely the corporate obligations of such Conduit Lender and shall be payable solely to the extent of funds received by such Conduit Lender from the Credit Parties in accordance herewith or from any party to any Loan Document in accordance with the terms thereof in excess of funds necessary to pay such Conduit Lender's matured and maturing Commercial Paper or other rated indebtedness and, to the extent funds are not available to pay such obligations, the claims relating thereto shall not constitute a claim against such Conduit Lender but shall continue to accrue. The payment of any claim (as defined in Section 101 of Title 11 of the Bankruptcy Code) of any party to this Credit Agreement or any other Loan Document against a Conduit Lender shall be subordinated to the payment in full of all of such Conduit Lender's Commercial Paper and other rated indebtedness. No recourse under or with respect to any obligation, covenant or agreement of any Conduit Lender as contained in this Credit Agreement or any other agreement, instrument or document entered into by it pursuant hereto or in connection herewith shall be had against any manager or administrator of such Person or any incorporator, stockholder, member, officer, employee or director of such Person or of any such manager or administrator, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise.

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SIGNATURE PAGES FOLLOW.

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*Revolving Credit Agreement
Acadia Strategic Opportunity Fund III LLC*

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed as of the day and year first above written.

BORROWER:

ACADIA STRATEGIC OPPORTUNITY FUND III LLC,
a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

MANAGING MEMBER:

ACADIA REALTY ACQUISITION III LLC,
a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

PLEDGOR:

ACADIA INVESTORS III, INC.,
a Maryland corporation

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

GUARANTOR:

ACADIA REALTY LIMITED PARTNERSHIP,
a Delaware limited partnership

By: **ACADIA REALTY TRUST,**
its General Partner

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A., as
Administrative Agent

By: /s/ Jeremy Grubb

Name: Jeremy Grubb

Title: Vice President

Signature Page to Revolving Credit Agreement

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MANAGING AGENT AND ADMINISTRATOR:

BANK OF AMERICA, N.A., as Managing Agent
for the YC SUSI Lender Group and as
Administrator for YC SUSI Trust

By: /s/ Jeremy Grubb
Name: Jeremy Grubb
Title: Vice President

Signature Page to Revolving Credit Agreement

LENDERS:

BANK OF AMERICA, N.A.
as an Alternate Lender for the YC SUSI Lender Group

By: /s/ Jeremy Grubb
Name: Jeremy Grubb
Title: Vice President

Signature Page to Revolving Credit Agreement

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YC SUSI TRUST, as Conduit Lender

-
By: /s/ Jeremy Grubb
Name: Jeremy Grubb
Title: Vice President

Signature Page to Revolving Credit Agreement
-

COMMITMENTS

Alternate Lender
Bank of America, N.A.

Commitment
\$75,000,000

Schedule to Revolving Credit Agreement

ADDRESSES

Bank of America

Bank of America, N.A., as Administrative Agent
NC1-027-19-01
214 North Tryon Street
Charlotte, North Carolina 28255
Attention: Dan Hattendorf
Telephone: (704) 388-3113
Facsimile: (704) 388-9211

With copy to:

Bank of America, N.A., as Administrative Agent
NC1-027-19-01
214 North Tryon Street
Charlotte, NC 28255
Attention: Brian Williams
Telephone: (704) 683-4747
Telecopy: (704) 968-1215

YC SUSI Trust

YC SUSI Trust
c/o Bank of America, N.A.
NC1-027-19-01
214 North Tryon Street
Charlotte, North Carolina 28255
Attention: Dan Hattendorf
Telephone: (704) 388-3113
Facsimile: (704) 388-9211

With copy to:

YC SUSI Trust
c/o Bank of America, N.A.
NC1-027-19-01
214 North Tryon Street
Charlotte, NC 28255
Attention: Brian Williams
Telephone: (704) 683-4747
Telecopy: (704) 968-1215

Schedule to Revolving Credit Agreement

PROCESSING AND RECORDATION FEES

The Administrative Agent will charge the applicable Lenders a processing and recordation fee (an "Assignment Fee") in the amount of \$2,500 for each assignment; provided, however, that in the event of two or more concurrent assignments to members of the same Assignee Group (which may be effected by a suballocation of an assigned amount among members of such Assignee Group) or two or more concurrent assignments by members of the same Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group), the Assignment Fee will be \$2,500 plus the amount set forth below:

<u>Transaction</u>	<u>Assignment Fee</u>
First four concurrent assignments or suballocations to members of an Assignee Group (or from members of an Assignee Group, as applicable)	-0-
Each additional concurrent assignment or suballocation to a member of such Assignee Group (or from a member of such Assignee Group, as applicable)	\$500

Schedule to Revolving Credit Agreement

EXHIBIT A
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto
SCHEDULE OF INVESTORS AND COMMITMENTS
(as of October 10, 2007)

[See Attached Spreadsheet]

Exhibit A

ACADIA STRATEGIC OPPORTUNITY FUND II, L.P.
BORROWING BASE CERTIFICATE
VC BUSI TRUST
CURRENT REPORTING MONTH END

Total Undrawn Commitments	\$	494,500,000
BORROWING BASE		
Eligible Available Commitments of the Included Investors	\$	278,020,210
Eligible Available Commitments of the Designated Investors	\$	21,889,043
Borrowing Base	\$	297,809,253
Maximum Commitment	\$	288,000,000
Availability Commitment	\$	297,809,253
EXISTING OUTSTANDINGS UNDER FACILITY	\$	-
EXISTING L/C UNDER FACILITY	\$	-
Available Loan Amount	\$	297,809,253
NEW / INCREMENTAL LOAN REQUEST		
NEW / INCREMENTAL LETTERS OF CREDIT INSURANCE	\$	-
Borrowing Request	\$	-
Available Loan Amount After Borrowing	\$	297,809,253
Compliance with L/C Sublimit (5% of Facility Limit)		YES
Borrowing Base Compliance (After loan request)		YES
Borrowing Base Compliance (After loan request)		YES

Capital Calls	Amount Called	Date
1	\$2,000,000	
2	\$2,000,000	
3		
4		
5		
6		
7		
8		
9		
10		
Total	\$1,500,000	
As a % of Fund Size	1.1%	

Acadia Strategic Opportunity Fund II, L.P.
Borrowing Certificate

Investor	Total Capital		Senior Unsecured	Contributions		Excess	Excess	Eligible	Advance	Availability		
	Commitment at Closing	% of Total Commitments		Called to Date	Undrawn Capital Commitment						Concentration %	Concentration
Rated Included Investors												
1 Yale University (including Clover III)	\$	110,000,000	21.0%	AAA	AAA	\$	108,750,000	\$	54,063,000	90.0%	\$	17,638,500
2 Stanford University	\$	63,100,000	12.0%	Aaa	AAA	\$	61,100,000	\$	29,428,900	15%	\$	33,435,210
3 University of Michigan	\$	23,000,000	4.0%	Aa1	Aa1+	\$	22,000,000	\$	13,760,000	15%	\$	17,302,000
4 Vanderbilt University	\$	13,000,000	2.0%	Aa2	Aa	\$	11,000,000	\$	8,800,000	15%	\$	8,961,000
5 University of Pennsylvania	\$	21,000,000	4.0%	Aa2	Aa	\$	20,000,000	\$	19,780,000	15%	\$	17,602,000
Rated Included Investors	\$	229,100,000	46.0%			\$	221,100,000	\$	117,872,000		\$	173,638,510
Non-Rated Included Investors												
6 Gordon E. & Betty I. Moore Foundation	\$	45,200,000	9.0%			\$	440,000	\$	39,580,000	15%	\$	35,004,000
7 Carnegie Corporation (of New York)	\$	35,000,000	7.0%			\$	365,000	\$	34,615,000	15%	\$	31,153,000
8 The William and Flora Hewlett Foundation	\$	45,000,000	9.0%			\$	440,000	\$	39,560,000	15%	\$	35,004,000
Non-Rated Included Investors	\$	125,000,000	25.0%			\$	1,264,000	\$	113,735,000		\$	109,261,000
Non-Rated Included Investors - Additional Excess Concentrations												
						\$		\$	113,735,000	80.0%	\$	109,261,000
Included Investors	\$	354,100,000	71.0%			\$	3,884,000	\$	24,725,000		\$	278,020,210
Designated Investors												
Investor	Total Capital Commitment at Closing	% of Total Commitments		Contributions Called to Date	Undrawn Capital Commitment	Excess Concentration	Excess Concentration	Eligible Contribution	Advance Rate	Availability		
10 Acadia Realty Acquisition II, LLC	\$	100,000,000	20.0%	\$	1,100,000	90,000,000	2%	\$	89,010,000	65.0%	\$	6,438,500
11 Williams Capital	\$	55,000,000	10.0%	\$	550,000	49,450,000	2%	\$	48,900,000	65.0%	\$	6,438,500
12 Bain Capital (Quinton Investment Partners II LP)	\$	10,000,000	2.0%	\$	100,000	9,900,000	2%	\$	9,800,000	65.0%	\$	6,438,500
13 The Owen Family Trust	\$	50,000,000	10.0%	\$	500,000	49,500,000	2%	\$	48,950,000	65.0%	\$	32,143,000
14 High Net Worth Individual (Works Ventures)	\$	4,000,000	0.8%	\$	40,000	3,960,000	2%	\$	3,910,000	65.0%	\$	2,571,400
Designated Investors	\$	219,000,000	44.0%	\$	1,810,000	183,260,000		\$	179,470,000		\$	11,089,543
Designated Investors - Additional Excess Concentrations												
				\$		33,875,000	48.0%	\$	33,875,000	65.0%	\$	21,089,543
Total	\$	500,000,000	100.0%	\$	5,694,000	494,306,000		\$	344,155,000		\$	297,809,253

Acadia Strategic Opportunity Fund III, L.P.

A	Aggregate Capital Commitments at Closing	\$500,000,000
B	Facility Limit	\$300,000,000
-		
C	Available Commitments of Rated Included Investors	\$220,100,000
D	- Less Excess Concentration	\$24,725,000
E	Eligible Available Commitments of Rated Included Investors	\$195,375,000
F	Available Commitments of Non Rated Included Investors	\$115,000,000
G	- Less Excess Concentration (13%)	\$0
H	- Less Additional Excess Concentration (35% in aggregate)	\$0
I	Eligible Available Commitments of Special Included Investors	\$115,000,000
J	- Included Investor Advance Rate	90%
K	Available Commitments of Designated Investors	\$164,900,000
L	- Less Excess Concentration (3%)	\$129,410,650
M	- Less Additional Excess Concentration (50% in aggregate)	\$0
N	Eligible Available Commitments of Designated Investors	\$35,489,350
O	- Designated Investor Advance Rate	65%
P	Total Eligible Available Capital Commitments (E+I+N)	\$345,864,350
Q	Borrowing Base ((E+I)*J) + (N*O)	\$302,405,578
R	Weighted Average Advance Rate (Q/A)	60.5%
S	Minimum Overcollateralization ((I-R)/R)	65.3%

EXHIBIT B-1
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

NOTE

\$300,000,000

York

New York, New

2007

1. FOR VALUE RECEIVED, ACADIA STRATEGIC OPPORTUNITY FUND III LLC, a Delaware limited liability company ("Maker"), hereby unconditionally promises to pay to the order of BANK OF AMERICA, N.A. ("Payee"), as Managing Agent for each of the Lenders in the YC SUSI Lender Group under the Credit Agreement referred to below, the principal sum of THREE HUNDRED MILLION DOLLARS (\$300,000,000), or, if less, the unpaid principal amount of the Loans of Payee, together with interest thereon, in lawful money of the United States. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement referred to below.

2. The unpaid principal amount of this Note (this "Note") shall be payable in accordance with the terms of Sections 3.2, 3.4 and 14.15 of the Credit Agreement.

3. The unpaid principal amount of this Note shall bear interest from the date of each Borrowing until maturity in accordance with Sections 2.4 and 14.15 of the Credit Agreement. Interest on this Note shall be payable in accordance with Sections 3.3, 3.4 and 14.15 of the Credit Agreement.

4. All Borrowings of Loans hereunder, and all payments made with respect thereto, may be recorded by Payee from time to time on the grid which may be attached hereto or Payee may record such information by such other method as Payee may generally employ in the course of its lending activities; provided, however, that failure to make any such entry shall in no way reduce or diminish Maker's obligations hereunder. The aggregate unpaid amount of all Borrowings of Loans set forth on the grid which may be attached hereto shall be rebuttably presumptive evidence of the unpaid principal amount of this Note.

5. This Note has been executed and delivered pursuant to that certain Revolving Credit Agreement (as amended, modified, supplemented, or restated from time to time, the ("Credit Agreement"), dated as of October 10, 2007, by and among Maker, Acadia Realty Acquisition III LLC, a Delaware limited liability company, as Managing Member, Acadia Realty Limited Partnership, a Delaware limited partnership, as Guarantor, Acadia Investors III, Inc., a Maryland corporation, as Pledgor, Bank of America, N.A., as Administrative Agent, Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager, YC SUSI Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto, and is one of the "Notes" referred to therein. This Note evidences Loans made under the Credit Agreement and the holder of this Note shall be entitled to the benefits provided in the Credit Agreement. Reference is hereby made to the Credit Agreement for a statement of: (a) the obligation of Payee to make advances hereunder; (b) the prepayment rights and obligations of Maker; (c) the collateral for the repayment of this Note; and (d) the events upon which the maturity of this Note may be accelerated. Maker may borrow, repay and reborrow hereunder upon the terms and conditions specified in the Credit Agreement.

Note

6. _____ If this Note, or any installment or payment due hereunder, is not paid when due, whether at maturity or by acceleration, or if it is collected through a bankruptcy, probate or other court, whether before or after maturity, Maker agrees to pay all out-of-pocket costs of collection, including, but not limited to, reasonable attorneys' fees incurred by the holder hereof and costs of appeal as provided for in the Credit Agreement. All past-due principal of, and, to the extent permitted by applicable law, past-due interest on this Note, shall bear interest until paid at the Default Rate as provided for in the Credit Agreement.

7. _____ Maker and all sureties, endorsers, guarantors and other parties ever liable for payment of any sums payable pursuant to the terms of this Note, jointly and severally waive demand, presentment for payment, protest, notice of protest, notice of acceleration and notice of intent to accelerate, diligence in collection, the bringing of any suit against any party, and any notice of or defense on account of any extensions, renewals, partial payment, or any releases or substitutions of any security, or any delay, indulgence, or other act of any trustee or any holder hereof, whether before or after maturity.

8. _____ Pursuant to Section 5-1401 of the New York General Obligations Law, the substantive laws of the State of New York, without regard to the choice of law principles that might otherwise apply, and the applicable federal laws of the United States of America, shall govern the validity, construction, enforcement and interpretation of this Note.

9. _____ Reference is hereby made to Section 14.19 of the Credit Agreement regarding the non-personal liability of Managing Member or any other Investor, the provisions of which are hereby incorporated by reference in this Note as if fully set forth herein, for the payment and performance of Borrower's obligations hereunder.

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Note

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BORROWER:

ACADIA STRATEGIC OPPORTUNITY FUND III LLC,
a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

<u>Date</u>	<u>Borrowing Amount</u>	<u>Payment</u>	<u>Aggregate Unpaid Amount</u>
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EXHIBIT B-2
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF QUALIFIED BORROWER NOTE

\$ _____ New York,
New York _____

1. **FOR VALUE RECEIVED**, the undersigned _____ a (the "**Maker**"), hereby unconditionally promises to pay to the order of **BANK OF AMERICA, N.A. ("Payee")**, as Managing Agent for each of the Lenders in the Ranger Lender Group under the Credit Agreement referred to below, the principal sum of _____ (\$ _____), or, if less, the unpaid principal amount of the Loans of Payee, together with interest thereon, in lawful money of the United States. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement referred to below.

2. The unpaid principal amount of this Note (this "**Note**") shall be payable in accordance with the terms of Sections 3.2, 3.4 and 14.15 of the Credit Agreement.

3. The unpaid principal amount of this Note shall bear interest from the date of each Borrowing until maturity in accordance with Sections 2.4 and 14.15 of the Credit Agreement. Interest on this Note shall be payable in accordance with Sections 3.3, 3.4 and 14.15 of the Credit Agreement.

4. All Borrowings of Loans hereunder, and all payments made with respect thereto, may be recorded by Payee from time to time on the grid which may be attached hereto or Payee may record such information by such other method as Payee may generally employ in the course of its lending activities; provided, however, that failure to make any such entry shall in no way reduce or diminish Maker's obligations hereunder. The aggregate unpaid amount of all Borrowings of Loans set forth on the grid which may be attached hereto shall be rebuttably presumptive evidence of the unpaid principal amount of this Note.

5. This Note has been executed and delivered pursuant to that certain Revolving Credit Agreement (as amended, modified, supplemented, or restated from time to time, the "**Credit Agreement**") dated as of October 10, 2007, by and among Acadia Strategic Opportunity Fund III LLC, a Delaware limited liability company ("**Borrower**"), Acadia Realty Acquisition III LLC, a Delaware limited liability company, as Managing Member, Acadia Realty Limited Partnership, a Delaware limited partnership, as Guarantor, Acadia Investors III, Inc., a Maryland corporation, as Pledgor, Bank of America, N.A., as Administrative Agent, Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager, YC SUSI Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto, and is one of the "**Qualified Borrower Notes**" referred to therein. This Note evidences Loans made under the Credit Agreement and the holder of this Note shall be entitled to the benefits provided in the Credit Agreement. Reference is hereby made to the Credit Agreement for a statement of: (a) the obligation of Payee to make advances hereunder; (b) the prepayment rights and obligations of Maker; (c) the collateral for the repayment of the Note; and (d) the events upon which the maturity of this Note may be accelerated. Maker may borrow, repay and reborrow hereunder upon the terms and conditions specified in the Credit Agreement. The repayment of this Note is secured by a guaranty of Borrower. Notwithstanding the foregoing, should any of the events described in Sections 12.1(g) or 12.1(2) of the Credit Agreement occur with respect to Maker, then the principal of or accrued interest on this Note shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Maker.

6. _____ If this Note, or any installment or payment due hereunder, is not paid when due, whether at maturity or by acceleration, or if it is collected through a bankruptcy, probate or other court, whether before or after maturity, Maker agrees to pay all out-of-pocket costs of collection, including, but not limited to, reasonable attorneys' fees incurred by the holder hereof and costs of appeal as provided for in the Credit Agreement. All past-due principal of, and, to the extent permitted by applicable law, past-due interest on this Note, shall bear interest until paid at the Default Rate as provided for in the Credit Agreement.

7. _____ Maker and all sureties, endorsers, guarantors and other parties ever liable for payment of any sums payable pursuant to the terms of this Note, jointly and severally waive demand, presentment for payment, protest, notice of protest, notice of acceleration, notice of intent to accelerate, diligence in collection, the bringing of any suit against any party, and any notice of or defense on account of any extensions, renewals, partial payment, or any releases or substitutions of any security, or any delay, indulgence, or other act of any trustee or any holder hereof, whether before or after maturity.

8. _____ Pursuant to Section 5-1401 of the New York General Obligations Law, the substantive laws of the State of New York, without regard to the choice of law principles that might otherwise apply, and the applicable federal laws of the United States of America, shall govern the validity, construction, enforcement and interpretation of this Note.

9. _____ By its execution hereof, Maker hereby agrees to be bound by the terms and conditions of the Credit Agreement as if it were a signature party thereto.

10. _____ Reference is hereby made to Section 14.19 of the Credit Agreement regarding the non-personal liability of Managing Member or any other Investor, the provisions of which are hereby incorporated by reference in this Note as if fully set forth herein, for the payment and performance of Maker's obligations hereunder.

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SIGNATURE PAGE FOLLOWS.

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BORROWER: -
[QUALIFIED BORROWER] -

By: -
Name:
Title:

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EXHIBIT B-3
to Revolving Credit Agreement
by and among

Acadia Strategic Opportunity Fund III LLC, as Borrower;
Acadia Realty Acquisition III LLC, as Managing Member;
Acadia Realty Limited Partnership, as Guarantor;
Acadia Investors III, Inc., as Pledgor;
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager;
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF QUALIFIED BORROWER LETTER OF CREDIT NOTE

New York, New York

1. FOR VALUE RECEIVED, _____, a _____ ("**Maker**"), hereby unconditionally promises to pay to the order of **BANK OF AMERICA, N.A.** ("**Payee**"), as Managing Agent for each of the Lenders in the [_____] Lender Group under the Credit Agreement referred to below, the principal sum of _____ (\$_____) together with interest thereon, or, if less, so much thereof as may be drawn under the Letter of Credit (as hereinafter defined), together with interest on the unpaid principal amount from day to day remaining from the date of advance until maturity as set forth below, in lawful money of the United States. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement referred to below.

2. The unpaid principal amount of this Note (this "**Note**") shall be payable in accordance with the terms of *Sections 3.2, 3.4 and 14.15* of the Credit Agreement.

3. The unpaid principal amount of this Note shall bear interest from the date of each Borrowing until maturity in accordance with *Sections 2.4 and 14.15* of the Credit Agreement. Interest on this Note shall be payable in accordance with *Sections 3.3, 3.4 and 14.15* of the Credit Agreement.

4. All Borrowings of Loans hereunder, and all payments made with respect thereto, may be recorded by Payee from time to time on the grid which may be attached hereto or Payee may record such information by such other method as Payee may generally employ in the course of its lending activities; provided, however, that failure to make any such entry shall in no way reduce or diminish Maker's obligations hereunder. The aggregate unpaid amount of all Borrowings of Loans set forth on the grid which may be attached hereto shall be rebuttably presumptive evidence of the unpaid principal amount of this Note.

Exhibit B-3

5. This Note has been executed and delivered to evidence advances made to Maker pursuant to that certain Revolving Credit Agreement (as amended, modified, supplemented, or restated from time to time, the ("**Credit Agreement**") dated as of October 10, 2007, by and among Acadia Strategic Opportunity Fund III LLC, a Delaware limited liability company ("**Borrower**"), Acadia Realty Acquisition III LLC, a Delaware limited liability company, as Managing Member, Acadia Realty Limited Partnership, a Delaware limited partnership, as Guarantor, Acadia Investors III, Inc., a Maryland corporation, as Pledgor, Bank of America, N.A., as Administrative Agent, Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager, YC SUSHI Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto, after a drawing has been made under Letter of Credit No. _____ dated _____, 200____, issued by for the account of Maker and the benefit of _____ (the "**Letter of Credit**"), and is one of the "**Qualified Borrower Letter of Credit Notes**" referred to in the Credit Agreement and the holder of this Note shall be entitled to the benefits provided in the Credit Agreement. This Note evidences Loans made during the Commitment Period under the Credit Agreement. Reference is hereby made to the Credit Agreement for a statement of: (a) the obligation of Payee to make advances hereunder; (b) the prepayment rights and obligations of Maker; (c) the collateral for the repayment of the Note; and (d) the events upon which the maturity of this Note may be accelerated. Maker may borrow, repay, and reborrow hereunder upon the terms and conditions specified in the Credit Agreement. The repayment of this Note is secured by a guaranty of Borrower. Notwithstanding the foregoing, should any of the events described in *Section 5.12.1(g) or 12.1(b)* of the Credit Agreement occur with respect to Maker, then the principal of or accrued interest on this Note shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Maker.

6. If this Note, or any installment or payment due hereunder, is not paid when due, whether at maturity or by acceleration, or if it is collected through a bankruptcy, probate or other court, whether before or after maturity, Maker agrees to pay all out-of-pocket costs of collection, including, but not limited to, reasonable attorneys' fees incurred by the holder hereof and costs of appeal. All past-due principal of, and, to the extent permitted by applicable law, past-due interest on this Note, shall bear interest until paid at the Default Rate as provided in the Credit Agreement.

7. Maker and all sureties, endorsers, guarantors and other parties ever liable for payment of any sums payable pursuant to the terms of this Note, jointly and severally waive demand, presentment for payment, protest, notice of protest, notice of acceleration, notice of intent to accelerate, diligence in collection, the bringing of any suit against any party, and any notice of or defense on account of any extensions, renewals, partial payment, or any releases or substitutions of any security, or any delay, indulgence, or other act of any trustee or any holder hereof, whether before or after maturity.

8. Pursuant to *Section 5-1401* of the New York General Obligations Law, the substantive laws of the State of New York, without regard to the choice of law principles that might otherwise apply, and the applicable federal laws of the United States of America, shall govern the validity, construction, enforcement and interpretation of this Note.

9. _____ By its execution hereof, Maker hereby agrees to be bound by the terms and conditions of the Credit Agreement as if it were a signature party thereto.

10. _____ Reference is hereby made to *Section 14.19* of the Credit Agreement regarding the non-personal liability of Managing Member or any other Investor, the provisions of which are hereby incorporated by reference in this Note as if fully set forth herein, for the payment and performance of Maker's obligations hereunder.

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SIGNATURE PAGE FOLLOWS.

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BORROWER: -
[QUALIFIED BORROWER] -

By: -
Name:
Title:

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EXHIBIT C
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF LOAN NOTICE

[DATE]

Bank of America, N.A., as Administrative Agent
NC1-027-19-01
214 North Tryon Street
Charlotte, NC 28255
Attention: Brian S. Williams
Telephone: (704) 683-4747
Telecopy: (704) 968-1215

Ladies and Gentlemen:

This Loan Notice is executed and delivered by Acadia Strategic Opportunity Fund III LLC, a Delaware limited liability company ("**Borrower**") [and NAME OF QUALIFIED BORROWER], to Bank of America, N.A. ("**Administrative Agent**"), pursuant to Section 2.3 of that certain Revolving Credit Agreement (as amended, modified, supplemented or restated from time to time, the "**Credit Agreement**") dated as of October 10, 2007, entered into by and among Borrower, Acadia Realty Acquisition III LLC, a Delaware limited liability company, as Managing Member, Acadia Realty Limited Partnership, a Delaware limited partnership, as Guarantor, Acadia Investors III, Inc., a Maryland corporation, as Pledgor, Administrative Agent, Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager, YC SUSI Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

1. Pursuant to Section 2.3(a) of the Credit Agreement, the Borrower hereby requests a Borrowing:

Exhibit C

(a) In the amount of \$ _____¹
(b) On _____ (a Business Day)

2. In connection with the Borrowing requested herein, Borrower hereby represents, warrants, and certifies to Administrative Agent for the benefit of the Secured Parties that:

- (a) As of the date of the Borrowing requested herein, each representation and warranty made by Borrower in Section 9 of the Credit Agreement is true and correct in all material respects both immediately before and, after giving effect to such Borrowing, after, the date of such Borrowing, with the same force and effect as if made on and as of such date (except to the extent of changes in facts or circumstances that have been disclosed to Lenders);
- (b) The conditions specified in Sections 8.1, 8.2 (if applicable) and 8.3 have been satisfied as of the date hereof;
- (c) No Event of Default or Potential Default exists and is continuing on and as of the date hereof; and
- (d) Following the requested Borrowing, the Principal Obligation (the aggregate outstanding principal amount of the Loans plus the Letter of Credit Liability) will be \$ _____ plus accrued, unpaid interest;
- (e) After giving effect to such Borrowing the Principal Obligation on and as of such date will not exceed the Available Loan Amount on and as of such date; and
- (f) The Borrowing Base Certificate attached hereto as Schedule I is true and correct as of the date hereof.

3. Following are Borrower's (or Qualified Borrower's) instructions for distribution of loan proceeds (appropriate wire instructions, etc.):

[Bank Name]
ABA No.: [ABA No.]
Account No.: [Account No.]
Reference No.: [Reference No.]

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SIGNATURE PAGE FOLLOWS.**

² At least \$500,000 at all times when there is only one Alternate Lender party to the Credit Agreement and at least \$1,000,000 at all times when there are two or more Alternate Lenders party to the Credit Agreement.

This Loan Notice is executed on _____, 20__. The undersigned hereby certifies each and every matter contained herein to be true and correct.

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BORROWER:
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ACADIA STRATEGIC OPPORTUNITY FUND III
LLC, a Delaware limited liability company.
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By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

[QUALIFIED BORROWER]
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By:
Name:
Title:

Signature Page to
Loan Notice

Schedule I

(Calculation of Borrowing Base)

[See Attached]

EXHIBIT D-1
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF REQUEST FOR LETTER OF CREDIT

[DATE]

Bank of America, N.A., as Administrative Agent
NC 1-027-19-01
214 North Tryon Street
Charlotte, NC 28255

Attention: Brian S. Williams
Telephone: (704) 683-4747
Telecopy: (704) 968-1215

Ladies and Gentlemen:

This Request for Letter of Credit (this "**Request for Letter of Credit**") is executed and delivered by Acadia Strategic Opportunity Fund III LLC, a Delaware limited liability company [and NAME OF QUALIFIED BORROWER] (together, "**Applicant**"), to Bank of America, N.A. ("**Administrative Agent**"), pursuant to Section 2.5(b) of that certain Revolving Credit Agreement (as amended, modified, supplemented or restated from time to time, the "**Credit Agreement**") dated as of October 10, 2007, entered into by and among Applicant, Acadia Realty Acquisition III LLC, a Delaware limited liability company, as Managing Member, Acadia Realty Limited Partnership, a Delaware limited partnership, as Guarantor, Acadia Investors III, Inc., a Maryland corporation, as Pledgor, Administrative Agent, Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager, YC SUSI Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement. Applicant has contemporaneously executed and delivered to Administrative Agent for the Letter of Credit Issuer an Application and Agreement for Letter of Credit dated [DATE]. In the event of a conflict between the terms of the Credit Agreement and said Application and Agreement for Letter of Credit, the terms of the Credit Agreement will control.

Exhibit D-1

1. Applicant hereby requests that the Letter of Credit Issuer [issue],[amend] a Letter of Credit, as follows:

For issuances:

Proposed Issuance Date (a Business Day): Stated Amount:
Expiration Date:

Beneficiary Name and Address:

Documents to be Presented
in case of Drawing: [please attach as a schedule hereto]

Full Text of Certificate to be Presented
in case of Drawing: [please attach as a schedule hereto]

For amendments:

Letter of Credit to be amended:

Proposed Date of Amendment (a Business Day):

Nature of the proposed amendment:

2. In connection with the [issuance] [amendment] of the Letter of Credit requested herein, Applicant hereby represents, warrants, and certifies, as applicable, to Administrative Agent for the benefit of the Secured Parties and the Letter of Credit Issuer that:

(a) _____ As of the date of the [issuance] [amendment] of the Letter of Credit requested herein, each representation and warranty made by Applicant in **Section 9** of the Credit Agreement is and will be true and correct in all material respects both immediately before and, after giving effect to such [issuance] [amendment] of the Letter of Credit, after, the date of such issuance of the Letter of Credit, with the same force and effect as if made on and as of such date (except to the extent of changes in facts or circumstances that have been disclosed to Lenders);

(b) _____ No Event of Default, Potential Default or Implicit Borrowing Base Deficit exists and is continuing on and as of the date of the [issuance] [amendment] of the Letter of Credit requested herein, or will result therefrom;

(c) _____ As of the date of the [issuance],[amendment] of the Letter of Credit requested herein, the Unfunded Capital Commitment of the Included Investors and the Designated Investors will be \$ _____;

(e) _____ Following the [issuance],[amendment] of a requested Letter of Credit, the Letter of Credit Liability will be \$ _____;

(f) _____ After giving effect to the [issuance],[amendment] of the requested Letter of Credit, the Principal Obligation (the aggregate outstanding principal amount of the Loans plus the Letter of Credit Liability) on and as of such date will not exceed the Available Loan Amount on and as of such date;

(g) _____ After giving effect to such issuance of the Letter of Credit, the Letter of Credit Liability will not exceed 75% of the Facility Amount as of the date hereof; and

(h) _____ The calculation of the Borrowing Base attached hereto as *Schedule I* is true and correct as of the date hereof.

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SIGNATURE PAGES FOLLOW.

This Request for Letter of Credit is executed as of the date first written above. The undersigned hereby certifies each and every matter contained herein to be true and correct.

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BORROWER:

ACADIA STRATEGIC OPPORTUNITY FUND III
LLC, a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

[QUALIFIED BORROWER]

By:
Name:
Title:

Signature Page to
Request for Letter of Credit

Applicant and Bank of America hereby agree that the terms and conditions of this Application and Agreement for Letter of Credit shall be controlled by Section 2.5 of the Revolving Credit Agreement, dated October 10, 2007, by and among Acadia Strategic Opportunity Fund III LLC, as Borrower, Acadia Realty Acquisition III LLC, as Managing Member, Acadia Realty Limited Partnership, as Guarantor, Acadia Investors III, Inc., as Pledgor, Bank of America, N.A., as Administrative Agent, the Lenders named therein and the other Persons from time to time party thereto.

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APPLICANT:
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**ACADIA STRATEGIC OPPORTUNITY FUND III
LLC**, a Delaware limited liability company.
-
By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

[QUALIFIED BORROWER]
-
By:
Name:
Title:

ISSUER:
-
BANK OF AMERICA, N.A.
-
By:
Name:
Title:

Schedule I

(Calculation of Borrowing Base)

[See Attached]

**EXHIBIT D-2
to Revolving Credit Agreement
by and among**

**Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSHI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto**

FORM OF LETTER OF CREDIT

**IRREVOCABLE LETTER OF CREDIT NO. []
[Date of Issuance]**

To: [Name of Beneficiary]
[Address of Beneficiary]

Ladies and Gentlemen:

At the request and for the account of Acadia Strategic Opportunity Fund III LLC (the "**Account Party**") which we have been advised by the applicant is pursuant to the Credit Agreement between us and the Account Party, dated October 10, 2007, (as amended, modified, supplemented or restated from time to time, the "**Credit Agreement**"), we hereby establish this Irrevocable Letter of Credit (the "**Letter of Credit**") in your favor to secure the obligations of the Account Party under [] in accordance with the following terms and conditions:

3. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the earliest of:
 1. [Date], but such expiration date shall be automatically, unless, at least 30 days before any expiration date, we notify you by extended without amendment for a period of one (1) year from the present or registered mail or overnight courier service at the above address, that this Letter of Credit is any future expiration date, but in no event later than not extended beyond the current expiration date; and
 2. our receipt of your certificate in the form of **Annex A-1** hereto appropriately completed, together with this Letter of Credit.

- In the event such expiration date shall not be a Business Day (as hereinafter defined) then this Letter of Credit shall expire on the next succeeding Business Day,

4. **Stated Amount.** The aggregate amount available under this Letter of Credit shall be [_____] in U.S. Dollars, which amount as from time to time reduced as provided in paragraph 3 is hereinafter referred to as the "Stated Amount."

5. **Reductions in the Stated Amount.** The Stated Amount shall be reduced automatically from time to time upon our honoring of a demand for payment hereunder by an amount equal to the amount of such payment. The Stated Amount may also be reduced from time to time at your written directions in the form of *Annex A-2* hereto.

6. **Documents To Be Presented.** Funds under this Letter of Credit are available to you against a certificate signed by you in the form of *Annex A-3* hereto appropriately completed (a "Drawing").

7. **Method and Notice of Presentment.** The certificate referenced in paragraph 4 (a "demand for payment") may be delivered to us in person, by mail, by an express delivery service, or by telecopy to our fax number [_____]. A demand for payment shall be presented during our business hours on a Business Day prior to the expiration hereof at our office at [_____]. As used herein, "**Business Day**" means any day other than (i) a Saturday or Sunday or (ii) a day on which the New York Stock Exchange is closed or Banks in New York or Charlotte, North Carolina are authorized to close.

8. **Time and Method for Payment.**

- 1. If a demand for payment is made on a Business Day to us prior to 11:00 a.m. in strict conformity with the terms and conditions hereof, payment shall be made to you, not later than 3:30 p.m. on the second succeeding Business Day (or third succeeding Business Day if the account is outside the United States) or such later date as you may specify in such demand for payment. All times referenced herein are as of New York, New York time.

- 2. Unless otherwise agreed, payment under this Letter of Credit shall be made in immediately available funds to such bank accounts specified by you in the demand for payment.

9. **Transferability.** This Letter of Credit is transferable. Transfer of this Letter of Credit is subject to our receipt of your instructions in the form attached hereto as *Annex A-4* accompanied by the original Letter of Credit and all amendment(s), if any. Costs or expenses of such transfer shall be for your account.

10. **GOVERNING LAW AND CUSTOMS.** TO THE EXTENT CONSISTENT WITH THE EXPRESS PROVISIONS HEREOF, THIS LETTER OF CREDIT SHALL BE GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES - ISP98 ("ISP98"), AND TO THE EXTENT CONSISTENT WITH THE EXPRESS PROVISIONS HEREOF AND NOT GOVERNED BY THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

11. **Irrevocability.** This Letter of Credit shall be irrevocable.

12. **No Negotiation.** A demand for payment under this Letter of Credit shall be presented directly to us and shall not be negotiated to or by any third party.

13. **Address for Communications.** Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at the addresses referenced in paragraph 5, specifically referred thereon to our Irrevocable Letter of Credit No. [_____].

14. **Complete Agreement.** This Letter of Credit, including *Annex A-1* through *A-4* hereto, sets forth in full the terms of our undertaking. Reference in this Letter of Credit to other documents or instruments is for identification purposes only and such reference shall not modify or affect the terms hereof or cause such documents or instruments to be deemed incorporated herein.

We hereby agree with you to honor your demand for payment presented in strict compliance with the terms and conditions of this Letter of Credit.

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Very truly yours,

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BANK OF AMERICA, N.A.

-
By:
Name:
Title:

TERMINATION CERTIFICATE REPAYMENT

Re: Irrevocable Letter of Credit No. []

The undersigned, a duly authorized officer of [] (the "**Beneficiary**"), hereby certifies to Bank of America, N.A. (the "**Bank**") with reference to Irrevocable Letter of Credit No. [] (the "**Letter of Credit**", any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of the Beneficiary, that the Account Party is not required to maintain the Letter of Credit at this time.

The Letter of Credit is attached hereto and being surrendered to you herewith.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate as of the day of , 20 .

[BENEFICIARY]

By:
Name:
Title:

REDUCTION CERTIFICATE

Re: Irrevocable Letter of Credit No. [_____]

The undersigned, a duly authorized officer of [_____], (the "**Beneficiary**") hereby certifies to Bank of America, N.A. (the "**Bank**") with reference to Irrevocable Letter of Credit No. [_____] (the "**Letter of Credit**", any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of the Beneficiary, that the Stated Amount of the Letter of Credit shall permanently be reduced to U.S. \$ _____.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate as of the _____ day of _____, 20____

[BENEFICIARY]

By:
Name:
Title:

CERTIFICATE FOR DRAWING

Re: Irrevocable Letter of Credit No. [_____]

The undersigned, a duly authorized officer of [_____] (the "**Beneficiary**"), hereby demands payment in the amount of U.S. \$ [_____] (the "**Drawing**") from Bank of America, N.A. (the "**Bank**"), under Irrevocable Letter of Credit No. [_____] (the "**Letter of Credit**"), any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit issued by the Bank in favor of the Beneficiary.

The undersigned hereby certifies that:

- (a) _____ The Beneficiary is making this Drawing by reason of: (check (i) or (ii) as applicable)
- (i) _____ Pursuant to the terms of the [_____] dated [_____] between the Beneficiary and [_____] (the "[_____] Agreement"); or
- (ii) _____ The Beneficiary has received a notice of Non-Renewal from Bank of America, N.A. and has not received a replacement Letter of Credit acceptable to the Beneficiary.
- (b) _____ The Beneficiary has not issued a certificate in the form of **Annex A-1** to the Letter of Credit.
- (c) _____ The Drawing does not exceed the Stated Amount less any previous Drawing.
- (d) _____ The proceeds of this Drawing shall be applied solely in accordance with the terms of the [_____] Agreement.
- (e) _____ (i) Payment of this demand for payment is requested on or before 3:30 p.m., the second Business Day succeeding (or, if the account specified below is outside the United States, three Business Days after) the Business Day on which this Certificate is received or deemed to have been received by the Bank in accordance with paragraph 5 of the Letter of Credit.
- (ii) Payment of this demand for payment shall be made to the Beneficiary by credit to the following account:

[Beneficiary]
[Account Information]

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate as of the _____ day of _____, 20____

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-
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-

[BENEFICIARY]

By: _____
Name:
Title:

TRANSFER FORM

_____, 200

Bank of America N.A. [applicable address]

Re: Irrevocable Standby Letter of Credit No. _____

We request you to transfer all of our rights as beneficiary under the Letter of Credit referenced above to the transferee, named below:

Name of Transferee

Address

By this transfer all our rights as the original beneficiary, including all rights to make drawings under the Letter of Credit, go to the transferee. The transferee shall have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly to the transferee without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments thereto. Please indicate your acceptance of our request for the transfer by endorsing the letter of credit and sending it to the transferee with your customary notice of transfer.

For your transfer fee of \$250.00

* Enclosed is our check for \$ _____

* You may debit my/our Account No. _____

We also agree to pay you on demand any expenses which may be incurred by you in connection with this transfer.

The signature and title at the right conform with those shown in our files as authorized to sign for the beneficiary. Policies governing signature authorization as required for withdrawals from customer accounts shall also be applied to the authorization of signatures on this form. The authorization of the Beneficiary's signature and title on this form also acts to certify that the authorizing financial institution (i) is regulated by a U.S. federal banking agency; (ii) has implemented anti-money laundering policies and procedures that comply with applicable requirements of law, including a Customer Identification Program (CIP) in accordance with Section 326 of the USA PATRIOT Act; (iii) has approved the Beneficiary under its anti-money laundering compliance program; and (iv) acknowledges that Bank of America, N.A. is relying on the foregoing certifications pursuant to 31 C.F.R. Section 103.121 (b)(6).

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NAME OF BANK

-
-

AUTHORIZED SIGNATURE AND TITLE

-
-

PHONE NUMBER

-
-

NAME OF TRANSFEROR

-
-

NAME OF AUTHORIZED SIGNER AND TITLE

-
-

AUTHORIZED SIGNATURE

-
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EXHIBIT E
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

BORROWER AND MANAGING MEMBER SECURITY AGREEMENT

THIS SECURITY AGREEMENT (as amended, modified, supplemented or restated from time to time, this "**Security Agreement**") is executed and delivered as of October 10, 2007 by Acadia Strategic Opportunity Fund III LLC, a Delaware limited liability company ("**Borrower**"), and Acadia Realty Acquisition III LLC, a Delaware limited liability company ("**Managing Member**"), in favor of **BANK OF AMERICA, N.A.**, a national banking association, as Administrative Agent ("**Administrative Agent**"), for the benefit of Secured Parties (hereinafter defined). Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement referred to below.

A. Formation. Borrower was formed pursuant to that certain Operating Agreement, dated as of May 15, 2007 (as the same may be restated, modified, amended or supplemented from time to time, the "**Operating Agreement**").

B. Capital Calls. Pursuant to Section 5.2 of the Operating Agreement, Managing Member may make one or more Capital Calls upon the Investors to make Capital Contributions to the capital of Borrower subject to certain limitations specified in the Operating Agreement.

C. Credit Agreement. Borrower, Managing Member, Acadia Realty Limited Partnership, a Delaware limited partnership, as Guarantor, Acadia Investors III, Inc., a Maryland corporation, as Pledgor, Administrative Agent, Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager, YC SUSI Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender, and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto, have entered into a Revolving Credit Agreement, dated as of October 10, 2007, relating to a revolving credit loan (as amended, modified, supplemented, or restated from time to time, the "**Credit Agreement**"), Administrative Agent, the Lenders, Agents, Letter of Credit Issuer, Program Support Providers, Conduit Collateral Agents and Indemnitees are herein collectively referred to as "**Secured Parties**" and each individually referred to as a "**Secured Party**." To secure Borrower's obligations under the Credit Agreement, Borrower and Managing Member have agreed to pledge and assign to Administrative Agent, for the benefit of Secured Parties, Borrower's and Managing Member's rights to make Capital Calls under the Operating Agreement, Borrower's rights to receive payment of each Investor's Capital Contributions, and Managing Member's right to enforce Capital Calls and the payment of Capital Contributions by each Investor.

Borrower and Managing Member Security Agreement

1. Collateral and Obligations. In order to secure the Notes and the Obligations, Borrower and Managing Member hereby grant to Administrative Agent for the benefit of Secured Parties, to the extent permitted by law, and subject to the terms and conditions of this Security Agreement, a first priority security interest and Lien in and to all of their respective rights in the following (the "Collateral");

a. Borrower's and Managing Member's right to issue Capital Call Notices, to make Capital Calls of the Capital Commitments, and all other rights, titles, interests, powers and privileges related to, appurtenant to or arising out of Borrower's and Managing Member's right to require or demand that Investors make Capital Contributions to the capital of Borrower;

b. Borrower's and Managing Members' rights, titles, interests and privileges in and to the Capital Commitments and the Capital Contributions, whether now owned or hereafter acquired; and

c. Borrower's and Managing Member's rights, titles, interests, remedies, and privileges under the Operating Agreement related to the Capital Commitments and to receive the same, or the enforcement thereof, including, without limitation, those rights and remedies as contemplated in Article 5 of the Operating Agreement and those rights and remedies of the Borrower and Managing Member pursuant to that certain pledge agreement, dated as of May 15, 2007, between the Borrower and Acadia Investors III, Inc.

Administrative Agent acknowledges that, with respect to any member of Borrower, the Collateral does not include a security interest in any equity interest of such member in Borrower.

Administrative Agent, in its discretion, without in any manner impairing any rights and powers of Secured Parties hereunder, may, at any time and from time to time, without further consent of or notice to Borrower or Managing Member, with or without valuable consideration file this Security Agreement or a photocopy hereof, or any financing statement with respect hereto (and any amendment, modification, supplement or continuation in respect of any such financing statement),

Each of the Borrower and the Managing Member hereby authorizes the filing of any financing statement or any amendment related thereto, in any jurisdiction and with any filing offices as the Administrative Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Administrative Agent in connection herewith. Such financing statement may describe the Collateral in the same manner as described in this Security Agreement or may contain an indication or description of the Collateral that describes such property more generally as all of Borrower's and Managing Member's rights, titles, interests and remedies in, to and under the Operating Agreement, as amended from time to time, including without limitation, all rights to make, receive and enforce all of each Borrower's and Managing Member's right, title and interest, whether now existing of hereafter created or arising, in and to the Collateral Account maintained with Bank of America, N.A., either generally or specifically by name, account number and/or ABA number, and all sums now or at any time hereafter on deposit therein, credited thereto or payable thereon, all proceeds and products thereof, and all instruments, documents, certificates, and other writings evidencing such collateral accounts, and all proceeds of all of the foregoing.

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In order to secure further the payment and the performance of the Obligations, Borrower and Managing Member shall execute such forms, authorizations, documents and instruments, and do such other things, as Administrative Agent shall request, in order to require that all Investors deliver directly to Administrative Agent for the benefit of Secured Parties all monies or sums paid or to be paid by them as and when Capital Calls are made pursuant to the Operating Agreement. Administrative Agent, on behalf of Secured Parties, is hereby authorized, in its own name or the name of Borrower or Managing Member, at any time upon the occurrence and during the continuation of an Event of Default, to notify any or all parties obligated to Borrower with respect to the Capital Contributions to make all payments due or to become due thereon directly to Administrative Agent for the benefit of Secured Parties at a different account than that specified in the Credit Agreement, or to initiate one or more Capital Calls in order to pay the Obligations or for any other purpose contemplated by the Credit Agreement (which Capital Calls may be in excess of the amount owing under the Credit Agreement if required in order to comply with ERISA or otherwise result in payment in full of the Obligations). With or without such general notification, upon the occurrence and during the continuation of an Event of Default, Administrative Agent, on behalf of Secured Parties, may: (i) take or bring in Borrower's or Managing Member's name or that of Administrative Agent for the benefit of Secured Parties all steps, actions, suits or proceedings reasonably deemed by Administrative Agent necessary or desirable to effect possession or collection of payments; (ii) complete any contract or agreement of Borrower in any way related to any of the Capital Calls; (iii) make allowances or adjustments related to the Capital Calls; (iv) compromise any claims related to the Capital Calls; or (v) issue credit in its own name or the name of Borrower or Managing Member. Regardless of any provision hereof, **IN THE ABSENCE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT** by Administrative Agent or Secured Parties, or both, neither Administrative Agent nor Secured Parties shall be liable for the failure of Administrative Agent to collect or exercise diligence in the collection, possession or any transaction concerning, all or part of the Capital Calls or sums due or paid thereon, nor shall Administrative Agent or Secured Parties be under any obligation whatsoever to anyone by virtue of the security interests and liens granted herein.

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Upon the occurrence and during the continuation of an Event of Default, issuance by Administrative Agent, on behalf of Secured Parties, of a receipt to any person obligated to pay any Capital Contributions to Borrower shall be a full and complete release, discharge and acquittance of such person to the extent of any amount so paid to Administrative Agent for the benefit of Secured Parties. Administrative Agent, on behalf of Secured Parties, is hereby authorized and empowered, upon the occurrence and during the continuation of an Event of Default, on behalf of Borrower and Managing Member to endorse the name of Borrower or Managing Member, or both, upon any check, draft, instrument, receipt, instruction or other document or item, including, but not limited to, all items evidencing payment upon a Capital Contribution of any person to Borrower coming into Administrative Agent's or any Secured Party's possession, and to receive and apply the proceeds therefrom in accordance with the terms of the Credit Agreement.

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- Administrative Agent, on behalf of Secured Parties, is hereby granted an irrevocable power of attorney, which is coupled with an interest, to execute all checks, drafts, receipts, instruments, instructions or other documents, agreements or items on behalf of Borrower or Managing Member, or both, upon the occurrence and during the continuation of an Event of Default, as shall be deemed by Administrative Agent to be necessary or advisable, in the sole discretion, reasonably exercised, of Administrative Agent, to protect the security interests and Liens herein granted or the repayment of the Obligations, and neither Administrative Agent nor any Secured Party shall incur any liability in connection with or arising from the exercise of such authority and power, except as a result of gross negligence or willful misconduct.

- **2. Warranties and Covenants.** Borrower and Managing Member hereby warrant to Administrative Agent for the benefit of Secured Parties and covenant and agree with Administrative Agent for the benefit of the Secured Parties as follows:

- a. That Borrower is the sole legal and equitable owner of the Capital Commitments and the Capital Contributions (with respect to its members) and has the authority to execute this Security Agreement, and this Security Agreement constitutes the legal, valid and binding obligation of Borrower enforceable in accordance with the terms hereof, subject to Debtor Relief Laws and to general principles of equity; and that Managing Member is the sole, legal and equitable owner and holder of the right to issue Capital Call Notices and to make Capital Calls (with respect to its members), (other than the Administrative Agent) and has the authority to execute this Security Agreement, and this Security Agreement constitutes the legal, valid and binding obligation of Managing Member enforceable in accordance with the terms hereof, subject to Debtor Relief Laws and to general principles of equity;

- b. That neither Borrower nor Managing Member has heretofore transferred, assigned, pledged, hypothecated or granted any security interest in all or any portion of the Collateral; that they have full right and power to make the transfer, pledge and assignment and grant the security interests granted hereby; that, to the extent required by the Operating Agreement, all Investors have been notified of, and have approved and consented to, the transfer, pledge and assignment contained herein; and that this instrument is effective to accomplish the transfer, pledge and assignment and grant of the security interests granted hereby;

- c. That Borrower and Managing Member have received direct or indirect benefit from the Loans evidenced by the Notes; and that the grant of the security interest in the Collateral hereunder was a condition to the granting of such loans;

- d. That Borrower and Managing Member shall, at their respective sole cost and expense, execute and deliver any financing statements or other documents which Administrative Agent reasonably requests to protect or perfect the assignment, pledge, transfer and grant of the security interest made herein;

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e. That neither Administrative Agent nor Secured Parties shall be responsible in any way for any depreciation in the value of the Collateral nor have any duty or responsibility whatsoever to take any steps to preserve any rights of Borrower or Managing Member in the Collateral or under the Operating Agreement;

f. That Borrower shall not sell, mortgage, hypothecate, assign or otherwise transfer its interest in the Capital Commitments, the Capital Contributions or the Collateral Account, or any portion of or interest in either, without the prior written consent of Administrative Agent, on behalf of Secured Parties; that Managing Member shall not sell, mortgage, hypothecate, assign or otherwise transfer its interests in its right to issue Capital Call Notices or to make Capital Calls or any portion of or interest therein without the prior written consent of Administrative Agent, on behalf of Secured Parties;

g. That Administrative Agent, on behalf of Secured Parties, is authorized and empowered to make one or more Capital Calls upon the occurrence and continuance of an Event of Default in order to pay the Notes and Obligation, without the necessity of any further action by Managing Member or Borrower; and

h. That neither Borrower nor the Managing Member shall: (i) issue any Capital Call Notice(s) other than as contemplated by Section 5.2 of the Credit Agreement; (ii) cancel or reduce the Capital Commitment of any of its equity holders or any Investor under the Operating Agreement other than with the consent of Secured Parties as required by the Credit Agreement; or (iii) excuse any of its equity holders or any Investor from making any Capital Contribution pursuant to the Operating Agreement if the proceeds from the related Capital Call are to be applied to the Obligations.

3. Remedies Upon Event of Default.

a. When an Event of Default exists, Administrative Agent, on behalf of Secured

Parties, shall have the following rights with respect to the Collateral:

i. To sell the Collateral or any part thereof, upon giving at least ten (10) days' prior notice to Borrower and Managing Member of the time and place of sale (which notice Borrower, Managing Member and Administrative Agent agree is commercially reasonable), for cash or upon credit or for future delivery, Borrower and Managing Member hereby waive all rights, if any, to require Administrative Agent to marshal the Collateral and any other security for the Obligation, and at the option and in the complete discretion of Administrative Agent, either:

A. at public sale; or

B. at private sale, in which event such notice shall also contain the terms of the proposed sale, and Borrower and Managing Member shall have until the time of such proposed sale in which to redeem the Collateral or to procure a purchaser willing, ready and able to purchase the Collateral on terms more favorable to Borrower, Managing Member, Secured Parties and the holders of the Notes, and if such a purchaser is so procured, then Administrative Agent shall sell the Collateral to the purchaser so procured; and

ii. _____ To bid for and to acquire, unless prohibited by applicable law, free from any redemption right, the Collateral, or any part thereof, and, if Secured Parties are then the holders of the Obligations or any participation or other interest therein, in lieu of paying cash therefor, Administrative Agent on behalf of Secured Parties may make settlement for the selling price by crediting the net selling price, if any, after deducting all costs and expenses of every kind, upon the outstanding principal amount of the Obligations, in such order and manner as Administrative Agent on behalf of Secured Parties, in its discretion, may deem advisable. Administrative Agent for the benefit of Secured Parties, upon so acquiring the Collateral, or any part thereof, shall be entitled to hold or otherwise deal with or dispose of the same in any manner not prohibited by applicable law; and

iii. _____ To enforce any other remedy available to Administrative Agent on behalf of Secured Parties at law or in equity.

From time to time Administrative Agent may, but shall not be obligated to, postpone the time and change the place of any proposed sale of any of the Collateral for which notice has been given as provided above if, in the judgment of Administrative Agent, such postponement or change is necessary or appropriate in order that the provisions of this Security Agreement applicable to such sale may be fulfilled or in order to obtain more favorable conditions under which such sale may take place. Administrative Agent shall give Borrower and Managing Member reasonable notice of such change.

b. _____ In case of any sale by Administrative Agent of any of the Collateral on credit, which may be elected at the option and in the complete discretion of Administrative Agent, on behalf of Secured Parties, the Collateral so sold may be retained by Administrative Agent for the benefit of Secured Parties until the selling price is paid by the purchaser, but neither Administrative Agent nor Secured Parties shall incur any liability in case of failure of the purchaser to take up and pay for the Collateral so sold. In case of any such failure, such Collateral so sold may be again similarly sold. After deducting all costs or expenses of every kind (including, without limitation, the reasonable attorneys' fees and legal expenses incurred by Administrative Agent or Secured Parties, or both), Administrative Agent shall apply the residue of the proceeds of any sale or sales, if any, to pay the principal of and interest upon the Obligations in such order and manner as Administrative Agent in its discretion may deem advisable. The excess, if any, shall be paid to Borrower. Neither Administrative Agent nor Secured Parties shall incur any liability as a result of the sale of the Collateral at any private sale or sales.

c. _____ Subject to Section 14.19 of the Credit Agreement, Administrative Agent and Secured Parties shall have all rights, remedies and recourse granted in the Credit Agreement, the Notes, the Loan Documents and any other instrument executed to provide security for or in connection with the payment and performance of the Obligations or existing at common law or equity (including specifically, those granted by the Uniform Commercial Code, as adopted in New York and any other state which governs the creation or perfection (and the effect thereof) of any security interest in the Collateral), and such rights and remedies: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Borrower and Managing Member and any other party obligated under the Obligations, or against the Collateral, or any of such Collateral, or any other security for the Obligations, or any of them, at the sole discretion of Administrative Agent, on behalf of the Secured Parties; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower and Managing Member that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (iv) are intended to be and shall be, non-exclusive.

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d. Notwithstanding a foreclosure upon any of the Collateral or exercise of any other remedy by Administrative Agent on behalf of Secured Parties in connection with an Event of Default: (i) neither Borrower nor Managing Member shall be subrogated thereby to any rights of Administrative Agent for the benefit of Secured Parties against the Collateral or any other security for the Obligations, or Borrower or Managing Member or any property of Borrower or Managing Member; (ii) nor shall Borrower or Managing Member be deemed to be the owner of any interest in the Obligations; (iii) nor shall Borrower or Managing Member exercise any rights or remedies with respect to Borrower or Managing Member or the Collateral or any other security for the Obligations or any of them or the property of Borrower or Managing Member until the Obligations have been paid to Administrative Agent for the benefit of the Secured Parties and are fully and indefeasibly performed and discharged.

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e. All recitals in any instrument of assignment or any other instrument executed by Administrative Agent for the benefit of Secured Parties or by Secured Parties incident to the sale, transfer, assignment or other disposition or utilization of the Collateral or any part thereof hereunder shall be full proof of the matters stated therein and no other proof shall be required to establish full legal propriety of the sale or other action taken by Administrative Agent for the benefit of Secured Parties or by Secured Parties or of any fact, condition or thing incident thereto, and all prerequisites of such sale or other action shall be presumed conclusively to have been performed or to have occurred.

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4. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing (except where telephonic instructions or notices are expressly authorized herein to be given) and shall be deemed to be effective (a) if by hand delivery, telex, telecopy or other facsimile transmission, on the day and at the time on which delivered to such party at the address, telex or telecopier numbers specified below; (b) if by mail, on the day which it is received after being deposited, postage prepaid, in the United States registered or certified mail, return receipt requested, addressed to such party at the address specified below; (c) if by Federal Express or other reputable express mail service, on the next Business Day following the delivery to such express mail service for next Business Day delivery, addressed to such party at the address set forth below; or (d) if by telephone on the day and at the time reciprocal communication (i.e., direct communication between two or more persons, which shall not include voice mail messages) with one of the individuals named below occurs during a call to the telephone numbers indicated for such party below:

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If to Borrower or Managing Member:
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq.

-
If to Administrative Agent:

-
Bank of America, N.A. 214 North Tryon Street NC 1-027-19-01

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Attention: Dan Hattendorf
Telephone: (704) 388-3113
Telecopy: (704) 388-9211

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With a copy to:
Bank of America, N.A.
214 North Tryon Street, 19th Floor
NC 1-027-19-01
Charlotte, NC 28255
Attention: Brian S. Williams
Telecopy: (704) 968-1215
Telephone: (704) 683-4747
Email: Brian.S.Williams@bankofamerica.com

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Any notice required hereunder shall be deemed commercially reasonable if given at least ten (10) days prior to the event giving rise to the requirement of such notice, including but not limited to, notices of a private or public sale.

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5. **Appointment of Successor Administrative Agent.**

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Reference is hereby made to Section 13.9 of the Credit Agreement for the terms and conditions upon which a successor Administrative Agent hereunder may be appointed. Wherever the words "**Administrative Agent**" are used herein, the same shall mean the Administrative Agent named in the first paragraph of this Security Agreement or the successor Administrative Agent at the time in question.

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6. **Binding Effect; Miscellaneous.**

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a. This Security Agreement shall be binding upon and inure to the benefit of and be enforceable by the undersigned and their respective successors and assigns.

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b. The headings to the various paragraphs of this Security Agreement shall have been inserted for convenient reference only and shall not modify, define, limit or expand the expressed provisions of this Security Agreement. This Security Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts shall together constitute but one and the same instrument.

c. No delay or omission on the part of Administrative Agent or the Secured Parties in exercising any right hereunder shall operate as a waiver of any such right or any other right. A waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

d. Pursuant to Section 5-1401 of the New York General Obligations Law, the substantive laws of the State of New York, without regard to the choice of law principals that might otherwise apply, and the applicable federal laws of the United States of America, shall govern the validity, construction, enforcement and interpretation of this Security Agreement.

e. Any suit, action or proceeding against Borrower or Managing Member with respect to this Security Agreement or any judgment entered by any court in respect thereof, may be brought in the courts of the State of New York, or in the United States Courts located in the Borough of Manhattan in New York City, pursuant to Section 5-1402 of the New York General Obligations Law, as the Administrative Agent on behalf of the Secured Parties in its sole discretion may elect and Borrower and Managing Member each hereby submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. Borrower and Managing Member each hereby irrevocably consents to the service of process in any suit, action or proceeding in said court by the mailing thereof by the Administrative Agent on behalf of the Secured Party by registered or certified mail, postage prepaid, to Borrower's address set forth in Section 4 hereof. Borrower and Managing Member each hereby irrevocably waives any objections which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Security Agreement brought in the courts located in the State of New York, Borough of Manhattan in New York City, and each hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **BORROWER AND MANAGING MEMBER EACH HEREBY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS SECURITY AGREEMENT, WHICH WAIVER IS INFORMED AND VOLUNTARY.**

f. The remedies given to Administrative Agent on behalf of the Secured Parties hereunder are cumulative and in addition to any and all other rights which Administrative Agent on behalf of a Secured Party or the Secured Parties may have against Borrower or Managing Member or any other person or firm, at law or in equity, including exoneration and subrogation, or by virtue of any other agreement.

g. This Security Agreement and the provisions set forth herein shall continue until the full, final and complete satisfaction of the Obligations, and Administrative Agent's and Secured Parties' rights hereunder shall not be released, diminished, impaired, reduced or adversely affected by: (i) the renewal, extension, modification, amendment or alteration of the Credit Agreement or any other Loan Document or any related document or instrument; (ii) any adjustment, indulgence, forbearance or compromise that might be granted or given by Administrative Agent or the Secured Parties to any primary or secondary obligor or in connection with any security for the Obligations; (iii) any full or partial release of any of the foregoing; or (iv) notice of any of the foregoing.

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h. Neither Administrative Agent nor Secured Parties has assumed, and nothing contained herein shall be declared to have imposed upon Administrative Agent or the Secured Parties, any of Borrower's duties or obligations or Managing Member's duties or obligations as a member of Borrower, except that Administrative Agent and the Secured Parties shall be bound by the provisions of the Operating Agreement in exercising rights or remedies thereunder assigned to Administrative Agent hereunder.

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i. Notwithstanding anything to the contrary herein, the obligations of Managing Member hereunder are subject to the nonrecourse provisions of Section 14.19 of the Credit Agreement.

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J. On the full, final, and complete satisfaction of the Obligations, this Security Agreement shall be of no further force or effect. Thereafter, upon request, Administrative Agent, on behalf of the Secured Parties, shall reasonably provide Borrower and Managing Member, at their sole expense, a written release of their respective obligations hereunder and of the Collateral.

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Signature Page Follows.
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EXECUTED on the date first above written.

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BORROWER:

ACADIA STRATEGIC OPPORTUNITY FUND III LLC, a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

MANAGING MEMBER:

ACADIA REALTY ACQUISITION III LLC, a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

EXHIBIT F
to Revolving Credit Agreement
by and among

Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

ACCOUNT ASSIGNMENT

Dated as of October 10, 2007

For value received, **ACADIA STRATEGIC OPPORTUNITY FUND III LLC**, a Delaware limited liability company ("**Assignor**"), hereby transfers and pledges to **BANK OF AMERICA, N.A.**, as Administrative Agent, on behalf of the Secured Parties, under that certain Revolving Credit Agreement (as amended, modified, supplemented, or restated from time to time, the "**Credit Agreement**"; capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement), dated as of October 10, 2007, by and among Assignor, **Acadia Realty Acquisition III LLC**, a Delaware limited liability company, as Managing Member, **Acadia Realty Limited Partnership**, a Delaware limited partnership, as Guarantor, **Acadia Investors III, Inc.**, a Maryland corporation, as Pledgor, **Bank of America, N.A.**, as administrative agent (in such capacity, the "**Administrative Agent**"), **Banc of America Securities LLC**, as Sole Lead Arranger and Sole Book Manager, **YC SUSI Trust**, as Conduit Lender, **Bank of America, N.A.**, as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto, and grants to Administrative Agent, for the benefit of each Secured Party, a common law lien, claim, encumbrance upon and security interest in deposit account no. 1233060441 at Bank of America, N.A. ("**Depository**"), with reference to "**Acadia Strategic Opportunity Fund III LLC Collateral Account**" and any extensions or renewals thereof, if the account is one which may be extended or renewed, and any successor or substitute accounts (such account or accounts and any extensions or renewals being hereinafter called the "**Collateral Account**"), together with all of Assignor's right, title, and interest (whether now existing or hereafter created or arising) in and to the Collateral Account, all sums now or at any time hereafter on deposit therein, credited thereto, or payable thereon, all proceeds and products thereof, and all instruments, documents, certificates, and other writings evidencing the Collateral Account, on the following terms and conditions:

1. This assignment of the Collateral Account shall secure the payment and the performance of the Obligations (as defined in the Credit Agreement).

2. Assignor represents and warrants that:

- a. subject to Administrative Agent's and the Secured Parties' rights with respect to the Collateral Account on the records of the Depository, Assignor is the sole owner of the Collateral Account and has authority to execute and deliver this assignment;
- b. except for any financing statement which may have been filed by the Administrative Agent for the benefit of the Secured Parties, no financing statement covering the Collateral Account, or any part thereof, has been filed with any filing officer;
- c. except for the security agreement entered into in favor of the Administrative Agent on behalf of the Secured Parties, no other assignment or security agreement has been executed with respect to the Collateral Account; and
- d. the Collateral Account is not subject to any Liens or offsets of any Person other than Administrative Agent, the Secured Parties and the Depository.

3. So long as the Obligations or any part thereof remains unpaid, Assignor covenants and agrees:

- a. (i) from time to time promptly to execute and deliver to Administrative Agent all such other assignments, certificates, passbooks, and supplemental writings, and do all other acts or things as Administrative Agent may reasonably request in order to more fully evidence and perfect the security interest herein created; and (ii) Administrative Agent may file such financing statements, amendments thereto and continuations thereof as Administrative Agent may reasonably deem appropriate in order to more fully evidence and perfect the security interest herein created;
- b. promptly to furnish Administrative Agent with any information or writings which Administrative Agent may reasonably request concerning the Collateral Account;
- c. promptly to notify Administrative Agent of any change in any fact or circumstances warranted or represented by Assignor herein or in any other writing furnished by Assignor to Administrative Agent in connection with the Collateral Account or the Obligations;
- d. promptly to notify Administrative Agent of any claim, action, or proceeding affecting title to the Collateral Account, or any part thereof, or the security interest herein, and, at the request of Administrative Agent, appear in and defend any such action or proceeding; and
- e. to pay to Administrative Agent the amount of any court costs and reasonable attorney's fees assessed by a court and incurred by Administrative Agent following any Event of Default or Special Default hereunder.

4. Assignor covenants and agrees that without the prior consent of Administrative Agent Assignor will not:

a. create any Lien in or upon, or otherwise encumber, or assign the Collateral Account, or any part thereof, or permit the same to be or become subject to any Lien, attachment, execution, sequestration, other legal or equitable process, or any encumbrance of any kind or character, except the Lien herein created and any offset rights inuring to the benefit of Depository, but only to the extent same are subordinated to Secured Parties' Liens; or

b. request, make or allow to be made any withdrawals from the Collateral Account except as provided hereunder or in Section 5.2 of the Credit Agreement.

Should any funds payable with respect to the Collateral Account be received by Assignor, they shall immediately upon such receipt become subject to the Lien hereof and while in the hands of Assignor be segregated from all other funds of Assignor and be held in trust for Secured Parties. Except as otherwise provided in the Credit Agreement, Assignor shall have absolutely no dominion or control over such funds except to immediately deposit them into the Collateral Account. Assignor acknowledges and agrees that Depository shall comply with instructions originated in writing by Administrative Agent in accordance with the terms hereof and of the Credit Agreement directing the disposition of funds in the Collateral Account without further consent of Assignor.

5. Administrative Agent's or the Secured Parties' rights hereunder shall not be released, diminished, impaired, reduced or adversely affected by:

a. any adjustment, indulgence, forbearance or compromise that might be granted or given by Administrative Agent, on behalf of the Secured Parties, or the Secured Parties to any primary or secondary obligor or in connection with any security for the Obligations;

b. any full or partial release of any security for the Obligations;

c. any other action taken or omitted to be taken by Administrative Agent, on behalf of the Secured Parties, or the Secured Parties in connection with the Obligations, whether or not such action or omission prejudices Assignor or increases the likelihood that the Collateral Account will be applied to the Obligations; or

d. notice of any of the foregoing.

6. Administrative Agent, in its discretion, without in any manner impairing any rights and powers of Secured Parties hereunder, may, at any time and from time to time, without further consent of or notice to Assignor, and with or without valuable consideration:

a. renew or extend the maturity of or accept partial payments upon the Obligations or any part thereof;

b. release any person primarily or secondarily liable in respect of the Obligations or any security therefor;

c. alter in any manner that the Secured Parties may elect the terms of any instrument evidencing the Obligations or any part thereof either as to the maturity thereof, rate of interest, method of payment, parties thereto or otherwise;

d. renew, extend or accept partial payments upon, release or permit substitutions for or withdrawals of, any security (other than the Collateral Account) at any time directly or indirectly, immediately or remotely, securing the payment of the Obligations or any part thereof; and

e. release or pay to Assignor, or any other person otherwise entitled thereto, any amount paid or payable in respect of any such other direct or indirect security for the Obligations, or any part thereof.

7. Should any person other than Assignor have heretofore executed or hereafter execute, in favor of the Secured Parties, any deed of trust, mortgage, or security agreement, or have heretofore pledged or hereafter pledge any other property to secure the payment of the Obligations, or any part thereof, the exercise by the Secured Parties of any right or power conferred upon any of them in any such instrument, or by any such pledge, shall be wholly discretionary with each Secured Party, and the exercise or failure to exercise any such right or power shall not impair or diminish the Secured Parties' rights, titles, interest, Liens, and powers existing hereunder.

8. The term "Event of Default," as used herein, means the existence of any "Event of Default" described in the Credit Agreement.

9. The term "Special Default," as used herein, means (a) the existence of any Event of Default or (b) the failure by Assignor or any Qualified Borrower to pay when due any monetary Obligations under the Credit Agreement, the Notes or any other Loan Document, including, without limitation, any mandatory prepayment required under Section 2.1(d) of the Credit Agreement or (c) the existence of a Potential Default under Section 12.1(g) and Section 12.10 of the Credit Agreement.

10. a. During the existence of an Event of Default, Administrative Agent, on behalf of the Secured Parties, in addition to any other remedies it may have, may do one or more of the following:

i. declare the Obligations immediately due and payable;

ii. demand payment and performance thereof from the funds in or credited to the Collateral Account; and

iii. withdraw funds from the Collateral Account and apply all or any portion of the Collateral Account to the Obligations as described in paragraph 1.3 hereof.

b. Assignor hereby authorizes Administrative Agent during the existence of an

Event of Default and so long as any part of the Obligations remain outstanding;

- i. to withdraw, collect, and receipt for any and all funds on deposit in or payable on the Collateral Account, and apply such funds to payment of the Obligations;
- ii. on behalf of Assignor to receive, take, assign, deliver, accept, deposit, and endorse the name of Assignor upon any checks, drafts, or other instruments payable to Assignor evidencing payment on the Collateral Account;
- iii. to surrender or present for notation of withdrawal the passbook, certificate, or other documents issued to Assignor in connection with the Collateral Account; and
- iv. exercise any other rights or take any other actions specified herein or in the Credit Agreement.

11. Upon the occurrence of a Special Default, Administrative Agent, on behalf of the Secured Parties, in addition to any other remedies it may have, may restrict or prohibit withdrawals from the Collateral Account.

12. Neither Administrative Agent nor any other Secured Party shall be liable for any loss of interest on or any penalty or charge assessed against funds in, payable on, or credited to the Collateral Account as a result of Administrative Agent, or any Secured Party exercising any of its rights or remedies under, and in accordance with, this assignment, except to the extent resulting from gross negligence or willful misconduct.

13. Administrative Agent shall be entitled to apply any and all funds received by it hereunder toward payment and performance of the Obligations in such order and manner as Administrative Agent, in its absolute discretion, may elect. If such funds are not sufficient to pay and perform the Obligations in full, Assignor shall remain liable for any deficiency, the liability of each person obligated on the Obligations to be determined by Administrative Agent following its receipt and crediting of such funds. Upon full and final payment of the Obligations, the rights of Administrative Agent in and to the Collateral Account hereunder will be deemed to be released and of no further force and effect.

14. All rights, titles, interests, Liens, and remedies of Secured Parties hereunder are cumulative of each other and of every other right, title, interest, Lien, or remedy which the Secured Parties may otherwise have at law or in equity or under any other contract or other writing for the enforcement of the security interest herein or the collection of the Obligations, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies. Should Assignor have heretofore executed or hereafter execute any other security agreement in favor of the Secured Parties, the security interest therein created and all other rights, powers, and privileges vested in the Secured Parties by the terms thereof shall exist concurrently with the security interest created herein.

15. Should any part of the Obligations be payable in installments, the acceptance by Administrative Agent at any time and from time to time of part payment of the aggregate amount of all installments then matured shall not be deemed to be a waiver of the default then existing. No waiver by the Secured Parties of any default shall be deemed to be a waiver of any other subsequent default, nor shall any such waiver by the Secured Parties be deemed to be a continuing waiver. No delay or omission by the Secured Parties in exercising any right or power hereunder, or under any other writings executed by Assignor as security for or in connection with the Obligations, shall impair any such right or power or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such right or power preclude other or further exercise thereof, or the exercise of any other right or power of the Secured Parties hereunder or under such other writings.

16. No provision herein or in any promissory note, instrument, or any other loan document evidencing the Obligations shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is provided for herein or in any such promissory note, instrument, or any other loan document, the provisions of this paragraph shall govern, and the Assignor shall not be obligated to pay the amount of such interest to the extent that it is in excess of the amount permitted by law. The intention of the parties being to conform strictly to the usury laws now in force, all promissory notes, instruments, and other loan documents evidencing the Obligations shall be held subject to reduction to the amount allowed under said usury laws as now or hereafter construed by the courts having jurisdiction.

17. (a) PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION GOVERN THE CREATION, PERFECTION, VALIDITY, OR ENFORCEMENT OF LIENS UNDER THIS ASSIGNMENT, AND THE APPLICABLE FEDERAL LAWS OF THE UNITED STATES OF AMERICA, SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS ASSIGNMENT. (b) NOTWITHSTANDING THE FOREGOING, THE PARTIES HERETO AGREE THAT THE STATE OF NEW YORK SHALL BE DEEMED TO BE THE JURISDICTION OF THE DEPOSITORY FOR PURPOSES OF ANY MATTER IN RESPECT HEREOF RELATING TO OR ARISING UNDER SECTION 9-304 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT FROM TIME TO TIME IN THE STATE OF NEW YORK. (c) ASSIGNOR AND BANK OF AMERICA EXPRESSLY AGREE THAT THE TERMS AND CONDITIONS OF ANY AGREEMENT ESTABLISHING THE COLLATERAL ACCOUNT OR < /font>OTHERWISE GOVERNING THE COLLATERAL ACCOUNT SHALL, TO THE EXTENT INCONSISTENT HERewith (INCLUDING IN RESPECT OF THE FOREGOING CLAUSE (b)), BE SUBORDINATE TO AND CONTROLLED BY THIS ASSIGNMENT OF COLLATERAL ACCOUNT.

18. Any suit, action or proceeding against Assignor with respect to this Assignment or any judgment entered by any court in respect thereof, may be brought in the courts of the State of New York, or in the United States Courts located in the Borough of Manhattan in New York City, pursuant to Section 5-1402 of the New York General Obligations Law, as Administrative Agent in its sole discretion may elect, and Assignor hereby submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. Assignor hereby irrevocably consents to the service of process in any suit, action or proceeding in said court by the mailing thereof by Administrative Agent by registered or certified mail, postage prepaid, to Assignor's address set forth following its signature hereto. Assignor hereby irrevocably waives any objections which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Assignment brought in the courts located in the State of New York, Borough of Manhattan in New York City, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **ASSIGNOR HEREBY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS ASSIGNMENT, WHICH WAIVER IS INFORMED AND VOLUNTARY.**

19. This assignment shall be binding on and inure to the benefit of Assignor and Administrative Agent and their respective successors and permitted assigns.

20. This Assignment and the provisions set forth herein shall continue until the full, final, and complete satisfaction of the Obligations, and the Administrative Agent's and the Secured Parties' rights hereunder shall not be released, diminished, impaired, reduced or adversely affected by: (i) the renewal, extension, modification, amendment or alteration of the Credit Agreement or any other Loan Document or any related document or instrument; (ii) any adjustment, indulgence, forbearance or compromise that might be granted or given by Administrative Agent or the Secured Parties to any primary or secondary obligor or in connection with any security for the Obligations; (iii) any full or partial release of any of the foregoing; or (iv) notice of any of the foregoing.

21. On the full, final, and complete satisfaction of the Obligations, this Assignment shall be of no further force or effect. Thereafter, upon request, Administrative Agent, on behalf of the Secured Parties, shall reasonably provide Assignor, at Assignor's sole expense, a written release of Assignor's obligations hereunder and an assignment of the Collateral Account to Assignor.

22. In the event of a conflict or inconsistency between any provision of this agreement with any provision of the Credit Agreement, the Credit Agreement will control.

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SIGNATURE PAGES FOLLOW.

ASSIGNOR ACKNOWLEDGES RECEIPT OF A COPY OF THIS ASSIGNMENT. Executed by Assignor on the date first above written.

ACADIA STRATEGIC OPPORTUNITY FUND III
LLC, a Delaware limited liability company

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

BANK OF AMERICA, N.A.

By:
Name:
Title:

Account Assignment

**DEPOSITORY ACKNOWLEDGMENT
AND AGREEMENT**

- The undersigned depository, Bank of America, N.A. (the "Depository"), acknowledges that Assignor has assigned the Collateral Account as described in the foregoing Assignment of Collateral Account (the "Assignment", with capitalized terms not defined herein being used herein as therein defined). The records of the Depository have been marked to show the Assignment. The Depository hereby acknowledges that the Collateral Account, as described in the Assignment, has been validly created by the Depository in favor of Assignor.

- Notwithstanding any other provision to the contrary in any other agreement between the Depository and the Assignor and/or the Administrative Agent, the Depository agrees that if at any time it shall receive any instructions directing deposition of funds in the Account from the Administrative Agent, the Depository shall comply with such instructions without further consent by the Assignor. In the event the Assignor is permitted to give instructions with respect to the Account, notwithstanding anything to the contrary contained in any other agreement between the Depository and the Assignor and/or the Administrative Agent, if at the time the Depository shall receive conflicting instructions from the Assignor and the Administrative Agent, the Depository shall follow the instructions of the Administrative Agent and not the Assignor.

- The Depository hereby subordinates any and all rights of set-off and all other rights and Liens of the Depository against the Collateral Account to the rights, security interests, and Liens under the Assignment, and agrees that, so long as the Obligation remains outstanding, Depository shall not, without the prior written consent of the Administrative Agent, which consent may be withheld by the Administrative Agent in its sole and absolute discretion, with or without cause, exercise or enforce any rights or remedies with respect to the Collateral Account except as required to preserve its rights in the case of bankruptcy, reorganization or insolvency proceedings with respect to the Assignor, and except that the Depository may charge the Collateral Account for any charges, fees and expenses for which Assignor is responsible and which relate to the transactions contemplated by the Assignment or the Credit Agreement referred to therein.

- The Depository may rely upon and shall be fully protected, indemnified and held harmless in acting or refraining from acting upon any notice (including, without limitation, electronically confirmed facsimiles of such notice) received from the Assignee or the Assignor (including, without limitation, any notice of an Event of Default or Special Default as defined in the Assignment or the Credit Agreement referred to in the Assignment) and believed by it to be genuine and to have been signed or presented by the proper party or parties.

- The Depository further agrees to provide Assignee with copies of all notices and records sent to Assignor relating to the Collateral Account, and will deliver to Assignee all monthly (or other periodic) statements of the Collateral Account and respond to inquiries by Assignee about any deposits, withdrawals or any other matters relating to the Collateral Account, to the same extent Depository makes such information available to the Collateral Account holder, and Assignor hereby acknowledges and consents to such agreement by Depository.

This Depository Acknowledgment shall be effective as of the date of the Assignment.

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BANK OF AMERICA, N.A.

By:
Name:
Title:

Depository Acknowledgement and Agreement

Acknowledged and Agreed:

ACADIA STRATEGIC OPPORTUNITY FUND III
LLC, a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

EXHIBIT G
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSHI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FACILITY INCREASE REQUEST

DATE]

- Bank of America, N.A., as Administrative Agent
NC 1-027-19-01
214 North Tryon Street
Charlotte, North Carolina 28255
Attention: Dan Hattendorf

- Telephone: (704) 388-3113
Facsimile: (704) 388-9211

- with a copy to:

- Bank of America, N.A.
NC1-027-19-01
214 North Tryon Street, 19th Floor
Charlotte, NC 28255
Attention: Brian S. Williams
Telephone: (704) 683-4747
Telecopy: (704) 968-1215
Email: Brian.S.Williams@bankofamerica.com

- and:

- Michael C. Mascia
Mayer Brown LLP
214 N. Tryon Street, Suite 3800
Charlotte, N.C. 28203
Phone: (704) 444-3651
Fax: (704) 377-2033

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Ladies and Gentlemen:

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This Facility Increase Request (this "Facility Increase Request") is executed and delivered by Acadia Strategic Opportunity Fund III LLC (the "Borrower") to Bank of America, N.A., as administrative agent ("Administrative Agent"), pursuant to that certain Revolving Credit Agreement (as amended, modified, supplemented, or restated from time to time, the "Credit Agreement") dated as of October 10, 2007, entered into by and among Borrower, Acadia Realty Acquisition III LLC, a Delaware limited liability company, as Managing Member, Acadia Realty Limited Partnership, a Delaware limited partnership, as Guarantor, Acadia Investors III, Inc., a Maryland corporation, as Pledgor, Administrative Agent, Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager, YC SUSHI Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

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Borrower hereby requests an increase in the Facility Amount pursuant to Section 2.12(a) of the Credit Agreement to \$ _____² (the "Facility Increase"), such Facility Increase to be effective on _____ [DATE] (must be at least 3 Business Days after date of Request).

-
In connection with the Facility Increase requested hereby, Borrower hereby represents, warrants, and certifies to Administrative Agent for the benefit of Lenders that:

-
(a) No Event of Default or Potential Default under the Credit Agreement has

-
occurred and is continuing or would result from the Facility Increase;

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(c) After giving effect to the Facility Increase, the aggregate amount of the Alternate Lenders' Commitments will not exceed the Maximum Commitment; and

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(d) Attached hereto as Schedule I is a calculation of the Borrowing Base, true and correct as of the date hereof.

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In the event that between the date hereof and the date of the Facility Increase, any event should occur which could reasonably be expected to have a Material Adverse Effect, Borrower shall promptly notify the Administrative Agent.

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SIGNATURE PAGE FOLLOWS.]**

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² Amount of Facility Increase shall be in a minimum amount of \$50,000,000.

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Exhibit G

- This Facility Increase Request is executed as of the date first written above. The undersigned hereby certifies each and every matter contained herein to be true and correct.

- **BORROWER:**

- **ACADIA STRATEGIC OPPORTUNITY FUND III**
- **LLC, a Delaware limited liability company.**

- By: /s/ Robert Masters
- Name: Robert Masters
- Title: Senior Vice President

- Acknowledged and Agreed To:

- **GUARANTOR:**

- **ACADIA REALTY LIMITED PARTNERSHIP, a Delaware limited**
- **partnership.**

- **ACADIA REALTY TRUST,**
- **its General Partner**

- By: /s/ Robert Masters
- Name: Robert Masters
- Title: Senior Vice President

EXHIBIT H
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF BORROWING BASE CERTIFICATE

-
Bank of America, N.A.

-
214 North Tryon Street, 19th Floor NC 1-027-19-01

Charlotte, NC 28255

Attention: Brian S. Williams

Telecopy: (704) 968-1215

Telephone: (704) 683-4747

-
ADMINISTRATIVE AGENT: Bank of America, N.A.

-
BORROWER: Acadia Strategic Opportunity Fund III LLC

-
The Borrower and Managing Member each hereby represent and warrant to the Administrative Agent that the Borrowing Base Certificate attached hereto as *Schedule I* is a true, correct and complete calculation of the Borrowing Base as of [DATE]. Capitalized terms used herein and not otherwise defined shall have the meaning assigned thereto in the Credit Agreement.

Exhibit H

BORROWER:

**ACADIA STRATEGIC OPPORTUNITY FUND III
LLC, a Delaware limited liability company.**

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

MANAGING MEMBER:

ACADIA REALTY ACQUISITION III LLC,
a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

Schedule I

(Calculation of the Borrowing Base)

[See Attached]

EXHIBIT I
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF INVESTOR LETTER

[See Attached.]

INVESTOR LETTER

[Investor Letter - Investor to copy/print on letterhead]

[Leave date blank - Borrower's counsel should obtain
authorization to complete date
upon closing]
_____, 2007

Bank of America, N.A., as
Administrative Agent
NC 1-027-19-01
214 North Tryon Street Charlotte, NC 28255
Attention: Brant Murdock

Re: Revolving Credit Facility (the "**Credit Facility**") established pursuant to that certain Revolving Credit Agreement (as the same may be modified, amended, or restated from time to time, the "**Credit Agreement**"), entered into or to be entered into by and among Acadia Strategic Opportunity Fund III, LLC ("**Borrower**"), Acadia Realty Acquisition III, LLC ("**Managing Member**"), Acadia Realty Limited Partnership, as Guarantor, Acadia Investors III, Inc. ("**Investor**"), Bank of America, N.A., as Administrative Agent, YC SUST Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto (each, a "**Lender**").

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 Stockholders Agreement by and among Investor, Yale University, The Vanderbilt University, Carnegie Corporation of New York, Gloster III, LLC, The Board of Trustees of the Leland Stanford Junior University, The William and Flora Hewlett Foundation, The Trustees of the University of Pennsylvania, The Regents of the University of Michigan, Gordon E. and Betty I. Moore Foundation, Morris Ventures, Makena Capital Holdings Prime, L.P., Clarendon Investment Partners II, LP and The Owen Family Trust, dated as of May 15, 2007 (as the same may be further modified, amended, or restated from time to time, 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 in the aggregate amount 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, \$[] of our Capital Commitment has been called, \$, of our Capital Commitment remains to 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 or Administrative Agent a certificate setting forth the remaining amount of our Capital Commitment which we are obligated to fund (the "**Unfunded Capital Commitment**").

- We hereby acknowledge and agree that under the terms of and subject to the conditions set forth in the Stockholders Agreement, we are and shall remain unconditionally obligated to fund our Unfunded 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 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 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, including without limitation any defense under Section 365 of the U.S. Bankruptcy Code, 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 Unfunded 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 Unfunded 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 and the Credit Agreement are making a collateral assignment to Administrative Agent for the benefit of Lenders of (i) our Capital Contributions; and the right to issue Drawdown Notices and call and receive all payments of all or any portion of our Unfunded Capital Commitment 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 an 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 Unfunded 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 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 Administrative Agent in writing, all future Capital Contributions made by us under the Stockholders Agreement will be made by wire transfer to the following account opened and maintained by Borrower with the Administrative Agent (the "**Collateral 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.
Account Number: 1233060441
ABA Number: 026-009-593
Reference: Acadia Strategic Opportunity Fund III LLC Collateral
Account
Contact Person: Mr. Brant Murdock

[Add to Yale and Gloster acknowledgments: The language/side letter/guarantees from the Acadia II transaction.]

We hereby acknowledge that for so long as the Credit Agreement is in effect, we are obligated, under the terms and subject to the limitations and conditions set forth in the Stockholders Agreement, to honor any Drawdown Notice delivered to us in the name of the Administrative Agent on behalf of Lenders, without setoff, counterclaim or defense by funding the applicable portion of our Capital Commitment into the Collateral Account, provided such Drawdown Notice is delivered for the purpose of paying due and payable obligations of the Borrower to Lenders under the Credit Facility and states on its face that it is delivered for such purpose.

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 Capital Commitment unless such Capital Contributions are paid into the above account (unless we are otherwise instructed by Administrative Agent as described above). We hereby acknowledge that the terms of the Credit Agreement and of each other Loan 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 Letter shall be for the benefit of Administrative Agent, Lenders, and Lenders' successors and assigns, and that this Investor Letter will remain in effect until we are notified jointly by Administrative Agent and Managing Member that the Credit Facility has been terminated.

- We also acknowledge and confirm that (a) we understand that Lenders have not been involved in the organization of Investor or offering of Investor's equity interests, or made any representation in connection therewith, (b) we are not relying on Lenders in any way in connection with our investment in Investor and (c) Lenders have no obligation to provide us with any financial, tax or other information pertaining to Investor or any other Person.

- For governmental entity Investors:

- [We represent and warrant that: (i) we are subject to commercial law with respect to our obligations under the Stockholders Agreement and this Investor Letter; (ii) the making and performance of the Stockholders Agreement and this Investor Letter constitute private and commercial acts rather than governmental or public acts, and that neither we nor any of our properties or revenues has any right of immunity from suit, court jurisdiction, execution of a judgment or from any other legal process with respect to our obligations under the Stockholders Agreement and this Investor Letter. To the extent that we may hereafter be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to the Stockholders Agreement, or this Investor Letter to claim any such immunity, and to the extent that in any such jurisdiction there may be attributed to us such an immunity (whether or not claimed), we hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the fullest extent permitted by applicable law.]

- For ERISA Investors:

- [The undersigned signatory confirms that it is the fiduciary of the plans whose assets are invested in Investor and it confirms that: (i) it made its own determination that the Transaction (defined below) was made on terms that are no less favorable to such plans than those that could be obtained in arm's-length transactions with unrelated parties; (ii) the decision to invest in Investor and to execute and deliver this Investor Letter (the "**Transaction**") was made by the undersigned, and the undersigned is not included among, is independent of, and is unaffiliated with, Lenders (including the Administrative Agent) and Investor (as defined below); (iii) each plan on behalf of which we have invested in Investor (or commingled funds of related plans): (A) has no less than \$100,000,000 of assets; and (B) not more than five percent (5%) of the assets of each such plan (or commingled fund) have been invested in Investor; and (iv) Lenders (including the Administrative Agent): (x) had no influence, authority, or control over the Transaction, and (y) rendered no investment advice with respect to the Transaction. For purposes of this paragraph, a fiduciary is "not included among, is independent of, and unaffiliated with" a Lender (including the Administrative Agent) and Investor, as applicable, if: (A) the fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Investor; (B) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Investor; and (C) no officer, director, highly-compensated employee, or shareholder of Investor, or any officer, director or highly-compensated employee, or partner of a Lender, is also an officer, director, highly-compensated employee, or partner of the fiduciary. If such individual is a director of the Lender, he or she must abstain from participation in, and not otherwise be involved in, the decision made by the fiduciary to invest in Investor.]

{or - where this Investor Letter is being signed by a custodian or someone other than the fiduciary;}

[We confirm that] _____] is the fiduciary (the "**Fiduciary**") of the Investor

and that the Fiduciary has confirmed to the Investor that: (i) the Fiduciary made its own determination that the Transaction (defined below) was made on terms that are no less favorable to the Investor than those that could be obtained in arm's-length transactions with unrelated parties; (ii) the Fiduciary made the decision to invest in Investor and to execute and deliver this Investor Letter (the "**Transaction**"), and the Fiduciary is not included among, is independent of, and is unaffiliated with, Lenders (including the Administrative Agent) and Investor (as defined below); (iii) each plan on behalf of which the Investor has invested in Investor (or commingled funds of related plans); (A) has no less than \$100,000,000 of assets; and (B) not more than five percent (5%) of the assets of each such plan (or commingled fund) have been invested in Investor; and (iv) Lenders (including the Administrative Agent); (x) had no influence, authority, or control over the Fiduciary's decision to invest in Investor, and (y) rendered no investment advice with respect to the Investor's investment in Investor. For purposes of this paragraph, a fiduciary is "not included among, is independent of, and unaffiliated with" a Lender (including the Administrative Agent) and Investor, as applicable, if: (A) the fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Investor; (B) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Investor; and (C) no officer, director, highly-compensated employee, or shareholder of Investor, or any officer, director or highly-compensated employee, or partner of a Lender, is also an officer, director, highly-compensated employee, or partner of the fiduciary. If such individual is a director of the Lender, then he or she must abstain from participation in, and not otherwise be involved in, the decision made by the fiduciary to invest in Investor.]

For non-U.S. Investors:

[We acknowledge and agree that: (i) this Investor Letter shall be governed by the laws of the State of New York; (ii) (x) any suit, action or proceeding against us with respect to this Investor Letter may be brought in the courts of the State of New York, or in the United States Courts located in the Borough of Manhattan in New York City, in the Administrative Agent's sole discretion; and (y) we hereby submit to the non-exclusive jurisdiction of such courts for the purpose of any suit; (iii) service of all writs, process and summonses in any such suit, action or proceeding brought in the State of New York may be brought upon our process agent appointed below, and the Investor hereby irrevocably appoints [Name] _____, [Address] _____, Attention: _____, as our process agent, as its true and lawful attorney-in-fact in the name, place and stead of it to accept such service of any and all such writs, process and summonses; and (iv) we hereby irrevocably waive: (x) any objection which we may have now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Investor Letter brought in the courts located in the State of New York, Borough of Manhattan in New York City; and (y) any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.]

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SIGNATURE PAGE FOLLOWS.

[NAME ON INVESTOR]

By:

Name:

Title:

Address:

[_____].

[_____].

[_____] Investor Letter
Signature Page

EXHIBIT J

-

[Reserved]

-

Exhibit J

EXHIBIT K
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSHI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

-
[RESERVED]
-

EXHIBIT L
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF CAPITAL CONTRIBUTIONS PLEDGE AGREEMENT

[See Attached]

EXHIBIT M
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSHI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption (this "**Assignment and Assumption**") is dated as of the Effective Date set forth below and is entered into by and between [ASSIGNOR] (the "**Assignor**") and [ASSIGNEE] (the "**Assignee**"). Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement referred to below (as amended, modified, supplemented or restated from time to time, the "**Credit 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 (the "**Standard Terms and Conditions**") are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption 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 Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below: (a) all of the Assignor's rights and obligations in its capacity as [Conduit Lender], [Alternate Lender] under the Credit 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 any letters of credit or guarantees included in such facilities); and (b) 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 [Conduit Lender], [Alternate Lender]) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby 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 (a)* above (the rights and obligations sold and assigned pursuant to *clauses (a) and (b)* 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 and Assumption, without representation or warranty by the Assignor.

1. Assignor:

2. Assignee: [and Assignee is an Affiliate/Approved Fund of [identify Lender]]¹

3. Borrower: Acadia Strategic Opportunity Fund III LLC

4. Administrative Agent: Bank of America, N.A., as Administrative Agent under the Credit Agreement

5. Credit Agreement: The Revolving Credit Agreement dated as of October 10, 2007 among Acadia Strategic Opportunity Fund III LLC, Acadia Realty Acquisition III LLC, Acadia Realty Limited Partnership, Acadia Investors III, Inc., the Lenders and other Persons party thereto, and Bank of America, N.A., as Administrative Agent

6. Assigned Interest:

ASSIGNOR
[NAME OF ASSIGNOR]

By:
Name:
Title:

<u>Facility Assigned</u>	<u>Aggregate</u> <u>Amount of</u> <u>Commitment for</u> <u>all [Alternate</u> <u>Lenders]</u> <u>[Conduit</u> <u>Lenders]²</u>	<u>Amount of</u> <u>Commitment</u> <u>Assigned*</u>	<u>Amount of</u> <u>Loans</u> <u>Assigned*</u>	<u>Percentage</u> <u>Assigned</u> <u>of Commitment/</u> <u>Loans³</u>
<u>Revolving Credit</u> <u>Commitment</u>	\$ -	-	-	\$ - %

[9. Trade Date:]⁴

Effective Date: _____, 20____ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR]

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SIGNATURE PAGES FOLLOW.**

Select or delete as applicable.

² Amount to be adjusted by the counterparties to take into account any payments made between the Trade Date and the Effective Date.

³ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

* Amounts to be adjusted by the counterparties to take into account payments and prepayments made between the Trade Date and the Effective Date.

⁴ To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date. If Trade Date is specified in the Assignment and Assumption Agreement, as of the Trade Date, shall not be less than \$2,500,000, and, after such assignment, no Lender shall hold a Commitment of less than \$5,000,000.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By:
Name:
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By:
Name:
Title:

[Consented to and] ⁵ Accepted:

BANK OF AMERICA, N.A., as Administrative Agent

By:
Name:
Title:

[Consented to] ⁶ [and Acknowledged] ⁷ by:

ACADIA STRATEGIC OPPORTUNITY FUND III
LLC, a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

⁵ To be used only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

⁶ To be used only if the consent of the Borrower is required by the terms of the Credit Agreement.

⁷ To be used only if assignment is made as a result of a demand by Borrower under the Credit Agreement.

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION AGREEMENT
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 Assumption 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 Credit 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 the 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 the 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 Assumption and to consummate the transactions contemplated hereby and to become a [Conduit Lender],[Alternate Lender] under the Credit Agreement; (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement); (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a [Conduit Lender],[Alternate Lender] thereunder and, to the extent of the Assigned Interest, shall have the obligations of a [Conduit Lender],[Alternate Lender] thereunder; (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 9.1 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender; and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that: (i) it will, independently and without reliance on the 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 [Conduit Lender],[Alternate Lender].

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

-

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption 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 and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. Pursuant to Section 5-1401 of the New York General Obligations Law, the substantive laws of the State of New York, without regard to the choice of law principles that might otherwise apply, and the applicable federal laws of the United States of America, shall govern the validity, construction, enforcement and interpretation of this Assignment and Assumption.

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EXHIBIT N
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSHI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF BORROWER GUARANTY

Dated _____, 20__

1. _____ The undersigned, **Acadia Strategic Opportunity Fund III LLC**, a Delaware limited liability company ("**Guarantor**"), hereby irrevocably, unconditionally and absolutely guarantees in favor of **BANK OF AMERICA, N.A.**, as Administrative Agent for each of the Secured Parties under that certain Credit Agreement referred to below ("**Creditor**"), the prompt payment when due of all interest, principal, fees, expenses and other amounts now or hereafter represented by, or arising in connection with: (a) that certain Qualified Borrower [Promissory] [Letter of Credit] Note (the "**Qualified Borrower Note**"), dated 20__ in the amount of \$ _____, payable by _____ ("**Qualified Borrower**") to the order of Creditor, including without limitation all liabilities and indebtedness represented or evidenced by any promissory note given in renewal, extension, modification or substitution of or for the Qualified Borrower Note; and (b) all obligations of Qualified Borrower under the Credit Agreement (collectively, the "**Guaranteed Debt**"). This is an unconditional guaranty of payment, and not a guaranty of collection, and Creditor may enforce Guarantor's obligations hereunder pursuant to Section 2.6 of the Credit Agreement without first suing, or enforcing its rights or remedies against, Qualified Borrower or any other obligor, or enforcing or collecting any present or future collateral security for the Guaranteed Debt. Unless otherwise defined in this guaranty agreement (this "**Borrower Guaranty**"), capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement (hereinafter defined).

2. _____ Guarantor hereby waives notice of: (a) acceptance of this Borrower Guaranty; (b) the extension of credit by Creditor to Qualified Borrower; (c) the occurrence of any breach or default by Qualified Borrower in respect of the Guaranteed Debt; (d) the sale or foreclosure on any collateral for the Guaranteed Debt; (e) the transfer of the Guaranteed Debt to any third party to the extent permitted under the Credit Agreement and to the extent that such notice is not required under the Credit Agreement; and (f) all other notices, except as otherwise required under the Credit Agreement.

Exhibit N

3. Guarantor hereby consents and agrees to, and acknowledges that its obligations hereunder shall not be released or discharged by, the following: (a) the renewal, extension, modification or alteration of the Qualified Borrower Note, the Guaranteed Debt or any related document or instrument; (b) any forbearance or compromise granted to Qualified Borrower by Creditor; (c) the insolvency, bankruptcy, liquidation or dissolution of Qualified Borrower; (d) the invalidity, illegality or unenforceability of all or any part of the Guaranteed Debt; (e) the full or partial release of the Qualified Borrower or any other obligor; (f) the release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including without limitation negligent, willful, unreasonable or unjustifiable impairment) of any collateral for the Guaranteed Debt; (g) the failure of Creditor properly to obtain, perfect or preserve any security interest or lien in any such collateral; (h) the failure of Creditor to exercise diligence, commercial reasonableness or reasonable care in the preservation, enforcement or sale of any such collateral; and (i) any other act or omission of Creditor or Qualified Borrower which would otherwise constitute or create a legal or equitable defense in favor of Guarantor.

4. Notwithstanding anything to the contrary in this Borrower Guaranty, until the Guaranteed Debt has been paid in full, Guarantor hereby irrevocably waives all rights it may have at law or in equity (including, without limitation, any law subrogating Guarantor to the rights of Creditor) to seek contribution, indemnification, or any other form of reimbursement from Qualified Borrower, any other guarantor, or any other person now or hereafter primarily or secondarily liable for any obligations of Qualified Borrower to Creditor, for any disbursement made by Guarantor under or in connection with this Borrower Guaranty or otherwise.

5. Guarantor represents and warrants that it has received or will receive direct or indirect benefit from the making of this Borrower Guaranty and the creation of the Guaranteed Debt, that Guarantor is familiar with the financial condition of Qualified Borrower and the value of any collateral security for the Guaranteed Debt and that Creditor has made no representations to Guarantor in order to induce Guarantor to execute this Borrower Guaranty.

6. If Qualified Borrower is or shall hereafter be liable to Creditor for any obligation, indebtedness or liability other than the Guaranteed Debt, and Creditor should collect or receive any payments, funds or distributions which are not specifically required, by law or agreement, to be applied to the Guaranteed Debt, then Creditor may, in its sole discretion, apply such payments, funds or distributions to indebtedness of Qualified Borrower other than the Guaranteed Debt.

7. This Borrower Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Debt is rescinded or must otherwise be returned by the Creditor, upon the insolvency, bankruptcy, reorganization, or dissolution of the Qualified Borrower or otherwise, all as though such payment had not been made.

8. This Borrower Guaranty has been executed and delivered pursuant to that certain Revolving Credit Agreement (as amended, modified, supplemented, or restated from time to time, the "Credit Agreement") dated as of October 10, 2007, by and among Guarantor, Acadia Realty Acquisition III LLC, as Managing Member, Acadia Realty Limited Partnership, as Guarantor, Acadia Investors III, Inc., as Pledgor, Creditor, Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager, YC SUSI Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto, and is one of the "Borrower Guaranties" referred to therein. This Borrower Guaranty may be amended only by a written instrument executed by Guarantor and Creditor.

9. Pursuant to Section 5-1401 of the New York General Obligations Law, the substantive laws of the State of New York, without regard to the choice of law principles that might otherwise apply, and the applicable federal laws of the United States of America, shall govern the validity, construction, enforcement and interpretation of this Borrower Guaranty.

10. Any suit, action or proceeding against Guarantor with respect to this Borrower Guaranty or any judgment entered by any court in respect hereof, may be brought in the courts of the State of New York, or in the United States Courts located in the Borough of Manhattan in New York City as Creditor in its sole discretion may elect and Guarantor hereby submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. Guarantor hereby irrevocably consents to the service of process in any suit, action or proceeding in said court by the mailing thereof by Creditor by registered or certified mail, postage prepaid, to Guarantor's address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, Attention: Robert Masters, Esq. Guarantor hereby irrevocably waives any objections which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Borrower Guaranty brought in the courts located in the State of New York, Borough of Manhattan in New York City, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **GUARANTOR, AND BY ITS ACCEPTANCE HEREOF CREDITOR, EACH HEREBY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS BORROWER GUARANTY, WHICH WAIVER IS INFORMED AND VOLUNTARY.**

Reference is hereby made to Section 14.19 of the Credit Agreement regarding the non-personal liability of Managing Member, the provisions of which are hereby incorporated by reference in this Borrower Guaranty as if fully set forth herein, for the payment and performance of Guarantor's obligations hereunder.

On the full, final and complete satisfaction of the Guaranteed Debt, this Guaranty shall be of no further force or effect. Thereafter, upon request, Creditor shall reasonably provide Guarantor, at Guarantor's sole expense, a written release of its obligations hereunder.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGES FOLLOW.

EXECUTED on the date first above written.

ACADIA STRATEGIC OPPORTUNITY FUND III
LLC, a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

Acknowledged and Agreed:

ACADIA REALTY LIMITED PARTNERSHIP,
a Delaware limited liability company.

By: ACADIA REALTY TRUST,
its general partner

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

Signature Page to
Guaranty of Payment

Exhibit N

Accepted and Approved:

-
BANK OF AMERICA, N.A.
as Administrative Agent

-
By:
Name:
Title:

Exhibit N

EXHIBIT 0
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto

FORM OF COMPLIANCE CERTIFICATE FOR [_____] ENDED [_____]
DATE: [DATE]

ADMINISTRATIVE AGENT: Bank of America, N.A.

BORROWER: Acadia Strategic Opportunity Fund III LLC

This certificate is delivered under the Revolving Credit Agreement, dated as of October 10, 2007 (as amended, modified, supplemented, or restated from time to time, the "Credit Agreement"), among Borrower, Acadia Realty Acquisition III LLC, as Managing Member, Acadia Realty Limited Partnership, as Guarantor, Acadia Investors III, Inc., as Pledgor, Administrative Agent, Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager, YC SUSI Trust, as Conduit Lender, Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent and the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from time to time party thereto. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The undersigned Responsible Officer hereby certifies as of the date hereof that he/she is authorized to execute and deliver this certificate to the Administrative Agent on behalf of Borrower, and that as of [date at the end of the period indicated above] (the "Reporting Date"):

(a) The undersigned has reviewed and is familiar with the terms and provisions of the Loan Documents and has made, or caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of Borrower during the account period covered by the attached financial statements, which fairly represent the financial condition and the results of the operations of the Borrower, and no Event of Default (nor any Potential Default) exists which has not been cured or waived (except the Events of Default or Potential Defaults, if any, together with the details of the actions that Borrower is taking or proposes to take with respect thereto, described on Annex A to this Certificate);

Exhibit O

(b) The Borrowers are in compliance with all the covenants set forth in Section 10 of the Credit Agreement and Borrower and Pledgor are in compliance with Section 11.11 of the Credit Agreement, and calculations evidencing such status are as set forth on Annex B to this certificate; and

(c) The calculation of the Borrowing Base attached hereto as Annex C is true and correct as of the date hereof, and any Investors which have been subject to an Exclusion Event are noted thereon.

[Signature of Responsible Officer]

By:
Name:
Title:

EXHIBIT P
to Revolving Credit Agreement
by and among
Acadia Strategic Opportunity Fund III LLC, as Borrower,
Acadia Realty Acquisition III LLC, as Managing Member,
Acadia Realty Limited Partnership, as Guarantor,
Acadia Investors III, Inc., as Pledgor,
Bank of America, N.A., as Administrative Agent,
Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager,
YC SUSI Trust, as Conduit Lender,
Bank of America, N.A., as an Administrator, Alternate Lender and Managing Agent,
and
the other Conduit Lenders, Administrators, Alternate Lenders and Managing Agents from
time to time party thereto
FORM OF GUARANTY OF CAPITAL

[See Tab 6]

Exhibit P

ACADIA TARRYTOWN LLC,
formerly known as
Acadia-Noddle Tarrytown Development Co., LLC

TO

ANGLO IRISH BANK CORPORATION PLC

MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT

Dated: As of October 30, 2007
Location: 124-134 Wildev Street
County: Westchester
Town: Greenburgh
Village: Tarrytown
Section: 1
Sheet: 2
Lots: P25 and P25B

RECORD AND RETURN TO:

Sullivan & Worcester LLP
1290 Avenue of the Americas
New York, New York 10104
Attention: Hugh P. Finnegan, Esq.

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MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT

This Mortgage Consolidation and Modification Agreement, dated as of this 30th day of October, 2007, is made by ACADIA TARRYTOWN LLC, formerly known as Acadia-Noddle Tarrytown Development Co., LLC, a New York limited liability company, having an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, ("Mortgagor") in favor of ANGLO IRISH BANK CORPORATION PLC, a banking corporation organized under the laws of the Republic of Ireland having its principal place of business at Stephen Court, 18/21 St. Stephen's Green, Dublin 2, Ireland ("Mortgagee").

RECITALS:

WHEREAS, Mortgagor is the owner of the fee estate in the premises described in Exhibit A attached hereto (the "Premises") and Mortgagee is the owner and holder of certain mortgages covering the fee estate of Mortgagor in the Premises, as more particularly described in Exhibit C attached hereto (collectively, the "Existing Mortgages") and of the notes, bonds or other obligations secured thereby, as more particularly described in Exhibit C attached hereto (collectively, the "Existing Notes");

WHEREAS, there is, prior to the execution of the note and the mortgage dated the date hereof, presently owing on the Existing Notes and the Existing Mortgages the principal balance of \$1,859,478.61 and interest;

WHEREAS, Mortgagor and Mortgagee have agreed in the manner hereinafter set forth (a) to spread the Existing Mortgages and the respective liens thereof over those portions of the Mortgaged Property not already covered thereby, if any, and (b) to modify the terms and provisions of the Existing Mortgages;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Mortgagor hereby represents and warrants to and covenants and agrees with Mortgagee as follows:

Section 1. Definitions. Each reference in this Mortgage to the following terms shall be deemed to have the following meaning:

Bankruptcy Code: The federal bankruptcy code, 11 U.S.C. § 101 et seq., as the same now exists or may hereafter be amended.

Collateral: Collectively, the Personal Property, the Proceeds, the Leases, Rents and Security Deposits.

Commitment Letter: Mortgagee's term sheet, dated September 6, 2007, setting forth the general terms of the Loan.

Continuing Expenses: Normal operating expenses of the Mortgaged Property that are incurred during the period of any loss due to a casualty with respect to the Mortgaged Property.

Cost to Repair: The term "Cost to Repair" is defined in Section 5.3.9 hereof.

Default Condition: The existence of any Event of Default or the existence of any condition or state of facts which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

Default Rate: The rate of interest payable under the Note at maturity or upon the occurrence of an Event of Default.

Deposited Funds: Any and all sums deposited with Mortgagee pursuant to Section 5.5 hereof for payment of Impositions and insurance premiums.

Environmental Site Assessment Report: The report, dated October 9, 2007 prepared by ATC Associates Inc. and provided to Mortgagee in connection with the Loan.

Event of Default: Any event of default listed in Section 8 hereof.

Existing Mortgages: The term "Existing Mortgages" is defined in the Recitals.

Existing Notes: The term "Existing Notes" is defined in the Recitals.

Guarantor: The term "Guarantor" shall mean Acadia Strategic Opportunity Fund, LP.

Guaranty Documents: The term "Guaranty Documents" shall collectively mean that certain Non-Recourse Carve Out Guaranty Agreement, dated the date hereof, executed by Mortgagor and Guarantor in favor of Mortgagee and that certain Environmental Indemnity Agreement, dated the date hereof, executed by Mortgagor and Guarantor in favor of Mortgagee.

Governmental Authority: Each and every national, state and local governmental body, department, agency or subdivision having jurisdiction over Mortgagor, any Guarantor or the Mortgaged Property or any part thereof or any use, operation or occupancy thereof.

Hazardous Waste: Any "oil," "hazardous material," "hazardous wastes" or "hazardous substances" as defined in the Hazardous Waste Laws, including, without limitation (whether or not included in the definition contained in the Hazardous Waste Laws), PCBs, asbestos, radon and other chemicals which would be materially dangerous to the environment or to human beings.

Hazardous Waste Laws: Collectively, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of remediation or prevention of releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment, including, but not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act.

Hedging Agreement: The term "Hedging Agreement" shall mean any swap, collar, option or similar contract entered into or to be entered into between the Mortgagor and the Mortgagee in connection with the Loan.

Impositions: Any and all taxes, assessments, water and sewer charges, and other charges of whatever nature which may at any time be assessed against, levied upon or constitute a lien on the whole or any part of the Mortgaged Property, or which otherwise might become a lien prior to this Mortgage or otherwise have priority in the distribution of the proceeds of a judicial sale, and any and all interest, costs or penalties with respect to any and all unpaid taxes, assessments or charges.

Improvements: Any and all buildings and improvements now or hereafter located on the Premises.

Lease: Each and every agreement providing for use or occupancy of all or any part of the Mortgaged Property, whether written or oral, whether now existing or hereafter arising, and any and all amendments, renewals and extensions thereof including all guaranties thereof.

Lessee: Any tenant pursuant to a Lease.

Licenses: Any and all franchises, licenses and permits whether issued by a Governmental Authority or otherwise, relating to construction on the Premises or any part thereof, or the use, operation or occupancy of the Premises and Improvements or any part thereof or any business conducted thereon.

Loan: The loan evidenced by the Note.

Loan Documents: Collectively, the Note, the Security Instruments and the Other Documents.

Mortgage: The term "Mortgage" is defined in Section 2.2 hereof.

Mortgaged Property: The term "Mortgaged Property" as defined in Section 2.1 hereof.

Net Proceeds: The net amount of all insurance proceeds received by Mortgagee pursuant to the provisions of this Mortgage as a result of damage or destruction of the Mortgaged Property, after deducting Mortgagee's reasonable costs and expenses, if any, in collecting the same available for the repair and restoration of the Improvements.

Note: The term "Note" means that certain Note Consolidation and Modification Agreement, dated the date hereof, executed by Mortgagor in favor of Mortgagee in the principal amount of up to \$9,800,000.00.

Obligations: The term "Obligations" as defined in Section 3 hereof.

Other Documents: Any document, instrument or agreement now or hereafter securing the Note or executed by Mortgagor or any Other Liable Party in connection with the Loan, other than the Note and the Security Instruments, including, without limitation, any Hedging Agreement.

Other Liable Party: Each and every person, corporation, limited liability company, partnership or other entity (other than Mortgagor) now or hereafter liable, absolutely or contingently, for the whole or any part of the indebtedness evidenced by the Note, including, without limitation, the Guarantor.

Permitted Encumbrances: The liens and encumbrances, if any, listed on Exhibit B attached hereto and incorporated herein by reference and any real estate taxes and assessments with respect to the Premises and Improvements to the extent that the same are not yet due and payable.

Permitted Use: Retail uses permitted by applicable law.

Personal Property: Any and all fixtures, machinery, equipment and other personal property of every kind, now or hereafter located in or upon or affixed to the Premises or Improvements, or any part thereof, or now or hereafter used or to be used in connection with any present or future operation of the Premises or Improvements, or any part thereof, and now owned or hereafter acquired by Mortgagor, or in which Mortgagor now or hereafter has an interest, including, without limitation, any and all (i) heating, lighting, incinerating, refrigerating, ventilating, air conditioning, air cooling, lifting, fire extinguishing, plumbing, cleaning, communications and power equipment and apparatus, (ii) gas, water and electrical equipment, (iii) elevators, escalators, switchboards, engines, motors, tanks, pumps, partitions, conduits, ducts and compressors, (iv) electrical and/or gas appliances, incinerators, carpeting, furniture and furnishings, draperies, storm windows and doors, and screens and awnings and (v) Licenses; and any and all renewals of, replacements, accessions or additions to, substitutions for and proceeds of any and all of the foregoing.

Premises: The term "Premises" is defined in the Recitals.

Proceeds: Any and all proceeds payable or paid for or with respect to any or as a result of damage or loss to the Premises, Improvements and Personal Property, or any part thereof, including, without limitation, insurance proceeds, and all awards in connection with any condemnation or other taking of the Premises, Improvements and Personal Property, or any part thereof, or for conveyance in lieu thereof.

Rents: Any and all rents and other payments of every kind due or payable and to become due or payable to Mortgagor by virtue of the Leases, or otherwise due or payable and to become due or payable to Mortgagor as the result of any use, possession or occupancy of all or any part of the Mortgaged Property.

Security Deposits: All tenant security deposits held by or deposited with Mortgagor or Mortgagee in connection with any of the Leases, whether in the form of cash, letter of credit or otherwise.

Security Instruments: (i) this Mortgage, (ii) an Assignment of Leases and Rents from Mortgagor to Mortgagee of even date herewith, (iii) any guaranty or indemnity of the obligations of Mortgagor under the Note or any of the other Loan Documents and (iv) the UCC-1 Financing Statements perfecting the security interest granted herein.

Section 2. _____ Consolidation; Spreader; Granting Clause.

2.1. _____ The Existing Mortgages and the respective liens thereof are hereby spread over those portions of the Mortgaged Property not already covered thereby, and for consideration paid and for other good and valuable consideration, the receipt and legal adequacy of which are hereby acknowledged, Mortgagor hereby grants, bargains, sells, conveys, transfers and assigns to Mortgagee, its successors and assigns, forever, WITH MORTGAGE COVENANTS, and Mortgagor hereby grants to Mortgagee, its successors and assigns a security interest in and to all of Mortgagor's right, title and interest, if any, in the following property, rights and interests (such property, rights and interests being heretofore and hereinafter collectively referred to as the "Mortgaged Property"):

(i) _____ the Premises;

(ii) _____ the Improvements;

(iii) _____ the Personal Property;

(iv) _____ any and all easements, rights of way, privileges, hereditaments and appurtenances now or hereafter belonging to or inuring to the benefit of the Premises and/or Improvements or any part thereof, all right, title and interest of Mortgagor in and to the land lying within any street or roadway adjoining the Premises or any part thereof, and all right, title and interest of Mortgagor in and to any now or hereafter vacated streets or roads adjoining the Premises or any part thereof;

(v) _____ any and all issues, benefits and profits of the Premises and/or Improvements;

(vi) the Leases, Rents and Security Deposits;

(vii) the Proceeds;

(viii) the Deposited Funds;

(ix) any and all records and books of account now or hereafter maintained by Mortgagor in connection with the operation of the Premises, Improvements and Personal Property or any part thereof;

(x) all of Mortgagor's right, title and interest in and to any name under which the Premises and/or Improvements may at any time be operated and any variation thereof and the goodwill of Mortgagor in connection herewith or therewith;

(xi) all of Mortgagor's right, title and interest in and to any Hedging Agreement.

All of which Premises, Improvements, Personal Property and other property hereby granted, sold and conveyed, or intended so to be, are collectively referred to as the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property unto and to the use of Mortgagee, its successors and assigns forever.

2.2. The Existing Mortgages and the respective liens thereof, as so spread, constitute in law but one mortgage, a single first mortgage lien, covering the Mortgaged Property and securing the principal sum of up to \$9,800,000.00, together with interest thereon as hereinafter provided (the Existing Mortgages, as modified, amended, restated, ratified and confirmed pursuant to the provisions of this Mortgage hereinafter set forth, being hereinafter collectively referred to as the "Mortgage").

2.3. The terms, covenants and provisions of the Mortgage are hereby modified, amended and restated in their entirety so that henceforth the terms, covenants and provisions of the Mortgage shall read the same as the paragraphs set forth herein, and the Mortgage, as so modified, amended and restated, is hereby ratified and confirmed in all respects by Mortgagor.

2.4. Mortgagor represents, warrants and covenants that there are no offsets, counterclaims or defenses against the Note or this Mortgage and that Mortgagor (and the undersigned representative of Mortgagor) has full power, authority and legal right to execute this Mortgage and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be observed and performed.

Section 3. Obligations Secured.

This conveyance is made to secure the following obligations (collectively, the "Obligations");

(i) Payment of the indebtedness of Mortgagor to Mortgagee evidenced by the Note;

(ii) payment by Mortgagor to Mortgagee of any and all sums expended or advanced by Mortgagee pursuant to any term or provision of this Mortgage;

(iii) performance and observance by Mortgagor of each and every covenant, condition and obligation contained in the Note, this Mortgage, the other Security Instruments and any other document, instrument or agreement now or hereafter given by Mortgagor as additional security for the payment of the indebtedness hereby secured, or otherwise executed in connection therewith;

(iv) payment by Mortgagor to Mortgagee of any and all sums expended or advanced by Mortgagee pursuant to any term or provision of any Hedging Agreement entered into between Mortgagor and Mortgagee; and

(v) performance and observance by Mortgagor of every condition and obligation contained in any Hedging Agreement entered into between Mortgagor and Mortgagee.

Section 4. Representations and Warranties.

4.1. Mortgagor is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to transact business in the state in which the Premises is located;

4.2. Mortgagor has the requisite power and authority (a) to own its properties and to carry on its business as now being conducted and as contemplated under this Mortgage and each Lease, (b) to place mortgages and liens upon its assets and (c) to execute and deliver or cause to be executed and delivered the Loan Documents and to perform its obligations thereunder;

4.3. The execution and delivery of the Loan Documents and the performance of the terms and conditions thereof by Mortgagor, have been duly authorized by all requisite action, and create the valid and binding obligations of Mortgagor, enforceable in accordance with their respective terms;

4.4. Neither the execution, delivery and performance of this Mortgage by Mortgagor, nor the execution, delivery and performance, by Mortgagor or any other party (except for Mortgagee), of any of the other Loan Documents or any and all other documents, instruments and agreements required by Mortgagee in connection with the Loan, including, without limitation, the execution and delivery of any guaranty by the Guarantor, will violate any provision of (a) law, (b) any order of any court or other Governmental Authority, (c) Mortgagor's organizational documents or operating agreement, (d) any indenture, agreement or other instrument to which Mortgagor or any Guarantor is a party, or by which Mortgagor or any Guarantor is bound, or be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Mortgagor or any Guarantor, other than as provided herein and in the Security Instruments;

4.5. All financial data, reports and other information prepared by or for the benefit of Mortgagor or Guarantor and furnished Mortgagee in connection with the Loan are accurate and complete and fairly present the financial position and the results of operations for the periods indicated therein, and there has been no material adverse change in the condition, financial or otherwise, of Mortgagor or the Guarantor since the dates of the most recent financial statements;

4.6. Neither Mortgagor, nor any Guarantor, nor any corporation, partnership or other legal entity in which Mortgagor or any Guarantor is a principal, is in default under any of their respective material obligations and agreements (including the payment of all federal, state and local taxes), to the best of Mortgagor's and Guarantor's knowledge, no condition or state of facts exists which with the giving of notice or passage of time or both would constitute such a default, and there is no action, suit or proceeding at law or in equity or by or before any Governmental Authority now pending, or, to the knowledge of Mortgagor or any Guarantor, threatened against or affecting Mortgagor, any Guarantor, the Mortgaged Property or any properties adjacent to the Mortgaged Property, which, if adversely determined, would have a material adverse effect on the business, operations, properties (including without limitation, the Mortgaged Property), assets or condition, financial or otherwise, of Mortgagor or any Guarantor;

4.7. To Mortgagor's knowledge and except as otherwise previously disclosed to Mortgagee in writing, there is no default under and there exists no condition or state of facts which, with the giving of notice or passage of time or both, would constitute a default under any Lease;

4.8. To the best of Mortgagor's knowledge, the Mortgaged Property and the use thereof for the Permitted Use does not violate (a) any building, zoning, subdivision, land-use, health, sanitation, environmental protection or other law, ordinance, rule or regulation promulgated by any Governmental Authority or (b) any deed, plat or other restriction of any kind applicable to the Mortgaged Property;

4.9. To the best of Mortgagor's knowledge, all utilities and services necessary for the operation of the Mortgaged Property for the Permitted Use and in accordance with each Lease, (a) are available at the boundary of the Premises and are connected to the Improvements, (b) are operational and (c) are of sufficient capacity to adequately service the operation of the Improvements;

4.10. Except as may be set forth in that certain Title Commitment dated the date hereof issued by Commonwealth Land Title Insurance Company under Title Number 07NYW10958 (the "Title Commitment"), there are no party wall agreements or easements across or affecting the Mortgaged Property which have any adverse effect upon the operation of the Mortgaged Property;

4.11. To the best of Mortgagor's knowledge, the Improvements are not located in a designated flood hazard area, as defined in the Flood Disaster Protection Act of 1973 (P.L. 93-234), as amended;

4.12. There is unrestricted access for the passage of motor vehicles to and from the Premises to and from the public road upon which the Premises fronts and all required curb cut or access permits (if any) have been obtained; and

4.13. Neither the making of the Loan nor Mortgagee's acceptance of the Loan Documents will subject Mortgagee to any claim for a brokerage commission, finder's fee or like charge by virtue of any action of Mortgagor.

Section 5. Mortgagor's Covenants. The Mortgagor covenants and agrees with Mortgagee as follows:

5.1. Title.

5.1.1 Mortgagor has good and clear, record and marketable title in fee simple to the Mortgaged Property subject only to the Permitted Encumbrances; this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property; Mortgagor has full power and lawful authority to grant, sell and convey the Mortgaged Property in the manner and form herein done; and Mortgagor will preserve such title, 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 whatsoever, except the holders of the Permitted Encumbrances.

5.1.2 Mortgagor agrees to deliver, within thirty (30) days after the date hereof, an ALTA standard form of Mortgagee's loan policy of title insurance with respect to the Premises, in the amount of the Note, insuring the lien of this Mortgage as a good and valid first lien subject only to the Permitted Encumbrances, and containing such endorsements and affirmative coverage as have been requested by or on behalf of Mortgagee in writing prior to the recording hereof or as Mortgagee otherwise reasonably may require.

5.2. Payment and Performance of Obligations.

5.2.1 Mortgagor shall pay all indebtedness hereby secured at the time or times and in the manner provided herein, in the Note, or in any other instrument secured hereby.

5.2.2 Mortgagor will perform and observe all the terms, provisions, covenants and conditions imposed upon Mortgagor under each and every of the Loan Documents, all at the time or times and in the manner provided therein.

5.3. Insurance.

5.3.1 Mortgagor shall keep the Improvements continuously insured against loss by fire and the risks covered under a so-called "extended coverage endorsement", flood, explosion of boilers, heating apparatus and other pressure vessels, and such other hazards, casualties and contingencies as Mortgagee from time to time reasonably may require, in an amount equal to one hundred percent (100%) of the replacement cost of the Improvements. The insurance policy evidencing such coverage: (a) shall be endorsed with an Agreed Amount Endorsement, (b) shall be endorsed with a Loss of Rents Endorsement (or equivalent endorsement) for a twelve (12) month period, and (c) shall contain a deductible satisfactory to Mortgagee. The amount of such insurance coverage shall be reviewed not less than annually and increased whenever necessary so as to provide the required coverage.

5.3.2 Mortgagor shall continuously keep in full force and effect a policy of public liability insurance and (if relevant) elevator insurance, against claims for bodily injury, death or property damage occurring upon, in or about the Mortgaged Property or any part thereof in which the limits of liability shall not be less than One Million Dollars (US\$1,000,000) per occurrence and Two Million Dollars (US\$2,000,000) general aggregate, together with an umbrella form liability policy in the amount of Five Million Dollars (US\$5,000,000), which shall be in addition to the limits above set forth. Mortgagor agrees to increase the limits of such liability insurance to such higher amounts as Mortgagee from time to time reasonably may require.

5.3.3 All such insurance shall be evidenced by valid and enforceable policies in form and substance satisfactory to Mortgagee. Without limiting the generality of the foregoing: (a) all such insurance policies shall contain an endorsement requiring thirty (30) days written notice to Mortgagee prior to cancellation or change in the coverage, scope or amount of any such policy or policies; (b) all such insurance policies and certificates thereof shall name Mortgagee, its successors and assigns, as mortgagee, loss payee and additional insured, and (c) any and all policies evidencing casualty insurance shall provide that any and all loss shall be payable to Mortgagee and such loss shall be payable to Mortgagee notwithstanding any act or omission of Mortgagor which might otherwise result in cancellation or forfeiture of said insurance.

5.3.4 Mortgagor shall deliver to Mortgagee evidence satisfactory to Mortgagee of the issuance of renewal or replacement policies not less than thirty (30) days prior to the expiration date of the policy to be renewed or replaced, accompanied, if requested by Mortgagee, by evidence satisfactory to Mortgagee that all premiums payable with respect to such policies have been paid in full by Mortgagor. In addition, Mortgagor shall provide such other insurance as may be reasonably requested by Mortgagee from time to time.

5.3.5 From time to time, upon the request of Mortgagee, Mortgagor shall provide Mortgagee with the originals of all policies evidencing the insurance coverage required under this Mortgage. In any event Mortgagor shall furnish to Mortgagee (a) concurrently with the execution of this Mortgage, a certificate of insurance or other evidence of insurance satisfactory to Mortgagee evidencing that Mortgagor has in full force and effect the insurance coverage required hereunder, and (b) from time to time at the request of Mortgagee, a certificate of insurance or other evidence of insurance satisfactory to Mortgagee evidencing that Mortgagor has in full force and effect the insurance coverage required hereunder.

5.3.6 Mortgagor shall have the right of free choice in the selection of the agent or insurer through or by which the insurance required hereunder is to be placed; provided, however, said insurer is authorized to write such insurance in the state in which the Premises is located, has a licensed resident agent in said state and has, at all times while this mortgage is in effect, a general policyholder's rating of A-VIII or better in Best's latest rating guide.

5.3.7 Mortgagee shall be, and is hereby, authorized and empowered, for and in the name or names and on behalf of Mortgagor and/or Mortgagee, and for the purposes hereinafter set forth, shall be and is hereby made, constituted and appointed the true and lawful attorney-in-fact of Mortgagor (with full power of substitution and revocation), and in the sole and uncontrolled discretion of said attorney, (a) to demand, adjust, sue for, settle, compromise and collect any amounts due under such insurance policies in the event of loss, and (b) to give releases for any and all amounts received in settlement of loss under such policies; provided, however, so long as no Default Condition exists, Mortgagee shall not exercise such power of attorney unless and until three (3) months have elapsed from the date of such loss without settlement having been made. Unless the settlement of such loss is in excess of the amount of the Obligations, no settlement therefor shall be made without the prior written consent of Mortgagee. The foregoing appointment, being coupled with an interest, is irrevocable until the Obligations are paid and otherwise satisfied in full.

5.3.8 (a) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee. Mortgagor hereby authorizes and empowers Mortgagee, at Mortgagee's option and at Mortgagee's sole discretion, as attorney-in-fact for Mortgagor, to make proof of loss, to adjust and compromise any claim under any insurance policy, to appear in and prosecute any action arising from any policy, to collect and receive insurance proceeds and to deduct therefrom Mortgagee's expenses incurred in the collection process, to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise, and to make any election required or permitted under any insurance policy relating to repair or restoration; provided, however, so long as no Default Condition exists, Mortgagee shall not exercise such power of attorney unless and until three (3) months have elapsed from the date of such loss without settlement having been made. So long as no Default Condition exists, Mortgagee shall disburse any Rents and Continuing Expenses received under any insurance policy to Mortgagor. Mortgagee shall make the Net Proceeds available for the repair and restoration of the Improvements, provided that (i) no Default Condition shall exist, (ii) Mortgagor shall proceed with the repair and restoration of the Improvements as nearly as reasonably possible to the condition the Improvements were in immediately prior to such fire or other casualty, promptly after the insurance claims are settled, (iii) no Lease shall be terminated as a result of such fire, (iv) Mortgagee shall be reasonably satisfied that upon the completion of such repair and restoration the gross cash flow and the net cash flow of the Mortgaged Property will be restored to a level at least equal to the level the same were at prior to the date of such fire or other casualty and (v) the estimated cost of repair, restoration, rebuilding or replacement (hereinafter, collectively, the "Cost to Repair") does not exceed \$500,000.00. If the Cost to Repair is greater than \$500,000.00 but does not exceed \$1,000,000.00, provided the conditions set forth in (i), (ii), (iii) and (iv) above have been satisfied, Mortgagee shall release so much of the Net Proceeds as may be required to pay for the actual Cost to Repair directly to the Mortgagor in accordance with the provisions of this Section 5.3.9. If the Cost to Repair is greater than or equal to \$1,000,000.00 or if the casualty occurs within one hundred and eighty (180) days of the Maturity Date (as such term is defined in the Note) the Mortgagee, in its sole and absolute discretion, may either apply the proceeds of insurance to reduce the Mortgagor's Obligations or, provided the conditions set forth in (i), (ii), (iii) and (iv) above have been satisfied, release so much of the Net Proceeds as may be required to pay for the actual Cost of the repair work to repair, restore, rebuild or replace the Improvements (collectively, the "Repair Work") directly to the Mortgagor in accordance with the provisions of this Section 5.3.9.

(b) Upon satisfaction of the provisions of the preceding paragraph (a), the Net Proceeds will be disbursed by Mortgagee to Mortgagor to pay for the costs of the Repair Work. The Net Proceeds shall be held by Mortgagee in escrow until expended in connection with the Repair Work, it being agreed that any Net Proceeds so held by Mortgagee may be commingled with the general funds of Mortgagee, shall bear interest at such rate as reasonably determined by Mortgagee, and shall constitute additional security for the payment of the Obligations. The Net Proceeds shall be paid by Mortgagee to, or as directed by, Mortgagor from time to time during the course of the Repair Work upon satisfaction of the following conditions: (i) all plans, specifications, costs estimates, contracts and bonds, if any, for the Repair Work, have been obtained and are satisfactory to Mortgagee in its commercially reasonable discretion and (ii) Mortgagee has received satisfactory evidence that: (x) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested payment) in connection with the repair and restoration have been paid for in full, (y) there exists no notices of intention, mechanics or other liens and encumbrances on the Mortgaged Property arising out of the Repair Work, and (z) the balance of the Net Proceeds plus the balance of any deficiency deposits made by Mortgagor pursuant to the provisions of this paragraph hereinafter set forth shall be sufficient to pay in full the balance of the cost of the Repair Work. The Repair Work shall be done and completed by Mortgagor in an expeditious and diligent fashion and in compliance with all applicable laws, rules and regulations, and all plans and specifications required in connection with the repair and restoration shall be subject to the prior review and approval in all respects by an independent inspecting engineer selected by Mortgagor and reasonably acceptable to Mortgagee (the "Inspecting Engineer"). All costs and expenses incurred by Mortgagee in connection with making the Net Proceeds available for the Repair Work, including, without limitation, counsel fees and disbursements and the Inspecting Engineer's fees incurred by Mortgagee, shall be paid by Mortgagor. In no event shall Mortgagee be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the value of the work in place as part of the repair and restoration, as certified by the Inspecting Engineer, minus 10% of such costs (such 10% being hereinafter referred to as the "Retainage"). Once fifty percent (50%) of the Repair Work has been completed, the Retainage shall be reduced to 5%. Mortgagee shall not be obligated to make disbursements of the Net Proceeds more than once every thirty (30) days. If the Cost to Repair does not exceed \$500,000.00, only one disbursement of the Net Proceeds shall be made by Mortgagee, which disbursement shall be made upon certification by the Inspecting Engineer that the Repair Work has been completed in accordance with the provisions of this paragraph, and upon receipt by Mortgagee of evidence satisfactory to Mortgagee that the costs of the repair and restoration have been paid in full or will be paid in full out of such disbursement. The Retainage shall not be released until the Inspecting Engineer certifies that the repair and restoration have been completed in accordance with the provisions of this paragraph, and Mortgagee receives evidence satisfactory to Mortgagee that the costs of the repair and restoration have been paid in full or will be paid in full out of the Retainage. The excess, if any, of the Net Proceeds after the completion of the Repair Work and the payment in full of all costs incurred in connection therewith shall be applied by Mortgagee in reduction of the Obligations in such priority and proportions as Mortgagee in its commercially reasonable discretion shall deem proper. If at any time the Net Proceeds, or the undisbursed balance thereof, shall not, in the commercially reasonable opinion of Mortgagee, be sufficient to pay in full the balance of the costs which will be incurred in connection with the completion of the Repair Work, Mortgagor shall deposit the deficiency with Mortgagee before any further disbursement of the Net Proceeds shall be made, which deficiency deposit may be commingled with the general funds of Mortgagee, shall bear interest at such rate as reasonably determined by Mortgagee and shall be disbursed for costs actually incurred in connection with the Repair Work on the same conditions applicable to the Net Proceeds. Any such deficiency deposit, until disbursed pursuant to this paragraph, shall constitute additional security for the payment of the Obligations. The balance, if any, of any such deficiency deposit remaining after the Inspecting Engineer certifies that the Repair Work has been completed in accordance with the provisions of this paragraph and the receipt by Mortgagee of evidence satisfactory to Mortgagee that all costs incurred in connection with the Repair Work have been paid in full shall be returned by Mortgagee to Mortgagor. All costs of the Repair Work in excess of the Net Proceeds shall be paid for by Mortgagor. If Mortgagee shall receive and retain such Net Proceeds, the lien of this Mortgagee shall be reduced only by the amount thereof received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Obligations. Mortgagee shall not be obligated to see to the proper application of insurance money paid over to Mortgagor, and if Mortgagee receives and retains any Net Proceeds, the lien of this Mortgagee shall be affected only by a reduction of the amount of said lien by the amount of such insurance money so received and retained by Mortgagee. Nevertheless, if prior to the receipt by Mortgagee of any insurance proceeds, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, as between Mortgagor and Mortgagee, Mortgagee shall have the right to receive said insurance proceeds, and Mortgagor shall pay over to Mortgagee said insurance proceeds as, if and when Mortgagor receives same, to the extent of (i) any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered, and (ii) of the attorneys' fees, costs and disbursements incurred by Mortgagee in connection with the collection of such insurance proceeds. Mortgagor will not permit any condition to exist on the Mortgaged Property that would wholly or partially invalidate the insurance policies.

5.3.9 If Mortgagee shall by any manner acquire title to the Mortgaged Property, it shall thereupon become the sole and absolute owner of all insurance policies held by or required hereunder to be delivered to Mortgagee, with the sole right to collect and retain all unearned premiums and dividends thereon, and Mortgagor shall only be entitled to a credit, in reduction of the then outstanding indebtedness secured hereby, in the amount of the short rate cancellation refund. Without limiting the generality of the foregoing, in the event of foreclosure of this Mortgage or any transfer of title to the Mortgaged Property to a third-party purchaser pursuant to the power(s) in this Mortgage granted Mortgagee, Mortgagee shall be and is hereby authorized and empowered, for and in the name or names and on behalf of Mortgagor and/or Mortgagee, and for the purposes hereinafter set forth, shall be and is hereby made, constituted and appointed the true and lawful attorney-in-fact of Mortgagor (with full power of substitution and revocation) in the name place and stead of Mortgagor, and in the sole and uncontrolled discretion of said attorney, to surrender up the policies of insurance covering the Mortgaged Property and any part thereof and to collect any amounts due thereunder or, at its option, to transfer all right, title and interest in and to said policies and the proceeds thereof to any purchaser of the Mortgaged Property or any part thereof without obligation to account therefor to any person claiming title to the Mortgaged Property; provided, however, that any amounts received by Mortgagee under said policies by way of refunds, dividends or otherwise, as aforesaid, shall be applied to the payment of the Obligations, and any surplus shall be paid over as a surplus on foreclosure. The foregoing appointment being coupled with an interest is irrevocable. Upon the occurrence of an Event of Default, Mortgagee shall have no obligation to disburse any funds to Mortgagor and all monies held by Mortgagee may be applied toward satisfaction of the Obligations. Notwithstanding the foregoing, this Section 5.39 shall not apply with respect to any blanket insurance policies of Mortgagor which do not relate solely to the Mortgaged Property. The provisions of Subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to the terms of this Mortgage.

5.3.10 Mortgagee consents to Mortgagor providing the insurance coverage required under this Section 5.3 by causing one or more tenants leasing the entire or a portion of the Mortgaged Property to provide such insurance in the same form and amounts as set forth in this Section 5.3.

5.4. Payment of Taxes and Liens.

5.4.1 Mortgagor shall pay, when due, all Impositions and shall furnish to Mortgagee, promptly after payment of the same, certificates, receipts or other evidence reasonably satisfactory to Mortgagee of such payment; provided, however, Mortgagor shall not be required to pay and discharge any such Imposition, if and so long as (a) the validity thereof shall be contested by Mortgagor with diligence and in good faith by appropriate proceedings and (b) Mortgagor shall have deposited with Mortgagee a sum equal to the amount being so contested and any additional charge, penalty or expense which may be incurred as a result of such contest; and provided further, however, that any such Imposition and any such additional charge, penalty or expense shall be paid in full before the Mortgaged Property, or any part thereof, shall be seized and sold in satisfaction thereof.

5.4.2 Mortgagor shall pay, when the same shall become due and payable, all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a lien on the Mortgaged Property or any part thereof, provided, however, Mortgagor shall not be required to pay any such claim or demand, if and so long as (a) the validity thereof shall be contested by Mortgagor with diligence and in good faith by appropriate proceedings and (b) in the event that such claim or demand results in a lien or notice of record against the Mortgaged Property or any part thereof, Mortgagor shall have bonded or otherwise caused such lien to be removed or discharged.

5.4.3 Mortgagor shall pay to Mortgagee, within thirty (30) days after Mortgagee's demand, an amount equal to any and all taxes, assessments or charges of whatever nature which may at any time be assessed against Mortgagee with respect to the Note or this Mortgage or its ownership or holding thereof, whether under statutes now or hereafter in effect. In the event any such tax, assessment or charge is not or, under applicable law, cannot be so paid by Mortgagor, at the option of Mortgagee, the Obligations shall become immediately due and payable.

5.5. Insurance and Tax Deposits.

Mortgagee, at any time if an Event of Default has occurred and is continuing or if Mortgagor has failed to pay the Impositions for the immediately preceding due date, upon ten (10) days notice to Mortgagor, may require Mortgagor to pay to Mortgagee, on the first day of each calendar month, a sum equal to (a) one-twelfth (1/12) of the Impositions and (b) one-twelfth (1/12) of the annual premiums for the insurance required hereunder to be maintained on the Mortgaged Property, the respective amounts of such Impositions and premiums to be reasonably estimated from time to time by Mortgagee. Mortgagee shall apply the Deposited Funds to the payment of such Impositions and premiums and shall render an annual accounting to Mortgagor of all disbursements of the Deposited Funds. Although each such monthly payment of Deposited Funds are to be in a lump sum, each component thereof shall be deemed to be held separately by Mortgagor for, and shall be applied only to, the particular item for which payment was made by Mortgagor, unless Mortgagee, in its discretion, elects otherwise. If at any time Mortgagee estimates that there shall or will not be on deposit with it, at least one (1) month prior to the due date (a) of any item constituting part of the Impositions and/or (b) of any annual insurance premium, a sum sufficient for the payment of such item and/or premium in full, Mortgagor, upon demand, shall pay the amount of such deficiency to Mortgagee notwithstanding that there may already be deposited with Mortgagee sums for the payment of other items which are not yet due. If the amount of the Deposited Funds shall exceed the amount necessary to pay such Impositions and premiums for the then current year, such excess shall be credited against future monthly deposits required hereunder. Unless otherwise required by applicable law, no interest shall be paid on the Deposited Funds, and the Deposited Funds may be commingled with Mortgagee's general funds. Upon payment and other satisfaction in full of the Obligations, any excess Deposited Funds shall be refunded to Mortgagor. Upon the occurrence of any Event of Default, Mortgagee may apply against the Obligations, in such manner as Mortgagee may determine, any or all of the Deposited Funds then held by Mortgagee.

5.6. Maintenance and Inspections.

5.6.1 Mortgagor shall at all times keep and maintain the Mortgaged Property and each part thereof in sound condition and in a first-class state of decoration and repair.

5.6.2 Mortgagor shall not: permit any strip or waste of the Mortgaged Property; permit the violation of any law, ordinance or rule or regulation of any Governmental Authority affecting the same or the use thereof; permit any conditions to exist which would wholly or partially invalidate any insurance on the Mortgaged Property; or do or permit anything to be done to the Mortgaged Property or any part thereof that might materially diminish the value thereof.

5.6.3 Mortgagor shall permit Mortgagee, its officers, agents and representatives to enter upon the Mortgaged Property at all reasonable times to view and inspect the same.

5.6.4 _____ Mortgagor, within thirty (30) days after demand by Mortgagee (or immediately upon demand in cases which Mortgagee deems to be an emergency), shall make such repairs, replacements, renewals, or additions, or perform such items of maintenance to the Mortgaged Property or any part thereof as Mortgagee reasonably may require in order to maintain the Mortgaged Property at the standards required by this Section.

5.7. _____ Alterations and Additions.

Mortgagor shall not remove or demolish any Improvements, or make any material alteration or addition to the Improvements (each an "Alteration"), including, without limitation, changes to the character, design, structure or size of the Improvements, without the prior written consent of the Mortgagee. Notwithstanding the foregoing, Mortgagor shall have the right to make any Alteration with respect to the Improvements without Mortgagee's prior written consent provided the cost of such Alteration is equal to or less than Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00).

5.8. _____ Management and Operation.

5.8.1 _____ Mortgagor shall at all times provide management for the Mortgaged Property reasonably satisfactory to Mortgagee. Mortgagor represents and warrants that, as of the date hereof, no third party management company has been engaged to manage the Mortgaged Property. In the event that (i) Mortgagor decides to engage a third-party management company to manage the Mortgaged Property, or (ii) Mortgagee requires Mortgagor to engage a third-party management company pursuant to Section 5.8.2, Mortgagor agrees to engage a management company satisfactory to Mortgagee, pursuant to a management agreement satisfactory to Mortgagee, and to execute, and to cause such management company to execute, an agreement assigning the management agreement to Mortgagee, sub ordinating such management agreement and the terms thereof, including but not limited to such management company's right to payment of management fees, and containing certain other agreements of Mortgagor and such management company, in Mortgagee's then-current form of such agreement (the "Assignment of Management Agreement"), and to deliver to Mortgagee promptly upon such engagement, a fully-executed copy of the management agreement, together with the Assignment of Management Agreement signed by Mortgagor and such manager.

5.8.2 _____ If Mortgagee reasonably determines at any time that the Mortgaged Property is not being managed in accordance with generally accepted management practices for similarly situated projects, Mortgagee may deliver written notice thereof to Mortgagor, which notice shall specify in reasonable detail the grounds for Mortgagee's determination. If Mortgagee reasonably determines that the conditions specified in Mortgagee's notice are not remedied to Mortgagee's reasonable satisfaction by Mortgagor within 30 days after the date of such notice, Mortgagee may direct Mortgagor to engage a management company acceptable to Mortgagee in Mortgagee's sole discretion. In addition, if an Event of Default has occurred, Mortgagee may direct Mortgagor to engage a management company acceptable to Mortgagee in Mortgagee's sole discretion.

5.8.3 Mortgagor will continuously operate the Mortgaged Property for the Permitted Use.

5.9. Compliance with Laws and Restrictions.

5.9.1 Mortgagor promptly shall comply with all present and future laws, ordinances, rules, regulations, directives and other requirements of all Governmental Authorities; provided, however, Mortgagor may postpone such compliance provided such non-compliance shall not (a) subject Mortgagee to liability, criminal prosecution or any other penalty, (b) impair the value, or jeopardize the safety or condition, of the Mortgaged Property, or (c) constitute a default under any Lease, if and so long as the validity or legality of any such governmental requirement shall be contested by Mortgagor with diligence and in good faith by appropriate proceedings.

5.9.2 Mortgagor shall comply with all restrictive covenants and other private restrictions, if any, applicable to the Mortgaged Property.

5.10. Hazardous Waste.

5.10.1 Mortgagor hereby warrants and represents to Mortgagee that, except as set forth in the Environmental Site Assessment Report, (a) Mortgagor has never released, generated, stored or disposed of any Hazardous Waste on the Mortgaged Property, (b) Mortgagor is not aware of the existence, release or threat of release of any Hazardous Waste on or from the Mortgaged Property or on or from any property adjacent to the Mortgaged Property, and (c) Mortgagor has not received any notice, order, claim or demand from the United States Environmental Protection Agency ("EPA") or any state or local governmental agency, authority or body having jurisdiction over Hazardous Waste or the storage or removal thereof (collectively, a "State Agency") with respect to the existence, release or threat of release of any Hazardous Waste.

5.10.2 Mortgagor shall not release, generate, store or dispose of any Hazardous Waste on the Mortgaged Property or on any property adjacent to the Mortgaged Property.

5.10.3 Mortgagor shall immediately notify Mortgagee in writing of (a) any and all enforcement, clean-up, removal or other action instituted or threatened by the EPA or any State Agency pursuant to any Hazardous Waste Laws, and (b) any and all claims made or threatened by any third party against Mortgagor or the Mortgaged Property or any part thereof, relating to the existence of, or damage, loss or injury from, any Hazardous Waste; and Mortgagee, to the extent permitted by applicable law, shall have the right to join and participate in, as a party if it so elects, any proceedings or actions initiated in connection with any such claim and to have all of its costs and expenses, including, without limitation, reasonable attorney's fees, in connection therewith paid by Mortgagor.

5.10.4 In the event that any Hazardous Waste is found on or in the Mortgaged Property, Mortgagor shall immediately contain and remove the same in compliance with all Hazardous Waste Laws.

5.10.5 _____ Mortgagee agrees to indemnify and hold Mortgagee harmless from and against any and all claims, liabilities, costs and expenses incurred by Mortgagee, including, without limitation, costs of litigation and reasonable attorney's fees, arising from the release, existence or removal of, any Hazardous Waste on or in the Mortgaged Property or on any properties adjacent to the Mortgaged Property. THIS RIGHT OF INDEMNIFICATION SHALL SURVIVE THE PAYMENT IN FULL OF THE NOTE, NOTWITHSTANDING ANY DISCHARGE OF THIS MORTGAGE.

5.10.6 _____ Mortgagee, at its election and in its sole discretion, at any time and from time to time, whether or not a Default Condition shall exist hereunder, upon receipt of evidence of the existence of Hazardous Materials at the Mortgaged Property that were not disclosed in the Environmental Site Assessment Report or upon substantial belief that a discharge of Hazardous Materials may have occurred on or about the Mortgaged Property, may cause one or more environmental site assessments of the Mortgaged Property to be undertaken. Environmental site assessments may include, without limitation, a detailed visual inspection of the Mortgaged Property and any part thereof, as well as the taking of soil samples, water samples and such other investigation or analysis as is necessary or appropriate for a complete assessment of whether any Hazardous Waste exists on or in the Mortgaged Property or any part thereof and the compliance of the Mortgaged Property with all Hazardous Waste Laws provided that no soil samples or destructive tests shall be made except on at least five (5) days notice to Mortgagee. If Mortgagee causes any such environmental site assessment to be undertaken because Mortgagee has reason to suspect Hazardous Waste may be present on the Mortgaged Property or any part thereof, or if Mortgagee causes the same to be undertaken without such reason but such environmental site assessment discloses Hazardous Waste is so present, or, if Mortgagee causes such environmental site assessment to be undertaken in contemplation of foreclosure of this Mortgage, Mortgagee shall pay the cost thereof to Mortgagee on demand of Mortgagee, and until paid the cost thereof shall be added to the unpaid principal of the Obligations, shall bear interest at the Default Rate, and the payment thereof, together with such interest, shall be secured by the lien of this Mortgage and the other Security Instruments.

5.10.7 _____ Mortgagee, at its election and in its sole discretion, may (but shall not be obligated to) cure any failure on the part of Mortgagee or any Lessee or other user of the Mortgaged Property or any part thereof (any such Lessee or other user being, in this Section 5, hereinafter referred to as a "User") to comply with the Hazardous Waste Laws; such cure may include, without limitation, the following actions:

- (a) _____ arranging for the cleanup or containment of Hazardous Waste found in, on or near the Mortgaged Property and paying for such cleanup and containment costs and other costs associated therewith;
- (b) _____ paying on behalf of Mortgagee or any User, any fines or penalties imposed on Mortgagee or any User by the EPA or any State Agency in connection with Hazardous Waste; and
- (c) _____ making any other payment or performing any other act which may prevent a release of Hazardous Waste, facilitate the cleanup thereof, or prevent a lien from attaching to the Mortgaged Property.

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Any partial exercise by Mortgagee of the remedies hereinabove set forth or any partial undertaking on the part of Mortgagee to cure the failure of Mortgagor or any User to comply with the Hazardous Waste Laws, shall not obligate Mortgagee to complete any action taken or require Mortgagee to expend further sums to cure Mortgagor's or any User's noncompliance; and the exercise of any such remedies shall not place upon the Mortgagee any responsibility for the operation, control, care, management or repair of the Mortgaged Property, or make the Mortgagee the "owner" or "operator" of the Mortgaged Property or a "responsible party" within the meaning of any of the Hazardous Waste Laws. Any amounts paid or costs incurred by the Mortgagee in the exercise of any of its rights under this subsection 5.10.7 shall be paid by Mortgagor on demand of Mortgagee, and until paid shall be added to the unpaid principal of the Obligations, shall bear interest at the Default Rate, and the payment thereof, together with such interest, shall be secured by the lien of this Mortgage and by the other Security Instruments. Mortgagee, by making any such payment or incurring any such costs, shall be subrogated to any rights of Mortgagor or any User to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to Mortgagor's title to the Mortgaged Property or any part thereof.

5.10.8 Mortgagor shall: (i) promptly cause, but no later than ten (10) days from the date hereof, the proposed scope of work for additional investigations specified in the Supplemental Investigation Work Plan, revised as of September 20, 2007, and prepared by J.R. Holzmacher, P.E., LLC for The Robert Martin Company, to be implemented at the Mortgaged Property; and (ii) promptly commence, but no later than ten (10) days from the date hereof, the development and implementation of an asbestos Operations and Maintenance Program (the "O&M Program"), as recommended in the Environmental Site Assessment Report. In addition, Mortgagor shall, during the term of the Loan, including any extension or renewal thereof, comply with the terms and conditions of the O&M Program.

5.11. Condemnation.

5.11.1 Upon the receipt by Mortgagor of notice of the institution of any proceeding or negotiations for the taking of the Mortgaged Property, or any part thereof, in condemnation or by the exercise of the power of eminent domain, Mortgagor shall give notice thereof to Mortgagee. Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. Mortgagor, notwithstanding that Mortgagee may not be a party to any such proceeding, will promptly give to Mortgagee copies of all notices, pleadings, judgments, determinations and other papers received by Mortgagor therein. Mortgagor will not enter into any agreement for the taking of the Mortgaged Property, or any part thereof, with anyone authorized to acquire the same in condemnation or by eminent domain unless Mortgagee shall first have consented thereto in writing, which consent shall not be unreasonably withheld or delayed.

5.11.2 Any award, whether paid as a result of a negotiated settlement or judgment, shall be paid to Mortgagee, and Mortgagee shall have the right and is hereby constituted and appointed the true and lawful attorney of Mortgagor, in the name and stead of Mortgagor, and in the discretion of said attorney, to collect and receive the total amount of such award, including interest, and to give proper receipts and acquittances therefor. The foregoing appointment, being coupled with an interest, is irrevocable until the Obligations are paid and otherwise satisfied in full.

5.11.3 In the event of any taking of the Premises and/or Improvements or any part thereof in condemnation or by exercise of the power of eminent domain, at the option of Mortgagee, the Obligations shall become immediately due and payable, and, at the option of Mortgagee, all awards paid or payable to Mortgagor on account of such taking shall be applied to the payment and discharge of the Obligations, whether or not then due, such application to be in the following order of priority: (a) payment of all amounts expended, advanced or incurred by Mortgagee in the discharge of Mortgagor's obligations hereunder; (b) payment of all expenses referenced in subsection 5.19 hereof; (c) payment of accrued interest under the Note; (d) payment of unpaid principal under the Note; and (e) payment and satisfaction of any and all other Obligations. To the extent that such award or awards exceed the amount required to pay in full the principal and interest under the Note and all other sums and charges then secured hereby, Mortgagee shall pay over to the person or persons legally entitled thereto the amount of such excess; provided, however, that until the actual vesting of title in the condemning authority in such proceeding or pursuant to any agreement in lieu or in settlement thereof, the obligations of Mortgagor to pay, perform and observe the terms, covenants and conditions of the Note and this Mortgage shall continue unimpaired. In no event shall Mortgagee be required to satisfy or discharge this Mortgage until the Obligations are paid and otherwise satisfied in full.

5.11.4 In the event of any taking of a portion of the, as opposed to the entire, Premises and/or Improvements in condemnation or by exercise of the power of eminent domain, notwithstanding anything to the contrary set forth herein, if the Premises is condemned and Mortgagee determines that all of the conditions specified in this section have been satisfied, then Mortgagee shall apply the condemnation proceeds (a) first to reimbursing itself for all reasonable costs incurred by it in the collection of such proceeds and (b) second to reimbursing Mortgagor for such actual costs as shall have been incurred by Mortgagor in restoring the Premises and shall be approved by Mortgagee, which approval shall not be unreasonably withheld or delayed. Condemnation proceeds shall be applied to such restoration solely if (A) Mortgagee reasonably determines that: (i) the Premises is capable of being suitably restored in accordance with applicable governmental requirements to the value, condition, character and general utility existing prior to such damage or destruction; (ii) sufficient funds are unconditionally available (from condemnation proceeds or from funds to Mortgagor) to enable Mortgagor promptly to commence, and thereafter diligently to prosecute to completion, such restoration; (iii) no Default Condition exists; 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. To the extent that the foregoing conditions are not satisfied, Mortgagee may apply such proceeds to the payment of the Obligations.

5.11.5 Mortgagor shall pay interest on the Note and other indebtedness forming part of the Obligations at the rate or rates provided for therein, notwithstanding any lesser rate required to be paid by the authorities making such award or awards.

5.12. Records and Financial Statements; Financial Covenants.

5.12.1 Mortgagor will keep proper and separate books of account, in accordance with generally accepted accounting principles, and make full and true entries of all dealings and transactions of every kind relating to the Mortgaged Property.

5.12.2 Within one hundred twenty (120) days after the end of each fiscal year of Mortgagor, Mortgagor shall furnish to Mortgagee: (a) a copy of the annual financial statements for such fiscal year accurately reflecting the financial condition of Mortgagor and the results of its operations, including, without limitation, balance sheets and profit and loss statements, all prepared in accordance with generally accepted principles of accounting consistently applied; the financial statements of Mortgagor shall be internally prepared by management of Mortgagor and shall set forth separately the property included in, the liabilities relating to and the results of the operations of, the Mortgaged Property; and (b) a "rent roll," dated as of the end of such fiscal year and stating with respect to each unit in the Mortgaged Property the name of the tenant thereof, the rent paid by such tenant, the date to which such rent is paid, the date on which such tenant's leasehold interest terminates and the amount held by Mortgagor by way of security deposit from each such tenant (a "Rent Roll"); all such financial statements and such Rent Rolls to be certified to as being accurate by the chief financial officer of Mortgagor.

5.12.3 Within thirty (30) days after the end of each quarter in each fiscal year of Mortgagor, Mortgagor shall furnish to Mortgagee: (a) a financial report accurately reflecting the results of the operations of the Mortgaged Property, including without limitation, a balance sheet and a profit and loss statement for such quarter and on a year-to-date basis, (b) a Rent Roll dated as of the end of such fiscal quarter; and (c) a gross sales report accurately reflecting the gross sales of any Lessee obligated to report such sales to Mortgagor pursuant to the terms of the respective Lease, including, but not limited to, Walgreen Eastern Co., Inc., its successors and assigns (collectively, "Walgreen"); all such financial reports, such Rent Rolls and such gross sales report to be certified to as being accurate by the chief financial officer of Mortgagor.

5.12.4 Mortgagor shall cause each Guarantor, (i) within one hundred twenty (120) days after the end of each fiscal year of Guarantor, to furnish to Mortgagee a signed audited financial statement accurately reflecting the financial condition of Mortgagor and the results of its operations, including, without limitation, audited balance sheets and audited profit and loss statements, in form reasonably satisfactory to Mortgagee, prepared by a certified public accountant reasonably satisfactory to Mortgagee and in accordance with generally accepted principles of accounting consistently applied; and (ii) within sixty (60) days after filing, a copy of each Guarantor's current signed Federal income tax returns (with all schedules and exhibits).

5.12.5 Upon Mortgagee's request, Mortgagor shall furnish such other information bearing on the financial condition of Mortgagor and the Guarantor, and the status and progress of the operation of the Mortgaged Property, as Mortgagee may from time to time reasonably request.

5.12.6 All books and records of Mortgagor with respect to the Mortgaged Property shall be kept at the Mortgaged Property or at Mortgagor's principal place of business and shall be open to inspection by Mortgagee at all reasonable times. Upon the occurrence of any Default Condition, on demand of Mortgagee, Mortgagor forthwith shall deliver to Mortgagee all such books and records.

5.12.7 At all times during the term of the Loan, Mortgagor shall maintain the financial covenants set forth in the Note.

5.13. Alienation.

5.13.1 Mortgagor shall not, directly or indirectly, sell, convey, mortgage, pledge, hypothecate, encumber, lease, assign or otherwise transfer the Mortgaged Property or any part thereof or any interest therein without the prior written consent of Mortgagee.

5.13.2 Without limiting the generality of the foregoing, Mortgagor will not create, join or consent to any private restrictive covenant or other restriction affecting the Mortgaged Property or any part thereof, without the prior written consent of Mortgagee.

5.13.3 Acadia Realty Trust, or an affiliate or subsidiary of Acadia Realty Trust in which it directly owns and controls, in the aggregate, at least fifty-one percent (51%) of such affiliate or subsidiary, (collectively, "ART") may assume the Loan provided that: (i) no Event of Default has occurred or is continuing; (ii) ART executes an assumption agreement in form and substance satisfactory to the Mortgagee; (iii) ART provides a replacement guarantor or guarantors for the Loan, which replacement guarantor(s) shall be satisfactory to Mortgagee in its sole discretion; and (iv) ART pays all costs and expenses reasonably incurred in connection with such assumption of the Loan, including, but not limited to, Mortgagee's reasonable attorneys' fees and disbursements, title charges and recording fees, if any. Additionally, the replacement guarantor(s) shall execute documents (the "Replacement Guaranty Documents") similar in form and substance to the Guaranty Documents, which documents shall contain financial covenants acceptable to Mortgagee and the replacement guarantor(s), and any other documents as reasonably required by Mortgagee. The foregoing right shall only be exercised one time during the term of the Loan. If it is exercised in accordance with the foregoing, the assumption right shall thereafter be a nullity.

5.13.4 Notwithstanding Section 5.13.1, Mortgagee's consent shall not be required for any public offering or transfer of shares of Acadia Realty Trust on a national recognized stock exchange.

5.14. Senior or Junior Indebtedness.

Mortgagor shall pay any and all indebtedness secured by any mortgage creating a senior and prior lien, if any, or junior and subordinate lien, if any, on the whole or any part of the Mortgaged Property and perform all covenants, terms and conditions contained in any such mortgage on the part of Mortgagor to be performed and observed, all within the periods provided for payment, performance and observance in any such mortgage; provided, however, the foregoing shall not be deemed to be a consent by Mortgagee to the creation of any such senior or junior indebtedness.

5.15. Preservation of Easements, Licenses and Zoning

5.15.1 Mortgagor, to the extent reasonably within its control, shall maintain, preserve and renew (a) any and all easements, rights of way, privileges and hereditaments now or hereafter belonging or inuring to the benefit of the Premises and/or Improvements or any part thereof, and (b) any and all Licenses.

5.15.2 Without the prior consent of the Mortgagee, Mortgagor will not initiate, create, join in or consent to any change of zoning with respect to the Mortgaged Property or any part thereof.

5.16. Mortgagee's Right to Pay or Perform Mortgagor's Covenants.

If Mortgagor fails, as required under this Mortgage, (a) to maintain insurance or pay the premiums therefor, (b) to pay and furnish receipts for all Impositions, (c) to pay for all labor and materials or to otherwise pay any claim which might result in or permit the creation of a lien on the Mortgaged Property or any part thereof, (d) to maintain or repair the Improvements, (e) to provide management or security for the Mortgaged Property, or (f) to pay any indebtedness secured by a lien or encumbrance on the Mortgaged Property or any part thereof (other than the Note), or if Mortgagor fails to otherwise pay, perform or observe any of Mortgagor's other covenants contained in this Mortgage, Mortgagee, at its option upon ten (10) days written notice to Mortgagor, may procure such insurance, pay such Impositions and any penalty and interest thereon, redeem the Mortgaged Property or any part thereof from any tax sale, procure such receipts, pay for such labor and materials, pay any such claim, do such maintenance or make such repairs, retain and pay for such management and/or security, pay any and all such liens and encumbrances and/or otherwise disburse such sums and/or take such action as Mortgagee deems necessary or appropriate (a) to cause compliance with Mortgagor's covenants under this Mortgage and/or (b) to protect Mortgagee's interest and/or the Mortgaged Property or any part thereof, and all amounts advanced by Mortgagee for the payment thereof and all expenses so incurred by Mortgagee, unless otherwise agreed in writing, shall be paid by Mortgagor to Mortgagee on demand of Mortgagee, and until paid such amounts shall be added to the unpaid principal of the Obligations, shall bear interest at the Default Rate, and the payment thereof, together with such interest, shall be secured by the lien of this Mortgage and the other Security Instruments. The failure of Mortgagee to take any such action shall not render Mortgagee liable to Mortgagor or any third party.

5.17. Proceedings and Indemnification.

5.17.1 If Mortgagor becomes a party defendant to any action or other proceeding brought by a third party concerning or otherwise affecting (a) this Mortgage or any of the other Loan Documents, (b) the Loan or (c) the Mortgaged Property or any part thereof or any interest therein or the construction, operation or occupancy thereof, or (d) title to the Mortgaged Property and/or the priority, perfection, enforceability or validity of any lien or security interest granted to secure the Obligations, including any action to foreclose any lien or security interest affecting Mortgagor or all or any part of the Mortgaged Property, Mortgagor shall:

- (i) promptly inform Mortgagee of the commencement thereof and thereafter timely apprise Mortgagee of all material developments therein;
- (ii) not take any position therein which would materially and adversely affect the interest of the Mortgagee;
- (iii) cooperate fully with Mortgagee with respect thereto; and
- (iv) consent to Mortgagee's becoming a party thereto, at the election of Mortgagee and to the extent permitted by law.

5.17.2 If Mortgagee becomes a party defendant to, or is compelled to testify or produce documents in, any action or other proceeding described in subsection 5.17.1 above, whether before or after payment in full of the Obligations, Mortgagor shall indemnify, defend and hold Mortgagee, its officers, directors and employees harmless from any and all liability by reason of each and every such action, including, without limitation, reasonable attorneys' fees and expenses incurred by Mortgagee in any such action, whether or not any such action is prosecuted to judgment. This right of indemnification shall survive the payment in full of the Note, notwithstanding any discharge of this Mortgage.

5.17.3 Mortgagor agrees to indemnify Mortgagee with respect to any and all loss, cost or damage (including, without limitation, reasonable attorneys' fees) incurred or suffered by Mortgagee as a result of (1) any fraud or material misrepresentation made by or on behalf of Mortgagor; (2) any and all condemnation awards or insurance proceeds which are not applied in accordance with the provisions of the Security Instruments; (3) any and all rents, revenues, incomes, issues, proceeds or profits of the Mortgaged Property ("Rents and Profits") collected by or on behalf of the Mortgagor following an Event of Default which are not applied, (i) first, to the payment of customary and usual operating expenses of the Mortgaged Property as the same become due and payable, and (ii) then, to the payment of principal, interest and other sums due under the Note and other Loan Documents; (4) the Mortgagor's failure following an Event of Default to deliver to the Mortgagee, on demand, all Rents and Profits, security deposits and books and records relating to the Mortgaged Property; (5) the Mortgagor's failure to procure and maintain any insurance policy required by the Security Instruments; (6) any damage or material waste of the Mortgaged Property, or any portion thereof, caused by the willful, wanton or tortious act or omission of the Mortgagor, any of its representatives or agents or any Guarantor; (7) any violation of or failure to comply with the provisions of Section 5.10 of this Mortgage; and (8) the failure of the Mortgagor to pay any impositions or insurance premiums with respect to the Mortgaged Property or any charges for labor or materials which may result in the creation of liens on the Mortgaged Property.

5.18. Further Assurances.

5.18.1 Mortgagor shall not do or suffer any act or thing to be done which would impair all or any part of the security for the payment of the Obligations or this Mortgage or the other Security Instruments.

5.18.2 Mortgagor and Mortgagee, within ten (10) days after request by the other, shall furnish to the requesting party a written statement, duly acknowledged, of the amount of the unpaid balance of the Note and containing such other information Mortgagee or Mortgagor, as the case may be, may reasonably request.

5.18.3 At any time and from time to time until payment in full of the Obligations, upon request of Mortgagee, Mortgagor will promptly execute, acknowledge and deliver to Mortgagee such additional instruments, and shall take such further actions, all at the expense of Mortgagor, as Mortgagee may reasonably require to further confirm, evidence or protect the lien of this Mortgage, the security position of Mortgagee with respect to the Mortgaged Property or any part thereof and the property and rights hereby conveyed to or conferred on Mortgagee, or intended to so be, including, without limitation, the execution, acknowledgment of delivery of additional mortgages, security agreements, financing statements, continuation statements and the like.

5.19. Expenses.

Mortgagor shall pay to Mortgagee on demand of Mortgagee any and all expenses reasonably incurred or paid by Mortgagee in connection with or incident to (a) negotiation, closing and administration of the Loan, including, without limitation, the examination of the title to the Premises, the cost of title insurance, charges for examining public records in connection with advances of the proceeds of the Loan, inspections, drawing of papers, recording and filing fees, value added taxes and other taxes, revenue stamps, if any, and fees and disbursements of attorneys, accountants, appraisers, tax advisors, architects and engineers engaged by the Mortgagee, and (b) the collection or enforcement of any or all of the Obligations or rights of the Mortgagee under the Note, the Security Instruments or any Other Document, whether by litigation, for eclosure or otherwise, including, without limitation, attorneys' fees to the extent permitted by law and further including, without limitation, attorneys' fees for any and all appellate proceedings, to the extent permitted by law; and all such expenses, until paid, shall be added to the unpaid principal of the Obligations, shall bear interest at the Default Rate, and the payment thereof, together with such interest, and shall be secured by the lien of this Mortgage and the other Security Instruments.

5.20. Required Repairs.

Mortgagor shall repair, within one hundred eight (180) days from the date hereof, all of the cracked exterior masonry of the buildings located on the Premises as recommended in the Property Condition Assessment, revised as of October 16, 2007, prepared ATC Associated, Inc. and certified to Mortgagee (collectively, the "Required Repairs"). Immediately upon completion of the Required Repairs, but in no event later than one hundred eight (180) from the date hereof, Mortgagor shall provide evidence of the completion of said Required Repairs, which evidence shall be satisfactory to Mortgagee in its reasonable discretion. If Mortgagor fails to complete the Required Repairs (or deliver satisfactory evidence to Mortgagee of the completion of said Required Repairs) within one hundred eight (180) from the date hereof, such failure shall constitute an Event of Default.

5.21. Estoppel Certificates.

Mortgagor has, as of the date hereof, executed and delivered to Mortgagee, a landlord form estoppel certificate, in form and substance satisfactory to Mortgagee ("Landlord Estoppel Certificate") with respect to the certain Lease between Mortgagor and Walgreen. Mortgagor shall, within thirty (30) days from the date hereof, obtain from Walgreen and deliver to Mortgagee, a tenant's form estoppel certificate, in form and substance satisfactory to Mortgagee ("Walgreen Estoppel Certificate"). Failure of Mortgagor to comply with the provisions of this Section 5.21 shall constitute an Event of Default.

5.22. Undertakings.

Mortgagor shall, within thirty (30) days from the date hereof, obtain and deliver to Mortgagee, Subordination, Non-Disturbance and Attornment Agreements from each of the following Lessees: (i) JPMorgan Chase Bank, N.A., and (ii) FAC West Donuts, LLC. Mortgagor shall pay all costs and expenses incurred by Mortgagee in connection with such Subordination, Non-Disturbance and Attornment Agreements, including, without limitation, reasonable attorneys' fees. Failure of Mortgagor to comply with the provisions of this Section 5.22 shall constitute an Event of Default.

Section 6. Assignment of Leases and Rents.

6.1. Mortgagor does hereby transfer, assign and deliver unto Mortgagee, grant to Mortgagee a security interest in, the Leases and the Rents and all right, title and interest of Mortgagor in and to any and all guarantees of any of the Leases; TO HAVE AND TO HOLD the Leases and the Rents and said guarantees, together with all the rights, privileges and appurtenances now or hereafter in any wise belonging or pertaining thereto, unto Mortgagee, its successors and assigns, forever, subject, however, to the terms and conditions hereinafter provided in this Section 6. Mortgagee shall have all rights against tenants of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York.

6.2. Mortgagor hereby authorizes and empowers Mortgagee to collect the Rents as the same shall become due, and hereby irrevocably directs each and all of the Lessees and sublessees to pay to Mortgagee, upon demand by Mortgagee, the Rents as may now be due or payable and/or shall hereafter become due or payable; provided however, no such demand shall be made by Mortgagee unless and until there shall have occurred a default or an Event of Default hereunder beyond any applicable notice and cure period. Until such demand is made, Mortgagor shall have the license to collect or continue to collect the Rents; upon such demand such license shall cease.

6.2.1 Mortgagor's right to collect or to continue to collect the Rents as aforesaid, shall not authorize collection by Mortgagor of any installment of rent or any other payment (exclusive of security deposits) more than one (1) month in advance of the respective dates prescribed in the Leases or otherwise for the payment thereof without the written consent of Mortgagee.

6.2.2 No lessee, sublessee, tenants or other occupant of the Mortgaged Property making any payment to Mortgagee pursuant to this Section 6 shall be under any obligation to inquire into or determine the actual existence of any default claimed by Mortgagee.

6.3 Mortgagee shall be and hereby is authorized and empowered, for and in the name or names and on behalf of Mortgagor and/or Mortgagee, and for the purposes hereinafter set forth, shall be and hereby is made, constituted and appointed the true and lawful attorney-in-fact of Mortgagor (with full power of substitution and revocation) and in the name, place and stead of Mortgagor, and in the sole and uncontrolled discretion of said attorney, to cause the assignment to Mortgagee of any Lease which has not been so assigned after request therefor by Mortgagor. The foregoing appointment, being coupled with an interest, is irrevocable until the Obligations are paid and otherwise satisfied in full.

6.4 Mortgagor shall not enter into any Lease in excess of 2,000 square feet without first obtaining Mortgagee's written approval of the terms and conditions thereof and the Lessee thereunder, which approval shall not be unreasonably withheld or delayed. In the event Mortgagor intends to enter into any Lease for less than 2,000 square feet, Mortgagor shall promptly notify Mortgagee of the terms and conditions thereof. If requested by Mortgagor, Mortgagee will grant conditional approvals of proposed Leases requiring Mortgagee's approval hereunder or proposed renewals, extensions or modifications of existing Leases at any stage of the leasing process, from initial "term sheet" through negotiated Lease drafts; provided, however, that the final approval of Mortgagee shall only be given following receipt of a final draft version of the Lease in question. Provided that no Event of Default is continuing, if Mortgagor provides Mortgagee with a written request for approval (which written request shall specifically refer to this Section 6.4 and shall explicitly state that failure by Mortgagee to approve or disapprove within ten (10) business days will constitute a deemed approval) and Mortgagee fails to reject the request in writing delivered to Mortgagor within ten (10) business days after receipt by Mortgagee of the request, the proposed Lease or proposed renewal, extension or modification of an existing Lease shall be deemed approved by Mortgagee, and Mortgagor shall be entitled to enter into such proposed Lease or proposed renewal, extension or modification of an existing Lease.

6.5 Notwithstanding anything in this Section 6 to the contrary, at Mortgagor's written request, Mortgagee shall enter into a subordination non-disturbance and attornment agreement on Mortgagee's then-current standard form with any national tenant or any other creditworthy tenant leasing in excess of ten (10%) percent of the Mortgage Property. Mortgagor shall reimburse Mortgagee upon demand for all reasonable costs and expenses incurred by Mortgagee in connection with the preparation and negotiation of such subordination, non-disturbance and attornment agreements.

6.6. The provisions of the Assignment of Leases and Rents and the powers granted to Mortgagee under Section 9 hereof shall in no respect operate to place upon Mortgagee any responsibility or obligation to take any action whatsoever with respect to the operation, control, care, management or repair of the Mortgaged Property and that any action taken or failure or refusal to act by Mortgagee shall be at Mortgagee's election and without any liability on its part.

Section 7. Security Agreement.

7.1. This Mortgage also shall constitute a security agreement, financing statement, and fixture filing within the meaning of the applicable Uniform Commercial Code, and is to be filed or recorded in the office where a mortgage on the Premises would be filed or recorded.

7.2. Mortgagor warrants and covenants that:

7.2.1 Except for the security interest granted hereby, Mortgagor is, or upon acquiring rights in any of the Collateral will be, the owner of the Collateral free from any other lien, security interest or encumbrance; and Mortgagor will defend the security interest of the Mortgagee in the Collateral against claims and demands of all persons at any time claiming the same or any interest therein; and

7.2.2 No financing statement covering any Collateral is on file in any public office, and at the request of Mortgagee, Mortgagor will join with Mortgagee in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee and will pay the cost of filing or recording the same in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable.

7.3. Mortgagor hereby authorizes Mortgagee to file financing and continuation statements with respect to the Collateral without the signature of Mortgagor whenever lawful.

7.4. The Personal Property will be kept at the Premises, and until installed will be suitably and safely stored thereon.

7.5. Mortgagor will not remove or permit to be removed from the subject property any of the Personal Property without the prior written consent of Mortgagee unless the same is immediately replaced with unencumbered fixtures, chattels or articles of personal property, as the case may be, of a quality, value and utility equal or superior to those which they replace. All such replacements, renewals and additions shall become and be immediately subject to the security interest of this Mortgage and be covered thereby.

7.6. Mortgagor, from time to time, on request of Mortgagee, shall deliver to Mortgagee an inventory of the Personal Property in reasonable detail, including an itemization of all items leased to Mortgagor or subject to conditional bill of sale, security agreement or other title retention agreement.

Section 8. Events of Default.

The occurrence of any one or more of the following events shall constitute an Event of Default:

8.1. Nonpayment of any installment of principal and/or interest due under the Note when it shall become due and payable (no prior demand therefore being necessary) and such nonpayment shall have continued for more than ten (10) days.

8.2. Nonpayment of any other sum payable under this Mortgage, the Note, any of the other Security Instruments or any of the Other Documents and, unless a different grace or notice period is elsewhere specified, such nonpayment shall have continued for more than ten (10) days after notice thereof from Mortgagee to Mortgagor.

8.3. Nonperformance or nonobservance of any of the other covenants, agreements, or conditions of this Mortgage, any of the other Security Instruments or any of the Other Documents, and, unless a different grace or notice period is elsewhere specified, such nonperformance or nonobservance shall have continued for more than thirty (30) days after notice thereof from Mortgagee to Mortgagor; provided, however, that if (a) the curing of such default cannot be accomplished with due diligence within said thirty (30) day period, (b) Mortgagor commences to cure such default promptly after receipt of notice thereof from Mortgagee and thereafter diligently and continuously prosecutes the cure of such default, and (c) the extension of the period for effecting a cure will not result in any material impairment of the Mortgaged Property or any portion thereof, or the value thereof or Mortgagee's lien thereon, then such period of thirty (30) days shall be extended for such period of time as Mortgagee reasonably deems necessary for Mortgagor so acting to cure such default; provided further, however, such extended cure period shall not be applicable to any default which may be cured by the payment of money only. The foregoing shall not be deemed to provide a grace or notice period for nonperformance or nonobservance of any covenant, agreement or condition which is specifically listed as an Event of Default in any other subsection of this Section 8.

8.4. The occurrence of any "Event of Default" under the Note, any of the other Security Instruments or any of the Other Documents, or the occurrence of any event or condition which would entitle Mortgagee to exercise any of its remedies under any of the Security Instruments or any of the Other Documents.

8.5. Title to the Mortgaged Property is not satisfactory to the Mortgagee by reason of any lien, charge, encumbrance, title condition or exception (other than Permitted Encumbrances) and such condition continues for more than thirty (30) days after notice thereof from Mortgagee to Mortgagor.

8.6. Any survey, report or examination discloses that the Improvements or any portion thereof encroach upon or project over a street or upon or over adjoining property, and such condition shall have continued for more than thirty (30) days after notice thereof from Mortgagee to Mortgagor.

8.7. The cancellation, lapse or termination of any insurance coverage required to be maintained by Mortgagor under this Mortgage or any of the other Security Instruments.

8.8. The Mortgaged Property or any part thereof or any interest therein is conveyed, voluntarily encumbered or otherwise transferred directly or indirectly in any way without the prior written consent of Mortgagee.

8.9. If any notice of responsibility, notice of violation, notice letter or other similar notice or claim is issued or filed by the EPA or any State Agency against Mortgagor or the Mortgaged Property under any of the Hazardous Waste Laws and within sixty (60) days after the issuance or filing thereof either (a) the condition referenced therein is not cured or (b) a consent agreement reasonably satisfactory to Mortgagee has not been entered into between Mortgagor and the EPA or the State Agency in question.

8.10. Breach of, or the proving false or misleading, in any material respect, of any representation or warranty now or hereafter made to Mortgagee by on behalf of, or for the benefit of Mortgagor, or contained in:

(a) any of the Security Instruments or Other Documents;

(b) the Note; or

(c) any loan application, statement, financial statement, certificate or other document, agreement or instrument furnished, signed or executed in connection herewith by, on behalf of, or for the benefit of Mortgagor.

8.11. The occurrence of any "event of default" under any document, agreement or instrument now or hereafter (a) evidencing or securing any other obligation or indebtedness of Mortgagor or any Other Liable Party to Mortgagee now existing or hereafter arising or (b) evidencing any obligation or other indebtedness secured in whole or in part by any or all of the property covered by any of the Security Instruments, or the nonpayment nonperformance or nonobservance of any of the covenants, agreements or conditions of any such documents, agreements or instruments, which nonpayment, nonperformance or nonobservance shall have continued beyond the expiration of any applicable grace or notice period, or the occurrence of any event or condition which would entitle the obligee of or under any such documents, agreements or instruments to exercise any of its remedies thereunder.

8.12. Nonpayment of any indebtedness of the Mortgagor or any Other Liable Party (other than the Note or other indebtedness referred to in the preceding subsection) if the effect of such nonpayment is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to the stated maturity thereof, or if any other indebtedness, the validity of which is not being contested in good faith by appropriate proceedings, is not paid when due and payable in accordance with the terms of such indebtedness or customary trade practice.

8.13. (a) (i) The insolvency or inability of Mortgagor or any Other Liable Party to pay his or its debts as they mature; (ii) the appointment of a receiver, trustee, custodian or other fiduciary, for or for any of the property of, Mortgagor or any Other Liable Party; (iii) the making of an assignment for the benefit of creditors, or the making of or entering into a trust mortgage or deed or other instrument of similar import for the benefit of creditors, by Mortgagor or any Other Liable Party; or (iv) the convening of a meeting of the creditors, or the selection of a committee representing the creditors of Mortgagor or any Other Liable Party; or

(b) The filing of a petition, complaint, motion or other pleading seeking any relief under any receivership, insolvency, or debtor relief law, or seeking any readjustment of indebtedness, reorganization, composition, extension or any similar type of relief, or the filing of a petition, complaint, or motion under any chapter of the Bankruptcy Code, by Mortgagor or any Other Liable Party; or

(c) The filing of a petition, complaint, motion or other pleading seeking any relief under any receivership, insolvency, or debtor relief law, or under any chapter of the Bankruptcy Code, or seeking any readjustment of indebtedness, reorganization, composition, extension or any similar type of relief, or the entry of any order for relief under any chapter of the Bankruptcy Code, against Mortgagor or any Other Liable Party; provided, however, that if Mortgagor shall immediately notify Mortgagee in writing of the filing of any such petition, complaint, motion or other pleading against Mortgagor or any Other Liable Party, and shall provide evidence satisfactory to Mortgagee that Mortgagor or such Other Liable Party, as the case may be, has in good faith and within ten (10) days after the filing of any such petition, complaint, motion or other pleading filed an answer thereto contesting same, then there shall be no Event of Default under this subparagraph (c) until the earliest of (i) the entry of an order for relief or a judgment under any proceedings referred to in this subparagraph (c), (ii) the appointment of a receiver, trustee, custodian or other fiduciary in any such proceeding or (iii) the expiration of a period of thirty (30) days, at the end of which such petition, complaint, motion or other pleading remains undismissed; or

(d) The entry of any judgment against, or the attachment or garnishment of any of the property, goods or credits of, Mortgagor or any Other Liable Party which remains unpaid, unstayed, undismissed or unbonded for a period of thirty (30) days; or if any foreclosure is instituted (by judicial proceedings, by publication of notice pursuant to a power of sale or otherwise) against Mortgagor under any mortgage, deed of trust or security agreement granted by Mortgagor and is not dismissed or terminated for a period of fifteen (15) days.

8.14. The dissolution, liquidation or termination of existence of Mortgagor or any Other Liable Party or a sale of assets of Mortgagor or any other Liable Party out of the ordinary course of business.

8.15. Any material adverse change in the financial condition of, or any act or omission of Mortgagor or any Other Liable Party, or any act or omission of any officer or director of Mortgagor or any Other Liable Party which leads Mortgagee reasonably to believe that performance of any of the covenants, agreements, or conditions of the Note, any of the Security Instruments or any Other Document, is or may be substantially impaired.

8.16. The death, incompetence, or incapacity to act of any Guarantor, unless a replacement guarantor is provided by Mortgagor within ninety (90) days of such death, which replacement guarantor shall be acceptable to Mortgagee in its sole discretion and which replacement guarantor, together with the other Guarantor, satisfies the financial covenants set forth in the Security Instruments.

8.17. Except as permitted by Section 5.13 herein, (a) the transfer of any membership interest in Mortgagor or (b) the transfer of any membership interest in Mortgagor held directly or indirectly, through one or more intermediate entities, by any Guarantor or (c) the dilution of the percentage membership interest in Mortgagor held directly or indirectly, through one or more intermediate entities, by any Guarantor, without the prior written consent of Mortgagee.

8.18. The merger or consolidation with any entity by Mortgagor, or the transfer of any of the membership interests of Mortgagor by any of the present members thereof or dilution of the percentage of the membership interests in Mortgagor held by any of the present members thereof, or the acquisition of any of the membership interests of Mortgagor by any person, corporation or entity, not presently a member thereof, without the prior written consent of Mortgagee.

8.19. If Mortgagor shall breach the financial covenants set forth in the Note beyond any applicable cure period.

8.20. If Mortgagor fails to promptly notify Mortgagee, in writing, and in any event within ten (10) days, of the occurrence of any event or condition of which Mortgagor is aware which constitutes a Default Condition, and together with such notice, furnish a written statement to Mortgagee which shall set forth the details of any action Mortgagor proposes to take with respect thereto.

8.21. If any Hedging Agreement (i) fails or ceases in any respect to be in full force and effect and to be continuing, (ii) is terminated, (iii) is disputed or (iv) becomes invalid or unenforceable based on Mortgagor's default thereunder.

8.22. If it becomes unlawful under the laws of the State of New York for Mortgagor to perform all or any of Mortgagor's obligations under any Hedging Agreement.

8.23. If any Hedging Agreement is not, or is alleged by Mortgagor not to be, binding on or enforceable against Mortgagor or effective to create the security intended to be created by it.

Section 9. Remedies.

9.1. Rights Upon Default.

Upon the occurrence of any Event of Default beyond any applicable notice and cure period hereunder, Mortgagee, in addition to the remedies provided above, shall have each and every of the following rights and remedies, all of which rights and remedies shall be cumulative and not exclusive and in addition to any and all other rights and/or remedies granted to Mortgagee under this Mortgage, the Note, any of the other Security Instruments or Other Documents:

9.1.1 Mortgagee shall have the right forthwith, at its election, to exercise any and all rights and remedies available to it at law or in equity.

9.1.2 Mortgagee shall have the right forthwith, at its election, and without further notice or demand (except as otherwise specifically provided in the Note, this Mortgage or the other Security Instruments) and without the commencement of any action to foreclose this Mortgage or exercise any power of sale Mortgagee may have under this Mortgage, to enter immediately upon and take possession of the Mortgaged Property, or any part thereof, without further consent or assignment by Mortgagor, and to do, execute and perform any act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Mortgaged Property and the leasing, management, or operation thereof as fully as Mortgagor might do, including, without limitation, the right to institute summary proceedings against any Lessee who shall fail to comply with the provisions of the applicable Lease, with the right to lease the Mortgaged Property, or any part thereof, and to collect and receive all of the Rents, issues and profits, and all other amounts past due or to become due to Mortgagor by reason of its ownership of the Mortgaged Property and to apply the same, after the payment of all necessary charges and expenses in connection with the operation of the Mortgaged Property (including, without limitation, any managing agent's commission, at the option of Mortgagee), on account of the Obligations. If Mortgagor or any other person claiming by, through or under it, (other than any Lessee whose tenancy Mortgagee has agreed not to disturb or whose tenancy Mortgagee, in its sole and uncontrolled discretion, is willing not to disturb) are occupying all or any part of the Mortgaged Property, it is hereby agreed that Mortgagor and such other persons shall either immediately surrender possession of the Mortgaged Property to Mortgagee and vacate the premises so occupied or pay a reasonable rental for the use thereof, monthly in advance, to Mortgagee.

9.1.3 Mortgagee shall have the right to seek the immediate appointment by any court of competent jurisdiction of a receiver for the Mortgaged Property and the business of Mortgagor in connection therewith and of the Rents and profits arising therefrom, which receiver shall be entitled to immediate possession of the entire Mortgaged Property, whether or not occupied by Mortgagor. Mortgagee shall be entitled to the appointment of such a receiver as a matter of right without consideration of the value of the Mortgaged Property or other security for the Obligations or the solvency of any person or corporation liable for the payment thereof. If Mortgagor is then in possession of the Mortgaged Property or any part thereof, Mortgagor shall immediately, upon the appointment of such receiver, vacate the Mortgaged Property or such part thereof, as the case may be, or pay a reasonable rental for the use thereof during such receivership, the amount of such rental to be agreed upon between said receiver and Mortgagor or to be fixed by the court in which said receiver shall have been appointed; and the relationship between said receiver and Mortgagor shall be that of landlord and tenant.

9.1.4 Mortgagee, to the extent permitted by law, may choose to utilize the procedures set forth in Article 14 of the Real Property Actions and Proceedings Law and commence a non-judicial foreclosure by power of sale of this Mortgage. To the extent permitted by law, Mortgagor waives any right granted pursuant to Section 1421, or any other provision of the Real Property Actions and Proceedings Law, to challenge Mortgagee's election to enforce this Mortgage by means of such non-judicial power of sale unless Mortgagor in good faith believes there is one or more specific factual, meritorious defenses to the foreclosure action.

9.2. Mortgagee's Right to Release and Negotiate.

Without affecting the liability of Mortgagor or any Other Liable Party (except any person expressly released in writing), and without affecting any lien or other security not expressly released in writing, Mortgagee, at any time and from time to time, either before or after maturity of the Note, irrespective of whether any Default Condition then exists and without notice or consent, may do any one or more of the following:

- (a) release any person liable for payment of or performance of any or all of the Obligations;
- (b) make any agreement extending the time, or otherwise altering the terms of payment of the Obligations or any part thereof, or modifying or waiving any of the Obligations, or subordinating, modifying or otherwise dealing with the lien or liens securing payment of the Obligations;
- (c) exercise or refrain from exercising or waive any right Mortgagee may have;
- (d) accept additional security of any kind;
- (e) release or otherwise deal with any property, real or personal, securing the Obligations or any part thereof, including all or any part of the Mortgaged Property; and
- (f) (in the event of any conveyance of Mortgagor's interest in the Mortgaged Property to parties not appearing in this instrument), deal with such successor or successors in interest with reference to this Mortgage and the Obligations secured hereby, either by way of forbearance on the part of Mortgagee or extension of the time of payment of the Note or any other sum forming part of the Obligations, or otherwise, without in any way modifying or affecting the conveyance under this Mortgage or the original liability of Mortgagor for the Obligations, either in whole or in part. Nothing in this subsection, however, shall be deemed a consent by Mortgagee to the conveyance by Mortgagor of any interest in the Mortgaged Property.

9.3. Mortgagor to Surrender Possession.

In the event of any sale of the Mortgaged Property under the provisions hereof, Mortgagor shall forthwith surrender possession thereof to the purchaser. Upon failure to do so, Mortgagor shall thereupon be a tenant at sufferance of such purchaser, and upon its failure to surrender possession of the Mortgaged Property upon demand, such purchaser, his heirs, legal representatives, successors or assigns, shall be entitled to institute and maintain an appropriate action for possession of the Mortgaged Property.

9.4. Uniform Commercial Code. Upon the occurrence of any Event of Default, Mortgagee shall have and may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code then in effect in the state in which the Premises is located. Without limiting the generality of the foregoing:

(a) Mortgagee, at its option, pursuant to the applicable provisions of Article 9 of the Uniform Commercial Code, may proceed as to both the real and personal property covered by this Mortgage in accordance with its rights and remedies in respect of said real property, in which event (i) the other provisions of the Uniform Commercial Code shall not apply to disposition of the Collateral, and (ii) the sale of the Collateral in conjunction with and as one parcel with said real estate shall be deemed to be a commercially reasonable manner of sale; or

(b) Mortgagee, at its option, may proceed as to the Collateral separately from said real property, in which event the requirement of reasonable notice shall be met by mailing notice of the sale, postage prepaid, to Mortgagor or any other person entitled thereto at least ten (10) days before the time of the sale or other disposition of any of the Collateral.

Section 10. Miscellaneous.

10.1. Notices. Any notice, demand, request, instruction, document, or other communication to be given under or in connection with this Mortgage shall be in writing and hand-delivered, receipt requested or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by Federal Express or other similar courier service, addressed as follows:

- If to Mortgagee:
-
- Anglo Irish Bank Corporation plc
- Stephen Court
- 18/21 St. Stephen's Green
- Dublin 2, Ireland
- Attn: Owen O'Neill, Director
-
- Copy by ordinary
- first class mail to:
-
- Anglo Irish New York Corporation
- 222 East 41st Street, 24th Floor
- New York, New York 10017
- Attn: Peter Lennon, Vice President
-
- and
-
-

-
- Sullivan & Worcester LLP
- 1290 Avenue of the Americas
- New York, New York 10104
- Attn: Hugh P. Finnegan, Esq.
- -
If to Mortgagor: -
- -
- Acadia Tarrytown LLC
- c/o Acadia Realty Trust
- 1311 Mamaroneck Avenue, Suite 260
- White Plains, New York 10605
- Attn.: Robert Masters, Esq.
- -
Copy by ordinary -
first class mail to: -
- -
- Acadia Realty Trust
- 1311 Mamaroneck Avenue, Suite 260
- White Plains, New York 10605
- Attn.: Robert Masters, Esq.
- -

Any party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other party in the manner herein provided for giving notice. Any such notice, demand, request, or other communication shall be deemed given when mailed as aforesaid.

10.2. Captions. The captions in this Mortgage are for convenience and reference only and do not define, limit or describe the scope of the provisions hereof.

10.3. Modifications. The provisions of this Mortgage may be modified or terminated only in a writing signed by Mortgagor and Mortgagee.

10.4. Non-Waiver. Mortgagee shall not be deemed to have waived or amended any of its rights or remedies under any of the Loan Documents unless such waiver or amendment be in writing and signed by it. No delay or omission on the part of Mortgagee in exercising any such right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or a waiver of the same right or remedy on any future occasion. Without limiting the generality of the foregoing, the acceptance by Mortgagee of any sum after the occurrence of any Event of Default shall not constitute a waiver of the right to require prompt performance of all of the covenants and conditions contained in the Loan Documents. The acceptance by Mortgagee of any sum less than the sum then due shall be deemed an acceptance on account only and shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay said entire sum due shall be and continue to be an Event of Default notwithstanding such acceptance of such lesser amount on account, and Mortgagee shall be entitled at all times thereafter to exercise all rights and remedies conferred upon it following an Event of Default, notwithstanding the acceptance by Mortgagee thereafter of future sums on account.

10.5. Cumulative Nature of Rights and Remedies. The rights and remedies provided Mortgagee in the Loan Documents and any of them, or otherwise available by law, shall be cumulative and may be exercised concurrently or successively. Any one or more of such rights or remedies may be exercised by Mortgagee, at its option, without regard to the adequacy of its security.

10.6. Limitation of Third-Party Rights. The Mortgagor and Mortgagee do not intend the benefits of any one or more of the Loan Documents to inure to, or otherwise exist for, the benefit of any third party who has a contractual relationship with Mortgagor, who is a creditor of Mortgagor with respect to the Mortgaged Property, or any part thereof, or who otherwise succeeds to Mortgagor's interest or rights, and none of the Loan Documents shall be construed to make or render Mortgagee liable to any materialman, supplier, contractor, subcontractor, successor in title to the Mortgaged Property, or any part thereof, or any Lessee, or for debts or claims accruing to any such persons against Mortgagor. Notwithstanding anything contained in any of the Loan Documents, or any conduct or course of conduct by Mortgagor or Mortgagee or both, whether before or after signing this Mortgage, none of the Loan Documents shall be construed as creating any right, claim or cause of action against Mortgagee, or any of its officers, directors, agents or employees, in favor of any materialman, supplier, contractor, subcontractor, successor in title to the Mortgaged Property, or any part thereof, or any Lessee or to any other person, corporation or other entity, other than Mortgagor.

10.7. Interpretation. Mortgagor acknowledges that Mortgagor, Mortgagee and their respective counsel have reviewed and revised the Loan Documents and the Commitment Letter and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of the Loan Documents or said Commitment Letter.

10.8. Assignability of Mortgagee's Interest. Mortgagee may assign, negotiate, or pledge all or any portion of its rights under the Loan Documents or any of them, and, in case of such assignment, Mortgagor shall accord full recognition thereto. Without limiting the generality of the foregoing, Mortgagee shall have the right to sell or otherwise grant participations in the Loan to one or more of the participating financial institutions and to disclose all information in its possession with respect to Mortgagor and the Mortgaged Property to such institutions; Mortgagor shall cooperate with Mortgagee, if requested by Mortgagee, with respect to any of Mortgagee's efforts to obtain such participants.

10.9. Integration. The Loan Documents and the Commitment Letter reflect the entire agreement between Mortgagor and Mortgagee; provided, however, to the extent there shall exist a conflict between any term or provision of the Commitment Letter and any term or provision of the Loan Documents, the term or provision of the Loan Documents shall prevail.

10.10. Singular Includes Plural. Every word herein purporting to the neuter gender only shall extend to and include males and females and every word herein importing the singular number only shall be construed to extend to and include the plural number also.

10.11. Severability. In the event any term or provision of this Mortgage or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Mortgage or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall be valid and enforceable to the fullest extent permitted by law.

10.12. Governing Law. This Mortgage shall be construed in accordance with and governed by the laws of the State of New York in the United States of America, without resort to that state's conflict of laws rules.

10.13. Incorporation of Exhibits. All Exhibits referred to in this Mortgage are by such references fully incorporated herein.

10.14. Successors and Assigns Bound. This Mortgage shall inure to the benefit of and be binding on the successors and assigns of Mortgagee and the heirs, legal representatives, successors and assigns of Mortgagor; provided, however, the foregoing shall not be deemed to allow any assignment by Mortgagor in violation of the terms hereof.

10.15. Waiver of Jury Trial. Mortgagor and Mortgagee by acceptance of this Mortgage, expressly acknowledge and agree that the Loan involves a sophisticated commercial real estate finance transaction and that disputes arising in connection with the Loan would be most fairly resolved by a judge applying applicable federal and state laws, rather than by arbitration rules or jury trial. To the fullest extent permitted by law, Mortgagor hereby waives, for Mortgagor and Mortgagor's heirs, legal representatives, successors and assigns, and by acceptance of this Mortgage, Mortgagee hereby waives, for itself, its successors and assigns, any right to a trial by jury in respect to any litigation directly or indirectly arising out of, under, or in connection with this Mortgage, the Note or any of the other Loan Documents. Mortgagor hereby (a) certifies that no employee, attorney or other agent or representative of Mortgagee has represented, expressly or otherwise, that Mortgagee, in the event of litigation, would not seek to enforce the foregoing waiver, and (b) acknowledges that Mortgagee has been induced to make the Loan, by, among other things, the waiver, acknowledgments and certification contained in this subsection.

Section 11. State of New York Provisions.

11.1. Non-Residential Property. This Mortgage does not cover real property principally improved by one or more structures containing in the aggregate six (6) or less residential dwelling units having their own separate cooking facilities.

11.2. Trust Fund. Pursuant to Section 13 of the Lien Law of New York, Mortgagor shall receive the advances secured by this Mortgage 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 on the Mortgaged Property before using any part of the total of the same for any other purpose.

11.3. Liability. If Mortgagor consists of more than one person or entity, the obligations and liabilities of each such person or entity hereunder shall be joint and several.

11.4. Multiple Parcels. In addition to all other rights and remedies of Mortgagee set forth herein, upon the occurrence of an Event of Default, Mortgagee may institute a non-judicial foreclosure proceeding in compliance with applicable law in effect on the date foreclosure is commenced (including, without limitation, non-judicial foreclosure proceedings pursuant to New York Real Property Actions and Proceedings § 1401 et seq.) for Mortgagee to sell the Premises either as a whole or in separate parcels as Mortgagee may determine at public sale or sales to the highest bidder for cash, in order to pay the Indebtedness. If the Premises is sold as separate parcels, Mortgagee may direct the order in which the parcels are sold. Mortgagee shall deliver to the purchaser a Mortgagee's deed or deeds without covenant or warranty, express or implied. Mortgagee may postpone the sale of all or any portion of the Premises by public announcement at the time and place of sale, and from time to time may further postpone the sale by public announcement in accordance with applicable law.

11.5. Maximum Amount Secured. Notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is (i) the principal sum of NINE MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (US\$9,800,000.00) plus interest and late charges thereon (at such rates as provided for in the Note or herein, as applicable), plus (ii) amounts expended by Mortgagee to maintain the lien of this Mortgage or to protect the property secured by this Mortgage, including, without limitation, amounts in respect of insurance premiums, real estate taxes, litigation expenses to prosecute or defend the rights, remedies and lien of this Mortgage or title to the Mortgaged Property secured hereby, and any costs, charges or amounts to which Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority, together with interest on all the foregoing amounts at such rates as provided for in the Note or herein, as applicable.

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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed, under seal, hereunto duly authorized, as of the date first above written.

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ACADIA TARRYTOWN LLC,
formerly known as
Acadia-Noddle Tarrytown Development Co., LLC,
a New York limited liability company.

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By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

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State of New York)

: ss:

County of Westchester)

On this 25th day of October, 2007, before me, the undersigned notary public, personally appeared Robert Masters, proved to me through satisfactory evidence of identification, which were
_____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

/s/ Debra Liebler-Jones
(official signature and seal of notary)

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EXHIBIT A

Legal Description

ALL that certain plot, piece or parcel of land, situate, lying and being in the village of Tarrytown, Town of Greenburgh, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at the point on the easterly side of Cortlandt Street where the same is intersected by the northerly line of the land now or formerly of the Village of Tarrytown;

RUNNING THENCE along the easterly side of Cortlandt Street, the following courses and distances and curves:

- North 01 degrees 42 minutes 20 seconds east, 28.84 feet to a point of curve;
- Along a curve to the right having a radius of 416.00 feet, a distance of 97.40 feet to a point of tangency;
- North 15 degrees 07 minutes 15 seconds east, 113.66 feet;

THENCE the following courses and distances:

- South 69 degrees 50 minutes 53 seconds east, 77.53 feet;
- North 20 degrees 09 minutes 07 seconds east, 167.00 feet;
- South 69 degrees 50 minutes 53 seconds east, 16.58 feet, and
- North 20 degrees 09 minutes 07 seconds east, 110.00 feet to the southerly side of Wildev Street;

THENCE along the southerly side of Wildev Street, south 69 degrees 50 minutes 53 seconds east, 98.32 feet to a point of curve;

THENCE along a curve to the right having a radius of 95.00 feet, a distance of 77.83 feet to the southwesterly side of Central Avenue;

THENCE along the southwesterly side of Central Avenue, south 22 degrees 54 minutes 22 seconds east, 112.04 feet to a point of curve and along a curve to the left having a radius of 334.00 feet, a distance of 117.33 feet to a point of reverse curve;

THENCE along a curve to the right having a radius of 44.00 feet, a distance of 42.89 feet to a point on the westerly side of Cottage Place;

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- THENCE along the westerly side of Cottage Place, south 12 degrees 49 minutes 20 seconds west, 13.56 feet to the northerly line of land now or formerly of Moten

- THENCE along the said northerly line of land now or formerly of Moten, north 73 degrees 35 minutes 40 seconds west, 27.64 feet and north 59 degrees 41 minutes, 10 degrees west, 51.46 feet to the westerly line of said land now or formerly of Moten;

- THENCE in part along the westerly line of land now or formerly of Moten and in part along the westerly line of land now or formerly of Monti, south 33 degrees 15 minutes 24 seconds west, 84.29 feet to a point;

- THENCE CONTINUING in part along the westerly line of land now or formerly of Monti and in part along the westerly line of land now or formerly of Alpine, South 08 degrees 21 minutes 21 seconds west, 108.91 feet to the northerly line of land now or formerly of Asbury Terrace;

- THENCE in part along the northerly line of land now or formerly of Asbury Terrace and in part along the northerly line of land now or formerly of the Village of Tarrytown, north 86 degrees 25 minutes 00 seconds west, 358.16 feet to the easterly side of Cortlandt Street and the point or place of BEGINNING;

- TOGETHER with the benefits of the easements set forth, defined, and limited in Deed dated September 2, 1976, and recorded on September 3, 1976, in Liber 7349 page 570, as modified by (i) agreement dated as of July 15, 1980, and recorded on September 8, 1980, in Liber 7651, page 385, (ii) Amendment of Certain Covenants and Conditions dated as of July 15, 1980, and recorded on May 19, 1981, in Liber 7699, page 690, and (iii) Second Amendment of Certain Covenants and Conditions dated as of May 20, 1983, and recorded on December 5, 1983, in Liber 7883, page 274,

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EXHIBIT B

Permitted Encumbrances

SCHEDULE B

PART I

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

1. Survey exceptions set forth in the Survey Reading herein.

2. Covenants, Conditions, Easements, Leases, Agreements of record, as follows:

a. Covenants, conditions, agreements and restrictions set forth in boundary line agreement dated June 20, 1850, and recorded on June 21, 1850, in Liber 150, page 96, and also in agreement dated June 20, 1850, and recorded on July 27, 1860, in Liber 426, page 347 (affects Lots 1, 2 and 3 on filed Map Volume 32, page 46).

Policy insures that there is no condition or right of re-entry or any other provision for forfeiture or reversion of title set forth therein by which the insured mortgage could be cut-off, subordinated or foreclosed, and no covenants, restrictions or conditions set forth therein under which the lien or priority of the insured mortgage could be impaired or extinguished.

b. Covenants, restrictions, conditions and right of reverter set forth in Deed dated October 30, 1975, and recorded on in Liber 7295, page 427, which right of reverter and some of the aforesaid covenants have been terminated by Certificates of Completion recorded in Liber 7349, page 765, Liber 7588, page 568, and Liber 8032, page 248.

Policy insures that there is no condition or right of re-entry or any other provision for forfeiture or reversion of title set forth therein by which the insured mortgage could be cut-off, subordinated or foreclosed, and no covenants, restrictions or conditions set forth therein under which the lien or priority of the insured mortgage could be impaired or extinguished.

c. Covenants, easements, obligations and agreements set forth in Deed dated September 2, 1976, and recorded on September 3, 1976 in Liber 7349, page 570, as modified by (i) agreement dated as of July 15, 1980, and recorded on September 8, 1980, in Liber 7651, page 385, (ii) Amendment of Certain Covenants and Conditions dated as of July 15, 1980, and recorded on May 19, 1981, in Liber 7699, page 690, and (iii) Second Amendment of Certain Covenants and Conditions dated as of May 20, 1983, and recorded on December 5, 1983, in Liber 7883, page 274.

With respect to the vehicular and pedestrian ingress/egress easement set forth, defined and limited in the aforesaid Deed, as amended by the aforesaid instruments, in favor of the premises adjoining the described premises on the west, Policy insures that exercise of the easement will not materially interfere with the use and occupancy of the buildings located on the described premises herein that are depicted on the Survey referenced in the Survey Reading herein.

SCHEDULE B

PART I

(Continued)

3. Pending disbursement of the full proceeds of the loan secured by the mortgage described herein, this Policy insures only to the extent of the amount actually disbursed plus interest accrued thereon but increases as disbursements are made in good faith and without knowledge of any defects in, or objections to, the title, up to the face amount of the policy. Title shall be continued down to the date of each disbursement and the Company shall furnish to the mortgagee a continuation report stating whether, since the date hereof or since the date of the last preceding continuation report, any liens or encumbrances have been recorded, whether any taxes, assessments or other charges of whatever nature which have become due and payable have been paid and whether any mechanics' liens or materialmen's liens have been filed. The first five continuations are free; each continuation thereafter carries a surcharge of \$200.00.

END OF SCHEDULE B - PART I

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EXHIBIT C


The term "Notes" shall mean all of the notes secured by the mortgages set forth below and "Mortgages" shall mean, collectively:

1. Mortgage made by RMC Development Company, LLC in favor of Emigrant Savings Bank in the principal amount of \$2,000,000.00, dated as of September 9, 1999 and recorded April 25, 2000 in the Office of the County Clerk, Westchester County, (the "Register's Office") under Control Number 400410557, as assigned by Assignment of Mortgage made by Emigrant Savings Bank to Acadia Realty Limited Partnership, dated May 13, 2004 and recorded April 8, 2005 in the Register's Office under Control Number 450620831, and as further assigned by an Assignment of Mortgage made by Acadia Realty Limited Partnership to Mortgagee, dated as of October 30, 2007 and intended to be recorded in the Register's Office simultaneously herewith.
 2. Mortgage, dated the date hereof, in the principal amount of \$7,940,521.39, executed by Mortgagor in favor of Mortgagee and intended to be recorded in the Register's Office simultaneously herewith.
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MORTGAGEE:

LENDER:

ANGLO IRISH BANK CORPORATION PLC

By: 
Name: _____
Title: 

Paul Stephens - Associate Director

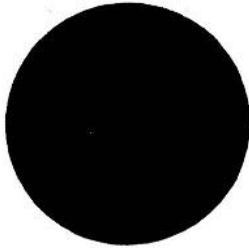
Pat Walsh - Director

STATE OF _____)

COUNTY OF Dublin, Ireland)

SS:

On the 18th day of September, in the year 2007, before me, the undersigned, personally appeared Paul Stephens + Pat Walsh, 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, and that by his/her/their signature(s) on the instrument, the individual(s) or the person(s) upon behalf of which the individual(s) acted, executed the instrument.



John O'Connor

NOTARY PUBLIC

[Seal]

JOHN O'CONNOR
168 PEMBROKE ROAD.
BALLSBRIDGE, DUBLIN 4.
Notary Public for the County & City of Dublin
Ireland
Commissioned for Life

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country Ireland
This public document
2. has been signed by John O'Connor
3. acting in the capacity of Notary Public
4. bears the seal/stamp of.....

Certified

5. at Dublin..... 6. the 20/09/07
7. by the Department of Foreign Affairs
8. No. 5781/07

9. Seal/Stamp:  10. Signature: John Glenn

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PROJECT LOAN AGREEMENT

Dated as of December 10, 2007

Between

P/A-ACADIA PELHAM MANOR, LLC.

as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,

as Lender

MERS MIN: 8000101-0000007140-6

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PROJECT LOAN AGREEMENT

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THIS PROJECT LOAN AGREEMENT, dated as of December 10, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement" or sometimes, this "Project Loan Agreement"), is made by and between BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 ("Lender") and P/A-ACADIA PELHAM MANOR, LLC, a Delaware limited liability company, having its principal place of business c/o Acadia Realty Trust, 1311 Mamaroneck Avenue - Suite 260, White Plains, New York 10605 ("Borrower").

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WITNESSETH:

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WHEREAS, Borrower desires to obtain the Project Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Project Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I.

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 **Definitions.**

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent, all capitalized terms used herein but not otherwise defined shall have their respective meanings set forth in the Building Loan Agreement and:

"Advance" or "Advances" shall mean any disbursement of the proceeds of the Project Loan by Lender pursuant to the terms of this Agreement.

"Agreement" shall mean this Project Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Borrower" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

"Building Loan" shall mean the loan made by Lender to Borrower pursuant to the Building Loan Agreement in the principal amount of up to the Building Loan Amount.

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- “Building Loan Agreement” shall mean that certain Building Loan Agreement dated as of the date hereof between Borrower and Lender as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Building Loan Amount” shall have the meaning set forth in the Building Loan Agreement.

- “Building Loan Assignment of Leases” shall have the meaning set forth in the Building Loan Agreement.

- “Building Loan Documents” shall have the meaning set forth in the Building Loan Agreement.

- “Building Loan Earn Out Advance” shall have the meaning set forth in Section 2.12.2 hereof.

- “Building Loan Mortgage” shall have the meaning set forth in the Building Loan Agreement.

- “Building Loan Note” shall have the meaning set forth in the Building Loan Agreement.

- “Contingency Excess” shall have the meaning set forth in Section 2.1.7(b) hereof.

- “Debt” shall mean the outstanding principal amount of the Project Loan set forth in, and evidenced by, this Agreement, the Project Loan Note and the other Project Loan Documents, together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Project Loan under the Project Loan Note, this Agreement, the Project Loan Mortgage or any other Project Loan Document.

- “Debt Service” shall mean, with respect to any particular period of time, the aggregate scheduled principal and interest payments due under this Agreement and the Project Loan Note.

- “Defeasance Date” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

- “Defeasance Event” shall have the meaning set forth in Section 2.5.1(a) hereof.

- “Earn Out Advances” shall have the meaning set forth in Section 2.12.2 hereof.

- “Event of Default” shall have the meaning set forth in Section 8.1(a) hereof.

- “Final Advance” shall have the meaning set forth in Section 2.12.1 hereof.

- “Final Building Loan Advance” shall mean the Final Advance as defined in Section 2.12.1 of the Building Loan Agreement.

- “Home Depot” shall have the meaning set forth in Section 2.11.15 hereof.

- "Home Depot Estoppel Certificate" shall have the meaning set forth in Section 2.10.8 hereof.

- "Home Depot Lease" shall have the meaning set forth in Section 2.11.15 hereof.

- "Indemnified Liabilities" shall have the meaning set forth in Section 10.13(a) hereof.

- "Initial Advance" shall have the meaning set forth in Section 2.10 hereof.

- "Initial Advance Conditions" shall have the meaning set forth in Section 2.10 hereof.

- "Interest Period" shall mean: (a) the period commencing on the Closing Date and ending on the last day of the month in which the Closing Date occurs, both dates inclusive; and (b) the period commencing on and including the first day of each calendar month thereafter during the term of Loan and ending and including the last day of such calendar month.

- "Interest Rate" shall mean seven and one hundred eighty-two one thousandths percent (7.182%), provided, however, in the event that (a) on or before June 1, 2009, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.00, and Borrower delivers to Lender a MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan, Lender shall, upon Borrower's written request, reduce the Interest Rate to a per annum rate equal to five and ninety-three one hundredth percent (5.93%), commencing on the first Payment Date after Borrower's request, and (b) on or before June 1, 2010, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.00, and Borrower delivers to Lender a MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan, Lender shall, upon Borrower's written request, reduce the Interest Rate to a per annum rate equal to five and ninety-eight one hundredth percent (5.98%), commencing on the first Payment Date after Borrower's request. Any reduction in the Interest Rate as set forth above shall be effective commencing on the first Payment Date after Borrower's request for such reduction and satisfaction of the conditions set forth above and no reduction in the Interest Rate shall be retroactive. In the event that Borrower fails to satisfy the conditions for a reduction of the Interest Rate within the time periods set forth above, time being of the essence, Borrower shall have no further right to obtain a reduction in the Interest Rate. **Notwithstanding anything to the contrary contained herein, Lender shall have the right, in its sole discretion, at any time prior to a Securitization of the Loan, to increase the Interest Rate by up to two-tenths of one percent (0.20%).**

- “Interest Reserve Line Item” shall mean the interest reserve Line Item of the Project Loan Budget.

- “Lender” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

- “Loan” shall mean collectively, the Building Loan and the Project Loan.

- “Loan Agreement” shall mean collectively, this Project Loan Agreement and the Building Loan Agreement.

- “Loan Documents” shall mean collectively, the Building Loan Documents and the Project Loan Documents, the Environmental Indemnity, the Guaranty of Completion, the Guaranty of Recourse Carveouts, the Cash Management Agreement, the Clearing Account Agreement, the Collateral Assignment of Condominium Documents, the Assignment of Contracts, the Administration Fee Agreement, the Rate Lock Agreement and all other documents executed and/or delivered in connection with the Loan.

- “Maturity Date” shall mean January 1, 2020 or such earlier date on which the final payment of principal of the Project Loan Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

- “Monthly Debt Service Payment Amount” shall mean (a) an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with Section 2.2 hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in January, 2013, and (b) a constant monthly payment of \$85,625.17 commencing with the Payment Date occurring in February, 2013 and on each Payment Date thereafter, provided, however, that in the event that the Interest Rate is modified in accordance with the provisions of the definition of “Interest Rate,” the Monthly Debt Service Payment Amount shall be adjusted by Lender based upon the modified Interest Rate and a thirty (30) year amortization schedule, Lender’s determination of the Monthly Debt Service Payment Amount being binding absent manifest error.

- “MERS” shall have the meaning set forth in Section 10.25 hereof.

- “Open Period Date” shall have the meaning set forth in Section 2.4.1 hereof.

- “Other Debt” shall mean the “Debt” as defined in both the Building Loan Agreement and the Mezzanine Loan Documents, if applicable.

- “Other Obligations” shall have the meaning as set forth in the Mortgage.

- “Payment Date” shall mean February 1, 2008, and the 1st day of every month thereafter during the term of the Loan until and including the Maturity Date or, if such day is not a Business Day, the immediately preceding Business Day.

- "Prepayment Date" shall have the meaning set forth in Section 2.4.4 hereof.

- "Project Loan" shall mean the loan being made by Lender to Borrower pursuant to this Project Loan Agreement in the principal amount of up to the Project Loan Amount.

- "Project Loan Amount" shall mean Twelve Million Six Hundred Thirty-Seven Thousand Ninety-Three and 40/100 Dollars (\$12,637,093.40).

- "Project Loan Assignment of Leases" shall mean that certain Project Loan Assignment of Leases and Rents, dated the date hereof, from Borrower, as assignor, to Lender, as assignee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- "Project Loan Documents" shall mean, collectively, this Agreement, the Project Loan Note, the Project Loan Mortgage, the Project Loan Assignment of Lease as well as all other documents not or hereafter executed and/or delivered with respect to the Project Loan.

- "Project Loan Earn Out Advance" shall have the meaning set forth in Section 2.12.2 hereof.

- "Project Loan Mortgage" shall mean that certain Project Loan Fee and Leasehold Mortgage and Security Agreement dated the date hereof, executed and delivered by Borrower to Lender as security for the Project Loan and encumbering the Property, as the same may be amended, restated, supplemented or otherwise modified from time to time.

- "Project Loan Note" shall mean that certain Project Loan Promissory Note, dated the date hereof, in the principal amount of up to the Project Loan Amount made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- "Required Equity Funds" shall have the meaning set forth in Section 2.11.13.

- "Retaining Wall Letter" shall have the meaning set forth in Section 2.10.10 hereof.

- "Scheduled Defeasance Payments" shall have the meaning set forth in Section 2.5.1(b) hereof.

- "Security Agreement" shall have the meaning set forth in Section 2.5.1(a)(v) hereof.

- "Severed Loan Documents" shall have the meaning set forth in Section 8.2(c), hereof.

- "Shortfall" shall have the meaning set forth in Section 2.1.10 hereof.

- "Successor Borrower" shall have the meaning set forth in Section 2.5.3 hereof.

- Section 1.2 Principles of Construction.

- (a) All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. Any reference in this Agreement or in any other Loan Document to any Loan Document shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, replaced and/or restated from time to time (and, in the case of any note or other instrument, to any instrument issued in substitution therefor). Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

- (b) With respect to any cross-reference to the Building Loan Documents or the Project Loan Documents or any combination thereof, as the case may be, for terms defined therein or provisions set forth therein or Schedules or Exhibits thereto, such cross-references shall be to referenced defined terms or provisions or Schedules or Exhibits, as the case may be, as the same are set forth in the Building Loan Documents or the Project Loan Documents or any combination thereof, as the case may be, as of the date hereof, and as the same may be amended, modified, supplemented, extended, replaced or restated or any combination thereof from time to time, and shall survive the repayment or satisfaction of the Building Loan or the Project Loan as the case may be, or the termination of the Building Loan Agreement or this Agreement or any combination thereof, as the case may be, for so long as the Project Loan remains outstanding.

- **ARTICLE II.**

- **GENERAL TERMS**

- Section 2.1 Loan Commitment; Disbursement to Borrower.

- 2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept Advances in respect of the Project Loan as more particularly set forth in Section 2.10.

- 2.1.2 No Reborrowings. Any amount borrowed and repaid hereunder in respect of the Building Loan may not be reborrowed.

- 2.1.3 The Note, Mortgage and Loan Documents. The Project Loan shall be evidenced by the Project Loan Note and secured by the Project Loan Mortgage, the Project Loan Assignment of Leases and the other Project Loan Documents.

- 2.1.4 Use of Proceeds. Borrower hereby agrees that Borrower shall use the proceeds of the Project Loan to pay or reimburse itself for Project-Loan Costs actually incurred in connection with the construction of the Project Improvements if and to the extent that such Project-Loan Costs are reflected in the Project Loan Budget, subject to reallocation pursuant to Sections 2.1.6 and 2.1.7 hereof, and 5.1.33 of the Building Loan Agreement (or other reallocations approved by Lender in its sole discretion).

- 2.1.5 Advances. The Project Loan Budget shall reflect, by category and line item, the purposes and amounts for which funds to be advanced by Lender under this Agreement are to be used. Lender shall not be required to Advance funds hereunder for any category or line item of Project Loan Costs in excess of the amount specified for such line item or category in the Project Loan Budget, subject to Sections 2.1.6 and 2.1.7 hereof and 5.1.33 of the Building Loan Agreement (or other reallocations approved by Lender in its sole discretion). No Advances shall be made to pay for Affiliate Fees.

- 2.1.6 Cost Overruns. If Borrower becomes aware of any change in actual or projected Project Loan Costs which will increase any one or more category or line item of costs reflected in the Project Loan Budget, Borrower shall immediately notify Lender in writing and promptly submit to Lender for its approval a revised Project Loan Budget. Any reallocation of any category or line items in the Project Loan Budget in connection with cost overruns shall be subject to Lender's approval in Lender's sole discretion except as set forth in Sections 2.1.7 hereof and 5.1.33 of the Building Loan Agreement, provided, however, under no circumstances shall Borrower be permitted, or Lender obligated to approve, the reallocation of line items from the Building Loan Budget to the Project Loan Budget. Lender shall have no obligation to make any further Advances unless and until the revised Project Loan Budget so submitted by Borrower is approved by Lender and Borrower has satisfied its obligations with respect to any resulting Shortfall under Section 2.1.10. Lender reserves the right to approve or disapprove any revised Project Loan Budget in its sole and absolute discretion (except with respect to reallocations in accordance with Sections 2.1.7 and 5.1.33).

- 2.1.7 Contingency Reserve.

- (a) Following the satisfaction of the Initial Advance Conditions, and subject to the prior approval of Lender in its sole discretion, Borrower may revise the Project Loan Budget to move amounts available under any Line Item that are designated to "Contingency" to other Line Items in the Project Loan Budget. In no event may the Contingency Line Item of the Building Loan Budget be reallocated to any Line Item in the Project Loan Budget. Provided no Event of Default exists and with Lender's consent (which shall not be unreasonably withheld), after Completion of the Improvements, Borrower may draw amounts available under the Contingency Line Item of the Project Loan Budget to fund Shortfalls in monthly interest due, which amounts shall be deposited in the Interest Reserve. Such drawing shall be in addition to any Interest Reserve Line Item advanced under the Project Loan pursuant to Section 2.14.10 hereof.

- (b) Following the occurrence of Final Completion, Lender shall reasonably cooperate with Borrower to amend the Project Loan Budget, Building Loan Budget, Project Loan Documents and Building Loan Documents such that: (x) the Building Loan Budget is amended to remove the amounts then available under the Building Loan Budget either in the contingency Line Item or as cost savings from other Line Items (the "Contingency Excess") and the Building Loan Amount is reduced by the Contingency Excess; and (y) the contingency line item of the Project Loan Budget and the Project Loan Amount are increased by the Contingency Excess. Borrower and Lender shall execute and deliver such documents, certificates and instruments as may be reasonably required to effect the above described re-allocation, including, without limitation, the filing of an amended Section 22 Affidavit and the modification of the Project Loan Documents and Building Loan Documents to reflect the respective changes in the Project Loan Amount and the Building Loan Amount and Borrower shall obtain such other evidence as Lender may reasonably request to confirm that none of the foregoing shall adversely impact the validity or priority of its security interests in the Property or otherwise adversely impact its rights and remedies under the Loan Documents including, without limitation, appropriate endorsements to the title insurance policy. Borrower shall pay any and all title insurance, recording and other charges and all reasonable costs and expenses (including legal fees) incurred by Lender in connection with the foregoing.

2.1.8 Intentionally Omitted.

2.1.9 Amount of Advances. In no event shall any Advance exceed the full amount of Project Loan Costs theretofore paid or to be paid with the proceeds of such Advance plus any Project Loan Costs incurred by Borrower through the date of the Draw Request for such Advance minus (i) the applicable Retainage for each Contract and Subcontract, and (ii) the aggregate amount of any Advances previously made by Lender. It is further understood that the Retainage described above is intended to provide a contingency fund protecting Lender against failure of Borrower or Guarantor to fulfill any obligations under the Loan Documents, and that Lender may charge amounts to pay for Project Loan Costs against such Retainage in the event Lender is required or elects to expend funds to cure any Default or Event of Default, in either instance, in accordance with the terms of this Agreement. No Advance of the Loan by Lender shall be deemed to be an approval or acceptance by the Lender of any work performed thereon or the materials furnished with respect thereto.

2.1.10 Loan-In-Balance. As used herein, a "Shortfall" shall mean, as to any Line Item in the Development Budget as of any date, the amount determined by Lender, in Lender's sole but reasonable judgment, by which (A) the cost of completing or satisfying such Line Item, exceeds (B) the remaining undisbursed portion of the Loan allocated to such Line Item in the Development Budget plus any sums deposited with Lender pursuant to this Section 2.1.10 to pay for such Line Item and not previously disbursed plus any Reserve Funds to the extent such Reserve Funds are available hereunder for the payment of such Line Item. From time to time and at any time during the Construction Period, Lender shall have the right, but not the obligation, to notify Borrower that it has determined a Shortfall exists as to any one or more Line Items. If Lender at any time shall so notify Borrower, Borrower shall, at its option within five (5) days of Lender's notification as aforesaid, either: (i) deposit with Lender an amount equal to such Shortfall, which Lender disburse to Borrower to the satisfaction of the costs of such Line Item prior to advancing any further Loan proceeds on account of such costs; (ii) post an irrevocable standby Letter of Credit in the amount of such Shortfall, in favor of Lender; (iii) to the extent permitted under Sections 2.1.7 hereof and 5.1.33 of the Building Loan Agreement, and following the satisfaction of the Initial Advance Conditions allocate the Contingency Reserve, with respect to the Line Item(s) in question, to the Shortfall, and provided, further that the amount of the remaining Contingency Reserve for such Line Item(s) (following the allocation to the Shortfall) is sufficient for such Line Item(s), as determined by Lender in its sole discretion; and (iv) to the extent permitted under Section 5.1.33 of the Building Loan Agreement, and then only following the satisfaction of the Initial Advance Conditions, reallocate cost savings from the Development Budget in respect of the Loan (or other reallocations which are approved by Lender, in its sole discretion) in accordance with the terms of this Agreement, but only to the extent such cost savings can be allocated to the related Line Items. Borrower hereby agrees that Lender shall have a lien on and security interest in, for the benefit of Lender, any sums deposited pursuant to clause (i) above and that Borrower shall have no right to withdraw any such sums except for the payment of the aforesaid costs as approved by Lender. Lender shall have no obligation to make any further Advances of proceeds of the Loan as to any Line Item until the sums required to be deposited pursuant to clause (i) above as to such Line Item have been exhausted, or until Borrower has posted an irrevocable standby Letter of Credit pursuant to clause (iii) above, as the case may be, and, in any such case, the Loan is back "in balance". Any such sums not used as provided in said clause (i) shall be released to Borrower when and to the extent that Lender reasonably determines that the amount thereof is more than the excess, if any, of the remaining Project-Related Costs over the undisbursed balance of the Loan, provided, however, that should an Event of Default occur, Lender, in its sole discretion, may apply such amounts either to the remaining Project-Related Costs or to the immediate reduction of outstanding principal and/or interest under the Note.

- 2.1.11 Quality of Work. No Advance or any portion thereof shall be made with respect to defective work or to any contractor that has performed work that is defective and that has not been cured, as confirmed by the report of the Construction Consultant, but Lender may disburse all or part of any Advance before the sum shall become due if Lender believes it advisable to do so, and all such Advances or parts thereof shall be deemed to have been made pursuant to this Agreement.

- 2.1.12 Required Equity Funds. All Required Equity Funds shall be contributed (i.e., expended by Borrower and invested by Borrower in the Property, for Project Related Costs set forth on the approved Development Budget) before the Closing Date.

- 2.1.13 Trust Fund. Pursuant to Section 13 of the New York Lien Law, Borrower shall receive the Advances hereunder and shall hold the right to receive the Advances as a trust fund to be applied first for the purpose of paying the Costs of the Improvements and shall apply the Advances first to the payment of the Cost of the Improvements on the Property before using any part of the total of the same for any other purpose.

- 2.1.14 Final Project Report and Development Budget. The provisions of Section 2.1.14 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein.

- 2.1.15 Miscellaneous.

- (a) The making of an Advance by Lender shall not constitute Lender's approval or acceptance of the construction theretofore completed. Lender's inspection and approval of the Plans and Specifications, the construction of the Project Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Lender, the sole obligation of Lender as the result of such inspection and approval being to make the Advances if and to the extent, required by this Agreement.

- (b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT LENDER TO MAKE ADVANCES OF THE LOAN IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. MOREOVER, ALL POTENTIAL LIENORS ARE REMINDED THAT SUBDIVISION (3) OF SECTION 13 OF THE NEW YORK LIEN LAW PROVIDES THAT "NOTHING IN THIS SUBDIVISION SHALL BE CONSIDERED AS IMPOSING UPON THE LENDER ANY OBLIGATION TO SEE THE PROPER APPLICATION OF SUCH ADVANCES BY THE OWNER," AND LENDER DOES NOT IMPOSE SUCH AN OBLIGATION ON ITSELF.

- Section 2.2 Interest Rate.

- 2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate calculated as set forth in Section 2.2.2 below.

- 2.2.2 Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance.

- 2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

- 2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under 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 Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

2.3.1 Monthly Debt Service Payments. Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from and including the Closing Date up to and including December 31, 2007, which interest shall be calculated in accordance with the provisions of Section 2.2 hereof, and (b) on each Payment Date commencing on the Payment Date occurring in February, 2008, and thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to interest due for the related Interest Period at the Interest Rate, for such related Interest Period and then to the principal amount of the Loan due in accordance with this Agreement, and lastly, to any other amounts due and unpaid pursuant to the Loan Documents hereto. Borrower and Lender acknowledge and agree that, on the 15th calendar day of the month preceding each Payment Date during the Construction Term: (a) if and to the extent undrawn funds remain available for Advance under the Project Loan from the Interest Reserve Line Item of the Project Loan Budget, and provided that no Event of Default or monetary Default then exists under any of the Loan Documents or would occur as a result of such Advance, the Monthly Debt Service Amount then due and owing shall be advanced by Lender by a Advance under Interest Reserve Line Item of the Project Loan Budget; and (b) if no amount remains available under the Interest Reserve Line Item but and to the extent Interest Reserve Funds are on deposit in the Interest Reserve Account, and no Event of Default or monetary Default then exists under any of the Loan Documents, the Monthly Debt Service Payment Amount then due and payable shall be paid by application of funds from the Interest Reserve Account. Borrower and Lender acknowledge and agree that Lender may automatically make an Advance or apply Interest Reserve Funds on deposit in the Interest Reserve Account on each Payment Date occurring during the Construction Term, in either instance, in accordance with this Section 2.3.1, without the need for Borrower to submit a Draw Request or otherwise request such an Advance or application.

2.3.2 Payments Generally. The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include December 31, 2007. Thereafter each Interest Period shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided in this **Section 2.4.1** and **Section 2.4.2**, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. 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. Notwithstanding anything to the contrary contained herein, commencing after the Payment Date three (3) months prior to the Maturity Date (the "Open Period Date"), or on any Payment Date thereafter (or on any date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole, but not in part, without payment of the Yield Maintenance Premium.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to **Section 6.4** of the Building Loan Agreement, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest through the end of the related Interest Period and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; provided, however, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this **Section 2.4.2**.

2.4.3 Prepayments After Default. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in **Section 2.4.1** hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a "**Prepayment Date**"), provided no Event of Default exists and upon payment of an amount equal to the Yield Maintenance Premium. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. 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.

2.4.5 Application of Prepayments to Components. Any prepayment of the principal of the Loan, in whole or in part, voluntary or involuntary, shall be applied (a) first, to the reduction of the outstanding principal balance of the Project Loan until reduced to zero, and (b) second, to the reduction of the outstanding principal balance of the Building Loan until reduced to zero. Subsequent to any Event of Default, any payment of principal from whatever source may be applied by Lender between the various components of the Loan in Lender's sole discretion.

Section 2.5 Defeasance.

2.5.1 Voluntary Defeasance

(a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntary prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a "**Defeasance Event**):

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the "**Defeasance Date**") on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the Payment Date immediately preceding the next Payment Date, provided, however, if the Defeasance Deposit shall include short-term interest computed from the date of such prepayment through to the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

- (iv) _____ Borrower shall use the Defeasance Deposit to purchase U.S. Obligations in accordance with Section 2.5.1(b) below;
- (v) _____ Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this Section 2.5 (the "**Security Agreement**");
- (vi) _____ Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of such Defeasance Event;
- (vii) _____ Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;
- (viii) _____ Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.5.1(a) have been satisfied;
- (ix) _____ Borrower shall deliver a certificate of Borrower's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;
- (x) _____ Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and
- (xi) _____ Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in Section 2.6 hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Open Period Date (the "Scheduled Defeasance Payments"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Clearing Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this Section 2.5 and satisfy Borrower's other obligations under this Section 2.5 and Section 2.6 shall be remitted to Borrower.

2.5.2 *Collateral.* Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 *Successor Borrower.* In connection with any Defeasance Event, Borrower shall establish a successor entity (the "Successor Borrower"), which shall be a Special Purpose Entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Section 2.5.3, but Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 *Release of Property.* Except as set forth in this Section 2.6, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 Release of Property.

(a) If Borrower has elected to defease the Loan and the requirements of Section 2.5 and this Section 2.6 have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

2.6.2 Release on Payment in Full. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

Section 2.7 Clearing Account/Cash Management. The provisions of Section 2.7 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein

Section 2.8 Intentionally Omitted.

Section 2.9 Payments Not Conditional. All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

Section 2.10 Initial AdvanceThe obligation of Lender to make the initial Advance of the Project Loan (the "Initial Advance") shall be subject to the following conditions precedent (collectively, the "Initial Advance Conditions") on or prior to the Required Initial Advance Date, all of which conditions precedent must be satisfied prior to Lender making any such Initial Advance:

2.10.1 Prior Conditions Satisfied. All conditions precedent to closing shall continue to be satisfied as of the date of the Initial Advance (in the same manner in which they were satisfied for the closing without reimposing any one-time condition).

2.10.2 Performance; No Default. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Initial Advance, and on the date of such Initial Advance there shall exist no Default or Event of Default.

- 2.10.3 Representations and Warranties. The representations and warranties made by Borrower or Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of the Initial Advance.

- 2.10.4 No Damage. The Project Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall be satisfied that sufficient insurance proceeds will be available in the reasonable judgment of Lender to effect the satisfactory restoration of the Project Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

- 2.10.5 Deliveries. Lender shall have received:

- (a) Draw Request. A Draw Request complying with the requirements hereof;

- (b) Intentionally Omitted;

- (c) Title Insurance Policy. A Title Insurance Policy for the full amount of the Loan, which includes a pending disbursement clause to increase the coverage of the Title Insurance Policy by the amount of the any Advance, insuring the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances;

- (d) Lien Waivers. Duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form set forth in **Exhibit J** to the Building Loan Agreement from the General Contractor and all Contractors and Subcontractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials, for the labor and/or materials so supplied, except for such work or labor and/or materials for which payment thereof is requested, as to which duly executed lien waivers shall be delivered to Lender with the next request for an Advance;

- (e) Ratios. Evidence satisfactory to Lender that following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 80%.

- (f) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents;

- (g) Anticipated Costs Report. An Anticipated Costs Report; and

- (h) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

- 2.10.6 Initial Building Loan Advance. All conditions to the initial advance of the Building Loan set forth in Section 2.10 of the Building Loan Agreement shall have been satisfied.

- 2.10.7 Rate Lock Agreement. Simultaneously with the Initial Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Initial Advance bears to the Total Loan Amount.

- 2.10.8 Home Depot Estoppel Certificate. Borrower shall have delivered to Lender estoppel certificates from Home Depot certifying to Lender that the Home Depot Lease is in full force and effect and that there are no defaults by Borrower or Home Depot thereunder, and otherwise in form and substance satisfactory to Lender in Lender's sole discretion (the "**Home Depot Estoppel Certificate**").

- 2.10.9 Initial Reserve Deposits Borrower shall have deposited the Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit with Lender. The Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit shall be funded on the date of the Initial Advance with a portion of the Initial Advance under the Project Loan.

- 2.10.10 Retaining Wall Letter. Borrower shall have delivered to Lender a letter from the Village of Pelham Manor evidencing resolution of the retaining wall issue in form and substance satisfactory to Lender in Lender's sole discretion (the "**Retaining Wall Letter**").

- 2.10.11 Satisfaction of Initial Advance Conditions. Borrower covenants and agrees that, prior to the Required Initial Advance Date, time being of the essence, it shall cause all of the Initial Advance Conditions to be satisfied. Borrower shall not perform any work at the Property, including, without limitation, any demolition of the existing improvements, until all of the Initial Advance Conditions have been satisfied. Borrower's failure to satisfy, or cause the satisfaction of, any of the Initial Advance Conditions on or prior to the Required Initial Advance Date shall, at Lender's election, constitute an Event of Default. In addition to any and all other remedies that may be available to Lender hereunder, under the other Loan Documents, at law or in equity, upon the occurrence of an Event of Default resulting from the failure of any Initial Advance Condition to have been satisfied, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, with full power of substitution to complete or undertake such steps as may be necessary, in Lender's sole determination, to satisfy the Initial Advance Condition in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (ii) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Initial Advance Conditions, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the Project; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement and the other Loan Documents. In addition, upon such Event of Default, Lender shall have the right to unwind any interest rate hedge entered into by Lender and apply any deposits or other amounts held by Lender pursuant to the Rate Lock Agreement to costs and expenses incurred by Lender under this Agreement, the Rate Lock Agreement or any of the other Loan Documents.

Section 2.11 **Project Loan Advances.** The obligation of Lender to make the Advances of the Project Loan after the Initial Advance shall be subject to the following conditions precedent, all of which conditions precedent must be satisfied prior to Lender making any such Advance:

2.11.1 **Prior Conditions Satisfied.** All conditions precedent to any prior Advance (in the same manner in which they were satisfied for the Initial Advance or prior Advance, as applicable, and without reimposing any one-time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

2.11.2 **Performance; No Default.** Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Advance, and on the date of such Advance there shall exist no Default or Event of Default or Shortfall.

2.11.3 **Representations and Warranties.** The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of such Advance.

2.11.4 **No Damage**

The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall have received insurance proceeds sufficient in the reasonable judgment of Lender to effect the satisfactory restoration of the Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.11.5 **Deliveries.** The following items or documents shall have been delivered to Lender:

(a) **Anticipated Costs Report.** An Anticipated Costs Report in the form set forth in **Exhibit I** to the Building Loan Agreement executed by the General Contractor which sets forth the anticipated costs to complete construction of the Project Improvements, after giving effect to costs incurred during the previous month and any anticipated change orders;

(b) **Endorsement to Title Insurance Policy.** A "datedown" endorsement to Lender's title insurance policy as described in the form set forth in **Exhibit C** to the Building Loan Agreement which continuation or endorsement shall increase the coverage of the Title Insurance Policy by the amount of the Advance through the pending disbursement clause (but not the overall policy amount which shall be for the full amount of the Loan), amend the effective date of the Title Insurance Policy to the date of such Advance, continue to insure the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances and which shall state that since the last disbursement of the Loan there have been no changes in the state of title to the Property (other than Permitted Encumbrances) and that there are no additional survey exceptions not previously approved by Lender;

(c) **Evidence of Sufficiency of Funds.** Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents.

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(d) Draw Request. A Draw Request complying with the provisions of this Agreement which shall constitute Borrower's representation and warranty to Lender that: (a) any completed construction is substantially in accordance with the Plans and Specifications, (b) all costs for the payment of which Lender have previously advanced funds have in fact been paid, (c) all the representations and warranties contained in Article IV of this Agreement continue to be true and correct in all material respects, (d) no Event of Default shall have occurred and be continuing hereunder, and (e) Borrower continues to be in compliance in all respects with all of the other terms, covenants and conditions contained in this Agreement.

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(e) Affirmation of Payment. General Contractor's Affirmation of Payment (AIA Form G706) in the form attached as **Exhibit E** to the Building Loan Agreement.

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(f) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

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2.11.6 Construction Consultant Certificate. Each draw request relating to Hard Costs shall be accompanied by a certificate or report of the Construction Consultant to Lender based upon a site observation of the Property made by the Construction Consultant not more than thirty (30) days prior to the date of such draw, in which the Construction Consultant shall in substance: (i) verify that the portion of the Project Improvements completed as of the date of such site observation has been completed substantially in accordance with the Plans and Specifications; and (ii) state its estimate of (1) the percentages of the construction of the Project Improvements completed as of the date of such site observation on the basis of work in place as part of the Project Improvements and the Building Loan Budget, (2) the Hard Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (3) the sum necessary to complete construction of the Project Improvements in accordance with the Plans and Specifications, and (4) the amount of time from the date of such inspection that will be required to achieve Completion of the Improvements.

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2.11.7 Intentionally Omitted.

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2.11.8 Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgement or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of per sonalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

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2.11.9 Lien Waivers. Borrower shall have delivered duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as applicable, and otherwise substantially in the form set forth as **Exhibit J** to the Building Loan Agreement, from the General Contractor, all Major Contractors and Major Subcontractors for all work performed, and all labor or material supplied for which payment thereof has been made prior to the date of the Advance.

2.11.10 Construction Consultant Approval. Lender has received advice from the Construction Consultant, satisfactory to Lender, as to Construction Consultant's determination, acting seasonably, based on on-site inspections of the Improvements and the data submitted to and reviewed by it as part of Borrower's Requisition of the value of the labor and materials in place, that the construction of the Project Improvements is proceeding satisfactorily and according to schedule and that the work on account of which the Advance is sought has been completed in a good and workmanlike manner to such Construction Consultant's satisfaction and substantially in accordance with the Plans and Specifications.

2.11.11 Ratios. Following such Advance (and any Building Loan Advance being made on such date), the Loan-to-Cost Ratio shall be no greater than 80%.

2.11.12 Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

2.11.13 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of each Advance, Borrower has invested Cash equity in an amount equal to or greater than (a) \$8,916,000 or (b) 20% of the Total Project Costs or (c) the difference between the Development Budget and the maximum Loan amount of \$35,664,000 for approved Project-Related Costs (the "Required Equity Funds"). Notwithstanding the foregoing, if the Borrower realizes cost savings from the development of the Project, either in the form of Hard Costs or Soft Costs, Advances may be advanced to Borrower provided that (i) the Borrower would not have less than \$8,916,000 of cash equity in the Project through such Advance and (ii) the Debt Service Coverage Ratio shall be equal to or greater than 1.15 to 1.0 assuming a fully advanced Loan using a debt service constant of 7.31%, and (iii) the loan-to-value ratio for the Property is greater than 80% assuming a fully advanced Loan. If Borrower is in non-compliance solely with respect to condition (i) above, at Borrower's option, either (A) any excess cost savings (funds in excess of the amount so that the Required Equity Funds shall continue to be satisfied) shall be deposited as follows: (1) 100% into the Replacement Reserve Account until the amount on deposit in such account equals the Replacement Reserve Cap, and then (2) 100% of any excess into the Rollover Reserve Account until the amount on deposit in such account equals the Rollover Reserve Cap, and then (3) 100% of any excess into any other Reserves required by Lender pursuant to this Agreement, or (B) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement. If Borrower is in compliance with respect to condition (i) above but is not in compliance with conditions (ii) and (iii) above, any excess cost savings shall, at Borrower's option, (A) be held back by Lender as additional collateral for the Loan until satisfaction of each of the requirements are satisfied, or (B) be deposited as follows: (1) 100% into the Replacement Reserve Account until the amount on deposit in such account equals the Replacement Reserve Cap, and then (2) 100% of any excess into the Rollover Reserve Account until the amount on deposit in such account equals the Rollover Reserve Cap, and then (3) 100% of any excess into any other Reserves required by Lender pursuant to this Agreement, or (C) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement.

2.11.14 Rate Lock Agreement. Simultaneously with each Construction Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Construction Advance bears to the Total Loan Amount, provided, however, that in the event that any of the conditions of Section 2.11.13 are not satisfied, Lender shall have the right to apply the portion of the deposit under the Rate Lock Agreement to be returned to Borrower to satisfy the conditions of Section 2.11.13.

2.11.15 Home Depot Contribution. In the event that Borrower receives any portion of the Tenant Contribution (as defined in the Home Depot Lease) payable to Borrower pursuant to that certain Sublease dated as of December 21, 2006 (the "**Home Depot Lease**"), with Home Depot U.S.A., Inc. ("**Home Depot**") or the proceeds of any letter of credit delivered by Home Depot pursuant to the Home Depot Lease as security for Home Depot's obligation to pay the Tenant Contribution, Borrower shall apply such Tenant Contribution or the proceeds of such letter of credit, as applicable, to the payment of Project Related Costs and shall provide Lender with evidence that such Tenant Contribution or proceeds, as applicable, have been applied to the payment of Project Related Costs prior to Lender making any further Advances under this Agreement.

Section 2.12 Final Advance.

2.12.1 Conditions to Release of Final Advance. In addition to the conditions set forth in Section 2.10 and Section 2.11, above, Lender's obligation to make the final Advance in the amount calculated pursuant to Section 2.12.2 of this Agreement (the "**Final Advance**":) shall be subject to receipt by Lender of the following:

- (a) Completion of Improvements. Evidence satisfactory to Lender and the Construction Consultant that the Completion of the Improvements has occurred.
- (b) Final Building Loan Advance. All conditions to the Final Building Loan Advance have been satisfied and the Final Building Loan Advance shall have been made or will be made simultaneously therewith.
- (c) Lien Waivers. Duly executed final lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form as **Exhibit J** to the Building Loan Agreement from the General Contractor and Major Contractors and Major Subcontractors who have performed work for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied.
- (d) "As-Built" Plans and Specifications. A full and complete set of "as built" Plans and Specifications certified to by Borrower's Architect.
- (e) Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

(f) Certificates. Completed AIA Form G704 (Certificate of Substantial Completion) and completed AIA Form G707 (Consent of Surety to Final Payments) shall have been executed and delivered by Borrower's Architect, General Contractor and each surety issuing any of the Required Construction Bonds.

(g) Deposits to Reserves. All deposits to the Reserve Funds required under the Building Loan Agreement have been made.

(h) Other Documents. Such documents, letters, affidavits, reports and assurances, as Lender, Lender's counsel and the Construction Consultant may reasonably require.

(i) Required Ratios at Completion. Lender shall have determined that, following the Final Advance (and taking into consideration the Final Building Loan Advance to be made simultaneously under the Building Loan) the Required Ratios at Completion have been satisfied, or Borrower shall have deposited with Lender Cash or a Letter of Credit to satisfy the Required Ratios at Completion in accordance with **Section 2.12.2**.

(j) Tenant Estoppel Certificates. Borrower shall have delivered to Lender estoppel certificates from all of the tenants at the Property in form and substance satisfactory to Lender.

(k) Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of the Final Advance, Borrower has invested Cash equity in an amount equal to or greater than the Required Equity Funds or has otherwise complied with the provisions of **Section 2.11.13** with respect thereto.

(l) Insolvency Opinion. The issuance of and delivery to Lender of six (6) original counterparty Insolvency Opinions in the form attached hereto as **Exhibit K** to the Building Loan Agreement from Wachtel & Masys, LLP or another law firm reasonably acceptable to Lender.

2.12.2 Amount of Final Advance. Except as expressly provided for below, the amount of the Final Advance shall be equal to the sum of: (a) any Retainage not previously released and advanced to Borrower; plus (b) the amount of any Punch List and Deferred Maintenance Reserve Deposit not funded pursuant to the Building Loan Agreement; plus (c) the positive difference, if any, between: (i) the Building Loan Amount and (ii) all amounts previously Advanced under the Building Loan (including the amounts described in clauses (a) and (b) of the sentence). The portion of the Final Advance described in clause (c) of the foregoing sentence is referred to herein as the "**Project Loan Earn Out Advance**" and the corresponding portion of the Final Building Loan Advance is referred to herein as the "**Building Loan Earn Out Advance**" and together with the Project Loan Earn Out Advance, the "**Earn Out Advances**". Notwithstanding anything to the contrary provided for herein, the Earn Out Advances shall be reduced, pro rata, but not below \$0.00, if and to the extent necessary for the Required Ratios at Completion to be achieved following the Final Advances. In addition, if the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00, Lender shall have the right, but not the obligation, to apply any deposits held by Lender pursuant to the Rate Lock Agreement and any Interest Reserve Funds to the payment of the Building Loan and the Project Loan in such order and priority as Lender shall determine in its sole discretion. If the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00 and the deposits, if any under the Rate Lock Agreement and the Interest Reserve Funds are applied to the payment of the Loan, Borrower shall deposit with Lender Cash or a Letter of Credit satisfactory to Lender in an amount equal to the amount which, if used to pay down the Loan, would result in Stabilized Loan-to-Value Ratio of 80% and a Debt Service Coverage Ratio of 1.15 to 1.00, calculated based upon Lender's determination on a pro-forma basis of Lender's Stabilized Net Cash Flow for the 12 months immediately following and assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 7.31%.

- 2.12.3 Rate Lock Agreement. Upon satisfaction of all of the conditions to the Final Advance set forth in **Section 2.12.1**, and subject to the provisions of **Section 2.12.2**, Lender shall return to Borrower the remaining deposits, if any, held by Lender under the Rate Lock Agreement and not applied by Lender in accordance with the provisions of the Rate Lock Agreement and any Interest Reserve Funds held by Lender pursuant to the Building Loan Agreement.

- **Section 2.13 No Reliance.** All conditions and requirements of this Agreement are for the sole benefit of Lender and no other person or party (including, without limitation, the Construction Consultant, the General Contractor and subcontractors (including, without limitation, Major Contractors and Major Subcontractors) and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower. Lender shall have the right, in its sole and absolute discretion, to waive any such condition or requirement.

- **Section 2.14 Method of Disbursement of Loan Proceeds.**

- 2.14.1 Draw Request to Be Submitted to Lender. At such time as Borrower shall desire to obtain an Advance, Borrower shall complete, execute and deliver to Lender a Borrower's Requisition in the form attached as **Exhibit L** to the Building Loan Agreement.

- (a) Borrower's Requisition shall be accompanied by a completed and itemized Application and Certificate for Payment (AIA Document No. G702) attached as **Exhibit M** to the Building Loan Agreement or similar form approved by Lender, containing the certification of the General Contractor or contractor or subcontractor to whom such payment is made, as applicable, and Borrower's Architect as to the accuracy of same, together with invoices relating to all items of Hard Costs covered thereby and accompanied by a cost breakdown showing the cost of work on, and the cost of materials incorporated into, the Improvements to the date of the requisition. The cost breakdown shall also show the percentage of completion of each line item on the Project Loan Budget, and the accuracy of the cost breakdown shall be certified by Borrower and by Borrower's Architect. All such applications for payment shall also show all contractors and subcontractors, including Major Contractors and Major Subcontractors, by name and trade, the total amount of each contract or subcontract, the amount theretofore paid to each subcontractor as of the date of such application, and the amount to be paid from the proceeds of the Advance to each contractor and subcontractor;

(b) _____ the completed construction will be reviewed by the Construction Consultant who will certify to Lender as to the value of completed construction, percentage of completion and compliance with Plans and Specifications;

(c) _____ lien waivers from each other Major Contractor and Major Subcontractors for work done and materials supplied by them which were paid for pursuant to any prior Draw Request;

(d) _____ a written request of Borrower for any necessary changes in the Plans and Specifications, the Project Loan Budget, the Disbursement Schedule or the Construction Schedule;

(e) _____ copies of all executed change orders, contracts and subcontracts, and, to the extent requested by Lender, of all inspection or test reports and other documents relating to the construction of the Project Improvements not previously delivered to Lender; and

(f) _____ such other information, documentation and certification as Lender shall reasonably request.

2.14.2 Procedure of Advances.

(a) _____ Each Draw Request shall be submitted to Lender and Construction Consultant at least ten (10) Business Days prior to the Requested Advance Date, and no more frequently than monthly. Lender shall make the requested Advance on the Requested Advance Date so long as all conditions to such Advance are satisfied or waived.

(b) _____ Not later than 11:00 A.M. New York City time, on the Requested Advance Date, Lender shall make such Advance available to Borrower in accordance with the terms of this **Section 2.14.**

(c) _____ Each Advance (other than the Final Advance) shall be in an amount of not less than \$500,000.00.

(d) _____ Each Advance shall be made on a Payment Date.

2.14.3 Funds Advanced. Each Advance shall be made by Lender by wire transfer to such checking account of Borrower as specified to Lender in writing or as provided in **Section 2.14.4** below. All proceeds of all Advances shall be used by Borrower only for the purposes for which such Advances were made. Borrower shall not commingle such funds with other funds of Borrower.

2.14.4 Direct Advances to Third Parties. Lender may make, at Lender's option, any or all Advances directly or through the Title Company to (i) any Contractor, as applicable, for construction expenses which shall theretofore have been approved by Lender and for which Borrower shall have failed to make payment after receipt by Borrower of such applicable Advance, (ii) Borrower's Architect to pay its fees to the extent funds are allocated thereto in the Building Loan Budget if Borrower shall have failed to do so, (iii) the Construction Consultant to pay its fees, (iv) Lender's counsel to pay its fees, (v) to pay (x) any installment of interest due under the Note, (y) any expenses incurred by Lender which are reimbursable by Borrower under the Loan Documents (including, without limiting the generality of the foregoing, reasonable attorneys' fees and expenses and other fees and expenses incurred by Lender), provided that Borrower shall theretofore have received notice from Lender that such expenses have been incurred and Borrower shall have failed to reimburse Lender for said expenses beyond any grace periods provided for said reimbursement under the Note, this Agreement or any of the other Loan Documents, or (z) following the occurrence and continuation of an Event of Default, any other sums due to Lender under the Note, this Agreement or any of the other Loan Documents, all to the extent that the same are not paid by the respective due dates thereof, and (vi) any other Person to whom Lender in good faith determines payment is due and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan directly to any such Person or through the Title Company to such Persons in accordance with this **Section 2.14.4** as amounts become due and payable to them hereunder and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. No further authorization from Borrower shall be necessary to warrant such direct Advances to such relevant Person, and all such Advances shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the Mortgage and the other Loan Documents as fully as if made directly to Borrower.

- 2.14.5 One Advance Per Month. Lender shall have no obligation to make Advances of the Loan more often than once in each calendar month except that Lender, in its sole discretion, shall have the right but not the obligation, to make additional advances per month for interest, fees and expenses due under the Loan Documents.

- 2.14.6 Advances Do Not Constitute a Waiver. No Advance shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances nor, in the event Borrower is unable to satisfy any such condition, shall any Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default hereunder.

- 2.14.7 Trust Fund Provisions. All proceeds advanced hereunder shall be subject to the trust fund provisions of **Section 13** of the Lien Law. Nothing contained in this Agreement is intended to constitute a promise by Borrower, express or implied, or to create any obligation, express or implied, on the part of Borrower, to make an "improvement," as such term is defined in the Lien Law of the State of New York, and no advance of proceeds of the Loan shall at any time be conditioned, directly or indirectly, upon the making of any such "improvement".

- 2.14.8 Advances and Disbursements Under Completion Guaranty. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, Borrower hereby irrevocably and unconditionally authorizes Lender to make any disbursements of proceeds of the Loan or of any Reserve Funds held by Lender to Guarantor in accordance with the Guaranty of Completion.

- Section 2.15 Interest Advances. Notwithstanding the requirements contained in Section 2.10, Section 2.11 and Section 2.12, and provided that no Event of Default shall have occurred, Lender shall make an Advance on each Payment Date during the Construction Term from the Interest Reserve Line Item, if and to the extent funds remain available under such line item, to pay interest then due under the Note. Notwithstanding the foregoing, if and to the extent that funds are available in the Additional Interest Reserve Deposit, Lender shall first apply funds available in the Additional Interest Reserve Deposit to the payment of interest due, prior to making an Advance for such purpose. Nothing contained in this Section 2.15 shall limit or derogate from Borrower's absolute and unconditional obligation to pay interest due under the Note.

ARTICLE III.

CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the conditions precedent set forth in Section 3.1 of the Building Loan Agreement no later than the Closing Date.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.1 **Borrower Representations.** The representations and warranties of Borrower set forth in Section 4.1 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

Section 4.2 **Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in **Section 4.1** hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V.

BORROWER COVENANTS

Section 5.1 **Affirmative Covenants.** The affirmative covenants of Borrower set forth in Section 5.1 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

Section 5.2 **Negative Covenants.** The negative covenants of Borrower set forth in Section 5.2 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

Section 6.1 Insurance. Borrower, at its sole cost and expense, shall obtain and maintain, or cause to be maintained, insurance policies necessary to satisfy the requirements of Section 6.1 of the Building Loan Agreement.

Section 6.2 Casualty and Condemnation. Section 6.2 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

Section 6.3 Application of Net Proceeds. Section 6.3 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

ARTICLE VII

RESERVE FUNDS

Section 7.1 Reserve Funds. Borrower shall establish such accounts and make such deposits as are required by Article VII of the Building Loan Agreement. The provisions of Article VII of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein.

Section 7.2 Other Loan Documents. Borrower's obligations under this Article VII shall be suspended for so long as sufficient amounts are on deposit and reserved as required by the Building Loan Agreement.

Section 7.3 Reserve Funds, Generally. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. All interest on a Reserve Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

ARTICLE VIII.

DEFAULTS

Section 8.1 Event of Default. (a) Each of the following events shall constitute an event of default hereunder (an "Event of Default");

- (i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);
- (ii) if any of the Taxes (other than Taxes being contested pursuant to Section 5.1.2 of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after Borrower receives notice of same;
- (iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;
- (iv) if Borrower Transfers or otherwise encumbers any portion of the Property without Lender's prior written consent in violation of the provisions of this Agreement or the Mortgage;
- (v) if any material representation or warranty made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;
- (vi) if Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;
- (vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mezzanine Borrower, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mezzanine Borrower, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any covenant contained in Section 4.1.30;

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Borrower fails to pay the Administration Fee, or any portion or installment thereof, within five (5) days of the date when due;

(xiii) If Borrower fails to deposit with Lender the cash deposit or Letter of Credit required in accordance with Section 2.12.2 hereof;

(xiv) if Borrower fails to materially comply with the Construction Schedule;

(xv) if the Completion of the Improvements has not occurred on or prior to the Required Completion Date, subject to Force Majeure or if Lender or the Construction Consultant determines that Completion of the Improvements cannot occur on or prior to the Required Completion Date;

(xvi) if any voucher or invoice is fraudulently submitted by Borrower or in connection with any Advance for services performed or for materials used in or furnished for the Property;

(xvii) if there is any cessation at any time in construction of the Project Improvements for more than twenty (20) consecutive Business Days, other than as a result of Force Majeure;

(xviii) if Borrower expressly confesses in writing to Lender its inability to continue or complete construction of the Project Improvements in accordance with this Agreement;

(xix) _____ if Lender, the Construction Consultant or their representatives are not permitted at all reasonable times upon not less than three (3) Business Days notice to enter upon the Property, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all the Plans and Specifications, or if Borrower shall fail to furnish to Lender or its authorized representative, when requested upon not less than five (5) Business Days notice, copies of the Plans and Specifications;

(xx) _____ if a material adverse change in Borrower's financial condition shall occur which would, in Lender's reasonable determination, materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any other document evidencing or securing the Loan beyond any applicable notice and grace periods expressly set forth in the Loan Documents;

(xxi) _____ if the conditions precedent to the Final Advance have not been satisfied on or prior to the Required Completion Date;

(xxii) _____ If the Guarantor fails to maintain the Required Liquidity and the Required Net Worth covenants specified in the Guaranty of Completion or if the Guarantor shall default under the Guaranty of Completion or the Guaranty of Recourse Carveouts;

(xxiii) _____ if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xxiv) _____ if Borrower shall continue to be in Default under any of the terms, covenants or conditions of Section 9.1 hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of Section 9.1 hereof, in either case for three (3) Business Days after notice to Borrower from Lender;

(xxv) _____ if an Event of Default (as defined in the Building Loan Agreement) shall have occurred;

(xxvi) _____ if there shall be default by Borrower or Guarantor under any of the other Loan Documents, beyond applicable cure periods, if any, contained in such documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such other default, event or condition is to accelerate the maturity of all or any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xxvii) _____ if (A) a breach or default by Borrower under any condition or obligation contained in the Ground Lease shall occur, (B) there occurs any event or condition that gives the 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, supplemented, altered, or amended without the prior written consent of Lender;

(xxviii) _____ if (A) a breach or default by Borrower 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 the Borrower or the 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 Lender;

(xxix) _____ if Guarantor or Storage Facility Tenant shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of Section 5.2.15 or Section 5.1.44(e) hereof, respectively;

(xxx) _____ if the Initial Advance Conditions are not satisfied by the Required Initial Advance Date; or

(xxxi) _____ if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xxx) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

(b) _____ Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing, (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "Severed Loan Documents") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

- Section 8.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

- **ARTICLE IX.**

- **SPECIAL PROVISIONS**

- Article 9 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

- **ARTICLE X.**

- **MISCELLANEOUS**

- Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

- Section 10.2 Lender's Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

- Section 10.3 Governing Law.

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

- National Registered Agents, Inc. -
- 875 Avenue of the Americas, Suite 501 -
- New York, New York 10001 -

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

- Section 10.4 **Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

- Section 10.5 **Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

with a copy to: Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Paul A. Keenan, Esq.
Facsimile No.: (212) 808-7897

If to Borrower: P/A-Acadia Pelham Manor, LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq., General Counsel
Facsimile No.: (914) 288-2162

If to MERS: MERS Commercial
P.O. Box 2300
Flint, Michigan 48501-2300

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

Section 10.7 Trial by Jury.

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

- Section 10.8 **Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

- Section 10.9 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

- Section 10.10 **Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

- Section 10.11 **Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

- Section 10.12 **Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 Expenses; Indemnity. (1) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Account or Cash Management Account, as applicable.

(a) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(b) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 Schedules and Exhibits Incorporated. The Schedules and Exhibits annexed to the Building Loan Agreement are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

- Section 10.18 **Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

- Section 10.19 **Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

- Section 10.20 **Identical Obligations; Conflict; Construction of Documents; Reliance.** To the extent that Borrower has identical obligations under this Agreement and under any of the other Loan Agreements, performance by Borrower of such obligations under this Agreement or any of the other Loan Agreements shall be deemed performance by Borrower, as applicable, under all such Loan Agreements and hereunder of such obligations. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

- Section 10.21 **Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this **Section 10.21** shall survive the expiration and termination of this Agreement and the payment of the Debt.

- Section 10.22 **Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated August 9, 2007 between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

- Section 10.23 **Joint and Several Liability.** If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

- Section 10.24 **Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

- (a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower, provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

- (b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

- (c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

- (d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property and/or construction of the Project Improvements).

- The rights described above in this Section 10.24 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

- Section 10.25 **MERS.** Mortgage Electronic Registration Systems, Inc., a Delaware corporation ("MERS"), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Mortgage and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to "Mortgagee" shall include Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER

P/A-ACADIA PELHAM MANOR, LLC,
a Delaware limited liability company.

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

LENDER

BEAR STEARNS COMMERCIAL
MORTGAGE, INC., a New York corporation

By: /s/ Michael A. Forastiere
Name: Michael A. Forastiere
Title: Authorized Signatory Managing Director

BUILDING LOAN AGREEMENT

Dated as of December 10, 2007

Between

P/A-ACADIA PELHAM MANOR, LLC,

as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,

as Lender

MERS MIN: 8000101-0000007140-6

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- Exhibit D Section 22 Affidavit
- Exhibit E Affirmation of Payment (AIA Form G706)
- Exhibit F Architect's Certificate
- Exhibit G General Contractor's Certificate
- Exhibit H Form of Performance Letter
- Exhibit I Anticipated Cost Report Form
- Exhibit J Form of Lien Waivers
- Exhibit K Form of Insolvency Opinion -To Be Delivered Upon Completion
- Exhibit L Form of Borrower's Requisition
- Exhibit M Application and Certificate for Payment (AIA Form G702)
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BUILDING LOAN AGREEMENT

- THIS BUILDING LOAN AGREEMENT, dated as of December 10, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "Agreement" or sometimes, this "Building Loan Agreement"), is made by and between BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 ("Lender") and P/A-ACADIA PELHAM MANOR, 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, as Borrower ("Borrower").

- **WITNESSETH:**

- **WHEREAS**, Borrower desires to obtain the Building Loan (as hereinafter defined) from Lender; and

- **WHEREAS**, Lender is willing to make the Building Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

- **NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

- **ARTICLE I.**

- **DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

- **Section 1.1 Definitions**

- For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

- "ADA" shall mean the Americans with Disabilities Act of 1992, as amended from time to time.

- "Additional Insolvency Opinion" shall have the meaning set forth in Section 4.1.30(c).

- "Additional Interest Reserve Deposit" shall have the meaning set forth in Section 5.1.28 hereof.

- "Additional Mezzanine Borrower" shall have the meaning set forth in Section 5.2.14(g) hereof.

- “Additional Mezzanine Loan” shall have the meaning set forth in Section 5.2.14 hereof.

- “Additional Mezzanine Loan Documents” shall have the meaning set forth in Section 5.2.14(f) hereof.

- “Administration Fee” shall have the meaning set forth in the Administration Fee Agreement.

- “Administration Fee Agreement” shall mean that certain Administration Fee Agreement dated as of the date hereof between Borrower and Lender.

- “Advance” or “Advances” shall mean any disbursement of the proceeds of the Building Loan by Lender pursuant to the terms of this Agreement.

- “Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

- “Affiliated Manager” shall mean any Manager in which Borrower or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

- “Affiliate Fees” shall mean collectively, any development fee, management fee, brokerage fee, commission, distribution, reimbursement, salary, consideration sum or amount, however characterized, payable to any Restricted Party with respect to the Property and/or the Project.

- “Affirmation of Payment” shall have the meaning as set forth in Section 2.11.5(e).

- “Aggregate Debt Service Coverage Ratio” shall have the meaning set forth in Section 5.2.14 hereof.

- “Agreement” shall mean this Building Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “ALTA” shall mean American Land Title Association, or any successor thereto.

- “Anchor Tenant” shall mean Home Depot, Inc. or any other tenant occupying 20,000 square feet or more of space at the Property.

- “Annual Budget” shall mean the operating budget, including all planned Capital Expenditures, for the Property prepared by Borrower in accordance with Section 5.1.11.(e) hereof for the applicable Fiscal Year or other period.

- “Anticipated Costs Report” shall have the meaning as set forth in Section 2.11.5(a).

- “Approved Annual Budget” shall have the meaning set forth in Section 5.1.11(e) hereof.

- “Approved Bank” shall mean a bank or other financial institution which has a minimum long term unsecured debt rating of at least “AA” by S&P and Fitch and “Aa2” by Moody’s.

- “Architect’s Certificate” shall have the meaning as set forth in Section 2.10.10.

- “Architect’s Contract” shall mean those certain executed proposals from Borrower’s Architect to General Contractor dated September 1, 2005 (revised September 21, 2005) and November 3, 2005, and accepted by Borrower, as the same may be amended from time to time in compliance with the terms hereof.

- “Assignment of Contracts” shall mean that certain Assignment of Contracts, Licenses and Permits dated as of the date hereof from Borrower, as assignor, to Lender, as assignee.

- “Assignment of Leases” shall mean, collectively, the Building Loan Assignment of Leases and the Project Loan Assignment of Leases.

- “Assignment of Management Agreement” shall mean, with respect to each Manager, that certain Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof, among Lender, Borrower and the applicable Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Award” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

- “Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which such Person colludes with, or otherwise assists such Person, or causes to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

- “Bankruptcy Code” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

- "Borrower" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

- "Borrower's Architect" shall mean Greenberg Farrow Architects.

- "Borrower's Requisition" shall have the meaning set forth in **Section 2.14.1** hereof.

- "BSCMI" shall mean Bear Stearns Commercial Mortgage, Inc., a New York corporation, and its successors in interest.

- "Budget Line" shall have the meaning set forth in **Section 2.1.14** hereof.

- "Building Loan" shall mean the loan made by Lender to Borrower pursuant to this Agreement in the principal amount of up to the Building Loan Amount.

- "Building Loan Amount" shall mean Twenty-Three Million Twenty-Six Thousand Nine Hundred Six and 60/100 Dollars (\$23,026,906.60).

- "Building Loan Assignment of Leases" shall mean that certain Building Loan Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to Lender, as assignee.

- "Building Loan Budget" shall have the meaning set forth in **Section 2.1.14** hereof.

- "Building Loan Costs" shall mean all Project-Related Costs (including Hard Costs and Soft Costs) that are Costs of the Improvements.

- "Building Loan Documents" shall mean, collectively, this Agreement, the Building Loan Note, the Building Loan Mortgage, the Building Loan Assignment of Leases, as well as all other documents now or hereafter executed and/or delivered with respect to the Building Loan.

- "Building Loan Earn Out Advance" shall have the meaning set forth in **Section 2.12.2** hereof.

- "Building Loan Mortgage" shall mean that certain Building Loan Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated the date hereof, executed and delivered by Borrower to Lender as security for the Building Loan and encumbering the Property.

- "Building Loan Note" shall mean that certain Building Loan Promissory Note, dated the date hereof, in the principal amount of up to the Building Loan Amount made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Business Day” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York, or the place of business of any Servicer are not open for business.

- “Capital Expenditures” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs).

- “Carrying Costs” shall mean, the sum of the following costs associated with the Property for any specified period: (a) Taxes, (b) Other Charges, (c) Insurance Premiums and (d) Operating Expenses.

- “Cash” shall mean the legal tender of the United States of America.

- “Cash and Cash Equivalents” shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Obligations, and (iii) an irrevocable standby Letter of Credit.

- “Cash Management Account” shall have the meaning set forth in Section 2.7.2(a) hereof.

- “Cash Management Agreement” shall mean that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Manager, Cash Management Bank and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Cash Management Bank” shall mean Wells Fargo Bank, N.A., a national banking association, or any successor Eligible Institution acting as Agent under the Cash Management Agreement.

- “Cash Management Conditions” shall have the meaning set forth in Section 2.7 hereof.

- “Cash Trap Event” shall mean the occurrence of any of the following: (a) an Event of Default; (b) any Bankruptcy Action of Borrower or Mezzanine Borrower; (c) any Bankruptcy Action of Manager; (d) on or after the last day of the Construction Term, a DSCR Trigger, or (e) on or after the earlier of that date that an Anchor Tenant opens for business or the last day of the Construction Term, a Go Dark Trigger.

- “Cash Trap Event Cure” shall mean:

- (a) if the Cash Trap Event is caused solely by the occurrence of:

- (i) _____ clause (a) in the definition of “Cash Trap Event”, a cure of the Event of Default which gave rise to the Cash Trap Event which is accepted or waived in writing by Lender, in its sole discretion, prior to Lender exercising any of its rights, to accelerate the Loan, move to appoint a receiver, or commence a foreclosure action;

(ii) _____ clause (c) in the definition of "Cash Trap Event", either (A) if such Cash Trap Event is as a result of the filing of an involuntary petition against Manager and not consented to by Manager, upon the same being discharged, stayed or dismissed within thirty (30) days of such filing and such filing (after dismissal or discharge), provided, that such dismissal or discharge in Lender's reasonable opinion does not adversely impact the Loan or the Property, or (B) if Borrower replaces the Manager with a Qualified Manager pursuant to a Replacement Management Agreement approved by Lender;

(iii) _____ a DSCR Trigger Event, if the Debt Service Coverage Ratio is greater than 1.05 to 1:00 based upon the trailing six (6) month period annualized as of two (2) consecutive Debt Service Coverage Ratio Determination Dates occurring thereafter;

(iv) _____ a Go Dark Trigger, if the relevant Anchor Tenant subsequently is in occupancy, open for business for one hundred twenty (120) days, and paying full contractual rent with no free rent, credit or right of offset during the term of its Lease, as evidenced by an estoppel letter from such Anchor Tenant in form acceptable to Lender;

(b) _____ provided, that, each such Cash Trap Event Cure set forth in this definition shall be subject to the following conditions, (i) no Event of Default (other than that giving rise to the Cash Trap Event) shall have occurred and be continuing under this Agreement or any of the other Loan Documents, (ii) Borrower shall have notified Lender in writing of its election to cure the respective Cash Trap Event, (iii) a Cash Trap Event Cure under clauses (a)(i) and (a)(ii) may occur no more than 3 times during the term of the Loan, (iv) Borrower shall have paid all of Lender's reasonable expenses incurred in connection with such cure including, reasonable attorney's fees and costs; and (v) in no event shall Borrower have the right to "cure" a Cash Trap Event occurring by reason of a Bankruptcy Action of Borrower or Mezzanine Borrower.

"Cash Trap Period" shall mean each period commencing on the occurrence of a Cash Trap Event and continuing until the earlier of (a) the Payment Date next occurring following the related Cash Trap Event Cure, or (b) until payment in full of all principal and interest on the Loan and all other amounts payable under the Loan Documents in accordance with the terms and provisions of the Loan Documents.

"Casualty" shall have the meaning set forth in Section 6.2 hereof.

"Casualty Consultant" shall have the meaning set forth in Section 6.2.4(d) hereof.

"Casualty Retainage" shall have the meaning set forth in Section 6.2.4(e) hereof.

"Clearing Account" shall have the meaning set forth in Section 2.7 hereof.

"Clearing Account Agreement" shall have the meaning set forth in Section 2.7.1 hereof.

"Clearing Bank" shall have the meaning set forth in Section 2.7 hereof.

"Closing Date" shall mean the date of this Agreement.

- “Code” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

- “Completion of the Improvements” shall mean the substantial completion (i.e., completion of the Project Improvements other than Punch List Items) of the construction and renovation of the Project Improvements substantially in accordance with all Plans and Specifications, all Legal Requirements, all Permitted Encumbrances and this Agreement, and that all utilities necessary to service the Project Improvements have been connected and are in operation, such completion to be evidenced to the reasonable satisfaction of Lender and the Construction Consultant; together with the delivery to Lender of:

- (i) a permanent or temporary certificate(s) of occupancy for the Project Improvements and evidence that all other Governmental Approvals have been issued and all other Legal Requirements have been satisfied so as to allow the Project Improvements to be used and operated in accordance with the Loan Documents and the Plans and Specifications; and

- (ii) AIA Form G704 (Certificate of Substantial Completion) completed and executed by Borrower’s Architect certifying the substantial completion of the Project Improvements in accordance with the Plans and Specifications.

- “Condemnation” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

- “Condemnation Proceeds” shall have the meaning set forth in Section 6.2.1 hereof.

- “Construction Advance Conditions” shall have the meaning set forth in Section 2.11 hereof.

- “Construction Consultant” shall mean Valcon Construction Consultants, Inc., or such other Person as Lender may designate and engage as a replacement to inspect the Project Improvements and the Property as construction progresses and consult with and to provide advice to and to render reports to Lender, which Person may be, at Lender’s option upon notice to Borrower, either an officer or employee of Lender or consulting architects, engineers or inspectors appointed by Lender.

- “Construction Schedule” shall mean the construction schedule attached hereto as Schedule IV, broken down by trade, of Borrower’s best good faith estimate of the dates of commencement and completion of the Project Improvements certified by Borrower to Lender in final form approved by Lender and the Construction Consultant prior to the Closing.

- “Construction Term” shall mean the period commencing on the date hereof and ending on the first to occur of (i) the Maturity Date, whether by acceleration or otherwise, (ii) the 24th Payment Date, and (iii) the Final Advance.

- “Contingency” shall mean the contingency Line Item in the Building Loan Budget and/or Project Loan Budget.

- “Contract” shall mean any agreement (including the General Contractor’s Agreement) entered into by Borrower or by General Contractor, in which the Contractor or Subcontractor thereunder agrees to provide services, labor and/or materials in connection with the Project Improvements. All Contracts shall require that the Contractor or Subcontractor thereunder use union labor.

- “Contractor” shall mean any contractor hired by Borrower, including, without limitation, the General Contractor (including subsidiaries and affiliates), supplying services, labor and/or materials in connection with the Project.

- “Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “Controlled” and “Controlling” shall have correlative meanings.

- “Costs of the Improvement” shall mean those items defined as an “improvement” and/or a “cost of improvement” under Section 2 of Article 1 the Lien Law.

- “Covered Disclosure Information” shall have the meaning set forth in Section 9.2(b) hereof.

- “Debt” shall mean the outstanding principal amount of the Building Loan set forth in, and evidenced by, this Agreement, the Building Loan Documents and the Building Loan Note together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Building Loan under the Building Loan Note, this Agreement, the Building Loan Mortgage or any other Building Loan Document.

- “Debt Service” shall mean, with respect to any particular period of time, the aggregate scheduled principal and interest payments due under this Building Loan Agreement and the Building Loan Note.

- “Debt Service Coverage Ratio” shall mean a ratio for the applicable period in which:

- (a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, adjusted for a vacancy rate equal to the greater of the actual vacancy rate, the market vacancy rate and an assumed vacancy rate equal to five percent (5%), without deduction for (i) 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 four percent (4%) of Gross Income from Operations or (2) the actual management fees incurred, (B) Replacement Reserve Fund contributions equal to \$47,544 per annum; and (C) Rollover Reserve Fund contributions equal to \$187,744 per annum, and

- (b) the denominator is the Total Debt Service for such period assuming a thirty (30) year amortization schedule.

- “Debt Service Coverage Ratio Determination Date” shall mean the earlier of the Required Completion Date and the date of the Final Advance and the first day of each calendar month thereafter.

- “Default” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

- “Default Rate” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the maximum rate permitted by applicable law or (b) five percent (5%) above the Interest Rate.

- “Defeasance Date” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

- “Defeasance Deposit” shall mean an amount equal to the remaining principal amount of the Note, the Defeasance Payment Amount, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of Section 2.5 hereof (including, without limitation, any fees and expenses of accountants, attorneys and the Rating Agencies incurred in connection therewith).

- “Defeasance Event” shall have the meaning set forth in Section 2.5.1(a) hereof.

- “Defeasance Expiration Date” shall mean the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust.

- “Defeasance Payment Amount” shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

- “Deferred Maintenance Condition” shall have the meaning set forth in Section 7.4.1.

- “Development Budget” shall have the meaning set forth in Section 2.1.14 hereof.

- “Disbursement Schedule” shall mean the schedule of the amounts of Advances hereunder and Project Loan Advances under the Project Loan anticipated to be requisitioned by Borrower each month during the term of the Loan, attached hereto as part of the Development Budget and in final form approved by Lender and the Construction Consultant prior to the Closing Date.

- “Disclosure Document” shall mean a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, or such other information reasonably requested by Lender, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

- “Dollars” or “\$” shall mean lawful money of the United States of America.

- “Draw Request” shall mean, with respect to each Advance, Borrower’s Requisition for such Advance, along with such other documents required by this Agreement to be furnished to Lender as a condition to such Advance.

- “DSCR Trigger Event” shall mean, that as of any Debt Service Coverage Ratio Determination Date, the Debt Service Coverage Ratio as determined by Lender based on the trailing six (6) month period (annualized) immediately preceding the date of such determination is less than 1.00 to 1.00.

- “Earn Out Advance” shall have the meaning set forth in Section 2.12.2 hereof.

- “Eligible Account” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least Fifty Million and 00/100 Dollars (\$50,000,000.00) and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

- “Eligible Institution” shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P, “P-1” by Moody’s and “F-1+” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long-term unsecured debt obligations of which are rated at least “AA” by Fitch and S&P and “Aa2” by Moody’s).

- “Embargoed Person” shall have the meaning set forth in Section 5.1.42 hereof.

- “Environmental Engineer” shall mean such environmental engineering or similar inspection firms approved by Lender.

- “Environmental Indemnity” shall mean that certain Environmental Indemnification Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Equipment” shall have the meaning as set forth in the granting clause of the Building Loan Mortgage.

- “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

- “Event of Default” shall have the meaning set forth in Section 8.1(a) hereof.

- “Excess Cash Flow” shall have the meaning set forth in Section 3.4(i) of the Cash Management Agreement.

- “Excess Cash Flow Funds” shall have the meaning set forth in Section 7.6 hereof.

- “Excess Cash Flow Reserve” shall have the meaning set forth in Section 7.6 hereof.

- “Exchange Act” shall have the meaning set forth in Section 9.2(a) hereof.

- “Extraordinary Expense” shall have the meaning set forth in Section 5.1.11(f) hereof.

- “Final Advance” shall have the meaning set forth in Section 2.12.1.

- “Final Project Loan Advance” shall mean the Final Advance as defined in the Project Loan Agreement.

- “Final Project Report” shall mean the report to be prepared by the Construction Consultant of its review of the Development Budget, Building Loan Budget, Project Loan Budget, the Plans and Specifications, the Construction Schedule in final form, the Disbursement Schedule, all in final form, the General Contractor’s Agreement, the Contracts, the Major Contracts and such other documents and information reasonably required by the Construction Consultant.

- “FIRREA” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

- “Fiscal Year” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

- “Fitch” shall mean Fitch, Inc.

- “Fixtures” shall have the meaning set forth in the Mortgage.

- “Force Majeure” shall mean, with respect to the obligations of any Person, actual delay beyond the reasonable control of such Person, which is due to any of the following (a) natural disaster, fire or other casualty, earthquake, flood, explosion, abnormally inclement weather for the season in question (as reported by an appropriate authority) or any other act of God, (b) declared or undeclared war, acts of domestic or international terrorism, riot, mob violence, insurrection or sabotage, (c) the inability to procure labor, equipment, facilities, energy, materials or supplies, the failure of transportation, any other labor disturbance, strikes, lockouts or actions of labor unions, in each such case, so long as such cause is not within the reasonable control of such Person, (d) condemnation, temporary restraining orders or injunctions, changes after the date hereof in the requirements or interpretations of relevant laws, in each such case, so long as such cause is not within the reasonable control of such Person, or (e) any other cause not within the reasonable control of such Person; provided that, with respect to any of the circumstances described in the foregoing clauses (a) through (e) inclusive: (i) for the purposes of this Agreement, any period of Force Majeure shall apply only to such person’s performance of the obligations necessarily affected by such circumstance and shall continue only so long as such person is continuously and diligently using all reasonable efforts to minimize the effect and duration thereof; and (ii) notwithstanding the foregoing, Force Majeure shall not include (A) the unavailability or insufficiency of funds as a result of the insolvency of such Person or any of its Affiliates, (B) any breach of contract or default by Borrower’s Architect, the General Contractor or any Major Contractor under their respective contracts and agreements concerning the Project Improvements.

- "GAAP" shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

- "General Contractor" shall mean ACRS, Inc. or any other general contractor or construction manager, as applicable, approved by Lender and the Construction Consultant in accordance with the terms of this Agreement.

- "General Contractor's Agreement" shall have the meaning set forth in Section 2.10.9.

- "General Contractor's Certificate" shall have the meaning set forth in Section 2.10.10.

- "Go Dark Trigger" shall mean that an Anchor Tenant Goes Dark.

- "Goes Dark" shall mean with respect to any tenant, that the relevant tenant ceases to continuously occupy and operate its business at its premises on the Property in a manner similar to which it operates its business as of the date that such tenant opens for business at the Property.

- "Governmental Approvals" shall mean all approvals, consents, waivers, orders, acknowledgments, authorizations, permits and licenses required under applicable Legal Requirements to be obtained from any Governmental Authority for the performance of the demolition work and construction of the Project Improvements and/or the use, occupancy and operation of the Project Improvements before the commencement, during and following completion of construction and Building Loan, as the context requires, including, without limitation, all land use, building, subdivision zoning and similar ordinances and regulations promulgated by any Governmental Authority.

- "Governmental Authority" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

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- **"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 under the Storage Facility Master Lease and Rents from tenants in occupancy, open for business and paying full contractual rent without right of offset or credit, utility charges, escalations, forfeited security deposits, interest on credit accounts, 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 month-to-month tenants, or 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, 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.

- **"Ground Lease"** shall mean that certain Ground Lease dated as of October 1, 2004 between Ground Lessor as lessor and Borrower, as lessee, as the same has been amended and may hereafter be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

- **"Ground Lease Reserve Account"** shall have the meaning set forth in Section 7.9.1 hereof.

- **"Ground Lease Reserve Fund"** shall have the meaning set forth in Section 7.9.1 hereof.

- **"Ground Lessor"** shall mean Rusciano & Son Corp. and Secor Lane Corp., and any successor lessor under the Ground Lease.

- **"Ground Rent"** shall have the meaning set forth in Section 7.9.1 hereof.

- **"Guarantor"** shall mean Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company.

- **"Guaranty of Completion"** shall mean that certain Guaranty of Completion, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- **"Guaranty of Recourse Carveouts"** shall mean that certain Guaranty of Recourse Carveouts, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- **"Hard Costs"** shall mean those Building Loan Costs which are for labor, materials, equipment and fixtures.

- **"Home Depot"** shall have the meaning set forth in Section 2.11.15 hereof.

- “Home Depot Estoppel Certificate” shall have the meaning set forth in Section 2.10.19 hereof.

- “Home Depot Lease” shall have the meaning set forth in Section 2.11.15 hereof.

- “Improvements” shall have the meaning set forth in the granting clause of the Mortgage

- “Indebtedness” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

- “Indemnified Liabilities” shall have the meaning set forth in Section 10.13(a) hereof.

- “Indemnified Persons” shall have the meaning set forth in Section 9.2(b) hereof.

- “Indemnifying Person” shall mean Borrower and Guarantor.

- “Independent Director” shall mean a director of a corporation or a limited liability company that is a Special Purpose Entity and “Independent Manager” shall mean a manager of a limited liability company that is a Special Purpose Entity, in either case, who is not at the time of initial appointment, or at any time while serving as an Independent Director or Independent Manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director or Independent Manager of a Special Purpose Entity), officer, employee, partner, member, attorney or counsel of Guarantor, Borrower, or any Affiliate of any of them (unless such natural person is an Independent Director or Independent Manager provided by a nationally recognized company that provides professional independent managers and which also provides other corporate services in the ordinary course of business, in which case such Person may receive reasonable fees for servicing as Independent Director or Independent Manager of a Special Purpose Entity); (b) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with Guarantor, Borrower or any Affiliate of any of them; (c) a Person controlling or under common control with any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other Person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Initial Advance” shall have the meaning set forth in Section 2.10 hereof.

“Initial Advance Conditions” shall have the meaning set forth in Section 2.10 hereof.

“Initial Interest Reserve Deposit” shall have the meaning set forth in Section 7.2.1.

“Initial Tax and Insurance Escrow Deposit” shall have the meaning set forth in Section 7.1 hereof.

“Insolvency Opinion” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Wachtel & Masyr, LLP in connection with the Loan.

“Insurance Premiums” shall have the meaning set forth in Section 6.1.1(e) hereof.

“Insurance Proceeds” shall have the meaning set forth in Section 6.2.1.

“Intellectual Property” shall have the meaning set forth in Section 4.1.44 hereof.

“Interest Period” shall mean: (a) the period commencing on the Closing Date and ending on the last day of the month in which the Closing Date occurs, both dates inclusive; and (b) the period commencing on and including the first day of each calendar month thereafter during the term of Loan and ending and including the last day of such calendar month.

“Interest Rate” shall mean seven and one hundred eighty-two one thousandths percent (7.182%), provided, however, in the event that (a) on or before June 1, 2009, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.00, and Borrower delivers to Lender a MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan, Lender shall, upon Borrower's written request, reduce the Interest Rate to a per annum rate equal to five and ninety-three one hundredth percent (5.93%), commencing on the first Payment Date after Borrower's request, and (b) on or before June 1, 2010, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.00, and Borrower delivers to Lender a MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan, Lender shall, upon Borrower's written request, reduce the Interest Rate to a per annum rate equal to five and ninety-eight one hundredth percent (5.98%), commencing on the first Payment Date after Borrower's request. Any reduction in the Interest Rate as set forth above shall be effective commencing on the first Payment Date after Borrower's request for such reduction and satisfaction of the conditions set forth above and no reduction in the Interest Rate shall be retroactive. In the event that Borrower fails to satisfy the conditions for a reduction of the Interest Rate within the time periods set forth above, time being of the essence, Borrower shall have no further right to obtain a reduction in the Interest Rate. Notwithstanding anything to the contrary contained herein, Lender shall have the right, in its sole discretion, at any time prior to a Securitization of the Loan, to increase the Interest Rate by up to two-tenths of one percent (0.20%).

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- “Interest Reserve Account” shall have the meaning set forth in Section 7.2.1.

- “Interest Reserve Deposit” shall have the meaning set forth in Section 7.2.1.

- “Interest Reserve Fund” shall have the meaning set forth in Section 7.2.1.

- “Interest Reserve Line Item” shall mean the interest reserve Line Item of the Project Loan Budget.

- “Land” shall mean the land described on Exhibit “A” attached hereto.

- “Lease” shall mean 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.

- “Legal Requirements” shall mean, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting the Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

- “Lender” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

- “Letter of Credit” shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit, as the same may be replaced, split, substituted, modified, amended, supplemented, assigned or otherwise restated from time to time, (either an evergreen letter of credit or a letter of credit which does not expire until at least two (2) Business Days after the Maturity Date or such earlier date as such Letter of Credit is no longer required pursuant to the terms of this Agreement) in favor of Lender and entitling Lender to draw thereon based solely on a statement purportedly executed by an officer of Lender stating that it has the right to draw thereon, and issued by a domestic Approved Bank or the U.S. agency or branch of a foreign Approved Bank, or if there are no domestic Approved Banks or U.S. agencies or branches of a foreign Approved Bank then issuing letters of credit, then such letter of credit may be issued by a domestic bank, the long term unsecured debt rating of which is the highest such rating then given by the Rating Agency or Rating Agencies, as applicable, to a domestic commercial bank.

- “Liabilities” shall have the meaning set forth in Section 9.2(b) hereof.

- “Lien” shall mean, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

- “Lien Law” shall mean the Lien Law of the State of New York.

- “Line Item” shall have the meaning set forth in Section 2.1.14 hereof.

- “Liquidity” means unrestricted and unencumbered Cash and Cash Equivalents acceptable to Lender.

- “Loan” shall mean collectively, the Building Loan and the Project Loan.

- “Loan Agreement” shall mean collectively, this Building Loan Agreement, and the Project Loan Agreement.

- “Loan Documents” shall mean collectively, the Building Loan Documents and the Project Loan Documents, the Environmental Indemnity, the Guaranty of Completion, the Guaranty of Recourse Carveouts, the Cash Management Agreement, the Clearing Account Agreement, the Assignment of Contracts, the Administration Fee Agreement, the Rate Lock Agreement, and all other documents executed and/or delivered in connection with the Loan.

- “Loan-to-Cost Ratio” shall mean, as of any date, the ratio of (i) the Total Loan Amount to (ii) the aggregate amount of Project-Related Costs (excluding any Affiliate Fees) actually paid as of such date plus Project-Related Costs to be paid with the proceeds of the Advance(s) being requested by Borrower on such date hereunder and under the Project Loan Agreement.

- “Major Contractor” shall mean any contractor hired by Borrower, including, without limitation, the General Contractor (including subsidiaries and affiliates), supplying services, labor and/or materials in connection with the Project which is for an aggregate contract price equal to or greater than \$500,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders, or which relates to major project elements such as steel, concrete, HVAC systems, windows, doors and other similar items.

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- “Major Contracts” shall mean any Contract with a Major Contractor or Major Subcontractor.

- “Major Subcontractor” shall mean any subcontractor supplying services, labor and/or materials in connection with the Project which is for an aggregate contract price equal to or greater than \$500,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders, or which relates major project elements such as steel, concrete, HVAC systems, windows, doors and other similar items.

- “Management Agreement” shall mean, collectively, the Management Agreement dated as of August 23, 2007 by and between Borrower and Acadia-P/A Management Services, LLC and the Management Agreement dated as of December 4, 2007 by and between Borrower and Post Management, L.L.C. pursuant to which Manager is to provide management and other services with respect to the Property, or, if the context requires, the Replacement Management Agreement.

- “Manager” shall mean Acadia-P/A Management Services, LLC, a Delaware limited liability company, and Post Management, L.L.C., a Delaware limited liability company, or, if the context requires, a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

- “Material Action” means, with respect to any Person, to file any insolvency or reorganization case or proceeding, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against such Person, to file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, to make any assignment for the benefit of creditors of such Person, to admit in writing such Person’s inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

- “Maturity Date” shall mean January 1, 2020 or such earlier date on which the final payment of principal of the Building Loan Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

- “Maximum Legal Rate” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

- “MERS” shall have the meaning set forth in Section 10.25 hereof.

- “Mezzanine Borrower” shall have the meaning set forth in Section 9.1.

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- “Mezzanine Loan Documents” shall have the meaning set forth in Section 9.1.

- “Monthly Debt Service Payment Amount” shall mean (a) an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with Section 2.2 hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in January, 2013, and (b) a constant monthly payment of \$156,023.44 commencing with the Payment Date occurring in February, 2013 and on each Payment Date thereafter, provided, however, that in the event that the Interest Rate is modified in accordance with the provisions of the definition of “Interest Rate,” the Monthly Debt Service Payment Amount shall be adjusted by Lender based upon the modified Interest Rate and a thirty (30) year amortization schedule, Lender’s determination of the Monthly Debt Service Payment Amount being binding absent manifest error.

- “Moody’s” shall mean Moody’s Investors Service, Inc.

- “Mortgage” shall mean, collectively, the Building Loan Mortgage and the Project Loan Mortgage, as the same may be amended, restated, supplemented or otherwise modified from time to time.

- “Net Cash Flow” shall mean, for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

- “Net Operating Income” shall mean the amount obtained by subtracting Operating Expenses from Gross Income from Operations.

- “Net Proceeds” shall have the meaning set forth in Section 6.2.1 hereof.

- “Net Proceeds Deficiency” shall have the meaning set forth in Section 6.2.4(g) hereof.

- “Net Worth” means with respect to any Person for any period, assets less liabilities of such Person, determined in accordance with GAAP.

- “Note” shall mean, collectively, the Building Loan Note and the Project Loan Note.

- “Officer’s Certificate” shall mean a certificate delivered to Lender by Borrower that is signed by an authorized officer of the general partner or managing member of Borrower.

- “Open Period Date” shall have the meaning set forth in Section 2.4.1 hereof.

- “Operating Expenses” shall mean the total of all expenditures, computed in accordance with GAAP, of whatever kind relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments as approved by Lender, and other similar costs, but excluding depreciation, Debt Service, Capital Expenditures and contributions to the Reserve Funds.

- “Operating Reserve Account” shall have the meaning set forth in Section 7.7.1 hereof.

- “Operating Reserve Deposit” shall have the meaning set forth in Section 7.7.1 hereof.

- “Operating Reserve Funds” shall have the meaning set forth in Section 7.7.1 hereof.

- “Other Charges” shall mean all maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

- “Other Debt” shall mean the “Debt” as defined in both the Project Loan Agreement, and the Mezzanine Loan Documents, if applicable.

- “Other Design Professionals” shall mean all architects (other than Borrower’s Architect) and engineers engaged by Borrower and/or Borrower’s agent to work on the Project Improvements.

- “Other Obligations” shall have the meaning as set forth in the Mortgage.

- “Payment Date” shall mean February 1, 2008, and the 1st day of every month thereafter during the term of the Loan until and including the Maturity Date or, if such day is not a Business Day, the immediately preceding Business Day.

- “Performance Letter” shall have the meaning set forth in Section 2.10.11(a) hereof.

- “Permitted Encumbrances” shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, unless and to the extent being contested by Borrower in compliance with the terms of this Agreement, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to complete the Project or repay the Loan.

- “Permitted Investments” shall have the meaning set forth in the Cash Management Agreement.

- “Permitted Mezzanine Lender” shall have the meaning set forth in Section 5.2.14 hereof.

“Permitted Release Date” shall mean the earlier of (i) the Defeasance Expiration Date or (ii) the date that is the fourth (4th) anniversary of the Completion of the Improvements.

“Permitted Transfer” means any of the following:

(a) any transfer, directly as a result of the death of a natural Person, of stock, membership interests, partnership interests or other ownership interests in any Restricted Party previously held by the decedent in question to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower delivers notice to Lender as soon as practicable thereafter and that such Restricted Party is promptly reconstituted, if applicable, following the death of such member, partner or shareholder and there is no change in Control of such Restricted Party as a result of such transfer;

(b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the such natural Person to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower delivers notice to Lender as soon as practicable thereafter and that such Restricted Party is promptly reconstituted, if applicable, following the death of such member, partner or shareholder and there is no change in Control of such Restricted Party as a result of such transfer;

(c) transfers for estate planning purposes of a natural Person's stock, membership interests, partnership interests or other ownership interests in a Restricted Party by the current partner(s), shareholder(s) or member(s), as applicable, to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as such Restricted Party is reconstituted, if required, following such transfer and there is no change in Control of such Restricted Party as a result of such transfer;

(d) transfers permitted pursuant to Section 5.2.11(d) of this Agreement;

(e) the sale, transfer, or issuance of stock in Acadia Realty Trust, in the ordinary course of business, provided such stock is listed on the NYSE or other nationally recognized stock exchange; and

(f) a Transfer by P/A Associates, LLC of 100% of its membership interest in Acadia-P/A Holding Company, LLC to Acadia Strategic Opportunity Fund II, LLC (“Fund II”) or an Affiliate of Fund II Controlled by Acadia Realty Trust;

“Person” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing;

“Personal Property” shall have the meaning set forth in the granting clause of the Mortgage.

- “Physical Conditions Report” shall mean, a structural engineering report prepared by a company satisfactory to Lender regarding the physical condition of the Property, satisfactory in form and substance to Lender in its sole discretion, which report shall, among other things, confirm that the Property and its use complies, in all material respects, with all applicable Legal Requirements (including, without limitation, zoning, subdivision and building laws).

- “Plans and Specifications” shall mean the final plans and specifications for the performance of the Project Improvements prepared by Borrower’s Architect and the Other Design Professionals listed on Schedule III attached hereto and approved by Lender, the Construction Consultant, as the same may be amended and supplemented from time to time in accordance with the terms of this Agreement.

- “Policies” shall have the meaning specified in Section 6.1.1(e) hereof.

- “Policy” shall have the meaning specified in Section 6.1.1(e) hereof.

- “Prepayment Date” shall have the meaning set forth in Section 2.4.4 hereof.

- “Prepayment Rate” shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date as most recently published in the “Treasury Bonds, Notes and Bills” section in The Wall Street Journal as of such Prepayment Rate Determination Date. If more than one issue of United States Treasury Securities has the same remaining term to the Maturity Date, the “Prepayment Rate” shall be the yield on such United States Treasury Security most recently issued as of the Prepayment Rate Determination Date. The rate so published shall control absent manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

- “Prepayment Rate Determination Date” shall mean the date which is five (5) Business Days prior to the date that such prepayment shall be applied in accordance with the terms and provisions of Section 2.4.1 hereof.

- “Prescribed Laws” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

- “Principal” shall mean the Special Purpose Entity that is the general partner of Borrower, if Borrower is a limited partnership, or member of Borrower, if Borrower is a limited liability company.

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- “Proceeds” shall mean Insurance Proceeds or Condemnation Proceeds.

- “Project” shall mean the development and construction of Project Improvements, all in accordance with the Plans and Specifications, all Legal Requirements, this Agreement and the other Loan Documents.

- “Project Improvements” shall mean the demolition of all existing improvements located on the Land and the development and construction thereon by Borrower of a multi-anchor community shopping center with a gross leaseable area of approximately 228,862 square feet of floor area and self-storage space of approximately 88,127 square feet of floor area, substantially as depicted on the Plans and Specifications, as the same will be developed, renovated and constructed in accordance with the Plans and Specifications and all Legal Requirements.

- “Project Loan” shall mean the loan being made by Lender to Borrower pursuant to the Project Loan Agreement in the principal amount of up to the Project Loan Amount.

- “Project Loan Advance” shall mean “Advance” as such term is defined in the Project Loan Agreement.

- “Project Loan Agreement” shall mean that certain Project Loan Agreement dated the date hereof among Lender and Borrower.

- “Project Loan Amount” shall mean Twelve Million Six Hundred Thirty-Seven Thousand Ninety-Three and 40/100 Dollars (\$12,637,093.40).

- “Project Loan Assignment of Leases” shall mean that certain Project Loan Assignment of Leases and Rents, dated the date hereof, from Borrower, as assignor, to Lender, as assignee.

- “Project Loan Budget” shall have the meaning set forth in Section 2.1.14.

- “Project Loan Costs” shall mean all Projected Related Costs that are not Costs of the Improvements.

- “Project Loan Documents” shall have the meaning as set forth in the Project Loan Agreement.

- “Project Loan Earn Out Advance” shall have the meaning set forth in Section 2.12.1 hereof.

- “Project Loan Mortgage” shall have the meaning as set forth in the Project Loan Agreement.

- “Project Loan Note” shall have the meaning as set forth in the Project Loan Agreement.

“Project-Related Costs” shall mean all direct and indirect costs and expenses of acquiring the Property, demolishing the existing improvements on the Property, designing, inspecting, renovating, constructing and developing the Project Improvements, including, without limitation, Hard Costs and Soft Costs, along with all Carrying Costs, Debt Service, financing charges, Operating Expense and other costs and expenses associated with the Property during the Construction Term.

“Property” shall mean the Land, all Improvements now or hereafter located thereon, the easements and other rights, licenses and privileges and appurtenance to the Land, and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the Mortgage and referred to therein as the “Mortgaged Property”.

“Provided Information” shall mean any and all financial and other information provided at any time prepared by, or on behalf of, any Indemnifying Person with respect to the Property, Borrower, Principal, Guarantor and/or Manager, including, without limitation, any financial data or financial statements required under Section 5.1.11.

“Punch List and Deferred Maintenance Reserve Deposit” shall have the meaning set forth in Section 7.4.1.

“Punch List and Deferred Maintenance Reserve Funds” shall have the meaning set forth in Section 7.4.1.

“Punch List Items” shall mean, collectively, any Punch List items identified by the Construction Consultant and other minor or insubstantial details of construction, decoration, mechanical adjustment or installation, which do not hinder or impede the use, operation, or maintenance of the Property or the ability to obtain a permanent certificate of occupancy with respect thereto.

“Qualified Manager” shall mean in the reasonable judgment of Lender, a reputable and experienced management organization (which may be an Affiliate of Borrower) possessing experience in managing properties similar in size, scope, use and value as the Property, provided, that Borrower shall have obtained (i) prior written confirmation from the applicable Rating Agencies that management of the Property by such Person will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof and (ii) if such Person is an Affiliate of Borrower, an Additional Insolvency Opinion.

“Rate Lock Agreement” shall mean that certain Extended Rate Lock Agreement-Application Stage dated May 9, 2007 between Borrower and Lender, as amended by that certain First Amendment to Extended Rate Lock Agreement-Application Stage dated as of the date hereof.

“Rating Agencies” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender.

“Related Entities” shall have the meaning set forth in Section 5.2.11(e).

“REMIC Trust” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds any portion of the Note.

“Rentable Space Percentage” shall have the meaning set forth in Section 6.2.4(a)(B)(iii).

“Rents” shall mean, all rents (including percentage rents), rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to the Property, including, without limitation, charges for electricity, oil, gas, water, steam, heat, ventilation, air-conditioning and any other energy, telecommunication, telephone, utility or similar items or time use charges, HVAC equipment charges, sprinkler charges, escalation charges, license fees, maintenance fees, charges for Taxes, Operating Expenses or other reimbursables payable to Borrower (or to the Manager, for the account of Borrower) under any Lease, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property, and proceeds, if any, from business interruption or other loss of income or insurance.

“Replacements” shall have the meaning set forth in Section 7.3.1.

“Replacement Management Agreement” shall mean, collectively, (a) either (i) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (ii) a management agreement with a Qualified Manager, which management agreement shall be reasonably acceptable to Lender in form and substance, provided, with respect to this subclause (i), Lender, at its option, may require that Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that such management agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (b) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or of such other form and substance reasonably acceptable to Lender), executed and delivered to Lender by Borrower and such Qualified Manager at Borrower’s expense.

“Replacement Reserve Account” shall have the meaning set forth in Section 7.3.1.

“Replacement Reserve Cap” shall have the meaning set forth in Section 7.3.1.

“Replacement Reserve Fund” shall have the meaning set forth in Section 7.3.1.

“Replacement Reserve Monthly Deposit” shall have the meaning set forth in Section 7.3.1.

“Requested Advance Date” shall have the meaning set forth in Section 2.14.2(a), hereof.

- "Required Completion Date" shall mean June 1, 2009, provided, however, that the Required Completion Date may be extended by Lender to December 1, 2009 in Lender's sole discretion.

- "Required Equity Funds" shall have the meaning set forth in **Section 2.11.13**.

- "Required Initial Advance Date" shall mean January 10, 2008, provided, however, that Borrower shall have the right to extend the Required ~~Completion~~**Initial Advance** Date to February 10, 2008, provided that Lender is satisfied that prior to January 10, 2008, Borrower has used commercially reasonable efforts to obtain the Home Depot Estoppel Certificate and the Retaining Wall Letter, and further provided that Lender shall have the right to further extend the Required Initial Advance Date in Lender's sole discretion.

- "Required Ratios at Completion" shall have the meaning set forth in **Section 2.12(j)** hereof.

- "Reserve" or "Reserve Funds" shall mean, collectively, the Tax and Insurance Escrow Fund, the Interest Reserve Funds, the Excess Cash Flow Reserve Funds, the Replacement Reserve Fund, the Punch List and Deferred Maintenance Fund, the Operating Reserve Fund, the Ground Lease Reserve Fund, the Rollover Reserve Fund, the Storage Facility Master Lease Reserve Fund and any other escrow fund established by the Loan Documents.

- "Restoration" shall mean the repair and restoration of the Property after a Casualty or Condemnation to substantially the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

- "Restoration Threshold" shall have the meaning set forth in **Section 6.2.3(a)** hereof.

- "Restricted Party" shall mean collectively, (a) Borrower, any Guarantor, and any Affiliated Manager and (b) any shareholder, partner, member, non-member manager, any direct or indirect legal or beneficial owner of, Borrower, any Guarantor, any Affiliated Manager or any non-member manager.

- "Retainage" shall mean, for each Contract and Subcontract, the greater of (a) ten percent (10%) of all costs funded to the Contractor or Subcontractor under the Contract or Subcontract, or (b) the actual retainage required under such Contract or Subcontract.

- "Retaining Wall Letter" shall have the meaning set forth in **Section 2.10.21** hereof.

- "Rollover Reserve Account" shall have the meaning set forth in **Section 7.8.1**.

- "Rollover Reserve Cap" shall have the meaning set forth in **Section 7.8.1**.

- "Rollover Reserve Fund" shall have the meaning set forth in **Section 7.8.1**.

- “Rollover Reserve Monthly Deposit” shall have the meaning set forth in Section 7.8.1.

- “S&P” shall mean Standard & Poor’s Ratings Group, a division of the McGraw-Hill Companies.

- “Sale or Pledge” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

- “Scheduled Defeasance Payments” shall have the meaning set forth in Section 2.5.1(b).

- “Second Tax and Insurance Escrow Deposit” shall have the meaning set forth in Section 7.1 hereof.

- “Securities” shall have the meaning set forth in Section 9.1 hereof.

- “Securities Act” shall have the meaning set forth in Section 9.2(a) hereof.

- “Securitization” shall have the meaning set forth in Section 9.1 hereof.

- “Self Storage Facility” shall have the meaning set forth in Section 5.1.44 hereof.

- “Servicer” shall have the meaning set forth in Section 9.5 hereof.

- “Servicing Agreement” shall have the meaning set forth in Section 9.5 hereof.

- “Severed Loan Documents” shall have the meaning set forth in Section 8.2(c) hereof.

- “Shortfall” shall have the meaning set forth in Section 2.1.10.

- “Soft Costs” shall mean those Building Loan Costs which are not Hard Costs, including but not limited to, architect’s, engineer’s and general contractor’s fees, interest on the Building Loan, recording taxes and title charges in respect of the Building Loan Mortgage and such other non-construction costs as are part of the Cost of the Improvements.

- “Special Purpose Entity” shall mean a corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date thereof, has complied with and shall at all times comply with the following requirements unless it has received either prior consent to do otherwise from Lender or a permitted administrative agent thereof, or, while the Loan is securitized, confirmation from each of the applicable Rating Agencies that such noncompliance would not result in the requalification, withdrawal, or downgrade of the ratings of any Securities or any class thereof:

- (i) is and shall be organized solely for the purpose of (A) in the case of Borrower, leasing pursuant to the Ground Lease, holding, selling, leasing, transferring, exchanging, managing and operating the Property, entering into and performing its obligations under the Loan Documents with Lender, refinancing the Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (B) in the case of a Principal, acting as a general partner of the limited partnership that owns the Property or as member of the limited liability company that owns the Property and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) has not engaged and shall not engage in any business unrelated to (A) the acquisition, development, ownership, management or operation of the Property, or (B) in the case of a Principal, acting as general partner of the limited partnership that owns the Property or acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not owned and shall not own any real property other than, in the case of Borrower, a fee or leasehold interest in the Property;

(ix) does not have, shall not have and at no time had any assets other than (A) in the case of Borrower, the Property and personal property necessary or incidental to its ownership and operation of the Property or (B) in the case of a Principal, its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Property and personal property necessary or incidental to its ownership of such interests;

(v) has not engaged in, sought, consented or permitted to and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger, (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents, or (C) in the case of a Principal, any transfer of its partnership or membership interests;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) if such entity is a limited partnership, has and shall have at least one general partner and has and shall have, as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability company, (B) has two (2) Independent Directors, and (C) holds a direct interest as general partner in the limited partnership of not less than 0.5% (or 0.1%, if the limited partnership is a Delaware entity);

(viii) if such entity is a corporation, has and shall have at least two (2) Independent Director, and shall not cause or permit the board of directors of such entity to take any Material Action either with respect to itself or, if the corporation is a Principal, with respect to Borrower or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two Independent Directors shall have participated in such vote and shall have voted in favor of such action;

(ix) if such entity is a limited liability company (other than limited liability company meeting all of the requirements applicable to a single-member limited liability company set forth in this definition of "Special Purpose Entity"), has and shall have at least one (1) member that is a Special Purpose Entity, that is a corporation, that has at least two (2) Independent Directors and that directly owns at least one-half-of-one percent (0.5%) of the equity of the limited liability company (or 0.1% if the limited liability company is a Delaware entity);

(x) if such entity is a single-member limited liability company, (A) is and shall be a Delaware limited liability company, (B) has and shall have at least two (2) Independent Directors serving as a manager of such company, (C) shall not take any Material Action and shall not cause or permit the members or managers of such entity to take any Material Action, either with respect to itself or, if the company is a Principal, with respect to Borrower, in each case unless one Independent Director then serving as a manager of the company shall have participated and consented in writing to such action, and (D) has and shall have either (1) a member which owns no economic interest in the company, has signed the company's limited liability company agreement and has no obligation to make capital contributions to the company, or (2) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(xi) has not and shall not (and, if such entity is (a) a limited liability company, has and shall have a limited liability agreement or an operating agreement, as applicable, (b) a limited partnership, has a limited partnership agreement, or (c) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity shall not) (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets; (3) amend its organizational documents with respect to the matters set forth in this definition without the consent of Lender; or (4) without the affirmative vote of two (2) Independent Directors or Independent Managers of itself or the consent of a Principal that is a member or general partner in it: (A) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the entity or a substantial portion of its property; (C) make an assignment for the benefit of the creditors of the entity; or (D) take any action in furtherance of any of the foregoing;

(xii) has at all times been and shall at all times remain solvent and has paid and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and has maintained and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xiii) has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) has maintained and shall maintain its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is required by law to file consolidated tax returns and, if it is a corporation, has not filed and shall not file a consolidated federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;

(xv) has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) has held and shall hold its assets in its own name;

(xviii) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially-reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;

(xix) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity;

(xx) has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and shall maintain a sufficient number of employees in light of its contemplated business operations;

(xxi) has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) has not incurred any Indebtedness other than (i) acquisition financing with respect to the Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by the Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property;

(xxiii) shall have no Indebtedness other than (i) the Loan, (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Property, and the routine administration of Borrower, in amounts not to exceed \$525,000, which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to this Agreement;

(xxiv) has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets for the benefit of any other Person, in each case except as permitted pursuant to this Agreement;

(xxv) has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate;

(xxvi) has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing (individually, a "Related Party" and collectively, the "Related Parties"), including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxviii) has not pledged and shall not pledge its assets to or for the benefit of any other Person other than with respect to loans secured by the Property and no such pledge remains outstanding except to Lender to secure the Loan;

(xxix) has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(xxx) has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxi) has not made and shall not make loans to any Person and has not held and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(xxxii) has not identified and shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(xxxiii) other than capital contributions and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's-length transaction with an unrelated third party;

(xxxiv) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;

(xxxv) if such entity is a corporation, has considered and shall consider the interests of its creditors in connection with all corporate actions;

(xxxvi) has not had and shall not have any of its obligations guaranteed by any Affiliate except as provided by the Loan Documents;

(xxxvii) has not formed, acquired or held and shall not form, acquire or hold any subsidiary, except that a Principal may acquire and hold its interest in Borrower;

(xxxviii) has complied and shall comply with all of the terms and provisions contained in its organizational documents.

(xxxix) has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion are true;

(xl) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;

(xli) is, has always been and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business;

(xlii) has paid all taxes which it owes and is not currently involved in any dispute with any taxing authority;

(xliii) is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that resulted in a judgment against it that has not been paid in full;

(xliv) has no judgments or Liens of any nature against it except for tax liens not yet due and the Permitted Encumbrances;

(xlv) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and

(xlvi) has no material contingent or actual obligations not related to the Property.

"Stabilized Net Cash Flow" shall mean underwritten Gross Income from Operations calculated using an vacancy rate equal to the greater of five percent (5%), the actual vacancy rate for the Property and the market vacancy rate ("Effective Gross Income"), less (i) Operating Expenses including a management fee of not less than four percent (4%) of Effective Gross Income and (ii) an adjustment for Replacement Reserves and normalized costs of tenant improvements and leasing commissions of \$235,000.00.

"Stabilized Value" shall mean the value of the Property, determined following the Completion of the Improvements. The Stabilized Value shall be determined based upon an MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days or the date of the Completion of the Improvement occurs made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error.

"Stabilized Loan-to-Value Ratio" shall mean the ratio of the Total Loan Amount to the Stabilized Value.

"State" shall mean, the State or Commonwealth in which the Property or any part thereof is located.

"Storage Facility Master Lease" shall have the meaning set forth in Section 5.1.44 hereof.

"Storage Facility Master Lease Reserve Account" shall have the meaning set forth in Section 7.10.1 hereof.

"Storage Facility Master Lease Reserve Fund" shall have the meaning set forth in Section 7.10.1 hereof.

- “Storage Facility Rent” shall have the meaning set forth in Section 5.1.44 hereof.

- “Storage Facility Tenant” shall have the meaning set forth in Section 5.1.44 hereof.

- “Stored Materials” shall have the meaning set forth in Section 2.1.8 hereof.

- “Subcontract” shall mean shall mean any agreement (other than the Architect’s Contract and the General Contractor’s Agreement) entered into by Borrower or by General Contractor, in which the Subcontractor thereunder agrees to provide services, labor and/or materials in connection with the Project Improvements.

- “Subcontractor” shall mean any subcontractor supplying services, labor and/or materials in connection with the Project Improvements.

- “Subordinate Financing” shall have the meaning set forth in Section 9.1.2(b).

- “Successor Borrower” shall have the meaning set forth in Section 2.5.3 hereof.

- “Survey” shall mean a survey of the Property prepared by a Surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

- “Surveyor” shall mean Control Point Associates, Inc., or such other land surveyor registered as such in the State of New York.

- “Tax and Insurance Escrow Fund” shall have the meaning set forth in Section 7.1 hereof.

- “Taxes” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

- “Tenant” shall mean the tenant under any Lease.

- “Threshold Amount” shall have the meaning set forth in Section 5.1.21(a) hereof.

- “Title Company” shall have the meaning set forth in Section 3.1.3(b) hereof.

- “Title Insurance Policy” shall mean, an ALTA mortgagee title insurance policy in the form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to the Property and insuring the lien of the Mortgage.

- “Total Debt” shall mean, collectively, the Debt and Other Debt.

- “Total Debt Service” shall mean, with respect to any particular period of time, scheduled payments of principal, if any, and interest under the Building Loan, the Project Loan and, if applicable, the Subordinate Financing.

- “Total Loan Amount” shall mean the sum of the Building Loan Amount, the Project Loan Amount and the Subordinate Financing, if applicable.

- “Transfer” shall have the meaning set forth in Section 5.2.11(b) hereof.

- “Transferee” shall have the meaning set forth in Section 5.2.11(e).

- “Transferee’s Principals” shall mean collectively, (A) Transferee’s managing members, general partners or principal shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee.

- “UCC” or “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located.

- “U.S. Obligations” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (b) to the extent acceptable to the Rating Agencies, other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

- “Yield Maintenance Default Premium” shall mean an amount equal to the greater of (a) five percent (5%) of the outstanding principal balance of the Loan to be prepaid or satisfied and (b) the Defeasance Payment Amount that would be required if a Defeasance Event were to occur at such time (whether or not then permitted) in an amount equal to the outstanding principal amount of the Loan to be prepaid or satisfied.

- Yield Maintenance Premium” shall mean an amount equal to the greater of (a) one percent (1%) of the outstanding principal of the Loan to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under the Note assuming that all outstanding principal and interest on the Loan is paid on the Open Period Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount being prepaid.

- Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Any reference in this Agreement or in any other Loan Document to any Loan Document shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, re placed and/or restated from time to time (and, in the case of any note or other instrument, to any instrument issued in substitution therefor). Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

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ARTICLE II.

-
GENERAL TERMS

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Section 2.1 Loan Commitment; Disbursement to Borrower

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2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept Advances in respect of the Building Loan as more particularly set forth in **Section 2.10**.

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2.1.2 No Reborrowings. Any amount borrowed and repaid hereunder in respect of the Building Loan may not be reborrowed.

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2.1.3 The Note, Mortgage and Loan Documents. The Building Loan shall be evidenced by the Building Loan Note and secured by the Building Loan Mortgage, the Building Loan Assignment of Leases and the other Building Loan Documents.

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2.1.4 Use of Proceeds. Borrower hereby agrees that Borrower shall use the proceeds of the Building Loan to pay or reimburse itself for Building Loan Costs actually incurred in connection with demolition and the construction of the Project Improvements if and to the extent that such Building Loan Costs are reflected in the Building Loan Budget, subject to reallocation pursuant to **Sections 2.1.6, 2.1.7 and 5.1.33** (or other reallocations approved by Lender in its sole discretion).

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2.1.5 Advances. Lender shall not be required to Advance funds hereunder for any category or line item of Building Loan Costs in excess of the amount specified for such line item or category in the Building Loan Budget, subject to **Sections 2.1.6, 2.1.7 and 5.1.33** (or other reallocations approved by Lender in its sole discretion). No Advances shall be made to pay for Affiliate Fees.

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2.1.6 Cost Overruns. If Borrower becomes aware of any change in actual or projected Project-Related Costs which will increase any one or more category or line item of costs reflected in the Development Budget, Borrower shall immediately notify Lender in writing and promptly submit to Lender for its approval a revised Development Budget. Any reallocation of any category or line items in the Development Budget in connection with cost overruns shall be subject to Lender's approval in Lender's sole discretion except as set forth in **Sections 2.1.7 and 5.1.33**, provided, however, under no circumstances shall Borrower be permitted, or Lender obligated to approve, the reallocation of line items from the Building Loan Budget to the Project Loan Budget. Lender shall have no obligation to make any further Advances unless and until the revised Development Budget so submitted by Borrower is approved by Lender and Borrower has satisfied its obligations with respect to any resulting Shortfall under **Section 2.1.10**. Lender reserves the right to approve or disapprove any revised Development Budget in its sole and absolute discretion (except with respect to reallocations in accordance with **Sections 2.1.7 and 5.1.33**).

2.1.7 Contingency Reserve. Following the satisfaction of the Initial Advance Conditions, and subject to the prior approval of Lender in its sole discretion, Borrower may revise the Building Loan Budget to move (i) amounts available under any Line Item for Hard Costs that are designated to "Contingency" to other Line Items for Hard Costs in the Building Loan Budget, or (ii) amounts available under any Line Item for Soft Costs that are designated "Contingency" to other Line Items for Soft Costs in the Building Loan Budget. Any cost savings shall be allocated in accordance with **Section 5.1.33** hereof. In no event may the Contingency Line Item of the Building Loan Budget be reallocated to any Line Item in the Project Loan Budget. The Contingency Line Item in the Building Loan Budget for Hard Costs shall contain at least five percent (5%) of the total projected Hard Costs, separate from the Contingency Line Items in the Project Loan Budget.

2.1.8 Stored Materials. Lender shall not be required to disburse any funds for any materials, machinery or other Personal Property not yet incorporated into the Project Improvements (the "Stored Materials"), unless the following conditions are satisfied:

(a) Borrower shall deliver to Lender bills of sale or other evidence reasonably satisfactory to Lender of the cost of, and, subject to the payment therefor, Borrower's title in and to such Stored Materials;

(b) The Stored Materials are identified to the Property and Borrower, are segregated so as to adequately give notice to all third parties of Borrower's title in and to such materials, and are components in substantially final form ready for incorporation into the Project Improvements;

(c) The Stored Materials are stored at the Property or at such other third-party owned and operated site as Lender shall reasonably approve, and are protected against theft and damage in a manner satisfactory to Lender, including, if requested by Lender, storage in a bonded warehouse in the greater metropolitan area in which the Property is located;

(d) The Stored Materials will be paid for in full with the funds to be disbursed, and all lien rights or claims of the supplier will be released upon full payment;

(e) Lender has or will have upon payment with disbursed funds a perfected, first priority security interest in the Stored Materials;

(f) The Stored Materials are insured for an amount equal to their replacement costs in accordance with **Section 6.1** of this Agreement;

(g) The aggregate cost of Stored Materials stored at the Property is approved by the Construction Consultant and, if required by Lender, the Construction Consultant shall certify that it has inspected such Stored Materials and they are in good condition and suitable for use in connection with the Project Improvements; and

(h) The aggregate cost of Stored Materials stored on the Property at any one time shall not exceed ten percent (10%) of the maximum amount of the Loan and the aggregate cost of Stored Materials stored off the Property at any one time shall not exceed five percent (5%) of the maximum amount of the Loan.

2.1.9 Amount of Advances. In no event shall any Advance exceed the full amount of Building Loan Costs theretofore paid or to be paid with the proceeds of such Advance plus any Building Loan Costs incurred by Borrower through the date of the Draw Request for such Advance minus (i) the applicable Retainage for each Contract and Subcontract, and (ii) the aggregate amount of any Advances previously made by Lender. It is further understood that the Retainage described above is intended to provide a contingency fund protecting Lender against failure of Borrower or Guarantor to fulfill any obligations under the Loan Documents, and that Lender may charge amounts to pay for Building Loan Costs against such Retainage in the event Lender is required or elects to expend funds to cure any Default or Event of Default, in either instance, in accordance with the terms of this Agreement. No Advance of the Loan by Lender shall be deemed to be an approval or acceptance by the Lender of any work performed thereon or the materials furnished with respect thereto.

2.1.10 Loan-In-Balance. As used herein, a "Shortfall" shall mean, as to any Line Item in the Development Budget as of any date, the amount determined by Lender, in Lender's sole but reasonable judgment, by which (A) the cost of completing or satisfying such Line Item, exceeds (B) the remaining undisbursed portion of the Loan allocated to such Line Item in the Development Budget plus any sums deposited with Lender pursuant to this Section 2.1.10 to pay for such Line Item and not previously disbursed plus any Reserve Funds to the extent such Reserve Funds are available hereunder for the payment of such Line Item. From time to time and at any time during the Construction Period, Lender shall have the right, but not the obligation, to notify Borrower that it has determined a Shortfall exists as to any one or more Line Items. If Lender at any time shall so notify Borrower, Borrower shall, at its option within five (5) days of Lender's notification as aforesaid, either: (i) deposit with Lender an amount equal to such Shortfall, which Lender disburse to Borrower to the satisfaction of the costs of such Line Item prior to advancing any further Loan proceeds on account of such costs; (ii) post an irrevocable standby Letter of Credit in the amount of such Shortfall, in favor of Lender; (iii) to the extent permitted under Sections 2.1.7 and 5.1.33, and following the satisfaction of the Initial Advance Conditions allocate the Contingency Reserve, with respect to the Line Item(s) in question, to the Shortfall, and provided, further that the amount of the remaining Contingency Reserve for such Line Item(s) (following the allocation to the Shortfall) is sufficient for such Line Item(s), as determined by Lender in its sole discretion; and (iv) to the extent permitted under Section 5.1.33, and then only following the satisfaction of the Initial Advance Conditions, reallocate cost savings from the Development Budget in respect of the Loan (or other reallocations which are approved by Lender, in its sole discretion) in accordance with the terms of this Agreement, but only to the extent such cost savings can be allocated to the related Line Items. Borrower hereby agrees that Lender shall have a lien on and security interest in, for the benefit of Lender, any sums deposited pursuant to clause (i) above and that Borrower shall have no right to withdraw any such sums except for the payment of the aforesaid costs as approved by Lender. Lender shall have no obligation to make any further Advances of proceeds of the Loan as to any Line Item until the sums required to be deposited pursuant to clause (i) above as to such Line Item have been exhausted, or until Borrower has posted an irrevocable standby Letter of Credit pursuant to clause (iii) above, as the case may be, and, in any such case, the Loan is back "in balance". Any such sums not used as provided in said clause (i) shall be released to Borrower when and to the extent that Lender reasonably determines that the amount thereof is more than the excess, if any, of the remaining Project-Related Costs over the undisbursed balance of the Loan, provided, however, that should an Event of Default occur, Lender, in its sole discretion, may apply such amounts either to the remaining Project-Related Costs or to the immediate reduction of outstanding principal and/or interest under the Note.

2.1.11 Quality of Work. No Advance or any portion thereof shall be made with respect to defective work or to any contractor that has performed work that is defective and that has not been cured, as confirmed by the report of the Construction Consultant, but Lender may disburse all or part of any Advance before the sum shall become due if Lender believes it advisable to do so, and all such Advances or parts thereof shall be deemed to have been made pursuant to this Agreement.

2.1.12 Required Equity Funds. All Required Equity Funds shall be contributed (i.e., expended by Borrower and invested by Borrower in the Property, for Project-Related Costs set forth on the approved Development Budget) before the Closing Date.

2.1.13 Trust Fund. Pursuant to Section 13 of the New York Lien Law, Borrower shall receive the Advances hereunder and shall hold the right to receive the Advances as a trust fund to be applied first for the purpose of paying the Costs of the Improvements and shall apply the Advances first to the payment of the Cost of the Improvements on the Property before using any part of the total of the same for any other purpose.

2.1.14 Final Project Report and Development Budget. Attached hereto as **Schedule II** is Borrower's detailed and definitive budget of all Project-Related Costs to be incurred by Borrower during the Construction Term and that will be disbursed out of Loan proceeds subject to availability and satisfaction of all applicable conditions to Advances hereunder and under the Project Loan Agreement, being so indicated, delineated by each category of Project-Related Costs (each a "Line Item" or "Budget Line") and further broken down to segregate Building Loan Costs and Project Loan Costs, which budget has been approved by Lender and Construction Consultant (the "Development Budget"). The portion of the Development Budget that includes only Building Loan Costs is referred to herein as the "Building Loan Budget" and the portion of the Development Budget that includes only Project Loan Costs is referred to herein as the "Project Loan Budget."

2.1.15 Miscellaneous.

(a) The making of an Advance by Lender shall not constitute Lender's approval or acceptance of the construction theretofore completed. Lender's inspection and approval of the Plans and Specifications, the construction of the Project Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Lender, the sole obligation of Lender as the result of such inspection and approval being to make the Advances if and to the extent, required by this Agreement.

(b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT LENDER TO MAKE ADVANCES OF THE LOAN IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. MOREOVER, ALL POTENTIAL LIENORS ARE REMINDED THAT SUBDIVISION (3) OF SECTION 13 OF THE NEW YORK LIEN LAW PROVIDES THAT "NOTHING IN THIS SUBDIVISION SHALL BE CONSIDERED AS IMPOSING UPON THE LENDER ANY OBLIGATION TO SEE THE PROPER APPLICATION OF SUCH ADVANCES BY THE OWNER," AND LENDER DOES NOT IMPOSE SUCH AN OBLIGATION ON ITSELF.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate calculated as set forth in Section 2.2.2 below.

2.2.2 Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under 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 Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Loan Payment.

2.3.1 Monthly Debt Service Payments. Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from and including the Closing Date up to and including December 31, 2007, which interest shall be calculated in accordance with the provisions of Section 2.2 hereof, and (b) on each Payment Date commencing on the Payment Date occurring in February, 2008 and thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to interest due for the related Interest Period at the Interest Rate, for such related Interest Period and then to the principal amount of the Loan due in accordance with this Agreement, and lastly, to any other amounts due and unpaid pursuant to the Loan Documents hereto. Borrower and Lender acknowledge and agree that, on the 15th calendar day of the month preceding each Payment Date during the Construction Term: (a) if and to the extent undrawn funds remain available for Advance under the Project Loan from the Interest Reserve Line Item of the Project Loan Budget, and provided that that no Event of Default or monetary Default then exists under any of the Loan Documents or would occur as a result of such Project Loan Advance, the Monthly Debt Service Amount then due and owing shall be advanced by Lender by a Project Loan Advance under Interest Reserve Line Item of the Project Loan Budget; and (b) if no amount remains available under the Interest Reserve Line Item but and to the extent Interest Reserve Funds are on deposit in the Interest Reserve Account, and no Event of Default or monetary Default then exists under any of the Loan Documents, the Monthly Debt Service Payment Amount then due and payable shall be paid by application of funds from the Interest Reserve Account. Borrower and Lender acknowledge and agree that Lender may automatically make a Project Loan Advance or apply Interest Reserve Funds on deposit in the Interest Reserve Account on each Payment Date occurring during the Construction Term, in either instance, in accordance with this Section 2.3.1, without the need for Borrower to submit a Draw Request or otherwise request such an Advance or application.

2.3.2 Payments Generally. The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include December 31, 2007. Thereafter each Interest Period shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided in this **Section 2.4.1** and **Section 2.4.2**, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. 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. Notwithstanding anything to the contrary contained herein, commencing after the Payment Date three (3) months prior to the Maturity Date (the "Open Period Date"), or on any Payment Date thereafter (or on any date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole, but not in part, without payment of the Yield Maintenance Premium.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to **Section 6.4** hereof, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest through the end of the related Interest Period and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; provided, however, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this **Section 2.4.2**.

2.4.3 Prepayments After Default. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in **Section 2.4.1** hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a "**Prepayment Date**") provided no Event of Default exists and upon payment of an amount equal to the Yield Maintenance Premium. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. 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.

2.4.5 Application of Prepayments to Components. Any prepayment of the principal of the Loan, in whole or in part, voluntary or involuntary, shall be applied (a) first, to the reduction of the outstanding principal balance of the Project Loan until reduced to zero, and (b) second, to the reduction of the outstanding principal balance of the Building Loan until reduced to zero. Subsequent to any Event of Default, any payment of principal from whatever source may be applied by Lender between the various components of the Loan in Lender's sole discretion.

Section 2.5 Defeasance.

2.5.1 Voluntary Defeasance (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntary prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a "**Defeasance Event**"):

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the "**Defeasance Date**") on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the Payment Date immediately preceding the next Payment Date, provided, however, if the Defeasance Deposit shall include short-term interest computed from the date of such prepayment through to the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

(iv) Borrower shall use the Defeasance Deposit to purchase U.S. Obligations in accordance with Section 2.5.1(b) below;

(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this Section 2.5 (the "Security Agreement");

(vi) Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of such Defeasance Event;

(vii) Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;

(viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.5.1(a) have been satisfied;

(ix) Borrower shall deliver a certificate of Borrower's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in Section 2.6 hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Open Period Date (the "Scheduled Defeasance Payments"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Clearing Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this Section 2.5 and satisfy Borrower's other obligations under this Section 2.5 and Section 2.6 shall be remitted to Borrower.

2.5.2 Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 Successor Borrower. In connection with any Defeasance Event, Borrower shall establish a successor entity (the "**Successor Borrower**"), which shall be a Special Purpose Entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Section 2.5.3, but Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 Release of Property. Except as set forth in this **Section 2.6**, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 Release of Property.

(a) If Borrower has elected to defease the Loan and the requirements of Section 2.5 and this Section 2.6 have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

2.6.2 Release on Payment in Full. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

Section 2.7 Clearing Account/Cash Management. On or prior to the Closing Date, Borrower shall, at its sole cost and expense, cause each of the following to occur to the satisfaction of Lender (collectively, the "**Cash Management Conditions**"): (a) Borrower shall establish an Eligible Account (the "**Clearing Account**") with an Eligible Institution selected by Borrower and approved by Lender (the "**Clearing Bank**"); (b) Borrower shall cause the Clearing Bank to execute and deliver the Clearing Account Agreement in accordance with **Section 2.7.1(b)**; (c) Borrower shall establish an Eligible Account (the "**Cash Management Account**") with an the Cash Management Bank designated by Lender pursuant to and in accordance with the Cash Management Agreement and **Section 2.7.2** hereof; (d) Borrower shall deliver a Payment Direction Letter to the Tenant under any Lease then or thereafter in effect and provide Lender with reasonably satisfactory evidence that the Tenant under such Lease has confirmed that it shall comply with the terms thereof; (e) Borrower will take all actions necessary to establish and maintain in favor of Lender a perfected first priority security interest in the Clearing Account and Cash Management Account and all deposits at any time contained in either such account and the proceeds thereof, including, without limitation, executing and filing UCC-1 Financing Statements; (f) Borrower shall deliver to Lender an opinion of Borrower's counsel with respect to the due execution, authority, enforceability of the Cash Management Agreement and Clearing Account Agreement and confirming that Lender has first priority perfected security interest in the Cash Management Account and Clearing Account and such other matters as Lender may reasonably require, all such opinions in form, scope and substance satisfactory to Lender and Lender's counsel; and (g) Borrower shall reimburse Lender for any and all cost and expenses, including reasonable attorney's fees and disbursements, resulting from the foregoing.

2.7.1 Clearing Account.

(a) Borrower shall establish and maintain the Clearing Account with the Clearing Bank on or prior to the Closing Date, and thereafter Borrower shall maintain the Clearing Account at all times during the remainder of the term of the Loan. The Clearing Account shall be entitled "P/A-Acadia Pelham Manor, LLC, as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 10, 2007 - Clearing Account". Borrower hereby grants to Lender a first-priority security interest in the Clearing Account and all deposits at any time contained therein and the proceeds thereof. All monies now or hereafter deposited into the Clearing Account shall be deemed additional security for the Debt.

(b) Borrower shall obtain from the Clearing Bank and deliver to Lender an agreement, in form and substance satisfactory to Lender (the "Clearing Account Agreement"), pursuant to which: (i) Borrower and Clearing Bank acknowledge and agree that during a Cash Trap Period, Lender shall have the sole right to make withdrawals from the Clearing Account and all costs and expenses for establishing and maintaining the Clearing Account shall be paid by Borrower; (ii) upon notice from Lender that a Cash Trap Period exists, the Clearing Bank agrees to transfer to the Cash Management Account in immediately available funds by federal wire transfer all amounts on deposit in the Clearing Account once every Business Day during the term of the Loan.

(c) Borrower shall (i) deliver irrevocable written instructions to all tenants under Leases to deliver all Rents (including additional rent, payable thereunder directly to the Clearing Account, and (ii) deliver irrevocable written instructions to each of the credit card companies or credit card clearing banks with which Borrower or Manager has entered into merchant's agreements to deliver all receipts payable with respect to the Property directly to the Clearing Account (collectively, the "Payment Direction Letters."). Borrower and Manager shall deposit all amounts received by Borrower or Manager constituting Rents into the Clearing Account within one (1) Business Day after receipt thereof.

(d) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Clearing Account to the payment of the Debt in any order in its sole discretion.

(e) The Clearing Account shall be an Eligible Account and shall not be commingled with other monies held by Borrower or Clearing Bank.

(f) Borrower shall not further pledge, assign or grant any security interest in the Clearing Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Clearing Account and/or the Clearing Account Agreement (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Clearing Account was established.

2.7.2 Cash Management Account.

(a) Pursuant to and in accordance with the Cash Management Agreement, Borrower shall establish and maintain a segregated Eligible Account (the "**Cash Management Account**") to be held by an Eligible Institution selected by Lender (the "**Cash Management Bank**") in trust and for the benefit of Lender, which Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account shall be entitled "P/A-Acadia Pelham Manor, LLC as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 10, 2007 - Cash Management Account." Borrower hereby grants to Lender a first priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, executing and filing UCC-1 Financing Statements and continuations thereof. Borrower will not in any way alter or modify the Cash Management Account and will notify Lender of the account number thereof. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower.

(b) During a Cash Trap Period, and provided no Event of Default shall have occurred, on each Payment Date (or, if such Payment Date is not a Business Day, on the immediately preceding Business Day), all funds on deposit in the Cash Management Account shall be applied as set forth in the Cash Management Agreement

(c) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(d) Borrower hereby agrees that Lender may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Lender shall provide notice thereof to Borrower.

(e) All funds on deposit in the Cash Management Account following the occurrence of an Event of Default may be applied by Lender in such order and priority as Lender shall determine.

(f) Notwithstanding anything to the contrary herein, all transfers of Borrower's funds from the Cash Management Account or other sources to or for the benefit of any mezzanine lender under any Subordinate Financing pursuant to this Agreement or any of the other Loan Documents shall constitute distributions from Borrower to the Mezzanine Borrower and must comply with the requirements as to distributions of the Delaware Limited Liability Company Act. No provision of any of the Loan Documents shall create a debtor-creditor relationship between Borrower and any mezzanine or subordinate lender.

2.7.3 Payments Received Under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited on a monthly basis into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to the Cash Management Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

Section 2.8 Intentionally Omitted.

Section 2.9 Payments Not Conditional. All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

Section 2.10 Initial Advance. The obligation of Lender to make the initial Advance of the Building Loan (the "Initial Advance") shall be subject to the following conditions precedent (collectively, the "Initial Advance Conditions") on or prior to the Required Initial Advance Date, all of which conditions precedent must be satisfied prior to Lender making any such Initial Advance:

2.10.1 Prior Conditions Satisfied. All conditions precedent to closing shall continue to be satisfied as of the date of the Initial Advance (in the same manner in which they were satisfied for the closing without reimposing any one-time condition).

2.10.2 Performance; No Default. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Initial Advance, and on the date of such Initial Advance there shall exist no Default or Event of Default.

2.10.3 Representations and Warranties. The representations and warranties made by Borrower or Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of the Initial Advance.

2.10.4 No Damage. The Project Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall be satisfied that sufficient insurance proceeds will be available in the reasonable judgment of Lender to effect the satisfactory restoration of the Project Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.10.5 Government Approvals. Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the construction of the Project Improvements as contemplated by the Plans and Specifications, have been obtained and are in full force and effect, including, without limitation, the final approval of the Plans and Specifications by the all applicable Governmental Authorities for the Project Improvements and building permit(s) covering the entire scope of work contemplated by the Project Improvements in accordance with the approved Plans and Specification lawfully issued to Borrower.

2.10.6 Final Project Report. The Final Project Report shall have been delivered to Lender by the Construction Consultant.

2.10.7 Development Budget. Borrower shall have prepared and Lender and Construction Consultant shall have approved the Development Budget (including both the Building Loan Budget and the Project Loan Budget) and the Disbursement Schedule.

2.10.8 Plans and Specifications. Two (2) complete sets of the Plans and Specifications and any and all modifications and amendments made thereto which have been reviewed and approved by (A) Lender, and (B) the Construction Consultant. Borrower shall deliver to Lender a list identifying the Plans and Specifications and any and all modifications and amendments made thereto.

2.10.9 General Contractor's Agreement. Borrower and the General Contractor have entered into a Standard Form of Agreement between Owner and Construction Manager where Construction Manager is NOT a Constructor dated as of February 22, 2006 that obligates the General Contractor to cause the Completion of the Improvements to occur prior to the Required Completion Date reasonably acceptable to Lender and the Construction Consultant in both form and substance (once approved, the "**General Contractor's Agreement**"). The General Contractor's Agreement, shall have been duly executed and delivered by the parties thereto, shall be in full force and effect and Lender shall have received a certified copy or a fully executed duplicate original thereof. The General Contractor shall have duly executed and delivered to Lender a consent to the assignment of the General Contractor's Agreement, in form and substance reasonably satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. If General Contractor consist of more than one Person, then each such Person shall deliver a consent to the assignment of the General Contractor's Agreement, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof.

2.10.10 Architect's and General Contractor's Certificates. Certificates from the Borrower's Architect (the "**Architect's Certificate**") substantially in the form attached hereto as **Exhibit F** and from the General Contractor (the "**General Contractor's Certificate**") substantially in the form attached hereto as **Exhibit G**.

2.10.11 Contracts and Subcontracts. Borrower shall have delivered to Lender, and Lender and Construction Consultant shall have approved a list, certified by Borrower, of all Contractors and Subcontractors who have been or, to the extent identified by Borrower, will be supplying labor or materials for the Property. The list of Contractors and Subcontractors may be amended from time to time subject to the approval of Lender and Construction Consultant, in accordance with the terms hereof. Borrower shall have delivered to Lender all Contract and Major Contracts for all of the work necessary for Completion of the Improvements, and Lender and Construction Consultant shall have approved all such Major Contracts. No Advance shall be made by Lender with regard to work done by or on behalf of any Contractor or Subcontractor unless Borrower shall have delivered to Lender and Construction Consultant originals of the following documents as to such Contractor or Subcontractor, each in form and substance reasonably satisfactory to Lender:

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(a) Performance Letters. if requested by Lender, a performance letter (“**Performance Letter**”) substantially in the form attached hereto as **Exhibit H** from such Contractors and/or Subcontractors as Lender shall designate.

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(b) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

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2.10.12 Contractors’ Consent to Assignment. Each Contractor, Sub-Contractor and Other Design Professionals shall have delivered a consent to the assignment of each of their Contracts, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original of each such Contract.

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2.10.13 Cash Management. Lender has determined that the Cash Management Conditions have been satisfied.

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2.10.14 Notices. All notices required by any Governmental Authority or by any applicable Legal Requirement to be filed prior to commencement of construction of the Project Improvements shall have been filed.

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2.10.15 Deliveries. Lender shall have received:

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(a) Draw Request. A Draw Request complying with the requirements hereof;

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(b) Affirmation of Payment. An Affirmation of Payment;

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(c) Title Insurance Policy. A Title Insurance Policy for the full amount of the Loan, which includes a pending disbursement clause to increase the coverage of the Title Insurance Policy by the amount of the any Construction Advance, insuring the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances;

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(d) Lien Waivers. Duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form set forth in **Exhibit J** from the General Contractor and all Contractors and Subcontractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials, for the labor and/or materials so supplied, except for such work or labor and/or materials for which payment thereof is requested, as to which duly executed lien waivers shall be delivered to Lender with the next request for an Advance;

(e) Ratios. Evidence satisfactory to Lender that following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 80%;

(f) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents;

(g) Anticipated Costs Report. An Anticipated Costs Report; and

(h) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.10.16 Building Loan Agreement Filed. This Building Loan Agreement shall have been filed in the Westchester County Clerk's Office.

2.10.17 Initial Project Loan Advance. All conditions to the initial advance of the Project Loan set forth in Section 2.10 of the Project Loan Agreement shall have been satisfied.

2.10.18 Rate Lock Agreement. Simultaneously with the Initial Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Initial Advance bears to the Total Loan Amount.

2.10.19 Home Depot Estoppel Certificate. Borrower shall have delivered to Lender an estoppel certificate from Home Depot certifying to Lender that the Home Depot Lease is in full force and effect and that there are no defaults by Borrower or Home Depot thereunder, and otherwise in form and substance satisfactory to Lender in Lender's sole discretion (the "**Home Depot Estoppel Certificate**").

2.10.20 Initial Reserve Deposits. Borrower shall have deposited the Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit with Lender. The Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit shall be funded on the date of the Initial Advance with a portion of the Initial Advance under the Project Loan.

2.10.21 Retaining Wall Letter. Borrower shall have delivered to Lender a letter from the Village of Pelham Manor evidencing resolution of the retaining wall issue in form and substance satisfactory to Lender in Lender's sole discretion (the "**Retaining Wall Letter**").

2.10.22 Satisfaction of Initial Advance Conditions. Borrower covenants and agrees that, prior to the Required Initial Advance Date, time being of the essence, it shall cause all of the Initial Advance Conditions to be satisfied. Borrower shall not perform any work at the Property, including, without limitation, any demolition of the existing improvements, until all of the Initial Advance Conditions have been satisfied. Borrower's failure to satisfy, or cause the satisfaction of, any of the Initial Advance Conditions on or prior to the Required Initial Advance Date shall, at Lender's election, constitute an Event of Default. In addition to any and all other remedies that may be available to Lender hereunder, under the other Loan Documents, at law or in equity, upon the occurrence of an Event of Default resulting from the failure of any Initial Advance Condition to have been satisfied, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, with full power of substitution to complete or undertake such steps as may be necessary, in Lender's sole determination, to satisfy the Initial Advance Condition in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (ii) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Initial Advance Conditions, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the Project; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement and the other Loan Documents. In addition, upon such Event of Default, Lender shall have the right to unwind any interest rate hedge entered into by Lender and apply any deposits or other amounts held by Lender pursuant to the Rate Lock Agreement to costs and expenses incurred by Lender under this Agreement, the Rate Lock Agreement or any of the other Loan Documents.

Section 2.11 Construction Advances. The obligation of Lender to make the Advances of the Building Loan after the Initial Advance shall be subject to the following conditions precedent (collectively, the "**Construction Advance Conditions**"), all of which conditions precedent must be satisfied prior to Lender making any such Advance:

- 2.11.1 Prior Conditions Satisfied. All conditions precedent to any prior Advance (in the same manner in which they were satisfied for the Initial Advance or prior Advance, as applicable, and without reimposing any one-time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

- 2.11.2 Performance; No Default. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Advance, and on the date of such Advance there shall exist no Default or Event of Default or Shortfall.

- 2.11.3 Representations and Warranties. The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of such Advance.

- 2.11.4 No Damage. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall have received insurance proceeds sufficient in the reasonable judgment of Lender to effect the satisfactory restoration of the Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

- 2.11.5 Deliveries. The following items or documents shall have been delivered to Lender:

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(a) Anticipated Costs Report. An anticipated cost report ("**Anticipated Costs Report**") in the form set forth in **Exhibit I** executed by the General Contractor which sets forth the anticipated costs to complete construction of the Project Improvements, after giving effect to costs incurred during the previous month and any anticipated change orders;

(b) Endorsement to Title Insurance Policy. A "datedown" endorsement to Lender's title insurance policy as described in the form set forth in **Exhibit C** hereto, which continuation or endorsement shall increase the coverage of the Title Insurance Policy by the amount of the Advance through the pending disbursement clause (but not the overall policy amount which shall be for the full amount of the Loan), amend the effective date of the Title Insurance Policy to the date of such Advance, continue to insure the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances and which shall state that since the last disbursement of the Loan there have been no changes in the state of title to the Property (other than Permitted Encumbrances) and that there are no additional survey exceptions not previously approved by Lender;

(c) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents.

(d) Draw Request. A Draw Request complying with the provisions of this Agreement which shall constitute Borrower's representation and warranty to Lender that: (a) any completed construction is substantially in accordance with the Plans and Specifications, (b) all costs for the payment of which Lender have previously advanced funds have in fact been paid, (c) all the representations and warranties contained in **Article IV** of this Agreement continue to be true and correct in all material respects, (d) no Event of Default shall have occurred and be continuing hereunder, and (e) Borrower continues to be in compliance in all respects with all of the other terms, covenants and conditions contained in this Agreement.

(e) Affirmation of Payment. General Contractor's Affirmation of Payment ("**Affirmation of Payment**") (AIA Form G706) in the form attached hereto as **Exhibit E**.

(f) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.11.6 Construction Consultant Certificate. Each draw request relating to Hard Costs shall be accompanied by a certificate or report of the Construction Consultant to Lender based upon a site observation of the Property made by the Construction Consultant not more than thirty (30) days prior to the date of such draw, in which the Construction Consultant shall in substance: (i) verify that the portion of the Project Improvements completed as of the date of such site observation has been completed substantially in accordance with the Plans and Specifications; and (ii) state its estimate of (1) the percentages of the construction of the Project Improvements completed as of the date of such site observation on the basis of work in place as part of the Project Improvements and the Building Loan Budget, (2) the Hard Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (3) the sum necessary to complete construction of the Project Improvements in accordance with the Plans and Specifications, and (4) the amount of time from the date of such inspection that will be required to achieve Completion of the Improvements.

2.11.7 Other Bids. If in the reasonable judgment of Lender and the Construction Consultant all Contracts, Major Contracts, and the General Contractor's Agreement do not cover all of the work necessary for Completion of the Improvements, Borrower shall cause to be furnished firm bids from responsible parties, or estimates and other information reasonably satisfactory to Lender, for the work not so covered, to enable Lender to ascertain the total estimated cost of all work done and to be done.

2.11.8 Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

2.11.9 Lien Waivers. Borrower shall have delivered duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as applicable, and otherwise substantially in the form set forth in Exhibit J, from the General Contractor, all Major Contractors and Major Subcontractors for all work performed, and all labor or material supplied for which payment thereof has been made prior to the date of the Advance.

2.11.10 Construction Consultant Approval

Lender has received advice from the Construction Consultant, satisfactory to Lender, as to Construction Consultant's determination, acting reasonably, based on on-site inspections of the Improvements and the data submitted to and reviewed by it as part of Borrower's Requisition of the value of the labor and materials in place, that the construction of the Project Improvements is proceeding satisfactorily and according to schedule and that the work on account of which the Advance is sought has been completed in a good and workmanlike manner to such Construction Consultant's satisfaction and substantially in accordance with the Plans and Specifications.

2.11.11 Ratios. Following such Advance (and any Project Loan Advance being made on such date), the Loan-to-Cost Ratio shall be no greater than 80%.

2.11.12 Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

2.11.13 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of each Advance, Borrower has invested Cash equity in an amount equal to or greater than (a) \$8,916,000 or (b) 20% of the Total Project Costs or (c) the difference between the Development Budget and the maximum Loan amount of \$35,664,000 for approved Project-Related Costs (the "**Required Equity Funds**"). Notwithstanding the foregoing, if the Borrower realizes cost savings from the development of the Project, either in the form of Hard Costs or Soft Costs, Advances may be advanced to Borrower provided that (i) the Borrower would not have less than \$8,916,000 of cash equity in the Project through such Advance and (ii) the Debt Service Coverage Ratio shall be equal to or greater than 1.15 to 1.0 assuming a fully advanced Loan using a debt service constant of 7.31%, and (iii) the loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan. If Borrower is in non-compliance solely with respect to condition (i) above, at Borrower's option, either (A) any excess cost savings (funds in excess of the amount so that the Required Equity Funds shall continue to be satisfied) shall be deposited as follows: (1) 100% into the Replacement Reserve Account until the amount on deposit in such account equals the Replacement Reserve Cap, and then (2) 100% of any excess into the Rollover Reserve Account until the amount on deposit in such account equals the Rollover Reserve Cap, and then (3) 100% of any excess into any other Reserves required by Lender pursuant to this Agreement, or (B) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement. If Borrower is in compliance with respect to condition (i) above but is not in compliance with conditions (ii) and (iii) above, any excess cost savings shall, at Borrower's option, (A) be held back by Lender as additional collateral for the Loan until satisfaction of each of the requirements are satisfied, or (B) be deposited as follows: (1) 100% into the Replacement Reserve Account until the amount on deposit in such account equals the Replacement Reserve Cap, and then (2) 100% of any excess into the Rollover Reserve Account until the amount on deposit in such account equals the Rollover Reserve Cap, and then (3) 100% of any excess into any other Reserves required by Lender pursuant to this Agreement, or (C) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement.

2.11.14 Rate Lock Agreement. Simultaneously with each Construction Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Construction Advance bears to the Total Loan Amount, provided, however, that in the event that any of the conditions of **Section 2.11.13** are not satisfied, Lender shall have the right to apply the portion of the deposit under the Rate Lock Agreement to be returned to Borrower to satisfy the conditions of **Section 2.11.13**.

2.11.15 Home Depot Contribution. In the event that Borrower receives any portion of the Tenant Contribution (as defined in the Home Depot Lease), payable to Borrower pursuant to that certain Sublease dated as of December 21, 2006 (the "**Home Depot Lease**"), with Home Depot U.S.A., Inc. ("**Home Depot**") or the proceeds of any letter of credit delivered by Home Depot pursuant to the Home Depot Lease as security for Home Depot's obligation to pay the Tenant Contribution, Borrower shall apply such Tenant Contribution or the proceeds of such letter of credit, as applicable, to the payment of Project Related Costs and shall provide Lender with evidence that such Tenant Contribution or proceeds, as applicable, have been applied to the payment of Project Related Costs prior to Lender making any further Advances under this Agreement.

Section 2.12 Final Advance.

2.12.1 Conditions to Release of Final Advance. In addition to the conditions set forth in **Section 2.10** and **Section 2.11**, above, Lender's obligation to make the final Advance in the amount calculated pursuant to **Section 2.12.2** of this Agreement (the "**Final Advance**") shall be subject to receipt by Lender of the following;

- (a) Completion of Improvements. Evidence satisfactory to Lender and the Construction Consultant that the Completion of the Improvements has occurred.
 - (b) Final Project Loan Advance. All conditions to the Final Project Loan Advance have been satisfied and the Final Project Loan Advance shall have been made or will be made simultaneously therewith.
 - (c) Lien Waivers. Duly executed final lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form attached hereto as **Exhibit J** from the General Contractor and Major Contractors and Major Subcontractors who have performed work for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied.
 - (d) "As-Built" Plans and Specifications. A full and complete set of "as built" Plans and Specifications certified to by Borrower's Architect.
 - (e) Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.
 - (f) Certificates. Completed AIA Form G704 (Certificate of Substantial Completion) and completed AIA Form G707 (Consent of Surety to Final Payments) shall have been executed and delivered by Borrower's Architect and General Contractor.
 - (g) Deposits to Reserves. If Lender determines that any Punch List Work or Deferred Maintenance Condition exists, the Punch List and Deferred Maintenance Deposit has been made, if Lender determines that the deposits are required to the Operating Reserve Account, the Operating Reserve Deposit has been made, and all other deposits to the Reserve Funds required by this Agreement have been made.
 - (h) Other Documents. Such documents, letters, affidavits, reports and assurances, as Lender, Lender's counsel and the Construction Consultant may reasonably require.
 - (i) Required Ratios at Completion. Lender shall have determined that, following the Final Advance (and taking into consideration the Final Project Loan Advance under the Project Loan): (i) the Loan-to-Cost Ratio shall be no more than 80%; (ii) the Stabilized Loan-to-Value Ratio shall be no more than 80%; (iii) the Stabilized Net Cash Flow for the entire Property shall be not less than \$3,100,000; (iv) the Debt Service Coverage Ratio based on Lender's underwritten Net Operating Income and the greater of the actual debt service constant or 9.30% shall be .99 to 1.0 or greater; and (v) the Debt Service Coverage Ratio based on the Stabilized Net Cash Flow and the greater of the actual debt service constant or 7.31% shall be 1.15 to 1.0 or greater (the "**Required Ratios at Completion**"), or Borrower shall have deposited with Lender Cash or a Letter of Credit to satisfy the Required Ratios at Completion in accordance with **Section 2.12.2**.
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(j) Tenant Estoppel Certificates. Borrower shall have delivered to Lender estoppel certificates from all of the tenants at the Property in form and substance satisfactory to Lender.

(k) Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of the Final Advance, Borrower has invested Cash equity in an amount equal to or greater than the Required Equity Funds or has otherwise complied with the provisions of **Section 2.11.13** with respect thereto.

(l) Insolvency Opinion. The issuance of and delivery to Lender of six (6) original counterparty Insolvency Opinions in the form attached hereto as **Exhibit K** from Wachtel & Masys, LLP or another law firm reasonably acceptable to Lender.

2.12.2 Amount of Final Advance. Except as expressly provided for below, the amount of the Final Advance shall be equal to the sum of: (a) any Retainage not previously released and advanced to Borrower; plus (b) the amount of any Punch List and Deferred Maintenance Reserve Deposit; plus (c) the positive difference, if any, between, (i) the Building Loan Amount and (ii) all amounts previously Advanced under the Building Loan (including the amounts described in clauses (a) and (b) of the sentence). The portion of the Final Advance described in clause (c) of the foregoing sentence is referred to herein as the "**Building Loan Earn Out Advance**" and the corresponding portion of the Final Project Loan Advance is referred to herein as the "**Project Loan Earn Out Advance**" and together with the Building Loan Earn Out Advance, the "**Earn Out Advances**". Notwithstanding anything to the contrary provided for herein, the Earn Out Advances shall be reduced, pro rata, but not below \$0.00, if and to the extent necessary for the Required Ratios at Completion to be achieved following the Final Advances. In addition, if the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00, Lender shall have the right, but not the obligation, to apply any deposits held by Lender pursuant to the Rate Lock Agreement and any Interest Reserve Funds to the payment of the Building Loan and the Project Loan in such order and priority as Lender shall determine in its sole discretion. If the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00 and the deposits, if any under the Rate Lock Agreement and the Interest Reserve Funds are applied to the payment of the Loan, Borrower shall deposit with Lender Cash or a Letter of Credit satisfactory to Lender in an amount equal to the amount which, if used to pay down the Loan, would result in Stabilized Loan-to-Value Ratio of 80% and a Debt Service Coverage Ratio of 1.15 to 1.00, calculated based upon Lender's determination on a pro-forma basis of Lender's Stabilized Net Cash Flow for the 12 months immediately following and assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 7.31%.

2.12.3 Rate Lock Agreement. Upon satisfaction of all of the conditions to the Final Advance set forth in **Section 2.12.1**, and subject to the provisions of **Section 2.12.2**, Lender shall return to Borrower, the remaining deposits, if any, held by Lender under the Rate Lock Agreement and not applied by Lender in accordance with the provisions of the Rate Lock Agreement and any Interest Reserve Funds held by Lender pursuant to this Agreement.

2.14.2 Procedure of Advances.

(a) Each Draw Request shall be submitted to Lender and Construction Consultant at least ten (10) Business Days prior to the date of the requested Advance (the "Requested Advance Date"), and no more frequently than monthly. Lender shall make the requested Advance on the Requested Advance Date so long as all conditions to such Advance are satisfied or waived.

(b) Not later than 11:00 A.M. New York City time, on the Requested Advance Date, Lender shall make such Advance available to Borrower in accordance with the terms of this Section 2.14.

(c) Each Advance (other than the Final Advance) shall be in an amount of not less than \$500,000.00.

(d) Each Advance shall be made on a Payment Date.

2.14.3 Funds Advanced. Each Advance shall be made by Lender by wire transfer to such checking account of Borrower as specified to Lender in writing or as provided in Section 2.14.4 below. All proceeds of all Advances shall be used by Borrower only for the purposes for which such Advances were made. Borrower shall not commingle such funds with other funds of Borrower.

2.14.4 Direct Advances to Third Parties. Lender may make, at Lender's option, any or all Advances directly or through the Title Company to (i) any Contractor, as applicable, for construction expenses which shall theretofore have been approved by Lender and for which Borrower shall have failed to make payment after receipt by Borrower of such applicable Advance, (ii) Borrower's Architect to pay its fees to the extent funds are allocated thereto in the Building Loan Budget if Borrower shall have failed to do so, (iii) the Const ruction Consultant to pay its fees, (iv) Lender's counsel to pay its fees, (v) to pay (x) any installment of interest due under the Note, (y) any expenses incurred by Lender which are reimbursable by Borrower under the Loan Documents (including, without limiting the generality of the foregoing, reasonable attorneys' fees and expenses and other fees and expenses incurred by Lender), provided that Borrower shall theretofore have received notice from Lender that such expenses have been incurred and Borrower shall have failed to reimburse Lender for said expenses beyond any grace periods provided for said reimbursement under the Note, this Agreement or any of the other Loan Documents, or (z) following the occurrence and continuation of an Event of Default, any other sums due to Lender under the Note, this Agreement or any of the other Loan Documents, all to the extent that the same are not paid by the respective due dates thereof, and (vi) any other Person to whom Lender in good faith determines payment is due and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan directly to any such Person or through the Title Company to such Persons in accordance with this Section 2.14.4 as amounts become due and payable to them hereunder and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. No further authorization from Borrower shall be necessary to warrant such direct Advances to such relevant Person, and all such Advances shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the Mortgage and the other Loan Documents as fully as if made directly to Borrower.

2.14.5 One Advance Per Month. Lender shall have no obligation to make Advances of the Loan more often than once in each calendar month except that Lender, in its sole discretion, shall have the right but not the obligation, to make additional advances per month for interest, fees and expenses due under the Loan Documents.

2.14.6 Advances Do Not Constitute a Waiver. No Advance shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances nor, in the event Borrower is unable to satisfy any such condition, shall any Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default hereunder.

2.14.7 Trust Fund Provisions. All proceeds advanced hereunder shall be subject to the trust fund provisions of **Section 13** of the Lien Law. The affidavit attached hereto as **Exhibit D** is made pursuant to and in compliance with **Section 22** of the Lien Law, and, if so indicated in said affidavit, Building Loan proceeds will be used, in part, for reimbursement for payments made by the Borrower prior to the Initial Advance hereunder but subsequent to the commencement of the construction and equipping of the Improvements for items constituting Costs of the Improvement.

2.14.8 Advances and Disbursements Under Completion Guaranty. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, Borrower hereby irrevocably and unconditionally authorizes Lender to make any disbursements of proceeds of the Loan or of any Reserve Funds held by Lender to Guarantor in accordance with the Guaranty of Completion.

Section 2.15 Plan Review Process.

(a) Borrower hereby acknowledges and agrees that neither Lender nor the Construction Consultant's approval of any Plans and Specifications (or any revisions thereto), nor its inspection of the performance of the construction, nor its right to inspect such work, shall impose upon Lender and/or Construction Consultant any obligation or liability whatsoever with respect thereto, including, without limitation, any obligation or liability that might arise as a result of such work not being performed in accordance with applicable laws and/or requirements of public authorities or with the Plans and Specifications (and revisions thereto) approved by Lender and Construction Consultant or otherwise. The review or approval by Lender and Construction Consultant of any Plans and Specifications or any revisions thereto is solely for Lender's benefit, and is without any representation or warranty whatsoever with respect to the adequacy, correctness or efficiency thereof or otherwise. The granting by Lender and/or Construction Consultant of its approval of any Plans and Specifications or any revisions thereto, shall not in any manner constitute or be deemed to constitute a judgment or acknowledgment by Lender as to their legality or compliance with laws and/or requirements of public authorities.

ARTICLE III.

CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent to Closing. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

3.1.1 Representations and Warranties; Compliance with Conditions. The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

3.1.2 Loan Agreement and Note. Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.

(a) Mortgage, Assignment of Leases. Lender shall have received from Borrower fully executed and acknowledged counterparts of the Mortgage and the Assignment of Leases and evidence that counterparts of the Mortgage and Assignment of Leases have been delivered to the Title Company for recording, in the reasonable judgment of Lender, so as to effectively create upon such recording valid and enforceable Liens upon the Property, of the requisite priority, in favor of Lender or Lender's nominee (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) Title Insurance. Lender shall have received the Title Insurance Policy issued by a title company acceptable to Lender (the "Title Company") and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Insurance Policy shall (i) provide coverage in amounts satisfactory to Lender, (ii) insure Lender that the Mortgage creates a valid lien on the Property of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Insurance Policy have been paid.

(c) Survey. Lender shall have received a title survey for the Property, certified to the Title Company and Lender and their successors and assigns, in form and content satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by American Land Title Association, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 1999 or in such other form as Lender shall approve (the "Survey"). The Survey shall reflect the same legal description contained in the Title Insurance Policy referred to in clause (b) above and shall include, among other things, a metes and bounds description of the real property comprising part of the Property reasonably satisfactory to Lender. The surveyor's seal shall be affixed to the Survey and the surveyor shall provide a certification for the Survey in form and substance acceptable to Lender.

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(d) Insurance. Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its sole discretion, and evidence of the payment of all premiums payable for the existing policy period.

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(e) Environmental Reports. Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of the Property, in each case satisfactory in form and substance to Lender.

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(f) Zoning. Evidence reasonably acceptable to Lender confirming that the Project Improvements can be developed and constructed in accordance with the Plans and Specifications "as of right" without requiring the issuance of any zoning variance or other discretionary permit and/or approval and such other matters as Lender may reasonably require.

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(g) Encumbrances. Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date with respect to the Mortgage, subject only to applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

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3.1.4 Related Documents. Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

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3.1.5 Delivery of Organizational Documents. On or before the Closing Date, Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, amendments (as requested by Lender), good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

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3.1.6 Opinions of Borrower's Counsel. Lender shall have received opinions from Borrower's counsel with respect to due execution, authority, enforceability of the Loan Documents and such other matters as Lender may reasonably require, including, without limitation, the Insolvency Opinion, all such opinions in form, scope and substance satisfactory to Lender and Lender's counsel in their sole discretion.
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- 3.1.7 Development Budget. Borrower shall have delivered, and Lender and Construction Consultant shall have approved, the Development Budget and the Disbursement Schedule attached thereto, and certified by Borrower as being true, correct and complete.

- 3.1.8 Carrying Costs. Borrower shall have paid all Carrying Costs relating to the Property then due and payable including, without limitation, (a) accrued but unpaid Insurance Premiums due pursuant to the Policies, (b) currently due Taxes (including any in arrears) relating to the Property, and (c) currently due Other Charges relating to the Property, which amounts shall be funded with proceeds of the Loan.

- 3.1.9 Completion of Proceedings. All organizational and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance satisfactory to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

- 3.1.10 Payments. All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

- 3.1.11 Payment of Fees. Payment by Borrower of all fees and expenses required by this Agreement and/or the other Loan Documents, to the extent due and payable, including, without limitation, Lender's reasonable attorneys' fees and expenses, all origination fees, and brokerage commissions.

- 3.1.12 Transaction Costs. Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of environmental reports, Physical Conditions Report, appraisals and other reports, the fees and costs of Lender's counsel, and all other third party out-of-pocket expenses incurred in connection with the origination and closing of the Loan.

- 3.1.13 Material Adverse Change. There shall have been no material adverse change in the financial condition or business condition of Borrower, any one or more of the Persons comprising Guarantor that, in the aggregate, constitutes a material adverse change in the financial condition of the Guarantor collectively, or a material adverse change in the Property since the date of the most recent financial statements delivered to Lender. The income and expenses of the Property, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower, Guarantor nor any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

- 3.1.14 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that Borrower has contributed the Required Equity Funds for approved Project-Related Costs.

- 3.1.15 Ratios. Following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 80%.

3.1.16 Intentionally Omitted

3.1.17 Physical Conditions Report. Lender shall have received a Physical Conditions Report with respect to the Property, which report shall be issued by an engineer selected by Lender and shall be reasonably satisfactory in form and substance to Lender.

3.1.18 The Architect's Contract. The Architect's Contract in form and substance satisfactory to Lender, shall have been duly executed and delivered by the parties thereto, shall be in full force and effect and Lender shall have received a certified copy or a fully executed duplicate original thereof. Borrower's Architect shall have duly executed and delivered to Lender a consent to the assignment of the Architect's Contract, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. If Borrower's Architect consists of more than one Person, then each such Person shall deliver a consent to the assignment of the Architect's Contract in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. All Other Design Professionals shall deliver a consent to the assignment to each of their Contracts, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original of each such Contract.

3.1.19 Appraisal. Lender shall have received an appraisal of the Property, from an appraiser selected by Lender, which appraisal shall be satisfactory in form and substance to Lender.

3.1.20 Deliveries. The following items or documents shall have been delivered to Lender:

(a) Plans and Specifications. Two (2) complete sets of the Plans and Specifications and any and all modifications and amendments made thereto which have been reviewed and approved by Lender and the Construction Consultant. Borrower shall deliver to Lender a list identifying the Plans and Specifications and any and all modifications and amendments made thereto.

(b) Insurance. All Policies of insurance (or certificates thereof) required by **Section 6.1** of this Agreement or any other Loan Document.

(c) Final Project Report. The Final Project Report shall have been delivered to Lender by the Construction Consultant.

(d) Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

(e) Construction Schedule. The Construction Schedule, certified by Borrower as being true, correct and complete, which shall have been approved by Lender and the Construction Consultant.

3.1.21 Management Agreement. Lender shall have received a certified copy of each Management Agreement with respect to the Property which shall be satisfactory in form and substance to Lender.

3.1.22 Subordination. Lender shall have received the Subordination of Affiliate Fee executed by Borrower, Guarantor, each member of Borrower or any other Affiliate of Borrower entitled to an Affiliate Fee.

3.1.23 Ground Lease/Estoppels. Lender shall have received a fully executed copy of the Ground Lease in form and substance satisfactory to lender together with an executed estoppel letter from the Ground Lessor, which shall be in form and substance satisfactory to Lender.

3.1.24 Further Documents. Lender or its counsel shall have received such other documents and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. Borrower represents and warrants as of the date hereof and as of the Closing Date that:

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Property. The ownership interests in Borrower are as set forth on the organizational chart attached hereto as Schedule I.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending, or threatened against or affecting Borrower, Guarantor or the Property, which actions, suits or proceedings, if determined against Borrower, Guarantor or the Property, might materially adversely affect the condition (financial or otherwise) or business of Borrower, Guarantor or the condition or ownership of the Property.

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property as permitted pursuant to clause (xx) of the definition of "Special Purpose Entity" set forth in Section 1.1 hereof and (b) obligations under the Loan Documents.

4.1.6 Title. Borrower has good, marketable and insurable leasehold title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or Borrower's ability to repay the Loan. The Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into this transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower or any Guarantor in the last seven (7) years, and neither Borrower nor any Guarantor in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any Guarantor is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

4.1.8 Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which adversely affects, nor as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.9 No Plan Assets. Borrower does not sponsor, is not obligated to contribute to, and is not itself an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state or other statute, regulation or other restriction regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement, including but not limited to the exercise by Lender of any of its rights under the Loan Documents.

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4.1.10 Compliance. Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. To the best of Borrower's knowledge, Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission on affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

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4.1.11 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Borrower and the Property, as applicable, as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof as a mixed use retail and self-storage facility, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower from that set forth in said financial statements.

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4.1.12 Condemnation. No Condemnation or other proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

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4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

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4.1.14 Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

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4.1.15 Not a Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.
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- 4.1.16 Separate Lots. The Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

- 4.1.17 Assessments. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

- 4.1.18 Enforceability. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and neither Borrower nor Guarantor have asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

- 4.1.19 No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

- 4.1.20 Insurance. Borrower has obtained and has delivered to Lender certified copies of the Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policy, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policy.

- 4.1.21 Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

- 4.1.22 Ground Lease. Borrower hereby represents and warrants to Lender 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 the 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 and other encumbrances of record, 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 the Ground Lessor's related fee interest.

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(c) **Ground Lease Assignable.** Borrower's interest in the Ground Lease is assignable without the consent of the 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 the 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 the 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 the 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 the 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.

4.1.23 **Flood Zone.** None of the Improvements on the Property is located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to Section 6.1.1(a)(A) is in full force and effect with respect to the Property.

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4.1.24 Required Equity Funds. Borrower represents and warrants to Lender that Borrower has contributed the Required Equity Funds for approved Project-Related Costs.

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4.1.25 Boundaries. All of the improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy.

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4.1.26 Leases. The Property is not subject to any leases other than the Leases described in the rent roll attached hereto as Schedule V and made a part hereof. Borrower is the owner and lessor of landlord's interest in the Leases. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and, to the best of Borrower's knowledge, (a) there are no defaults thereunder by either party and (b) there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent (including security deposits) has been paid more than one (1) month in advance of its due date. To the best of Borrower's knowledge, all work to be completed by Borrower prior to the date hereof under each Lease has been performed as required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein. To the best of Borrower's knowledge, no tenant listed on Schedule I has assigned its Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No Tenant has no right or option for additional space in the Improvements. Except as otherwise disclosed by the Environmental Report (as defined in the Mortgage), no hazardous wastes or toxic substances, as defined by applicable federal, state or local statutes, rules and regulations, have been disposed, stored or treated by any tenant under any Lease on or about the Property nor does Borrower have any knowledge of any Tenant's intention to use its premises for any activity which, directly or indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum product or any toxic or hazardous chemical, material, substance or waste. True, correct and complete copies of the Leases have been provided to Lender and such Leases have not been modified or amended in any way.

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4.1.27 Survey. The Survey for the Property delivered to Lender in connection with this Agreement has been prepared in accordance with the provisions of Section 3.1.3(c) hereof, and does not fail to reflect any material matter affecting the Property or the title thereto.

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4.1.28 Inventory. Borrower is the owner of all of the Equipment, Fixtures and Personal Property (as such terms are defined in the Mortgage) located on or at the Property and shall not lease any Equipment, Fixtures or Personal Property other than as permitted hereunder. All of the Equipment, Fixtures and Personal Property are sufficient to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

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4.1.29 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid, and, under current Legal Requirements, the Mortgage is enforceable in accordance with its terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

4.1.30 Special Purpose Entity/Separateness.

(a) Until the Total Debt has been paid in full, Borrower hereby represents, warrants and covenants, that Borrower is, shall be and shall continue to be a Special Purpose Entity,

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the facts stated and all of the assumptions made in the Insolvency Opinion, including, but not limited to, in any exhibits attached thereto, are true and correct in all respects and all facts stated and all assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "Additional Insolvency Opinion"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all respects. Borrower has complied and will comply with, all of the assumptions made with respect to Borrower in the Insolvency Opinion. Borrower will have complied and will comply with all of the assumptions made with respect to Borrower in any Additional Insolvency Opinion. Each entity other than Borrower with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

4.1.31 Property Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

4.1.33 Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

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

4.1.35 Investment Company Act. Borrower is not (a) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.36 Embargoed Person. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable have been derived from any unlawful activity with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

4.1.37 Principal Place of Business; State of Organization. Borrower’s principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. The Borrower is organized under the laws of the State of Delaware.

4.1.38 Intentionally Omitted.

4.1.39 Mortgage Taxes. As of the date hereof, Borrower represents that it has paid all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

4.1.40 Zoning; Building Permits. The Project Improvements can be developed and constructed in accordance with the Plans and Specifications “as of right” without requiring the issuance of any zoning variance or other discretionary permit and/or approval. Borrower has obtain all building permits and other Governmental Approvals required for the construction of the Project Improvements.

4.1.41 Intentionally Omitted.

4.1.42 Single Purpose; Borrower's Prior Acts. Borrower hereby represents and warrants to Lender that:

(a) Since its formation, Borrower has not owned any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of the Property.

(b) Since its formation, Borrower has not engaged in any business other than the ownership, management and operation of the Property and Borrower has conducted and operated its business as presently conducted and operated.

(c) Since its formation, Borrower has not entered into any contract or agreement with any of its Affiliates, any of its constituent parties or any Affiliate of any constituent party, except those (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are substantially similar to those that would be obtained in a comparable arm's-length transaction with an unrelated third party, and (ii) in connection with this Agreement.

(d) Since its formation, Borrower has not incurred any Indebtedness.

(e) Since its formation, Borrower has not made any loans to any Person or held evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity).

(f) Since its formation, Borrower has remained solvent and has paid its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its own assets and generally as the same have become due.

(g) Since its formation, Borrower has done or caused to be done all things necessary to observe its respective organizational formalities applicable to a business entity of its type and to preserve their respective existence or has promptly taken curative action with respect thereto.

(h) Since its formation, (i) Borrower has maintained all of its respective accounts (including bank accounts), books and records separate from those of its Affiliates and any constituent party; (ii) Borrower has maintained separate financial statements and its respective assets have not been listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity; (iii) Borrower has filed its own tax returns and has not filed a consolidated federal income tax return with any other Person, except to the extent that Borrower was required to file consolidated tax returns by law; and (iv) Borrower has maintained books, records, resolutions and agreements as official records.

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(i) Since its formation, Borrower has been, and at all times has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person, except for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in Subsection (h) above, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower, has conducted business in its own name; has not identified itself or any of its Affiliates as a division or part of the other; and has used separate stationery, invoices and checks bearing its own name and not the name of any Affiliate.

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(j) Since its formation, Borrower has maintained adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

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(k) Since its formation, neither Borrower has, nor have any of its constituent parties, have sought or effected the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

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(l) Since its formation, Borrower has not commingled its funds or other assets with those of any Affiliate or constituent party or any other Person, and Borrower, has held all of its assets in its own name.

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(m) Since its formation, Borrower has maintained its assets in such a manner that it would not be costly or difficult to segregate, ascertain or identify their respective individual assets from those of any Affiliate or constituent party or any other Person.

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(n) Since its formation, Borrower has not guaranteed or become obligated for the debts of any other Person and has not held itself out to be responsible for or to have their respective credit available to satisfy the debts or obligations of any other Person.

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(o) Borrower is presently conducting its business so that the assumptions made with respect to Borrower in the Insolvency Opinion are currently true and correct in all material respects.

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(p) Since its formation, Borrower has not permitted any Affiliate or constituent party independent access to its bank accounts.

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(q) Since its formation, Borrower has paid the salaries of its own employees (if any) from its own funds and has maintained a sufficient number of employees (if any) in light of their respective contemplated business operations.

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(r) Since its formation, Borrower has compensated each of its consultants and agents from its own funds for services provided to it and pay from its own respective assets all obligations of any kind incurred.

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(s) Since its date of formation, Borrower has not acquired any obligations or securities of any of its Affiliates.

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(t) Since the date of its formation, Borrower has not acquired or held any interest in or formed any entity or subsidiary.

4.1.43 Cash Management Account. Borrower hereby represents and warrants to Lender that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code of the State of Delaware) in the Clearing Account and Cash Management Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold, pledged, transferred or otherwise conveyed the Clearing Account and Cash Management Account;

(b) Each of the Clearing Account and Cash Management Account constitutes a "deposit account" within the meaning of the Uniform Commercial Code of the State of Delaware;

(c) Pursuant and subject to the terms hereof, the Clearing Bank and the Cash Management Bank have agreed to comply with all instructions originated by Lender, without further consent by Borrower, directing disposition of the Clearing Account and Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities; and

(d) The Clearing Account and Cash Management Account are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to the Clearing Bank and the Cash Management Bank complying with instructions with respect to the Clearing Account and Cash Management Account from any Person other than Lender.

4.1.44 Trade Name; Other Intellectual Property. Borrower owns and possesses or licenses (as the case may be) all such patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights, websites, domain names and copyrights, as Borrower considers necessary for the conduct of its business as now conducted without, individually or in the aggregate, any infringement upon rights of other Persons, in each case except as could not reasonably be expected to (i) materially and adversely affect the value of the Property, (ii) impair the use and operation of the Property or (iii) impair Borrower's ability to pay its obligations in a timely manner, and there is no individual patent, patent right, trademark, trademark right, trade name, trade name right, service mark, service mark right or copyright the loss of which would (i) materially and adversely affect the value of the Property, (ii) impair the use and operation of the Property or (iii) impair Borrower's ability to pay its obligations in a timely manner (collectively, the "**Intellectual Property**").

4.1.45 General Contractor's Agreement. As of the date hereof, (i) the General Contractor's Agreement is in full force and effect; (ii) Borrower and General Contractor are in full compliance with their respective obligations under the General Contractor's Agreement; (iii) the work to be performed by General Contractor under the General Contractor's Agreement is the work called for by the Plans and Specifications; and (iv) all work on the Project Improvements heretofore completed has been completed in accordance with the Plans and Specifications in a good and workmanlike manner and is free of any defects. Borrower shall from time to time, upon request by Lender, cause General Contractor to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

4.1.46 Architect's Contract. As of the date hereof, (i) the Architect's Contract is in full force and effect; (ii) both Borrower and, to the best of Borrower's knowledge, Borrower's Architect are in compliance in all material respects with their respective obligations under the Architect's Contract; (iii) the work to be performed by Borrower's Architect under the Architect's Contract is the architectural services required to design the Project Improvements to be built in accordance with the Plans and Specifications and all architectural services required to complete the Project Improvements in accordance with the Plans and Specifications is provided for under the Architect's Contract; and (iv) all work on the Project Improvements heretofore completed has been completed in accordance with the Plans and Specifications in a good and workmanlike manner and is free of any defects. Upon request by Lender, Borrower shall or Borrower shall cause Borrower's Architect to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

4.1.47 Plans and Specifications. As of the date hereof, Borrower has furnished Lender true and complete sets of the Plans and Specifications. The Plans and Specifications comply with all applicable Legal Requirements, all Governmental Approvals, and all restrictions, covenants and easements affecting the Property, and have been approved by each such Governmental Authority as is required for construction and renovation of the Project Improvements and the General Contractor, Guarantor, Borrower's Architect, Lender and the Construction Consultant.

4.1.48 Budget. The Development Budget accurately reflects all anticipated Project-Related Costs. Upon the making of the Advances requested in Borrower's Requisition in the manner set forth therein, all materials and labor therefore supplied or performed in connection with the Property will have been paid for in full (subject to the Retainage).

4.1.49 Feasibility. Each of the Construction Schedule and the Disbursement Schedule is accurate.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

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ARTICLE V.

BORROWER COVENANTS

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Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

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5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall never permit any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Mortgage. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (vi) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of **Section 7.1** hereof. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to **Section 7.1** hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (vi) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower and/or Guarantor which might materially adversely affect Borrower's or Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice and subject to the rights of Tenants under Leases.

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any material adverse change in Borrower's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.6 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and reasonable expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.8 Award and Insurance Benefits. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) out of such Insurance Proceeds.

5.1.9 Further Assurances. Borrower shall, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require including, without limitation, the execution and delivery of all such writings necessary to transfer any licenses with respect to the Property into the name of Lender or its designee after the occurrence of an Event of Default; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

5.1.10 Principal Place of Business, State of Organization. Borrower will not cause or permit any change to be made in its name, identity (including its trade name or names), place of organization or formation (as set forth in **Section 4.1.36** hereof) or Borrower's corporate or partnership structure unless Borrower shall have first notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all reasonable action required by Lender for the purpose of perfecting or protecting the lien and security interests of Lender pursuant to this Agreement, the Cash Management Agreement and the other Loan Documents and, in the case of a change in Borrower's structure, without first obtaining the prior consent of Lender. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in the introductory paragraph of this Agreement. Borrower shall promptly notify Lender of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Lender of such organizational identification number.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire at Lender's expense unless an Event of Default shall have occurred. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's reasonable request, Borrower shall deliver to Lender such other information necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's annual financial statements covering the Property for such Fiscal Year audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include, but not be limited to, amounts representing annual Net Cash Flow, Net Operating Income, Gross Income from Operations and Operating Expenses. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (ii) an Officer's Certificate stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Property being reported upon and has been prepared in accordance with GAAP; (iii) a list of tenants, if any, occupying more than twenty percent (20%) of the total floor area of the Improvements, (iv) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and cumulative basis, and (v) a schedule audited by such independent certified public accountant reconciling Net Operating Income to Net Cash Flow (the "Net Cash Flow Schedule"), which shall itemize all adjustments made to Net Operating Income to arrive at Net Cash Flow deemed material by such independent certified public accountant. Together with Borrower's annual financial statements, Borrower shall furnish to Lender an Officer's Certificate certifying as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar month throughout the term of the Loan the following items, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable: monthly and year-to-date operating statements (including Capital Expenditures) prepared for each calendar month, noting all Net Operating Income, Gross Income from Operations and Operating Expenses (not including any contributions to the Reserve Funds) and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar month, and containing (i) a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, for any individual items in excess of \$10,000, all in form satisfactory to Lender, (ii) a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month accompanied by an Officers' Certificate with respect thereto; and (iii) a Net Cash Flow Schedule. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in **Section 4.1.30** and **Section 4.1.35** are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than sixty (60) days.

(d) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar month throughout the term of the Loan, an rent roll for the subject month, accompanied by an Officer's Certificate stating that such rent roll is true, correct, accurate, and complete and fairly presents the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable.

(e) For the partial year period commencing on the date of the Closing Date, and for each Fiscal Year thereafter, Borrower shall submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval (each such Annual Budget, an "Approved Annual Budget"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, the most recent Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges.

(f) In the event that, Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an "Extraordinary Expense"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval, except in the case of emergency (provided that Borrower will notify Lender promptly after such emergency).

(g) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a diskette, and (iii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with the Securitization to such parties requesting such information in connection with such Securitization.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower will qualify to do business and will remain in good standing under the laws of all relevant jurisdictions as and to the extent the same are required for the ownership, maintenance, management and operation of the Property. Borrower shall at all times during the term of the Loan, continue to own and/or maintain all of the Equipment, Fixtures and Personal Property which are necessary to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Mortgage and the Assignment of Leases on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Mortgage encumbering the Property is foreclosed in whole or in part or that the Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage encumbering the Property prior to or subsequent to the Mortgage in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After written request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Agreement, the Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall deliver to Lender upon written request, tenant estoppel certificates from each tenant paying base rent in an amount equal to or exceeding five percent (5%) of the Gross Income from Operations from the Property occupied by such tenant in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After written request by Borrower, Lender shall within ten (10) days furnish Borrower with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, and (iv) the date installments of interest and/or principal were last paid.

5.1.16 Loan Proceeds. Borrower shall use the proceeds of the Loan solely and exclusively for the purposes of constructing and renovating the Project Improvements in accordance herewith and in accordance with the Building Loan Budget which shall be subject to no change except as permitted hereby. Borrower will receive the Advances to be made hereunder and will hold the right to receive the same as a trust fund for the purpose of paying the Costs of the Improvement and it will apply the same first to such payment before using any part thereof for any other purpose.

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.18 Confirmation of Representations. Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower and Guarantor as of the date of the Securitization.

5.1.19 Intentionally Omitted

5.1.20 Leasing Matters. Borrower may not enter into a Lease, license or other occupancy agreement for any portion of the Property without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that after the Property shall have achieved the Required Ratios at Completion, Borrower shall not be required to obtain Lender's approval of Leases for less than 15,000 square feet that otherwise satisfy the requirements of this Agreement. Upon request, Borrower shall furnish Lender with executed copies of all Leases. All renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates. All proposed Leases shall be on commercially reasonable terms and shall not contain any terms which would materially affect Lender's rights under the Loan Documents. All Leases executed after the date hereof shall provide that they are subordinate to the Mortgage and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale. Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Property involved except that no termination by Borrower or acceptance of surrender by a tenant of any Leases shall be permitted unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Property; provided, however, that no such termination or surrender of any Lease will be permitted without the written consent of Lender, provided, further, that after the Property shall have achieved the Required Ratios at Completion, Borrower shall not be required to obtain Lender's approval for termination of Leases for less than 15,000 square feet that otherwise satisfy the requirements of this Agreement; (iii) shall not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents without Lender's prior written consent which shall not be unreasonably withheld; and (vi) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, Borrower shall not enter into a lease of all or substantially all of the Property without Lender's prior written consent.

5.1.21 Alterations.

(a) Following the Completion of the Improvements, Borrower shall obtain Lender's prior written consent to any subsequent alterations to any Improvements, which consent shall not be unreasonably withheld or delayed except with respect to alterations that may have a material adverse effect on Borrower's financial condition or the value of the Property or the Net Operating Income. Notwithstanding the foregoing, Lender's consent shall not be required in connection with (i) any alterations that will not have a material adverse effect on Borrower's financial condition or the value of the Property or the Net Operating Income, and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (ii) alterations performed in connection with the Restoration of the Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement. If the total unpaid amounts due and payable with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) shall at any time exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "Threshold Amount"), Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization or (D) a completion and performance bond or (E) a Letter of Credit. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and Lender may apply such security from time to time at the option of Lender to pay for such alterations.

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(b) Notwithstanding anything contained herein to the contrary, the construction, Building Loan and alteration of the Improvements in accordance with the Plans and Specifications shall not constitute "alterations" to the Improvements and will not be subject to the terms of this Section 5.1.21.

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5.1.22 No Fees or Payments to Affiliates. In no event shall Borrower pay any fees or make any payments to any Affiliates without Lender's approval, which may be withheld in its sole discretion.

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5.1.23 Payment of Administration Fee. Borrower shall pay to Lender on the first (1st) day of each calendar month the Administration Fee in advance.

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5.1.24 General Contractor's Agreement. Borrower shall (a) enforce the General Contractor's Agreement in the best interests of the Improvements using sound business judgment, (b) waive none of the material obligations of any of the parties thereunder, (c) do no act which would relieve the General Contractor from its material obligations to construct the Project Improvements according to the Plans and Specifications, (d) make no amendments to or change orders under the General Contractor's Agreement, except as permitted under this Agreement, without the prior approval of Lender, (e) ensure that the work to be performed by General Contractor under the General Contractor's Agreement is the work called for by the Plans and Specifications, and (f) ensure that all work on the Improvements shall be completed in accordance with the Plans and Specifications in a good and workmanlike manner and shall be free of any defects. Borrower shall from time to time, upon request by Lender, use reasonable efforts to cause General Contractor to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

5.1.25 Architect's Contract. Borrower shall enforce the Architect's Contract in the best interests of Borrower consistent with the construction of the Project Improvements using sound business judgment, (b) waive none of the material obligations of Borrower's Architect thereunder, (c) do no act which would relieve Borrower's Architect from its material obligations under the Architect's Contract and (d) make no amendments to the Architect's Contract without the prior approval of Lender. Upon request by Lender, Borrower shall cause Borrower's Architect to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

5.1.26 Building Loan Costs and Expenses. Borrower shall promptly pay when due all Building Loan Costs.

5.1.27 Fees. Borrower shall pay when due the reasonable fees of the Construction Consultant, all reasonable costs and expenses, including, without limitation, appraisal fees (only if required by law after the initial appraisal) recording fees and charges, abstract fees, title policy fees, escrow fees, reasonable attorneys' fees, fees of inspecting architects and engineers to the extent provided hereunder in connection with Advances, fees of environmental consultants to the extent provided in the Mortgage, and all other reasonable and customary costs and expenses which have been incurred or which may hereafter be incurred by Lender in connection with the preparation and execution of the Loan Documents, including any extension, amendment or modification thereof; the funding of the Loan, the administration and enforcement of this Agreement, the Mortgage, the Note, and the other Loan Documents, including, without limitation, reasonable attorneys' fees in any action for the foreclosure of the Mortgage and the collection of the Loan, and all such fees incurred in connection with any bankruptcy or insolvency proceeding; and Borrower will, within twenty (20) days after demand by Lender, reimburse Lender for all such expenses which have been incurred; and Borrower will indemnify and hold harmless Lender from and against, and reimburse it for all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against Lender or Borrower on account of any act performed or omitted to be performed hereunder by Borrower or on account of any transaction arising out of or in any way connected with the Property, or with this Agreement or any of the indebtedness evidenced by the Note, provided that the foregoing indemnity shall not apply to any such liabilities, losses, damages and expenses of Lender to the extent arising from the willful misconduct or gross negligence of Lender. All amounts incurred or paid by Lender under this Section 5.1.27, together with interest thereon at the Default Rate from the due date until paid by Borrower, shall be added to the Debt and shall be secured by the lien of the Mortgage.

5.1.28 Completion of Construction.

(a) Borrower shall cause the Project Improvements to be constructed in accordance with the Plans and Specifications and any Permitted Encumbrance and in full compliance with the Building Loan Budget, as the same may be amended from time to time in accordance with the terms hereof.

(b) Borrower shall cause the Completion of the Improvements to occur on or before the Required Completion Date.

(c) Borrower shall diligently pursue construction of the entire Project Improvements to cause the Complete of the Improvements and obtain a temporary or permanent certificate of occupancy (and to the extent the same are conditional or require performance by Borrower, satisfy all conditions to the issuance of and/or performed all obligations required for the continued validity of the same) for the Property on or prior to the Required Completion Date, in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Property, all applicable Legal Requirements, and all Governmental Approvals, and with all terms and conditions of the Loan Documents; pay all sums and to perform such duties as may be necessary to complete such construction of the Project Improvements substantially in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Property, all Legal Requirements and all Governmental Approvals, and with all terms and conditions of the Loan Documents, all of which shall be accomplished on or before the Required Completion Date, free from any liens, claims or assessments (actual or contingent) asserted against the Property for any material, labor or other items furnished in connection therewith unless bonded and removed as a Lien on the Property. The renovation of the Project Improvements shall include all work necessary to put the Property in conformity with, and eliminate any breaches from, the ADA. Evidence of satisfactory compliance with all of the foregoing shall be furnished by Borrower to Lender on or before the Required Completion Date. In addition, if such certificate of occupancy or other Governmental Approvals are temporary in nature, Borrower shall diligently pursue procuring final Governmental Approvals. In addition, Borrower shall diligently pursue construction of the entire Project Improvements to Final Completion after the Required Completion Date.

(d) If at any time prior to the Completion of the Improvements and satisfaction of the conditions to the Final Advance Lender determines in its sole discretion that the undrawn funds then available under the Interest Reserve Line Item of the Project Loan Budget and the amount of Interest Reserve Funds on deposit with Lender is insufficient to pay the Debt Service on the Loan, then, Borrower shall deposit with Lender, on demand, either (i) an amount reasonably determined by Lender to pay interest on the Loan as it comes due prior to the Completion of the Improvements and the satisfaction of the conditions to the Final Advance (the "Additional Interest Reserve Deposit"), or (ii) a Letter of Credit in such amount (the "Additional Interest Reserve Letter of Credit"). In determining the amount of the Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit, Lender will consider, among other things, (i) the degree of completion of the Improvements on such date, and (ii) the amount, if any, of undrawn funds then available under the Interest Reserve Line Item of the Project Loan Budget. In addition, and subject to the applicable terms hereof and the applicable terms of the Project Loan Agreement regarding the re-allocation of Line Items, Lender shall not unreasonably withhold its consent to Borrower's request at the time of the deposit of the Additional Interest Reserve Deposit or the Additional Interest Reserve Letter of Credit to re-allocate a portion of the then undrawn Contingency Line Item (or any other Line Item within the Building Loan Budget) from the Project Loan Budget to the Interest Reserve Line Item of the Project Loan Budget, provided, however, under no circumstances may any portion of the Contingency Line Item of the Building Loan Budget be reallocated to the Interest Reserve Line Item. The Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit shall be a Reserve Fund for all purposes hereunder. Lender shall apply the Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit in accordance with Section 7.2 hereof.

5.1.29 Inspection of Property. Borrower shall permit Lender, the Construction Consultant and their respective representatives, to enter upon the Property, inspect the Project Improvements and all materials to be used in the construction and Building Loan thereof and to examine the Plans and Specifications which are or may be kept at the construction site and will cooperate, and cause the General Contractor, the Major Contractors and the Major Subcontractors to cooperate with the Construction Consultant to enable him or her to perform his or her functions hereunder.

5.1.30 Construction Consultant. Borrower acknowledges that (i) the Construction Consultant has been retained by Lender to act as a consultant and only as a consultant to Lender in connection with the construction of the Project Improvements and has no duty to Borrower, (ii) the Construction Consultant shall in no event have any power or authority to give any approval or consent or to do any other act or thing which is binding upon Lender, (iii) Lender reserves the right to make any and all decisions required to be made by Lender under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Lender under this Agreement and to accept or not accept any matter or thing required to be accepted by Lender under this Agreement, and without being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by the Construction Consultant with respect thereto, (iv) Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by the Construction Consultant to Lender or any other person or party, and (v) Lender reserves the right to replace the Construction Consultant with another construction consultant at any time and without prior notice to or approval by Borrower.

5.1.31 Construction Consultant/Duties and Access. Borrower shall permit Lender to retain the Construction Consultant at the reasonable cost of Borrower to perform the following services on behalf of Lender:

(a) Prepare the Final Project Report;

(b) To review and advise Lender whether, in the opinion of the Construction Consultant, the Plans and Specifications are satisfactory;

(c) To review Draw Requests and change orders; and

(d) To make periodic inspections in accordance with Section 5.1.29 (approximately at the date of each Draw Request) for the purpose of assuring that construction of the Project Improvements to date is in accordance with the Plans and Specifications and to approve Borrower's then current Draw Request as being consistent with Borrower's Obligations under this Agreement.

- The fees of the Construction Consultant shall be paid by Borrower within thirty (30) days after billing therefor and expenses incurred by Lender on account thereof shall be reimbursed to Lender within thirty (30) days after request therefor, but neither Lender nor the Construction Consultant shall have any liability to Borrower on account of (i) the services performed by the Construction Consultant, (ii) any neglect or failure on the part of the Construction Consultant to properly perform its services or (iii) any approval by the Construction Consultant of construction of the Project Improvements. Neither Lender nor the Construction Consultant assumes any obligation to Borrower or any other Person concerning the quality of construction of the Project Improvements or the absence therefrom of defects.

- 5.1.32 Correction of Defects. Borrower shall promptly correct all material defects in the Project Improvements or any material departure from the Plans and Specifications not previously approved by Lender to the extent required hereunder. Borrower agrees that the advance of any proceeds of the Loan whether before or after such defects or departures from the Plans and Specifications are discovered by, or brought to the attention of, Lender shall not constitute a waiver of Lender's right to require compliance with this covenant.

- 5.1.33 Approval of Change Orders; Cost Savings. Borrower shall permit no deviations from the Plans and Specifications during construction without the prior approval of Lender; provided, however, that Borrower may make changes without Lender's prior written approval so long as (a) with respect to any Major Contract or Major Subcontract, such changes do not exceed two percent (2%) of the amount of the applicable contract, (b) such changes do not exceed in the aggregate \$250,000.00, provided that changes which have been approved by Lender either before or after such changes have been made shall be disregarded in calculating said \$250,000.00 threshold, (c) such changes do not cause any line item in the Building Loan Budget to be exceeded (after taking into account use of the Contingency Reserve to the extent permitted under Section 2.1.7, reallocations under this Section 5.1.33 and other reallocations approved by Lender in its sole discretion), (d) Borrower uses reasonable efforts to deliver to Lender and Construction Consultant prior notice of such change orders or, if Borrower is unable to deliver prior notice, Borrower shall submit to Lender and Construction Consultant copies of all change orders entered into with respect to the Project Improvements within fifteen (15) days after the same are entered into, irrespective of whether the same require the prior approval of Lender and Construction Consultant pursuant to this Agreement, (e) such changes will not materially change the gross square feet or the net rentable square feet of commercial space to be contained in the Improvements, or the basic layout of the Improvements, or involve the use of materials, furniture, fixtures and equipment that will not be at least equal in quality to the materials, furniture, fixtures and equipment originally specified in or required by the approved Plans and Specifications, and (f) such change will not prevent Borrower from completing the Project Improvements by the Required Completion Date. The foregoing to the contrary notwithstanding, Borrower may allocate cost savings actually achieved and verifiable in any line item of the Building Loan Budget to other line items of the Building Loan Budget, provided that if such costs savings are being allocated from a line item of the Building Loan Budget, (i) such Building Loan Budget line item has a firm contract or sub-contract in place, (ii) the work has commenced and is proceeding in accordance with the Construction Schedule and (iii) the Construction Consultant is satisfied with said contract or sub-contract, including, without limitation, with regard to the scope of said contract or sub-contract.

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5.1.34 Intentionally Omitted.

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5.1.35 Easements and Restrictions; Zoning. Borrower shall submit to Lender for Lender's approval prior to the execution thereof by Borrower all proposed easements, restrictions, covenants, permits, licenses, and other instruments which would affect the title to the Property, accompanied by a Survey showing the exact proposed location thereof and such other information as Lender shall reasonably require. Borrower shall not subject the Property or any part thereof to any easement, restriction or covenant (including any restriction or exclusive use provision in any lease or other occupancy agreement) without the prior approval of Lender (not to be unreasonably withheld or delayed in the case of utility easements only). Notwithstanding the foregoing, Lender shall consent to a reciprocal easement agreement in connection with the future development of the adjacent development site provided that such reciprocal easement agreement is reasonably acceptable to Lender. With respect to any and all existing easements, restrictions, covenants or operating agreements which benefit or burden the Property and any easement, restriction or covenant to which the Property may hereafter be subjected in accordance with the provisions hereof, Borrower shall: (a) observe and perform in all material respects the obligations imposed upon Borrower or the Property; (b) not alter, modify or change the same in any material respect without the prior approval of Lender; (c) enforce its rights thereunder in a commercially reasonable manner so as to preserve for the benefit of the Property the full benefits of the same; and (d) deliver to Lender a copy of any notice of default or other material notice received by Borrower in respect of the same promptly after Borrower's receipt of such notice.

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5.1.36 Laborers, Subcontractors and Materialmen. Borrower shall notify Lender promptly, and in writing, if Borrower receives any default notice, notice of lien or demand for past due payment, written or oral, from any laborer, subcontractor or materialmen. Borrower will also furnish to Lender at any time and from time to time upon reasonable demand by Lender, lien waivers in form reasonably satisfactory to Lender bearing a then current date from the Major Contractors and the Major Subcontractors.

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5.1.37 Ownership of Personalty. Borrower shall furnish to Lender, if Lender so requests, photocopies of the fully executed contracts, bills of sale, receipted vouchers and agreements, or any of them, under which Borrower claims title to the materials, articles, fixtures and other personal property used or to be used in the construction or operation of the Improvements.

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5.1.38 Comply with Other Loan Documents. Borrower shall perform all of Borrower's Obligations under the Note and the other Loan Documents.

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5.1.39 Purchase of Material Under Conditional Sale Contract. Borrower shall not permit any materials, equipment, fixtures or any other part of the Improvements to be purchased or installed under any security agreement or other arrangements wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation in the Property, unless authorized by Lender in writing and in advance.

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5.1.40 Further Assurance of Title. If at any time Lender has reason to believe in its reasonable opinion that any Advance is not secured or will or may not be secured by the Mortgage as a first priority lien or security interest on the Improvements (subject only to the Permitted Encumbrances and the Loan Documents), then Borrower shall, within ten (10) days after written notice from Lender, do all things and matters necessary (including execution and delivery to Lender of all further documents and performance of all other acts which Lender reasonably deems necessary or appropriate) to assure to the reasonable satisfaction of Lender that any Advance previously made hereunder or to be made hereunder is secured or will be secured by the Mortgage as a first priority lien or security interest with respect to the Improvements (subject only to the Permitted Encumbrances and the Loan Documents). Lender, at Lender's option, may decline to make further Advances hereunder until Lender has received such assurance.

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5.1.41 Management Agreement.

(a) From and after Final Completion, Borrower shall cause the Property to be operated, in all material respects, in accordance with the Management Agreement (or Replacement Management Agreement, as applicable). In the event that the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Management Agreement with Manager or another Qualified Manager, as applicable.

(b) Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement; and (iv) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner.

(c) If: (a) an Event of Default shall have occurred and be continuing, (b) Manager shall become bankrupt or insolvent; (c) a default beyond any applicable notice and/or cure period, if any, occurs under the Management Agreement, or (d) following the Completion of the Improvements, the Debt Service Coverage Ratio (based upon the trailing six (6) month period, annualized) as of any Debt Service Coverage Determination Date is less than 1.05 to 1.00, then, in any such event, Borrower shall, at the request of Lender, terminate the Management Agreement and replace the Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

5.1.42 Embargoed Person. Borrower has performed and shall perform reasonable due diligence to insure that at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA PATRIOT Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law ("Embargoed Person"); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Principal or Guarantor, as applicable, have been derived from or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure.

5.1.43 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 shall grant Lender 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 Lender's interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the Ground Lease Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default.

(c) The actions or payments of Lender to cure any default by Borrower under the Ground Lease shall not remove or waive, as between Borrower and Lender, the default that occurred under this Agreement by virtue of the default by Borrower under the Ground Lease. All sums expended by Lender to cure any such default shall be paid by Borrower to Lender, 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 Lender. All such indebtedness shall be deemed to be secured by the Mortgage.

(d) Borrower shall notify Lender promptly in writing of the occurrence of any material default by the 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 the Ground Lessor under the Ground Lease, and the receipt by Borrower of any notice (written or otherwise) from the 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 Lender, Borrower shall use reasonable efforts to obtain from the Ground Lessor under the Ground Lease and furnish to Lender the estoppel certificate of the 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 Lender such instruments as may reasonably be required to permit Lender to cure any default under the Ground Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the security interest of Lender under the Loan Documents with respect to the Ground Lease Property. Borrower irrevocably appoints Lender 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 Ground Lease Property.

(ii) Borrower shall not, without Lender'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 Lender's prior written consent shall be void.

(iii) As security for the Debt, 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 the 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, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Debt shall have been satisfied and discharged in full. Any amounts received by Lender or Borrower as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied to all costs and expenses of Lender (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 Lender. If Lender 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, Lender and Borrower shall cooperatively conduct and control any such litigation with counsel agreed upon between Borrower and Lender in connection with such litigation. Borrower shall, upon demand, pay to Lender all costs and expenses (including reasonable attorneys' fees and costs) actually paid or actually incurred by Lender 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 Lender 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 Lender, 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 Lender 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.

5.1.44 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 (i) provides for the payment of an annual base rent of \$800,000 per annum (the "Storage Facility Rent") (payable in equal monthly installments), (b) has a term expiring no earlier than December 1, 2024, and (c) is otherwise in form and substance satisfactory to Lender. Borrower hereby assigns to Lender 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 Lender is true and complete, and there are no oral agreements with respect thereto.

(c) Borrower shall give to Lender 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 5.1.44(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 Lender in Lender sole discretion.

(d) Lender 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) either (x) the Self Storage Facility yields an underwritten Net Cash Flow of \$800,000 with no free rent, credit or right of offset, or (y) the entire Property yields a Stabilized Net Cash Flow of \$3,100,000.

(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 Legal Requirements 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 Lender in its sole discretion and as to which Lender has received a Rating Agency Confirmation.

5.1.45 Home Depot Work. Borrower agrees (i) to complete the Asphalt Binder Work (as defined in the Home Depot Lease) prior to February 1, 2008, (ii) to complete the Site Work (as defined in the Home Depot Lease) prior to April 18, 2008, and (iii) to complete all of Landlord's Work (as defined in the Home Depot Lease) prior to March 18, 2009. Borrower's failure to complete the foregoing work within the time periods required hereunder shall, at Lender's election, be an Event of Default and Lender shall have the right (without prejudice to any other rights of Lender hereunder), but not the obligations, to complete such work and Borrower shall reimburse Lender for any costs and expenses incurred in connection therewith upon demand.

5.1.46 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 Lender cash (or other security as may be approved, in writing, by Lender) in an amount Lender deems sufficient to insure the payment of any such Condominium Assessments together with interest and penalties thereon, if any, provided that after a Securitization, one hundred twenty-five percent (125%) of the contested amount (plus anticipated penalty and interest) shall be deposited with Lender, (iv) Borrower furnishes to Lender 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 Section 5.1.11 hereof Borrower shall furnish the following to Lender, each prepared in such detail as reasonably required by Lender and certified by a Responsible Officer 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 Lender that all Condominium Assessments for the immediately preceding quarter which are then due and payable for an Individual Property, have been paid by Borrower (or are being duly and properly contested in accordance with Section (a)(1) above) which evidence shall include, without limitation, a true and correct photocopy of Borrower's cancelled check(s) evidencing such payment(s) with respect to such Individual Property provided, however, in lieu of furnishing such evidence to Lender, Borrower shall have the right to deposit cash with Lender in the full annual amount of such Condominium Assessments due with respect to such Individual Property, which deposit shall be held by Lender as additional security for the Loan until such time as satisfactory evidence of such payment in accordance with this clause is accepted by Lender.

(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 Lender's consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(v) Borrower shall comply with any such state, local or federal law, rule and regulation 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 Lender, Borrower shall give Lender prompt notice of any special assessment relating to the condominium regime received by Borrower.

(viii) Borrower shall provide Lender 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 Lender's prior approval, not to be unreasonably withheld.

(ix) Borrower shall promptly deliver to Lender 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 an Event of Default has occurred and is continuing, Borrower hereby acknowledges and agrees that, subject to the provisions of the Condominium Documents, Lender (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 an Event of Default has occurred and is continuing, Lender 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 an Event of Default has occurred and is continuing, Lender may, at its option, and Borrower hereby grants and assigns to Lender, from and after the occurrence and during the continuation of an Event of 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 Event of Default hereunder if Borrower violates or does not comply with any of the material provisions of Section 5.1.46(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 Lender under the Loan Documents.

(d) Additional Defined Terms. As used herein, the following words and phrases shall have the meaning specified below:

“**Association**” means the Condominium Association of the Property.

“**Condominium**” means the P/A Acadia Pelham Manor Condominium established pursuant to the Declaration.

“**Condominium Assessment**” means the Common Charges (as such term is defined in the By-Laws) 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 at such Individual Property, as the same may be amended from time to time.

“**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.

“**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 an Event of Default and which includes conditional resignations of each of the representatives elected or appointed by Borrower to the Condominium Board.

Section 5.2 **Negative Covenants.** From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Intentionally Omitted.

5.2.2 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except:

(i) Permitted Encumbrances;

(ii) Liens created by or permitted pursuant to the Loan Documents; and

(iii) Liens for Taxes or Other Charges not yet due.

5.2.3 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction in each case, without obtaining the prior written consent of Lender or Lender's designee.

5.2.4 Change In Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.5 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.6 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

5.2.7 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

5.2.8 Ground Lease (a). Borrower shall not, without Lender's 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 Lender and shall execute, acknowledge, deliver and record any document requested by Lender 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 Lender (which consent may be withheld by Lender 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, Lender may exercise the option or right as Borrower's agent and attorney-in-fact as provided above in Lender's own name or in the name of and on behalf of a nominee of Lender, as Lender may determine in the exercise of its sole and absolute discretion.

(b) 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 Lender.

(c) Borrower shall not, without Lender's prior written consent, surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or change, modify or amend in a material or adverse manner, any Ground Lease. 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 Lender.

5.2.10 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption), prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (A) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) Borrower is not subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.2.11 Transfers.

(a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender, and except to the extent otherwise set forth in this Section 5.2.11, Borrower shall not, and shall not permit any Restricted Party do any of the following (collectively, a "Transfer"): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or (ii) permit a Sale or Pledge of an interest in any Restricted Party, other than (A) pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 5.1.20 and (B) Permitted Transfers.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of the managing agent (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.1.22 hereof.

(d) Notwithstanding the provisions of this Section 5.2.11, Lender's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) of the stock, the limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such Transfer shall result in the change of Control in a Restricted Party, and as a condition to each such Transfer, Lender shall receive not less than thirty (30) days prior notice of such proposed Transfer. If after giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in a Restricted Party are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) direct or indirect interest in such Restricted Party as of the Closing Date, Borrower shall, no less than thirty (30) days prior to the effective date of any such Transfer, deliver to Lender an Additional Insolvency Opinion acceptable to Lender and the Rating Agencies. In addition, at all times, (a) Guarantor must continue to Control, and own, directly or indirectly, in the aggregate, at least a 51% legal and beneficial interest in, Borrower, and (b) Acadia Realty Trust must continue to Control, and own, directly or indirectly, at least a 20% legal and beneficial interest in, each of Guarantor and any Affiliated Manager.

(e) No consent to any assumption of the Loan shall occur on or before the date that is twelve (12) Payment Dates after the Completion of the Improvements. Thereafter, Lender's consent to a Transfer of the Property and assumption of the Loan shall not be unreasonably withheld provided that Lender receives sixty (60) days prior written notice of such Transfer and no Event of Default has occurred and is continuing, and further provided that the following additional requirements are satisfied for all Transfers other than those described in subsection (d) above:

(i) Borrower shall pay Lender at the time of such Transfer a transfer fee equal to one half of one percent (0.5%) of the outstanding principal balance of the Loan for the first Transfer and one percent (1.0%) of the outstanding principal balance of the Loan for each subsequent Transfer;

(ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Lender's counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (x) below);

(iii) The proposed transferee (the "Transferee") or Transferee's Principals must have demonstrated expertise in owning and operating properties similar in location, size, class and operation to the Property, which expertise shall be reasonably determined by Lender;

(iv) Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate Net Worth and Liquidity reasonably acceptable to Lender;

(v) Transferee, Transferee's Principals and all other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("Related Entities") must not have been party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(vi) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;

(viii) Transferee, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Lender;

(ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in Sections 4.1.30, 4.1.35, 5.1.46 and 5.2.10 of this Agreement, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and (B) all certificates, agreements and covenants reasonably required by Lender;

(x) Transferee shall be approved by the Rating Agencies selected by Lender, which approval, if required by Lender, shall take the form of a confirmation in writing from such Rating Agencies to the effect that such Transfer will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such assumption or transfer for the Securities or any class thereof issued in connection with a Securitization which are then outstanding;

(xi) Borrower or Transferee, at its sole cost and expense, shall deliver to Lender an Additional Insolvency Opinion reflecting such Transfer satisfactory in form and substance to Lender;

(xii) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty of Completion, the Guaranty of Recourse Carveouts and the Environmental Indemnity executed by Guarantor or execute replacement guaranties and environmental indemnity reasonably satisfactory to Lender;

(xiii) Borrower shall deliver, at its sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the Title Policy issued on the date hereof and the Permitted Encumbrances; and

(xiv) The Property shall be managed by a Qualified Manager pursuant to a Replacement Management Agreement.

Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the Mortgage and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower.

5.2.12 *No Distributions.* Until Completion of the Improvements and satisfaction of the conditions to the Final Advance, Borrower shall not make any distributions or other disbursements to its partners, shareholders, members or Persons owned by or related to any of its partners, shareholders or members. Borrower shall use any and all Rents collected from the Property to pay operating expenses of and real property taxes on the Property.

5.2.13 *Management Agreement.* Borrower shall not, without Lender's prior written consent (which consent shall not be unreasonably withheld): (i) surrender, terminate, cancel, amend or modify the Management Agreement; provided, that Borrower may, without Lender's consent, replace the Manager so long as the replacement manager is a Qualified Manager pursuant to a Replacement Management Agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

5.2.14 *Permitted Additional Mezzanine Indebtedness.* Notwithstanding anything the contrary contained in this Agreement, but subject to the rights of Lender to convert a portion of the Loan to a mezzanine loan pursuant to Section 9.1.2 hereof, an Additional Mezzanine Borrower (as defined below) shall have the right to pledge its direct and/or indirect equity interests in Borrower or Mezzanine Borrower, as applicable (but not of any direct interest in the Property, or Borrower, if there is Subordinate Financing in the form of a mezzanine loan) to a Permitted Mezzanine Lender (as defined below) as security for a loan to such Additional Mezzanine Borrower (an "**Additional Mezzanine Loan**") provided that the following terms and conditions are satisfied:

(a) no Event of Default shall then exist;

(b) Lender shall have received at least thirty (30) and no more than sixty (60) days' prior written notice of the proposed Additional Mezzanine Loan;

- (c) the Completion of the Improvements shall have occurred and all of the conditions to the Final Advance shall have been satisfied;

- (d) the aggregate amounts of the outstanding principal amount of the Total Debt (calculated without regard to any scheduled amortization paid under the Building Loan or the Project Loan) and the maximum principal amount of the Additional Mezzanine Loan (as of the effective date of the Additional Mezzanine Loan) shall not exceed eighty-five (85%) of the fair market value of the Property as determined by an MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender acting reasonably and dated, or updated, to a date within 30 days of the effective date of the Additional Mezzanine Loan, made in compliance with FIRREA and reasonably satisfactory to Lenders in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error.

- (e) the Aggregate Debt Service Coverage Ratio is at least 1.10 to 1.00;

- (f) Borrower shall not be obligated to repay the Additional Mezzanine Loan nor incur any obligation or liability to the Permitted Mezzanine Lender or any other Person with respect to the Additional Mezzanine Loan, and the terms and conditions of the Additional Mezzanine Loan, the collateral pledged as security therefor, and the documents evidencing the Additional Mezzanine Loan (the "Additional Mezzanine Loan Documents"), shall be reasonably satisfactory to Lender;

- (g) a new Single-Purpose Entity shall have been formed that will directly or indirectly own 100% of the Equity Interests in Borrower, or Mezzanine Borrower, as applicable (the "Additional Mezzanine Borrower"), the organizational documents of Borrower, Mezzanine Borrower, if any, such Additional Mezzanine Borrower, and their respective constituent owners shall be reasonably satisfactory to Lender, and Borrower, Mezzanine Borrower, if any and such Additional Mezzanine Borrower shall otherwise satisfy all applicable Rating Agency criteria for single-purpose entities, bankruptcy remoteness, and mezzanine borrowers;

- (h) the Permitted Mezzanine Lender shall have executed and delivered to Lender a subordination, standstill and intercreditor agreement acceptable to Lender in its sole and absolute discretion, which shall provide among other things that the Permitted Mezzanine Lender shall not have the right to foreclose on its interest in Borrower or Mezzanine Borrower, as applicable, or otherwise exercise its rights under the Additional Mezzanine Loan Documents unless and until the Loan is paid in full and that the Additional Mezzanine Loan shall not be transferable except to a Qualified Transferee;

- (i) Borrower and Guarantor shall have executed such additional Loan Documents and such amendments to and reaffirmations of the existing Loan Documents as Lender may require, including entering into a new cash management arrangement with Lender (or modifying any existing cash management requirement) to provide for, among other things, the payment of Lender-approved operating expenses and capital expenses prior to the payment of debt service on the Additional Mezzanine Loan;

(j) Lender shall have received (i) such opinions of counsel to Borrower as Lender may require, in form and content acceptable to Lender (including a new non-consolidation opinion if one was required to be delivered in connection with the Loan); and (ii) confirmation by each of the applicable Rating Agencies that the incurrence of the Additional Mezzanine Loan will not result in any qualification, withdrawal or downgrading of any existing ratings of securities created in any applicable Securitization; and

(k) Borrower shall have paid or reimbursed Lender for all of its costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the foregoing.

Notwithstanding anything herein to the contrary, none of BSCMI, Lender or their respective Affiliates shall have any obligation to provide an Additional Mezzanine Loan or any other financing.

For purposes hereof, the following terms shall have the following respective meanings:

"Aggregate Debt Service Coverage Ratio" shall mean a ratio for the applicable period in which:

(a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, adjusted for a vacancy rate equal to the greater of the actual vacancy rate, the market vacancy rate and an assumed vacancy rate equal to five percent (5%), without deduction for (i) 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 four percent (4%) of Gross Income from Operations or (2) the actual management fees incurred; (B) Replacement Reserve Fund contributions equal to \$47,544 per annum; and (C) Rollover Reserve Fund contributions equal to \$187,744 per annum; and

(b) the denominator is the Total Debt Service for such period assuming a thirty (30) year amortization schedule (and calculated without regard to any scheduled amortization paid under the Building Loan or the Project Loan, or the Subordinate Financing, if applicable), plus all principal and interest payable for such period under the Additional Mezzanine Loan (assuming the Additional Mezzanine Loan had been fully advanced at the beginning of such period) (provided, however, with respect to the Additional Mezzanine Loan, such ratio shall be determined utilizing a debt service constant calculated with the interest rate payable with respect to the Additional Mezzanine Loan and an assumed amortization period of thirty (30) years).

“Permitted Mezzanine Lender” shall mean a Qualified Transferee.

“Qualified Transferee” means (i) BSCMI or an Affiliate of BSCMI, or (ii) one or more of the following:

(A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the foregoing entities described in clause (i)(A), (i)(B) or (i)(E) that satisfies the Eligibility Requirements;

(D) any entity Controlled by, Controlling or under common Control with any of the entities described in clause (i) or clause (ii)(A) or (ii)(C) above or clause (ii)(E) below;

(E) a Qualified Trustee in connection with (aa) a securitization of, or (bb) the creation of collateralized debt obligations (“CDO”) secured by, or (cc) a financing through an “owner trust” of, the Mezzanine Loan or any interest therein (any of the foregoing, a “Securitization Vehicle”), provided, that (1) one or more classes of securities issued in connection with a Securitization Vehicle is initially rated at least investment grade by each of the Rating Agencies which assigned a rating to one or more classes of securities issued in connection with a Securitization (it being understood that with respect to any Rating Agency that assigned such a rating to the securities issued by such Securitization Vehicle, a Rating Agency Confirmation will not be required in connection with a transfer of the Additional Mezzanine Loan or any interest therein to such Securitization Vehicle, except that if one or more classes of securities issued in connection with a Securitization is rated by Moody’s, the transferee may not rely on this clause (1) with respect to Moody’s); (2) in the case of a Securitization Vehicle that is not a CDO, the special servicer of such Securitization Vehicle has the Required Special Servicer Rating at the time of Transfer and the related transaction documents for such Securitization Vehicle require that any successor have the Required Special Servicer Rating (such entity, an “Approved Servicer”) and such Approved Servicer is required to service and administer such Additional Mezzanine Loan or any interest therein in accordance with servicing arrangements for the assets held by the Securitization Vehicle which require that such Approved Servicer act in accordance with a servicing standard notwithstanding any contrary direction or instruction from any other Person; or (3) in the case of a Securitization Vehicle that is a CDO, the CDO Asset Manager and, if applicable, each Intervening Trust Vehicle that is not administered and managed by a CDO Asset Manager which is a Qualified Transferee, are each a Qualified Transferee under clauses (ii)(A), (B), (C), (D), (E) or (G) of this definition;

(E) an investment fund, limited liability company, limited partnership or general partnership (a “**Permitted Investment Fund**”) where a Permitted Fund Manager acts as general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more of the following: the Mezzanine Lender, a Qualified Transferee, an institutional “accredited investor”, within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended, and/or a “qualified institutional buyer” or both within the meaning of Rule 144A promulgated under the Securities Exchange Act of 1934, as amended, provided such institutional “accredited investors” or “qualified institutional buyers” that are used to satisfy the 50% test set forth above in this clause (E) satisfy the financial tests in clause (i) of the definition of Eligibility Requirements; or

(G) any Person for which the Rating Agencies have issued a Rating Agency Confirmation with respect to such Transfer.

“**Eligibility Requirements**” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of \$650,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or loans similar in type as the Mezzanine Loan or operating commercial mortgage properties.

“**CDO Asset Manager**” with respect to any Securitization Vehicle (hereinafter defined) that is a CDO, shall mean the entity that is responsible for managing or administering the Additional Mezzanine Loan (or any interest therein) as an underlying asset of such Securitization Vehicle or, if applicable, as an asset of any Intervening Trust Vehicle (including, without limitation, the right to exercise any consent and control rights available to the holder of the Additional Mezzanine Loan).

“**Intervening Trust Vehicle**” shall mean with respect to any Securitization Vehicle that is a CDO, a trust vehicle or entity which holds the Additional Mezzanine Loan (or any interest therein) as collateral securing (in whole or in part) any obligation or security held by such Securitization Vehicle as collateral for the CDO.

“**Permitted Fund Manager**” means any Person that on the date of determination is not subject to a Proceeding and is either (i) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, or (ii) an entity that is a Qualified Transferee pursuant to clause (i) or clauses (ii)(A), (B), (C), (D) or (G) of the definition thereof, in each case, which is investing through a fund with committed capital of at least \$250,000,000.

“**Qualified Trustee**” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two (2) rating categories of S&P and either Fitch or Moody’s (provided, however, if the Loan has been securitized, the rating requirement of any agency not a Rating Agency will be disregarded).

“Required Special Servicer Rating” means a special servicer that (i) has a rating of “CSS3” in the case of Fitch, (ii) is on the S&P’s select servicer list as a “U.S. Commercial Mortgage Special Servicer” in the case of S&P and (iii) in the case of Moody’s, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody’s within the twelve (12) month period prior to the date of determination and Moody’s has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities. The requirement of any agency not a Rating Agency shall be disregarded.

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“Rating Agency Confirmation” means a written affirmation from each of the Rating Agencies that the credit rating of the Certificates assigned by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event. In the event that no Certificates are outstanding or the Loan is not part of a Securitization, any action that would otherwise require a Rating Agency Confirmation shall instead require the consent of Lender. All fees and expenses of the Rating Agencies incurred in connection with any Rating Agency Confirmation required pursuant to this Agreement as the result of a request or action of Borrower shall be paid by Borrower.

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5.2.15 Guarantor. Notwithstanding anything to the contrary in the organizational documents of Guarantor, Guarantor 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 Guaranty and the Environmental Indemnity; (ii) compliance with all organizational and applicable Legal Requirements relating to dissolution and winding up of Guarantor; and (iii) replacement of the Guarantor with a replacement guarantor acceptable to Lender in its sole discretion and as to which Lender has received a Rating Agency Confirmation.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

Section 6.1 Insurance.

6.1.1 Insurance Policies. Borrower, at its sole cost and expense, shall obtain and maintain, or cause to be maintained, the following insurance policies:

(a) At all times prior to Completion of the Improvements and at any time thereafter during which construction work is being performed at the Property:

(A) Builder's Risk "All Risk" insurance in such amount as Lender shall require but in no event less than one hundred percent (100%) of the replacement cost value of the completed Project Improvements, but excluding foundations and any other improvements not subject to physical damage). Such policy shall be written on a Builder's Risk Completed Value Form (100% non-reporting) or its equivalent and shall include, without limitation, coverage for loss by testing, collapse, theft, flood, and earth movement. Such insurance Policy shall also include coverage for:

(i) Loss suffered with respect to materials, equipment, heating and air conditioning machinery, machinery, and supplies, in each case owned by Borrower or required to be insured by Borrower, whether on-site, in transit, or stored offsite and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property in each case owned by Borrower or required to be insured by Borrower;

(ii) Soft costs that are recurring costs, which shall include, without limitation, delayed opening loss of income/revenue coverage for a period of recovery of not less than twelve (12) months commencing from the date the Project Improvements are as to be completed agreed to by Lender in its sole discretion, as well as costs to reproduce plans, specifications, blueprints and models in connection with any restoration following a casualty;

(iii) Demolition, debris removal and increased cost of construction, including, without limitation, increased costs arising out of changes in applicable laws and codes; and

(iv) Operation of building laws.

(B) Borrower shall cause the Borrower's Architect to obtain and maintain Architect's or Professional Liability insurance during the period commencing on the date of the Architect's Contract respectively, and expiring no earlier than five (5) years after the Completion of the Improvements. Such insurance shall be in an amount equal to at least \$1,000,000 per claim or as otherwise acceptable to Lender.

(C) Commercial General Liability insurance (vacant building) naming Lender as an additional insured with a minimum liability of \$10,000,000 including "Umbrella Liability," of like amount per occurrence and in the aggregate per location.

(D) Workers Compensation, Employer's Liability coverage and Disability insurance as required by law covering Borrower.

(E) Prior to or simultaneously with its entering into the General Contractor's Agreement, Borrower shall, or shall cause the General Contractor to, obtain and maintain Commercial General Liability coverage, including, without limitation, products and completed operations and containing no "X", "C", "U" exclusion if excavation and/or demolition is to be provided, and Automobile Liability insurance with no less than \$10,000,000 in limits per occurrence and in the aggregate per project through primary and umbrella liability coverages. Such insurance shall name Borrower as the insured and Lender as additional insured. Borrower shall also require that all Contractors cause a ll of their respective subcontractors to maintain similar coverage with limits of no less than \$1,000,000 per occurrence and shall include Borrower and Lender as additional insureds. All Persons engaged in work on the improvements at the Property shall maintain statutory Workers Compensation and Disability insurance in force for all workers on the job. The liability insurance to be maintained by Borrower and/or the General Contractor pursuant to this subsection (E) shall include coverage for products and completed operations and coverage for construction defects for a period of five (5) years after Completion of the Improvements.

(b) At all times after Completion of the Improvements:

(i) comprehensive all risk insurance ("Special Form") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for all such insurance coverage excluding windstorm and earthquake and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require and (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity;

(ii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property (as reduced to reflect expenses not incurred during a period of Restoration) for a period of at least eighteen (18) months after the date of the Casualty; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross revenues from the Property for the succeeding eighteen (18) month period. Notwithstanding the provisions of Section 2.7.1 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance; and

(iii) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above.

(c) At all times during the term of the Loan:

(i) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate and One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all written contracts and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(ii) automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million Dollars and 00/100 Dollars (\$1,000,000.00);

(iii) worker's compensation and employee's liability subject to the worker's compensation laws of the applicable state;

(iv) umbrella and excess liability insurance in an amount not less than Fifty Million and 00/100 Dollars (\$50,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including, but not limited to, supplemental coverage for employer liability and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (ii) above;

(v) Insurance covering the decrease or diminution in value of the Property resulting from the enforcement of any law, building code, zoning regulation or other Legal Requirement or act of any Governmental Authority to the extent that the Property cannot legally be restored to a condition that existed prior to the Casualty (which insurance shall be in a stipulated sum amount reasonably acceptable to Lender in its sole discretion);

(vi) the insurance required under this Sections 6.1(a)(A) and 6.1(b)(i) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(A) and 6.1(b)(i) above at all times during the term of the Loan; and

(vii) upon sixty (60) days written notice, such other reasonable insurance, including, but not limited to, sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(d) Intentionally Omitted.

(e) All insurance provided for in this Section 6.1 shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy"), and, to the extent not specified above, shall be subject to the approval of Lender as to deductibles, loss payees and insureds. The Policies described in Section 6.1 hereof (other than those strictly limited to liability protection) shall designate Lender as loss payee. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies and within thirty (30) days after commencement of the new or renewal Policy evidence satisfactory to Lender of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Borrower to Lender.

(f) Prior to the renewal or replacement of any Policy (the "Existing Policy"), any required insurance may be procured under a blanket insurance Policy covering the Property and other properties or assets of Borrower or its affiliates, provided that any such blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of this Article VI. Lender, in its reasonable discretion, shall determine whether such blanket Policies provide sufficient limits of insurance.

(g) Unless otherwise specified, all Policies of insurance provided for or contemplated by this Article VI shall, in the case of property damage, builder's risk, boiler and machinery, flood and earthquake insurance, name Borrower as the insured and Lender (for the ratable benefit of Lenders and their successors and/or assigns) as the additional insured and shall contain a so-called New York standard non-contributing mortgagee clause or its equivalent in favor of Lender (including Lender as mortgagee and loss payee) providing that the loss thereunder shall be payable to Lender for the ratable benefit of Lenders and providing thirty (30) days' advance notice of cancellation to Lender.

(h) All Property insurance also shall include a co-insurance waiver and Agreed Amount Endorsement. The amount of any deductible under any Policy must be reasonably acceptable to Lender. Without the Lender's prior written consent, Borrower shall not name any Person other than the Lender, as loss payee, as it pertains to the Property, nor shall Borrower carry separate or additional insurance coverage covering the improvements at the Property concurrent in form or contributing in the event of loss with that required by this Agreement or; provided that, if blanket policies are obtained, this sentence shall not apply to property covered by such blanket policies other than the improvements at the Property and such tenant improvements and betterments that Borrower is required to insure pursuant to the applicable Lease.

(i) Each Policy shall contain a provision whereby the insurer: (i) agrees that such Policy shall not be canceled or terminated, the coverage, deductible, and limits of such Policy shall not be modified, other provisions of such Policy shall not be modified if such Policy, after giving effect to such modification, would not satisfy the requirements of this Agreement, and such Policy shall not be so modified, canceled or fail to be renewed, without in each case, at least thirty (30) days prior written notice to Lender, (ii) waives any right to claim any Insurance Premiums and commissions against Lender or any Lender, provided that the Policy need not waive the requirement that the Insurance Premiums be paid in order for a claim to be paid to the insured and (iii) provides that Lender is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums. In the event any Policy (except for general public and other liability and Workers Compensation insurance) shall contain breach of warranty provisions, such Policy shall not be invalidated by and shall insure Lender for the benefit of Lenders regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such Policy by any named insured, (B) the occupancy or use of the Property for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of the Mortgage or any other Loan Document.

(j) Borrower shall pay the Insurance Premiums for the Policies as the same become due and payable. Borrower shall deliver to Lender certified copies of the Policies required to be maintained pursuant to this Article VI; provided, however, Lender shall not be deemed by reason of the custody of such Policies to have knowledge of the contents thereof. Borrower also shall deliver to Lender within ten (10) days after Lender's request, a statement setting forth the particulars as to all such Policies, indicating that all Insurance Premiums due thereon have been paid and that the same are in full force and effect. Not later than fifteen (15) days prior to the expiration date of each Policy, Borrower shall deliver to Lender a certificate of insurance evidencing renewal of coverage as required herein. Not later than thirty (30) days after the renewal or replacement of each of the Policies, Borrower shall deliver to Lender evidence of payment of Insurance Premiums for such renewal or replacement Policies satisfactory to the Lender and not later than sixty (60) days after the renewal or replacement of each of the Policies, Borrower shall deliver to Lender an original or certified copy, (as required pursuant to this paragraph) of a renewal or replacement Policy or Policies.

(k) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is maintained in full force and effect, Lender shall have the right (but not the obligation), upon notice to Borrower, to take such action as Lender deems necessary to protect Lenders' interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate after three (3) Business Days notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Lender deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All Insurance Premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and until paid shall be secured by the Building Loan Mortgage and shall bear interest at the Default Rate.

(l) In the event of foreclosure of the Building Loan Mortgage and/or the Project Loan Mortgage or other transfer of title to the Property in extinguishment in whole or in part of the Total Debt, all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

6.1.2 Insurance Company. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located and having a claims paying ability rating of "A/VII" or better by A.M. Best Company, Inc. and "A- or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the Securities (one of which shall be S&P if they are rating the Securities and one of which will be Moody's if they are rating the Securities), or if only one (1) Rating Agency is rating the Securities, then only by such Rating Agency.

Section 6.2 Casualty and Condemnation.

6.2.1 Casualty. The term "Net Proceeds" for purposes of this Agreement shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1.1 (b) (1), (b)(iii), (c)(ii) and (c)(iv) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("Insurance Proceeds"), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("Condemnation Proceeds"), whichever the case may be. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such Casualty to Lender and Borrower shall promptly commence and diligently prosecute to completion the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such Casualty with such alterations as may be reasonably approved by Lender (a "Restoration") and otherwise in accordance with this Agreement. Borrower shall pay all costs of such Restoration whether or not such costs are covered by the Net Proceeds. Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

6.2.2 Condemnation. Borrower shall give Lender prompt notice of any actual or threatened commencement of any proceeding for the Condemnation by any Governmental Authority of all or any part of the Property and shall deliver to Lender a copy of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any Condemnation, Borrower shall continue to pay the Total Debt at the time and in the manner provided for its payment in the Building Loan Note and the Project Loan Note and in this Agreement and the Project Loan Agreement. Lenders shall not be limited to the interest paid on the Award by any Governmental Authority but shall be entitled to receive out of the Award interest and additional interest (if any) at the rate or rates provided in this Agreement or in the Building Loan Note or in the Project Loan Agreement or in the Project Loan Note, as applicable and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. If the Property or any portion thereof is taken by any Governmental Authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property pursuant to this Section 6.2 and otherwise comply with the provisions of hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Building Loan Note or the Project Loan Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Total Debt. Notwithstanding anything contained in this Section 6.2 or this Agreement to the contrary, Lender may, in its sole discretion, elect to (y) apply the net proceeds of any Condemnation Proceeds (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Total Debt in such order and manner as Lender may elect, whether due or not, or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Agreement restricting the right of Lender to make such an election is waived by Borrower. If the Condemnation Proceeds are made available to Borrower for restoration or repair, the Condemnation Proceeds shall be disbursed upon satisfaction of and in accordance with the terms and conditions set forth in this Section 6.2.

6.2.3 Application of Net Proceeds.

(a) Minor Casualty or Condemnation. If a Casualty or Condemnation has occurred to the Property, Borrower's right, title and interest in and to all Proceeds are, except as otherwise herein provided, hereby assigned by Borrower to Lender and all Net Proceeds shall, except as otherwise herein provided, be paid to Lender. Borrower shall, in good faith and in a commercially reasonable manner, file and prosecute the adjustment, compromise or settlement of any claim for Proceeds and, subject to Borrower's right to receive the direct payment of any Net Proceeds as herein provided, will cause the same to be paid directly to Lender to be held and applied in accordance with the provisions of this Agreement. Except upon the occurrence and during the continuance of an Event of Default, Borrower may settle any insurance claim with respect to Net Proceeds which do not One Million and 00/100 Dollars (\$1,000,000.00) (the "**Restoration Threshold**"). Whether or not an Event of Default shall have occurred and be continuing, Lender shall have the right to approve, such approval not to be unreasonably withheld, any settlement which would in Lender's reasonable judgment result in Net Proceeds which exceed the Restoration Threshold and Borrower shall deliver or cause to be delivered to Lender all instruments reasonably requested by Lender to permit such approval. Borrower shall pay all reasonable out-of-pocket costs, fees and expenses incurred by Lender on behalf of Lenders (including all reasonable attorneys' fees and expenses, the reasonable fees of insurance experts and adjusters and reasonable costs incurred in any litigation or arbitration), and interest thereon at the Default Rate to the extent not paid within fifteen (15) Business Days after delivery of a request for reimbursement by Lender, accompanied by reasonable back-up documentation, in connection with the settlement of any claim for Proceeds and the seeking and obtaining of any payment on account thereof in accordance with the foregoing provisions. If any Proceeds are received by Borrower and may be retained by Borrower pursuant to this **Section 6.2**, such Proceeds shall, until the completion of the related Work, be held in trust for Lender for the ratable benefit of Lenders and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof, and to the extent such Proceeds exceed the Restoration Threshold, such Proceeds shall be forthwith paid directly to and held by Lender to be applied or disbursed in accordance with this **Article VI**. If an Event of Default shall have occurred and be continuing, or if Borrower fails to file any insurance claim for a period of fifteen (15) Business Days, or to prosecute same with commercially reasonable diligence following Borrower's receipt of written notice to do so from Lender, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim (including settlement thereof) with counsel satisfactory to Lender and to collect and to make receipt for any such payment, all at Borrower's expense (including payment of interest at the Default Rate for any amounts advanced by Lender pursuant to this sentence). Notwithstanding anything to the contrary set forth in this Agreement, but excluding all situations requiring prepayment of the Note, to the extent any Proceeds (either singly or when aggregated with all other then unapplied Proceeds with respect to the Property) do not exceed the Restoration Threshold, such Proceeds are to be paid directly to Borrower to be applied to restoration of the Property in accordance with the terms hereof. As soon as reasonably practicable after receipt of the Net Proceeds Borrower shall commence and satisfactorily complete with due diligence: (x) the Completion of the Improvements in accordance with the terms of this Agreement, if such Casualty or Condemnation occurs prior to the Completion of the Improvements; of (y) the Restoration in accordance with the terms of this Agreement, if such Casualty or Condemnation occurs after the Completion of the Improvements.

6.2.4 Major Casualty or Condemnation.

(a) If a Casualty or Condemnation has occurred to the Property, Borrower shall commence and satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement and the Project Loan Agreement. If the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration, or Completion of the Improvements, as applicable, is equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration, provided that each of the following conditions are met:

(A) If the Casualty or Condemnation occurs prior to the Completion of the Improvements:

(i) No Event of Default shall have occurred and be continuing;

(ii) Lender is reasonably satisfied that the Net Proceeds plus any Advances available under this Building Loan Agreement and Project Loan Agreement is sufficient to cause the Completion of the Improvements and pay all Project-Related Costs to be incurred in connection therewith;

(iii) Lender shall be reasonably satisfied that Completion of the Improvements will be achieved on or prior to the Required Completion Date as such date may be extended by Force Majeure (which may include the Casualty giving rise to the Net Proceeds).

(B) If the Casualty or Condemnation occurs following the Completion of the Improvements:

(i) No Event of Default shall have occurred and be continuing;

(ii) In the event the Net Proceeds are Insurance Proceeds, less than thirty-five percent (35%) of the total floor area of the Improvements at the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is the subject of the Condemnation;

(iii) Leases demising in the aggregate a percentage amount equal to or greater than the Rentable Space Percentage of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Tenant, as applicable under the respective Lease, will make all necessary repairs and restorations thereto at their sole cost and expense. The term “Rentable Space Percentage” shall mean (1) in the event the Net Proceeds are Insurance Proceeds, a percentage amount equal to ninety percent (90%) and (2) in the event the Net Proceeds are Condemnation Proceeds, a percentage amount equal to ninety percent (90%);

(iv) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be) and Borrower and shall diligently pursue the same to satisfactory completion;

(v) Lender shall be satisfied that any operating deficit, including all scheduled all payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be paid during the period required for Restoration from (A) the Net Proceeds, (B) the insurance coverage referred to in Section 6.1.1(b)(ii) hereof, if applicable, or (C) other funds of Borrower;

(vi) Lender shall be satisfied that the Restoration will be achieved, on or before the earliest to occur of (A) the date six (6) months prior to the Maturity Date, (B) such time as may be required under applicable Legal Requirements in order to repair and restore the Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable or (C) the expiration of the insurance coverage referred to above;

(vii) The Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(viii) The Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements; and

(ix) Such Casualty or Condemnation, as applicable, does not result in the permanent loss of access to the Property or the related Improvements

(x) the Debt Service Coverage Ratio for the Property, after giving effect to the Restoration, shall be equal to or greater than 1.15 to 1.00;

(xi) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be acceptable to Lender; and

(xii) the Net Proceeds together with any Cash or Cash Equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 6.2.4 shall constitute additional security for the Total Debt and the Other Obligations under the Loan documents.

(c) Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all requirements set forth in Section 6.2.4(a) have been satisfied, (B) all relevant conditions to the making of Advances of the Building Loan shall have been satisfied with respect to disbursements of Net Proceeds for Restoration as though such disbursements were of Loan Proceeds rather than Net Proceeds, it being understood however that disbursements of Net Proceeds shall not be deemed to be advances of the Loan, (C) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (D) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other Liens of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company issuing the Title Insurance Policy.

(d) All plans and specifications required in connection with the Restoration shall be subject to prior approval by Lender and by an independent architect selected by Lender (which shall be the Construction Consultant if the Casualty or Condemnation occurs prior to the Completion of the Improvements) (the "Casualty Consultant"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to approval by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with recovering, holding and advancing the Net Proceeds for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Casualty Consultant's reasonable fees and disbursements, shall be paid by Borrower.

(e) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "Casualty Retainage" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above, be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.2 and all applicable Legal Requirements and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of such contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the Title Company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the Lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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(f) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

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(g) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.2.4 shall constitute additional security for the Debt.

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(h) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.2.4, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be deposited in the Cash Management Account to be disbursed in accordance with the Cash Management Agreement provided no Event of Default shall have occurred and shall be continuing under any of the Loan Documents.

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(i) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to this Article VI may be retained and applied by Lender toward the payment of the Total Debt in accordance with Section 2.4.2 whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its discretion.

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Section 6.3 Application of Net Proceeds. Upon the occurrence and continuation of an Event of Default, Lender, at its option, may withdraw all the Net Proceeds or the undisbursed balance thereof and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender and may apply the such Net Proceeds and Net Proceeds Deficiency either to the payment of Restoration or to payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply such Net Proceeds and Net Proceeds Deficiency shall be in addition to all other rights and remedies provided to Lender under the Building Loan Documents.

ARTICLE VII.
RESERVE FUNDS

Section 7.1 Tax and Insurance Escrow Fund. On the date hereof, Borrower shall pay or cause to be paid, all Taxes, Insurance Premiums and Other Charges that will be payable on or prior to January 2, 2008. Simultaneously with the Initial Advance, Borrower shall deposit with Lender an amount (the "**Initial Tax and Insurance Escrow Deposit**") equal to the Taxes, Insurance Premiums and Other Charges that Lender estimates will be payable from and after the date of the Initial Advance through and including the date that the Second Tax and Insurance Escrow Deposit is payable, which shall be funded from the Project Loan Advance. At least thirty (30) day prior to the first anniversary of the date hereof, Borrower shall deposit with Lender an amount (the "**Second Tax and Insurance Escrow Deposit**") equal to the Taxes, Insurance Premiums and Other Charges that Lender estimates will be payable from and after the first anniversary of the date hereof through and including the last day of the Construction Term. Subject to the terms and conditions of the Project Loan Agreement concerning Advances, the Second Tax and Insurance Escrow Deposit shall be funded from an Advance of like amount under the Project Loan. Simultaneously with the Final Advance, 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 Construction Term (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**"). The Tax and Insurance Escrow Fund and the Monthly Debt Service Payment Amount, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to **Section 5.1.2** hereof and under the Mortgage. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to **Section 5.1.2** hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. Any amount remaining in the Tax and Insurance Escrow Fund after the Debt has been paid in full shall be returned to Borrower. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes, Other Charges and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments (or, if such determination is made during the Construction Term, Borrower shall deposit the full amount of such deficiency within 5 days of such notice) to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and Other Charges and/or thirty (30) days prior to expiration of the Policies, as the case may be. Notwithstanding the foregoing, Borrower's obligation to make monthly deposits with Lender for Insurance Premiums shall be suspended for so long as no Event of Default has occurred and is continuing and Borrower provides Lender with written evidence reasonably satisfactory to Lender that all insurance coverages required to be maintained by Borrower pursuant to the terms of this Agreement are being maintained in full force and effect through one or more blanket insurance policies (provided that any such blanket insurance policies provide the same level of coverage which would otherwise be provided by a stand-alone policy). Borrower shall provide evidence reasonably acceptable to Lender on an annual basis thirty (30) days prior to the expiration of the existing insurance that the insurance has been renewed and will provide notice of cancellation for non-payment. In the event Borrower fails to provide such evidence or an Event of Default occurs, however, Borrower will thereafter be required to make deposits with Lender for Insurance Premiums as provided herein.

Section 7.2 Interest Reserve.

7.2.1 Deposit of Interest Reserve Funds. Simultaneously with the Initial Advance, Borrower shall deposit the sum of \$5,970,398.00 with Lender (the "**Initial Interest Reserve Deposit**"), which shall be funded from the Initial Advance of the Project Loan. In addition, pursuant to **Section 5.1.28(d)**, Borrower may be obligated to deposit an Additional Interest Reserve Deposit and in the event that Lender determines in its sole discretion that the Interest Reserve Funds on deposit in the Interest Reserve Account are insufficient, Borrower shall deposit with Lender an amount equal to the deficiency in the Interest Reserve Funds as determined by Lender (each an "**Interest Reserve Deposit**", each such amount so deposited shall hereinafter be referred to as the "**Interest Reserve Fund**"). The account in which the Interest Reserve Funds are held shall hereinafter be referred to as Borrower's "**Interest Reserve Account**". In lieu of making the Interest Reserve Deposits with Lender, Borrower shall have the right to deliver to Lender an irrevocable Letter of Credit acceptable to Lender in the amount of the Interest Reserve Deposit.

7.2.2 Release of Interest Reserve Funds. Provided no Event of Default or monetary Default exists and no amounts remain available for Advance under the Interest Reserve Line Item of the Project Loan Budget, on each Payment Date, Lender shall apply the Interest Reserve Funds to payments of the Monthly Debt Service Payment due on such date.

7.2.3 Application of Interest Reserve Funds. Upon the occurrence of an Event of Default, Lender, at its option, may withdraw all the Interest Reserve Funds and if Lender does so, shall apply the Interest Reserve Funds either to the payment of interest due on the Loan or toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Interest Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

Section 7.3 Replacements and Replacement Reserve.

7.3.1 Replacement Reserve Fund. From and after Completion of the Improvements, Borrower shall pay to Lender on each Payment Date an amount equal to \$3,962.00 (the "**Replacement Reserve Monthly Deposit**") for replacements and repairs required to be made to the Property (collectively, the "**Replacements**"). Amounts so deposited shall hereinafter be referred to as Borrower's "**Replacement Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "**Replacement Reserve Account**". Lender may reassess its estimate of the amount necessary for the Replacement Reserve Fund from time to time, and may increase the monthly amounts required to be deposited into the Replacement Reserve Fund upon thirty (30) days notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain the proper maintenance and operation of the Property. Notwithstanding the foregoing, Borrower shall not be required to deposit any portion of the Replacement Reserve Monthly Deposit which would cause the amount then on deposit in the Replacement Reserve, as determined by Lender, to exceed \$236,280 (the "**Replacement Reserve Cap**"). **When the Replacement Reserve Funds on deposit in the Replacement Reserve Account equals or exceeds the Replacement Reserve Cap, Borrower may cease making Replacement Reserve Monthly Deposits to the Replacement Reserve Fund. If at any time thereafter the amount of the Replacement Reserve funds on deposit in the Replacement Reserve Account is less than the Replacement Reserve Cap, then Borrower shall recommence and continue making Replacement Reserve Monthly Deposits to the Replacement Reserve Funds, until the amount of Replacement Reserve Funds on deposit in the Replacement Reserve Account equal or exceed the Replacement Reserve Cap.**

7.3.2 Disbursements from Replacement Reserve Account. (a) Lender shall make disbursements from the Replacement Reserve Account to pay Borrower only for the costs of the Replacements. Lender shall not be obligated to make disbursements from the Replacement Reserve Account to reimburse Borrower for the costs of routine maintenance to the Property, replacements of inventory or for costs which are a Tenant's obligation.

(b) Lender shall, upon written request from Borrower and satisfaction of the requirements set forth in this **Section 7.3.2**, disburse to Borrower amounts from the Replacement Reserve Account necessary to pay for the actual approved costs of Replacements or to reimburse Borrower therefor, upon completion of such Replacements (or, upon partial completion in the case of Replacements made pursuant to **Section 7.3.2(e)** hereof) as determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve Account if a Default or an Event of Default exists.

(c) Each request for disbursement from the Replacement Reserve Account shall be in a form specified or approved by Lender and shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request Borrower shall certify that all Replacements have been made in accordance with all applicable Legal Requirements of any Governmental Authority having jurisdiction over the Property. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided and, unless Lender has agreed to issue joint checks as described below in connection with a particular Replacement, each request shall include evidence satisfactory to Lender of payment of all such amounts. Except as provided in Section 7.3.2(e) hereof, each request for disbursement from the Replacement Reserve Account shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide Lender evidence of completion of the subject Replacement satisfactory to Lender in its reasonable judgment.

(d) Borrower shall pay all invoices in connection with the Replacements with respect to which a disbursement is requested prior to submitting such request for disbursement from the Replacement Reserve Account or, at the request of Borrower, Lender will issue joint checks, payable to Borrower and the contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with a Replacement. In the case of payments made by joint check, Lender may require a waiver of lien from each Person receiving payment prior to Lender's disbursement from the Replacement Reserve Account. In addition, as a condition to any disbursement, Lender may require Borrower to obtain lien waivers from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for completion of its work or delivery of its materials. Any lien waiver delivered hereunder shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current reimbursement request (or, in the event that payment to such contractor, supplier, subcontractor, mechanic or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).

(e) If (i) the cost of a Replacement exceeds Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), (ii) the contractor performing such Replacement requires periodic payments pursuant to terms of a written contract, and (iii) Lender has approved in writing in advance such periodic payments, a request for reimbursement from the Replacement Reserve Account may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of the work, (B) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, (C) all other conditions in this Agreement for disbursement have been satisfied, (D) funds remaining in the Replacement Reserve Account are, in Lender's judgment, sufficient to complete such Replacement and other Replacements when required, and (E) if required by Lender, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than Ten Thousand and 00/100 Dollars (\$10,000.00).

7.3.3 Performance of Replacements. (a) Borrower shall make Replacements when required in order to keep the Property in condition and repair consistent with other first class, mixed use retail and self-storage facilities in the same market segment in the metropolitan area in which the Property is located, and to keep the Property or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Lender reserves the right, at its option, to approve all contracts or work orders over Twenty-five Thousand and 00/100 Dollars (\$25,000.00) with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender.

(c) In the event Lender determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner, after notice and a reasonable period to cure, Lender shall have the option to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve Fund toward the labor and materials necessary to complete such Replacement, upon reasonable prior notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder.

(d) In order to facilitate Lender's completion or making of such Replacements pursuant to Section 7.3.3(c) above, Borrower grants Lender the right to enter onto the Property and perform any and all work and labor necessary to complete or make such Replacements and/or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to use any funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary or desirable to complete such Replacements; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Replacements, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

(e) Nothing in this Section 7.3.3 shall: (i) make Lender responsible for making or completing any Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Lender to proceed with any Replacements; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(f) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties making Replacements pursuant to this Section 7.3.3 to enter onto the Property during normal business hours (subject to the rights of tenants under their Leases) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Property, and to complete any Replacements made pursuant to this Section 7.3.3. Borrower shall cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 7.3.3(f) or the completion of Replacements pursuant to this Section 7.3.3.

(g) Lender may require an inspection of the Property at Borrower's expense prior to making a monthly disbursement from the Replacement Reserve Account in order to verify completion of the Replacements for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and/or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amounts from the Replacement Reserve Account. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

(h) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for those Liens existing on the date of this Agreement which have been approved in writing by Lender).

(i) Before each disbursement from the Replacement Reserve Account, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Property since the date of recordation of the related Mortgage and that title to the Property is free and clear of all Liens (other than the lien of the related Mortgage and any other Liens previously approved in writing by Lender, if any).

(j) All Replacements shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(k) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Lender.

7.3.4 Failure to Make Replacements. (a) It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this Section 7.3 and such failure is not cured within thirty (30) days after notice from Lender. Upon the occurrence of such an Event of Default, Lender may use the Replacement Reserve Fund (or any portion thereof) for any purpose, including but not limited to completion of the Replacements as provided in Section 7.3.3, or for any other repair or replacement to the Property or toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Replacement Reserve Fund shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

(a) Nothing in this Agreement shall obligate Lender to apply all or any portion of the Replacement Reserve Fund on account of an Event of Default to payment of the Total Debt or in any specific order or priority.

7.3.5 Balance in the Replacement Reserve Account

The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

Section 7.4 Punch List and Deferred Maintenance Reserve.

7.4.1 Establishment of Deferred Maintenance Reserve. In the event that, following the Completion of the Improvements but prior to the Final Advance, Lender determines that any Punch List Items remain to be completed or if Lender determines that any condition (a "Deferred Maintenance Condition") exists at the Property which requires maintenance or correction, Borrower shall deposit with Lender an amount equal to 150% of Lender's good faith estimate of the cost to perform any Punch List Items plus 125% of Lender's good faith estimate of the cost of performing such Deferred Maintenance Condition (the "Punch List and Deferred Maintenance Reserve Deposit", such amounts so deposited shall hereinafter be referred to as the "Punch List and Deferred Maintenance Reserve Funds").

7.4.2 Performance of Punch List Items and Deferred Maintenance. Borrower shall correct the Punch List Items and Deferred Maintenance Conditions in a diligent, workmanlike manner and shall complete the same within a reasonable time period. Upon the request of Borrower from time to time (but not more often than once per calendar month), Lender shall cause disbursements to Borrower from the Punch List and Deferred Maintenance Reserve Funds to reimburse Borrower for reasonable costs and expenses incurred in order to correct Punch List Items and Deferred Maintenance Conditions, upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Punch List Items and Deferred Maintenance Conditions to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured, (c) Lender shall have received an Officers' Certificate (i) stating that all the Punch List Items and Deferred Maintenance Conditions to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete the Punch List Items and Deferred Maintenance Conditions, (ii) identifying each Person that supplied materials or labor in connection with the Punch List Items and Deferred Maintenance Conditions to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such Officers' Certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender's option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (e) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender may condition the making of a requested disbursement on (1) reasonable evidence establishing that Borrower has applied any amounts previously received by it in accordance with this Section 7.4 for the expenses to which specific draws made hereunder relate, (2) reasonably satisfactory site inspections, and (3) receipt of lien releases and waivers from any contractors, subcontractors and others with respect to such amounts. Lender shall not be required to make disbursements from the Required Repair Account with respect to the Property unless such requested disbursement is in an amount greater than Twenty-five Thousand and 00/100 Dollars (\$25,000.00) (or a lesser amount if the total amount in the Required Repair Account is less than Twenty-five Thousand and 00/100 Dollars (\$25,000.00) in which case only one disbursement of the amount remaining in the account shall be made) and such disbursement shall be made only upon satisfaction of each condition contained in this Section 7.4.2.

7.4.3 Release of Deferred Maintenance Funds. Upon substantial completion (as reasonably determined by Lender) of any Punch List Item or Deferred Maintenance Condition, and provided no Event of Default is then continuing, Lender shall, on the first following Payment Date, release to Borrower the remainder of the portion of the Punch List and Deferred Maintenance Reserve Funds held for such Punch List Item or Deferred Maintenance Condition.

- **Section 7.5 Intentionally Omitted.**

- **Section 7.6 Excess Cash Flow.** Any Excess Cash Flow that, pursuant to the Cash Management Agreement, is required to be deposited to the Excess Cash Flow Reserve (such funds "Excess Cash Flow Funds") shall be deposited in an account (the "Excess Cash Flow Reserve Account") and held by Lender as additional security for the payment and performance by Borrower of its obligations hereunder and other the other Loan Documents.

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Section 7.7 Operating Reserve.

7.7.1 Deposit of Operating Reserve Funds. In the event that, following the Completion of the Improvements, Lender determines that the Gross Income from Operations is not sufficient to pay the Operating Expenses of the Property and the Total Debt Service, Borrower shall deposit with Lender an amount equal Lender's good faith estimate of the shortfall in Gross Income from Operations until such time that Lender determines that the Property will achieve a Debt Service Coverage Ratio of 1.15 to 1.00 (the "Operating Reserve Deposit", such amounts so deposited shall hereinafter be referred to as the "Operating Reserve Funds"). The account in which the Interest Reserve Fund are held shall hereinafter be referred to as the "Operating Reserve Account".

7.7.2 Release of Operating Reserve Funds. Provide no Event of Default or monetary Default exists, in the event that the amounts on deposit in the Cash Management Account are not sufficient to make the payments required under Section 3.4(a) through (g), of the Cash Management Agreement on each Payment Date, Lender shall apply the Operating Reserve Funds to payments of the such items.

7.7.3 Application of Operating Reserve Funds. Upon the occurrence of an Event of Default, Lender, at its option, may withdraw all the Operating Reserve Funds and if Lender does so, shall apply the Operating Reserve Funds toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Operating Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

7.7.4 Release of Operating Reserve Funds. Provided that no Event of Default or Monetary Default then exists if Lender determines that the Property has achieved a Debt Service Coverage Ratio of 1.15 to 1.00 for two consecutive Debt Service Coverage Ratio Determination Dates, Lender shall release to Borrower any amount remaining in the Operating Reserve Account.

Section 7.8 Rollover Reserve.

7.8.1 Deposits to Rollover Reserve Fund. From and after Completion of the Improvements, Borrower shall pay to Lender on each Payment Date the sum of \$15,645.33 (the "Rollover Reserve Monthly Deposit"), which amounts shall be deposited with and held by Lender for tenant improvement and leasing commission obligations incurred following the date hereof. Amounts so deposited shall hereinafter be referred to as the "Rollover Reserve Fund" and the account to which such amounts are held shall hereinafter be referred to as the "Rollover Reserve Account". Notwithstanding the foregoing, Borrower shall not be required to deposit any portion of the Rollover Reserve Monthly Deposit which would cause the amount then on deposit in the Rollover Reserve, as determined by Lender, to exceed \$938,720.00 (the "Rollover Reserve Cap"). When the Rollover Reserve Funds on deposit in the Rollover Reserve Account equals or exceeds the Rollover Reserve Cap, Borrower may cease making Rollover Reserve Monthly Deposits to the Rollover Reserve Fund. If at any time thereafter the amount of the Rollover Reserve funds on deposit in the Rollover Reserve Account is less than the Rollover Reserve Cap, then Borrower shall recommence and continue making Rollover Reserve Monthly Deposits to the Rollover Reserve Funds, until the amount of Rollover Reserve Funds on deposit in the Rollover Reserve Account equal or exceed the Rollover Reserve Cap.

7.8.2 Withdrawal of Rollover Reserve Funds. Lender shall make disbursements from the Rollover Reserve Fund for tenant improvement and leasing commission obligations incurred by Borrower. All such expenses shall be approved by Lender in its sole discretion. Lender shall make disbursements as requested by Borrower on a quarterly basis in increments of no less than \$5,000.00 upon delivery by Borrower of Lender's standard form of draw request accompanied by copies of paid invoices for the amounts requested and, if required by Lender, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Lender may require an inspection of the Property at Borrower's expense prior to making a quarterly disbursement in order to verify completion of improvements for which reimbursement is sought.

- Section 7.9 Ground Lease Reserve Fund.

- 7.9.1 Deposits to Ground Lease Fund. From and after the earlier of the Completion of the Improvements or the Required Completion Date, Borrower shall deposit with Lender, the sum of \$250,000.00. On each Payment Date, commencing on the Payment Date occurring in February, 2008, Borrower shall pay to Lender an amount equal to the rents (including both base and additional rents) and other charges due under the Ground Lease that will be payable by Borrower as lessee under the Ground Lease (collectively, the "Ground Rent") on the next date that Ground Rent is payable under the Ground Lease. Amounts so deposited shall hereinafter be referred to as the "Ground Lease Reserve Fund" and the account in which such amounts are held shall hereinafter be referred to as the "Ground Lease Reserve Account." Notwithstanding the foregoing, Borrower's obligation to make monthly deposits with Lender for Ground Rent shall be suspended for so long as no Event of Default has occurred and is continuing and Borrower provides Lender with written evidence reasonably satisfactory to Lender on a monthly basis that all Ground Rent has been paid when due. In the event Borrower fails to provide such evidence or an Event of Default occurs, however, Borrower will thereafter be required to make deposits with Lender for Ground Rent as provided herein.

- 7.9.2 Release of Ground Lease Reserve Fund. Provided no Event of Default has occurred and is continuing, Lender shall apply amounts in the Ground Lease Reserve Fund to the payment of the Ground Rent as and when such Ground Rent is payable. In making any payment relating to the Ground Rent, Lender may do so according to any bill, statement or estimate procured from the Ground Lessor, without inquiry into the accuracy of such bill, statement or estimate. Any amounts remaining in the Ground Lease Reserve Fund after the Debt has been paid in full shall be returned to Borrower. If the Ground Rent increases at any time Borrower shall, within thirty (30) days thereafter, deposit with Lender such amount as shall be sufficient so that at all times the amount on deposit in the Ground Rent Reserve Account shall be not less than two month's rent.

- Section 7.10 Storage Facility Master Lease Reserve.

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7.10.1 Storage Facility Master Lease Reserve Fund. On the earlier of the Completion of the Improvements or the Required Completion Date, Borrower shall deposit with Lender the amount of \$800,000.00, representing one (1) year's Storage Facility Rent under the Storage Facility Master Lease, which amount shall be deposited with and held by Lender as additional security for the Loan. Amounts so deposited shall hereinafter be referred to as the "Storage Facility Master Lease Reserve Fund" and the account in which such amount is held shall hereinafter be referred to as the "Storage Facility Master Lease Reserve Account". Until such time as the Storage Facility Master Lease Reserve Fund is fully released as set forth in **Section 7.10.2**, the Storage Facility Master Lease Reserve Fund shall be held by Lender as additional security for the Loan. The tenant under the Storage Facility Master Lease shall be obligated to make monthly rent payments and reimbursements thereunder until such time as the Storage Facility Master Lease shall have been terminated pursuant to **Section 5.1.44**.

7.10.2 Disbursement of Storage Facility Master Lease Reserve Funds. Provided no Event of Default shall have occurred and be continuing; Lender shall disburse the Storage Facility Master Lease Reserve Fund in the event that (a) the Self Storage Facility is open for business and (b) either (i) the Self Storage Facility yields an underwritten Net Cash Flow of \$800,000 with no free rent, credit or right of offset, or (ii) the entire Property yields a Stabilized Net Cash Flow of \$3,100,000.

Section 7.11 Reserve Funds, Generally. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Total Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds shall be held in an Eligible Account in Permitted Investments in accordance with the terms and provisions of the Cash Management Agreement. Interest earned on the Replacement 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 Rollover Reserve Funds, the Ground Rent Reserve Funds, the Cash Collateral Reserve Funds, the Punch List and Deferred Maintenance Reserve Funds, the Operating Reserve Funds, the Interest Reserve Funds, the Storage Facility Master Lease Reserve Fund and 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. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

Section 7.12 Letter of Credit Rights. Any Letter of Credit delivered to Lender pursuant to this Agreement shall be held by Lender as additional security for the Loan. Lender shall have the right to draw upon any Letter of Credit immediately and without further notice:

(a) upon the occurrence and during the continuance of an Event of Default;

(b) if Borrower fails to deliver to Lender, no less than thirty (30) days prior to the expiration of any Letter of Credit (including any renewal or extension thereof), a renewal or extension of such Letter of Credit or a replacement Letter of Credit; or

(c) if the institution issuing the Letter of Credit ceases to be an Approved Bank and Borrower fails to deliver to Lender a replacement Letter of Credit from an Approved Bank within thirty (30) days of the date that such institution ceased to be an Approved Bank.

ARTICLE VIII.

DEFAULTS

Section 8.1 Event of Default. (a) Each of the following events shall constitute an event of default hereunder (an "Event of Default"):

(i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);

(ii) if any of the Taxes (other than Taxes being contested pursuant to Section 5.1.2 of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after Borrower receives notice of same;

(iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;

(iv) if Borrower Transfers or otherwise encumbers any portion of the Property without Lender's prior written consent in violation of the provisions of this Agreement or the Mortgage;

(v) if any material representation or warranty made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mezzanine Borrower, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be instituted; provided, however, if such ap pointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mezzanine Borrower, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any covenant contained in Section 4.1.30;

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Borrower fails to pay the Administration Fee, or any portion or installment thereof, within five (5) days of the date when due;

(xiii) If Borrower fails to deposit with Lender the cash deposit or Letter of Credit required in accordance with Section 2.12.2 hereof;

(xiv) if Borrower fails to materially comply with the Construction Schedule;

(xv) if the Completion of the Improvements has not occurred on or prior to the Required Completion Date, subject to Force Majeure or if Lender or the Construction Consultant determines that Completion of the Improvements cannot occur on or prior to the Required Completion Date;

(xvi) if any voucher or invoice is fraudulently submitted by Borrower or in connection with any Advance for services performed or for materials used in or furnished for the Property;

(xvii) if there is any cessation at any time in construction of the Project Improvements for more than twenty (20) consecutive Business Days, other than as a result of Force Majeure;

(xviii) if Borrower expressly confesses in writing to Lender its inability to continue or complete construction of the Project Improvements in accordance with this Agreement;

(xix) if Lender, the Construction Consultant or their representatives are not permitted at all reasonable times upon not less than three (3) Business Days notice to enter upon the Property, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all the Plans and Specifications, or if Borrower shall fail to furnish to Lender or its authorized representative, when requested upon not less than five (5) Business Days notice, copies of the Plans and Specifications;

(xx) if a material adverse change in Borrower's financial condition shall occur which would, in Lender's reasonable determination, materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any other document evidencing or securing the Loan beyond any applicable notice and grace periods expressly set forth in the Loan Documents;

(xxi) if the conditions precedent to the Final Advance have not been satisfied on or prior to the Required Completion Date;

(xxii) If the Guarantor fails to maintain the Required Liquidity and the Required Net Worth covenants specified in the Guaranty of Completion or if the Guarantor shall default under the Guaranty of Completion or the Guaranty of Recourse Carveouts;

(xxiii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xxiv) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of Section 9.1 hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of Section 9.1 hereof, in either case for three (3) Business Days after notice to Borrower from Lender;

(xxv) if an Event of Default (as defined in the Project Loan Agreement) shall have occurred;

(xxvi) if there shall be default by Borrower or Guarantor under any of the other Loan Documents, beyond applicable cure periods, if any, contained in such documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such other default, event or condition is to accelerate the maturity of all or any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xxvii) if (A) a breach or default by Borrower under any condition or obligation contained in the Ground Lease shall occur, (B) there occurs any event or condition that gives the 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, supplemented, altered, or amended without the prior written consent of Lender;

(xxviii) if (A) a breach or default by Borrower 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 the Borrower or the 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 Lender;

(xxix) if Guarantor or Storage Facility Tenant shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of Section 5.2.15 or Section 5.1.44(e) hereof, respectively; or

(xxx) if the Initial Advance Conditions are not satisfied by the Required Initial Advance Date; or

(xxxi) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xxx) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 Remedies.

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing, (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. ; Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

ARTICLE IX.

SPECIAL PROVISIONS

Section 9.1 Sale of Notes and Securitization. Borrower acknowledges and agrees that Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a "**Securitization**"). At the request of Lender, and to the extent not already required to be provided by or on behalf of Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender or take other actions reasonably required by Lender, in each case in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender, prospective investors and/or the Rating Agencies;

(b) assist in preparing descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower and approved by Lender, Guarantor and their respective affiliates to obtain, collect, and deliver information requested or required by Lender, prospective investors and/or the Rating Agencies;

(c) deliver (i) an Additional Insolvency Opinion and an opinion with respect to, due execution and enforceability with respect to the Property, Borrower, Guarantor and their respective Affiliates and the Loan Documents, and such other legal opinions as Lender may request including, without limitation, a so called "10b-5" opinion, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

(d) if required by any prospective investor and/or any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect the Property, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

(e) make such representations and warranties as of the closing date of the Securitization with respect to the Property, Borrower, Guarantor and the Loan Documents as may be reasonably requested by Lender, prospective investors and/or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents;

(f) execute such amendments to the Loan Documents as may be requested by Lender, prospective investors and/or the Rating Agencies to effect the Securitization;

(g) if requested by Lender, review any information regarding the Property, Borrower, Guarantor, and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(b) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws.

9.1.2 Loan Components.

(a) Borrower covenants and agrees that in connection with any Securitization of the Loan, upon Lender's request, Borrower shall deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan (and such new notes or modified note shall initially have the same fully funded weighted average interest rate as the original note, but such new notes or modified note may subsequently change the weighted average spread and apply principal, interest rates and amortization of the Loan between the components in a manner specified by Lender in its sole discretion) and modify the Cash Management Agreement with respect to the newly created components such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that the same do not materially increase Borrower's obligations and/or liabilities under the Loan Documents or materially decrease Borrower's rights under the Loan Documents.

(b) Borrower covenants and agrees that Lender may hereafter convert any portion of the Loan to subordinate financing, including one or more tranches of mezzanine debt, preferred equity, subordinate debt or participation in such loan, subordinate to such loan (collectively, "**Subordinate Financing**"). provided, however, such Subordinate Financing and the Loan following the creation of the Subordinate Financing shall, in the aggregate, initially have the same fully funded weighted average interest rate as the fully funded interest rate of the Loan prior to the creation of such Subordinate Financing, but such Subordinate Financing may subsequently change the weighted average spread and Lender may apply principal, interest rates and amortization of the Loan and the Subordinate Financing in a manner specified by Lender in its sole discretion. If the Subordinate Financing takes the form of a mezzanine loan, a mezzanine borrower (the "**Mezzanine Borrower**") may be created which will own one hundred percent (100%) of the equity interests in the Borrower. One hundred percent (100%) of the ownership and economic interests in the Mezzanine Borrower may, at Lender's discretion, be required to be pledged as security for such tranches of Subordinate Financing, if any. A default with the related Loan shall be a default under the respective Subordinate Financing. Such Subordinate Financing shall be subject to an intercreditor agreement by and between the Lender and the subordinate lender(s).

9.1.3 Costs of Subordinate Financing. Borrower shall be responsible for all costs and expenses incurred by Lender in connection with any Subordinate Financing, (including reasonable attorneys' fees and disbursements) including without limitation (i) the preparation, negotiation, execution and delivery of any mezzanine loan documents ("**Mezzanine Loan Documents**") and the consummation of the transactions contemplated thereby and all the costs of furnishing all opinions by counsel for Borrower and Mezzanine Borrower; (ii) Mezzanine Borrower's and Lender's ongoing performance under and compliance with the Mezzanine Loan Documents, including confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Mezzanine Loan Document and any other documents or matters requested by Lender; (iv) filing and recording of any Mezzanine Loan Documents; (v) title insurance (including any applicable mezzanine endorsements or UCC endorsements or policies), surveys, inspections and appraisals; (vi) the creation, perfection or protection of Lender's Liens in the collateral securing the Mezzanine Loan Documents (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Construction Consultant, surveys and engineering reports); and (vii) fees charged by Rating Agencies in connection with the creation of the Subordinate Financing, or any modification of the Loan or the Subordinate Financing.

Section 9.2 **Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) The Indemnifying Persons agree to provide, in connection with the Securitization, an indemnification agreement (A) certifying that (i) the Indemnifying Persons have carefully examined the Disclosure Documents, including without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Mortgages," "Description of the Mortgage Loans and Mortgaged Property," "The Manager," "The Borrower" and "Certain Legal Aspects of the Mortgage Loan," and (ii) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Manager and/or the Loan), (collectively with the Provided Information, the "**Covered Disclosure Information**") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) jointly and severally indemnifying Lender, BSCMI (whether or not it is the Lender), any Affiliate of BSCMI that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of BSCMI that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Indemnified Persons**"), for any losses, claims, damages, liabilities, costs or expenses (including without limitation legal fees and expenses for enforcement of these obligations (collectively, the "**Liabilities**") to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities. This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification and reimbursement obligations provided for in clauses (B) and (C) above shall be effective, valid and binding obligations of the Indemnifying Persons whether or not an indemnification agreement described in clause (A) above is provided.

(c) In connection with Exchange Act Filings, the Indemnifying Persons jointly and severally agree to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against any Indemnifying Person, notify such Indemnifying Person in writing of the claim or the commencement of that action; provided, however, that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify any Indemnifying Person thereof, such Indemnifying Person shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Indemnifying Person to the Indemnified Person of its election to assume the defense of such claim or action, such Indemnifying Person shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both an Indemnifying Person, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to the Indemnifying Person, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which the Indemnifying Person is required hereunder to indemnify such Indemnified Person. No Indemnifying Person shall be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior written consent of BSCMI (which consent shall not be unreasonably withheld or delayed), no Indemnifying Person shall settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless the Indemnifying Person shall have given BSCMI reasonable prior written notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as an Indemnifying Person has complied with its obligations to defend and indemnify hereunder, such Indemnifying Person shall not be liable for any settlement made by any Indemnified Person without the consent of such Indemnifying Person (which consent shall not be unreasonably withheld or delayed).

(f) The Indemnifying Persons agree that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of the Indemnifying Persons, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) the Indemnifying Persons agree that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees actually received by the Indemnified Persons in connection with the closing of the Loan.

(g) The Indemnifying Persons agree that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. The Indemnifying Persons further agree that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and the Indemnifying Persons under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(j) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

Section 9.3 Exculpation

Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgage or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgage and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (c) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of the Assignment of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Mortgage or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower or Guarantor in connection with the Loan;

(ii) the gross negligence or willful misconduct of Borrower;

(iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement or in the Mortgage concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(iv) the removal or disposal of any portion of the Property after an Event of Default;

(v) the misapplication or conversion by Borrower of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards received in connection with a Condemnation of all or a portion of the Property, (C) any Rents following an Event of Default, or (D) any Rents paid more than one month in advance;

(vi) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Property;

(vii) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof; or

(viii) the breach of any representation, warranty, covenant or indemnification provision in the Guaranty of Completion or Guaranty of Recourse Carveouts;

(ix) if (A) a breach or default by Borrower under any condition or obligation contained in the Ground Lease is not cured within any applicable cure period provided therein, (B) there occurs any event or condition that gives the Ground Lessor under the Ground Lease a right to terminate or cancel the Ground Lease, or (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, supplemented, altered, or amended without the prior written consent of Lender; or

(x) if (A) a breach or default by Borrower or Storage Facility Tenant under any condition or obligation contained in the Storage Facility Master Lease occurs, (B) there occurs any event or condition that gives the Borrower 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 without the prior written consent of Lender, 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 Lender.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by the Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower (i) in the event of: (a) Borrower filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which Borrower colludes with, or otherwise assists such Person, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (c) Borrower filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) Borrower consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property; or (e) Borrower making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (ii) if the first full monthly payment of interest on the Note is not paid when due; (iii) if Borrower fails to maintain its status as a Single Purpose Entity, after the Guaranty Notice (as defined in the Guaranty of Recourse Carveouts) if Borrower fails to permit on-site inspections of the Property, fails to provide financial information, or fails to appoint a new property manager upon the request of Lender as permitted under this Agreement, each as required by, and in accordance with, the terms and provisions of this Agreement or the Mortgage; (iv) if Borrower fails to obtain Lender's prior written consent to any Indebtedness or voluntary Lien encumbering the Property; or (v) if Borrower fails to obtain Lender's prior written consent to any Transfer as required by this Agreement or the Mortgage.

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Section 9.4 **Intentionally Omitted.**

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Section 9.5 **Servicer.** At the option of Lender, the Loan may be serviced by a servicer/trustee (any such servicer/trustee, together with its agents, nominees or designees, are collectively referred to as "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a servicing agreement (the "Servicing Agreement") between Lender and Servicer. Borrower shall not be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement or the monthly servicing fee due to Servicer under the Servicing Agreement; provided, however, that Borrower shall be responsible for expenses incurred by Lender or Servicer as set forth in Section 10.13 hereof.

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ARTICLE X.

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MISCELLANEOUS

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Section 10.1 **Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

- Section 10.2 **Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

- Section 10.3 **Governing Law.**

(B) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

- National Registered Agents, Inc.
875 Avenue of the Americas, Suite 501
New York, New York 10001

- AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

- Section 10.4 **Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

- Section 10.5 **Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

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Section 10.6 **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

with a copy to: Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Paul A. Keenan, Esq.
Facsimile No.: (212) 808-7897

If to Borrower: P/A-Acadia Pelham Manor, LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq., General Counsel
Facsimile No.: (914) 288-2162

If to MERS: MERS Commercial
P.O. Box 2300
Flint, Michigan 48501-2300

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

Section 10.7 Trial by Jury.

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

- Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

- Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

- Section 10.10 Preferences. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

- Section 10.11 Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

- Section 10.12 Remedies of Borrower. In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

- Section 10.13 Expenses; Indemnity. (1) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and the rebuy and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Account or Cash Management Account, as applicable.

(a) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(b) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

- **Section 10.14 Schedules and Exhibits Incorporated.** The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

- **Section 10.15 Offsets, Counterclaims and Defenses.** Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

- **Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.**

- (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

- (b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

- **Section 10.17 Publicity.** All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

Section 10.18 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders, in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated August 9, 2007 between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Joint and Several Liability. If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

Section 10.24 Certain Additional Rights of Lender (VCOC). Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

- (a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, *that* such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;
- (b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;
- (c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and
- (d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property and/or construction of the Project Improvements).

The rights described above in this **Section 10.24** may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 MERS. Mortgage Electronic Registration Systems, Inc., a Delaware corporation ("MERS"), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Mortgage and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to "Mortgagee" shall include Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER

P/A-ACADIA PELHAM MANOR, LLC,
a Delaware limited liability company

By: /s/ Robert Masters,
Name: Robert Masters
Title: Senior Vice President

LENDER

BEAR STEARNS COMMERCIAL
MORTGAGE, INC., a New York corporation

By: /s/ Michael A. Forastiere
Name: Michael A. Forastiere
Title: Authorized Signatory Managing Director

EXHIBIT D

FORM OF
AFFIDAVIT PURSUANT TO SECTION 22 OF THE
LIEN LAW OF THE STATE OF NEW YORK

STATE OF NEW)
YORK) ss:
COUNTY OF NEW)
YORK)

ROBERT MASTERS, being duly sworn, deposes and says that:

1. I reside at Westchester County, New York, and am the Senior Vice President of P/A-Acadia Pelham Manor, 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 10, 2007, between Borrower and Bear Stearns Commercial Mortgage, Inc., as lender (the "**Building Loan Agreement**").
3. The principal amount of the loan (the "**Building Loan**") under the Building Loan Agreement is \$23,026,906.60.
4. The consideration paid, or to be paid, by Borrower for the Building Loan described herein is \$ 0 [(which amount will be paid from sources other than the building loan)].
5. All other expenses incurred or to be incurred in connection with the Building Loan for the Costs of the Improvements and to be advanced pursuant to the Building Loan Agreement during the construction of the Improvement are:

(a)	Interest on the Building Loan during construction	\$ 0
(b)	Taxes, assessments, water rents and sewer rents, paid or to be paid for periods prior to or during construction	\$ 0 *
(c)	Insurance during construction	\$ 0
(d)	Commitment fee, if any, in addition to the consideration stated above which is allocable to the Building Loan	\$ 0 *
(e)	Commitment fee for subsequent financing either (i) required by Lender, or (ii) to be borrowed within four months after completion of the improvements	\$ 0 *

(f)	<u>Title examination, insurance premium and recording fees which are allocable to the Building Loan</u>	\$ 0 *
(g)	<u>Survey</u>	\$ 0 *
(h)	<u>Engineer's and Architect's fees</u>	\$2,150,000.00*
(i)	<u>Bond premiums</u>	\$ 0 *
(j)	<u>Legal fees of Lender's counsel which are allocable to the Building Loan</u>	\$ 0 *
(k)	<u>Broker's commissions incurred with respect to obtaining the Building Loan</u>	\$ 0 *
(l)	<u>Broker's commissions incurred with respect to obtaining subsequent financing either (i) required by Lender, or (ii) to be borrowed within four months after the completion of the improvements</u>	\$ 0 *
(m)	<u>Brokerage Commissions for leases of space (other than residential space) in the improvements with terms in excess of three (3) years</u>	\$ 0 *
(n)	<u>Ground rents accruing during construction</u>	\$ 0 *
(o)	<u>Mortgage recording tax allocable to Building Loan</u>	\$ 0 *
(p)	<u>Appraisal</u>	\$ _____ *
(q)	<u>Sums paid to take by assignment prior existing mortgages which are consolidated with building loan mortgages and also the interest charges on such mortgages</u>	\$0

(r)	Sums paid to discharge or reduce the indebtedness under mortgages and accrued interest thereon and other prior existing encumbrances	\$0
(s)	Sums paid to discharge building loan mortgages whenever recorded	\$0*
(t)	Contingency cost of the improvement, other than the "improvement", as defined in subdivision 4 of Section 2 of the Lien Law	\$1,380,361.00*
TOTAL		\$3,530,361.00*

6. In addition to the above items the following sums shall be disbursed to Borrower for the cost of the improvement incurred and paid for by Borrower subsequent to the commencement of construction of the improvement, but prior to the date of the initial advance of the Building Loan under the Building Loan Agreement:

\$5,566,117.27

7. The net sum available to Borrower for the Improvement is Thirteen Million Nine Hundred Thirty Thousand Four Hundred Twenty Eight and 33/100 Dollars (\$13,940,428.33) 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.

8. 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.

[No Further Text on This Page]

9. The facts stated above and any costs itemized on this statement are true, to the knowledge of the undersigned.

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-
-

/s/ Robert Masters
Name: Robert Masters

SWORN TO BEFORE ME this
10th day of December, 2007.

/s/ Robert P. Schroeder
Notary Public

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SCHEDULE I

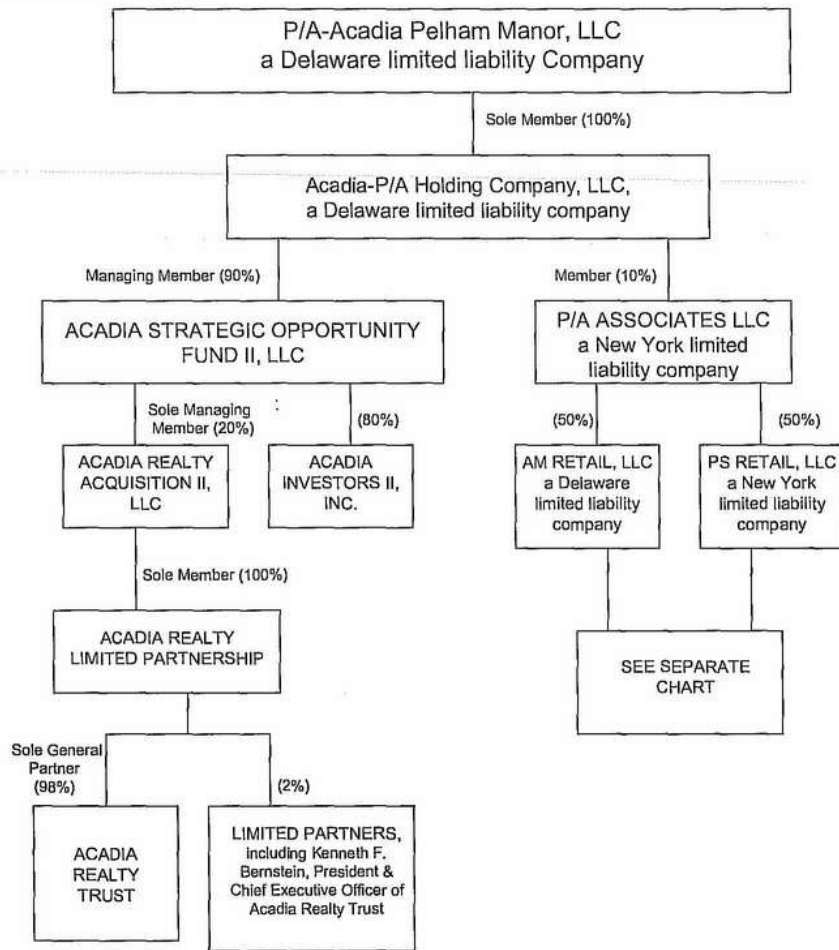
ORGANIZATIONAL CHART OF BORROWER

(See Attached)

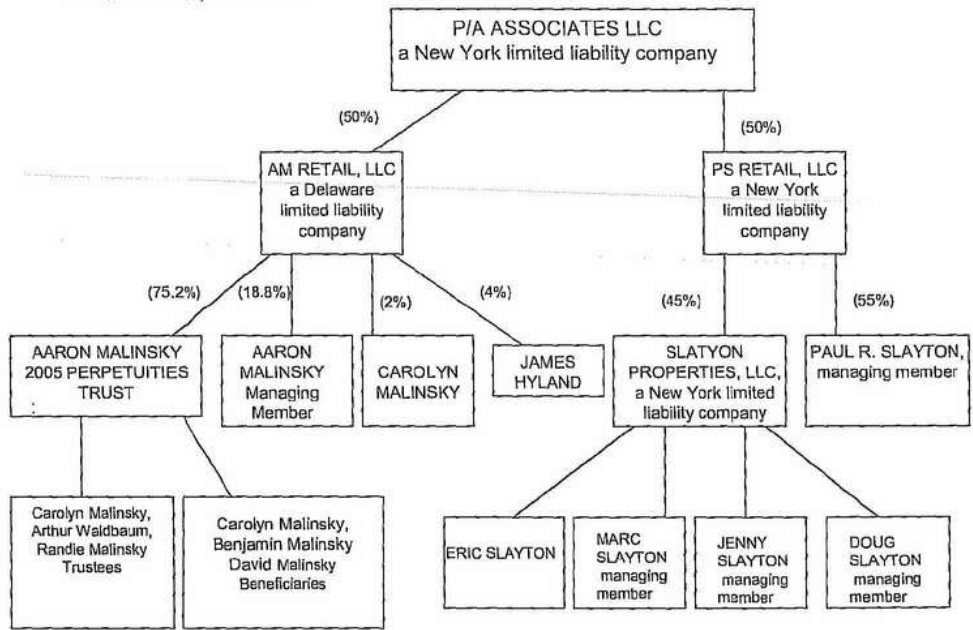
Exhibit A – Page 1

NJ01/VIDUJ/127868.4

2 Penn Plaza
Pelham Manor, New York



2 Penn Plaza
Pelham Manor, New York



SCHEDULE II

DEVELOPMENT BUDGET

(See Attached)

Exhibit A – Page 2

NJ01/VIDUJ/127868.4

Village Mayor Final Project Budget			
	Burrows	BSCM Adj.	Final Project Budget
PURCHASE PRICE			
Purchase of adjacent lot	\$ 903,079	\$ -	\$ 903,079
SITE COSTS			
Oil Site	720,000	-	720,000
Sitework(1)	6,073,239	-	6,073,239
Environmental Remediation	3,250,815	-	3,250,815
SUB-TOTAL SITE COSTS	\$ 10,044,104	\$ -	\$ 10,044,104
HARD COSTS			
Demolition	2,732,213	-	2,732,213
Construction	-	-	-
Home Depot	-	-	-
Retail D	4,118,977	-	4,118,977
Retail City	1,702,331	-	1,702,331
Retail E	640,939	-	640,939
Retail F	3,013,248	-	3,013,248
Retail A+B	3,810,833	-	3,810,833
Storage	5,333,269	-	5,333,269
Back	820,583	-	820,583
Pulse	43,265	-	43,265
Investigation	61,201	-	61,201
Architectural/Engineering Fees	2,150,000	-	2,150,000
General Conditions	1,178,256	-	1,178,256
SUB-TOTAL HARD COSTS	\$ 26,007,295	\$ -	\$ 26,007,295
Builder Risk Insurance	71,014	-	71,014
Liability Insurance	780,311	-	780,311
Construction Management Fee(2)	-	-	-
SUB-TOTAL HARD COSTS	\$ 28,389,283	\$ -	\$ 28,389,283
Hard Cost Contingency	1,387,324	-	1,387,324
TOTAL HARD COSTS INCLUDING CONTINGENCY	\$ 29,776,607	\$ -	\$ 29,776,607
SOFT COSTS			
Legal - Non-Lenders	300,000	(36,311)	463,889
Zoning Engineers	124,293	-	124,293
Marketing Costs (Storage)	45,000	-	45,000
Development Fee (Storage)	172,128	-	172,128
Leasing Commissions	-	-	-
Home Depot	735,000	-	735,000
Plumbing	467,775	-	467,775
Retail City	3,010,817	-	3,010,817
Retail E	46,200	-	46,200
Retail F	481,294	-	481,294
Retail A + B	378,494	-	378,494
Back	163,800	-	163,800
Other	41,200	(44,300)	-
Lease Buy-Out Fees	250,000	-	250,000
Interest & Carry (Debt Service, RI Taxes, Gas & Ground Rent)	5,970,258	-	5,970,258
Closing Costs	-	-	-
Commissions Fee	-	178,220	178,220
Mortgage Recording Tax	463,632	-	463,632
Bank Third Party Reports (Appraisal, Environmental, Engineering, Insurance)	44,200	-	44,200
Check Checks	-	2,072	2,072
Bank Administrative Fees	36,000	-	36,000
Lender Legal Fees	95,000	-	95,000
Other Closing Costs	25,000	(25,000)	-
SUB-TOTAL SOFT COSTS	\$ 10,422,148	\$ 254,281	\$ 10,677,461
Soft Cost Contingency	101,425	92,741	191,168
TOTAL SOFT COSTS INCLUDING CONTINGENCY	10,523,573	347,023	10,871,623
TOTAL COSTS EXCLUDING JTD CREDIT	\$ 50,811,279	\$ 347,023	\$ 50,618,216
Home Depot Contribution	(5,000,000)	-	(5,000,000)
TOTAL PROJECT COSTS	45,811,279	347,023	45,448,216
Interest-Free Annuity & Equity Annuity	\$ 45,301,273	\$ -	\$ 45,448,216
Total Project Costs	456,000	-	(456,000)
Less Affiliated Development Fee	\$ 45,757,273	\$ -	\$ 45,222,216
Minimum Loan Amount	\$ 35,664,000	\$ -	\$ 35,664,000
LTC	77,975	-	78,805
Minimum Return Equity Contribution	\$ 5,637,273	\$ -	\$ 5,584,216

Notes
(1) Sitework includes \$113,811 of Municipal Drives Change Orders and \$648,327 of costs related to Village of Village Mayor
(2) Construction Management Fee of \$426,000 is estimated within General Conditions Line Item.

SCHEDULE III

PLANS AND SPECIFICATIONS

(See Attached)

C-1.0	SITE DEMOLITION PLAN	03/20/07	3/26/07
C-2.0	SITE LAYOUT AND MATERIALS PLAN	03/20/07	3/26/07
C-2.1	SITE LAYOUT PLAN	03/20/07	3/26/07
C-3.0	SITE GRADING AND DRAINAGE PLAN	03/20/07	3/26/07
C-3.1G	SITE GRADING PLAN (NORTH)	03/20/07	3/26/07
C-3.1D	SITE DRAINAGE PLAN (NORTH)	03/20/07	3/26/07
C-3.2G	SITE GRADING PLAN (SOUTH - WEST)	03/20/07	3/26/07
C-3.2D	SITE DRAINAGE PLAN (SOUTH - WEST)	03/20/07	3/26/07
C-3.3G	SITE GRADING PLAN (SOUTH - EAST)	03/20/07	3/26/07
C-3.3D	SITE DRAINAGE PLAN (SOUTH - EAST)	03/20/07	3/26/07
C-4.0	SITE UTILITIES PLAN	03/20/07	3/26/07
C-4.1	SITE UTILITIES PLAN (NORTH)	03/20/07	3/26/07
C-4.2	SITE UTILITIES PLAN (SOUTH-WEST)	03/20/07	3/26/07
C-4.3	SITE UTILITIES PLAN (SOUTH-EAST)	03/20/07	3/26/07
C-5.0	SITE LANDSCAPING PLAN	03/20/07	3/26/07
C-6.0	SITE LIGHTING PLAN	03/20/07	3/26/07
C-7.0	CONSTRUCTION DETAILS AND NOTES	03/20/07	3/26/07
C-7.1	CONSTRUCTION DETAILS AND NOTES	03/20/07	3/26/07
C-7.2	CONSTRUCTION DETAILS AND NOTES	03/20/07	3/26/07
C-7.3	CONSTRUCTION DETAILS AND NOTES	03/20/07	3/26/07
C-8.1	STORM DRAIN PROFILES	03/20/07	3/26/07
C-8.2	SANITARY PROFILES	03/20/07	3/26/07
C-9.0	SOIL EROSION AND SIDEMENT CONTROL	03/20/07	3/26/07
C-10.0	SOIL EROSION AND SEDIMENT CONTROL DETAILS AND NOTES	03/20/07	3/26/07
RETAIL A-B			
A000AB	COVER SHEET	03/20/07	3/20/07
A001AB	BUILDING CODE DATA	03/20/07	3/20/07
A002	SITE PLAN	03/20/07	3/20/07
A101AB	FLOOR PLAN	03/20/07	3/20/07
A300AB	ROOF PLAN	03/20/07	3/20/07
A400AB	EXTERIOR ELEVATIONS	03/20/07	3/20/07
A401AB	EXTERIOR ELEVATIONS	03/20/07	3/20/07
A500AB	BUILDING SECTIONS	03/20/07	3/20/07
A600AB	WALL SECTIONS	03/20/07	3/23/07
A601AB	WALL SECTIONS	03/20/07	3/20/07
A700AB	DOOR, WINDOW SCHEDULES AND DETAILS	03/20/07	3/23/07
A800AB	DETAILS	03/20/07	3/20/07
S-101AB	GENERAL NOTES	03/20/07	3/27/07
S-102AB	GENERAL NOTES	03/20/07	3/20/07
S-201AB	FOUNDATION PLAN	03/20/07	3/27/07
S-301AB	TYPICAL FOUNDATION DETAILS AND SECTIONS	03/20/07	3/27/07
S-401AB	ROOF FRAMING PLAN	03/20/07	3/20/07
S-501AB	TYPICAL DETAILS AND SECTIONS	03/20/07	3/20/07
S-601AB	COLUMN SCHEDULE	03/20/07	3/20/07
E100 AB	ELECTRICAL NOTES & SYMBOLS RETAIL A/B	03/20/07	3/19/07
E200AB	ELECTRICAL POWER PLAN RETAIL A/B	03/20/07	3/19/07
E300AB	ELECTRICAL ROOF PLAN	01/08/07	1/9/07
E400 AB	ELECTRICAL ONE LINE DIAGRAM & PANEL SCHEDULES RETAIL A/B	03/20/07	3/19/07
E401A-F	ELECTRICAL SITE PLAN RETAIL A-F	03/20/07	3/19/07
E600ABF	ELECTRICAL DETAILS	01/08/07	1/9/07
E700AB	ELECTRICAL SPECIFICATIONS RETAIL A/B	03/20/07	3/19/07
M100AB	HVAC NOTES & SYMBOLS, AND SPECIFICATIONS RETAIL A/B	02/02/07	2/2/07
M100 F	HVAC NOTES, SYMBOLS AND SPECIFICATIONS RETAILS F	02/02/07	2/2/07
M201AB	HVAC FLOOR PLAN RETAIL A/B	02/02/07	2/2/07

M201F	MECHANICAL FLOOR PLAN RETAIL F	02/02/07	2/2/07
M300AB	HVAC ROOF PLAN	01/08/07	1/9/07
M300F	HVAC ROOF PLAN	01/08/07	1/9/07
M400AB	HVAC SCHEDULES & DETAILS RETAIL A/B	02/02/07	2/2/07
M400 F	HVAC SCHEDULES & DETAILS RETAIL F	02/02/07	2/2/07
M500AB	HVAC SPECIFICATIONS	05/08/06	5/10/06
P001ST	PLUMBING SITE PLAN	02/28/07	3/1/07
P002	PLUMBING SITE PLAN	05/08/06	5/10/06
P100ABF	PLUMBING SCHEDULES, NOTES AND DETAILS	01/08/07	1/9/07
P101AB	PLUMBING FLOOR PLAN RETAIL A/B	03/20/07	3/19/07
P101F	PLUMBING FLOOR PLAN RETAIL F	02/02/07	2/2/07
P102AB	PLUMBING FLOOR PLAN	05/08/06	5/10/06
P300AB	PLUMBING ROOF PLAN RETAIL A/B	03/20/07	3/19/07
P300F	PLUMBING ROOF PLAN RETAIL F	02/02/07	2/2/07
P500ABF	PLUMBING SPECIFICATION AND GAS RISER DIAGRAMS	01/08/07	1/9/07
SP100ABF	SPRINKLER LEGEND, NOTES AND DETAILS	03/20/07	3/21/07
SP101AB	SPRINKLER FLOOR PLAN RETAIL A/B	03/20/07	3/21/07
SP500ABF	SPRINKLER PERFORMANCE SPECIFICATION	01/08/07	1/9/07
RETAIL C-D-E			
A000CDE	COVER SHEET :	04/02/07	4/5/07
A001CDE	BUILDING CODE DATA	02/28/07	3/16/07
A002	SITE PLAN RETAIL A/B, C/D/E, STORAGE & F	02/28/07	3/16/07
A101CDE	FLOOR PLAN	02/28/07	3/16/07
A102CDE	SECOND FLOOR PLAN	02/28/07	3/16/07
A103CDE	THIRD FLOOR PLAN	02/28/07	3/16/07
A104CDE	FOURTH FLOOR PLAN	02/28/07	3/16/07
A201CDE	REFLECTED CEILING PLAN	02/28/07	3/16/07
A300CDE	ROOF PLAN	02/28/07	3/16/07
A301 C-D-E	ROOF DETAILS	02/28/07	3/16/07
A400CDE	EXTERIOR ELEVATIONS	02/28/07	3/16/07
A401CDE	ENLARGED EXTERIOR ELEVATIONS	02/28/07	3/16/07
A402CDE	ENLARGED EXTERIOR ELEVATIONS	02/28/07	3/16/07
A500CDE	BUILDING SECTIONS	02/28/07	3/16/07
A600CDE	WALL SECTIONS	02/28/07	3/16/07
A601CDE	WALL SECTIONS	02/28/07	3/16/07
A602 C-D-E	WALL SECTIONS	02/28/07	3/16/07
A700CDE	DOOR SCHEDULES AND DETAILS	02/28/07	3/16/07
A701CDE	STOREFRONT ELEVATIONS	02/28/07	3/16/07
A701.a C-D-E	STOREFRONT ELEVATIONS	02/28/07	3/16/07
A702CDE	STOREFRONT DETAILS	02/28/07	3/16/07
A730 C-D-E	ELEVATOR PLANS	02/28/07	3/16/07
A750CDE	FIRE STAIRS - ENLARGED PLANS AND SECTIONS	02/28/07	3/16/07
A751 C-D-E	EXTERIOR STAIRS - PLANS & SECTIONS	02/28/07	3/16/07
A752 C-D-E	LOADING AREAS - PLANS AND REFLECTED CEILING PLAN	02/28/07	3/16/07
A800CDE	WALL TYPES AND DETAILS	02/28/07	3/16/07
S-101 C-D-E	GENERAL NOTES	04/02/07	4/3/07
S-102 C-D-E	GENERAL NOTES	03/15/07	3/16/07
S-201 C-D-E	FOUNDATION PLAN	04/02/07	4/3/07
S202 C-D-E	TWO WAY SLAB REINFORCING PLAN	04/02/07	4/3/07
S-301 C-D-E	FOUNDATION SECTIONS AND TYPICAL DETAILS	04/02/07	4/3/07
S-302 C-D-E	FOUNDATION SECTIONS	04/02/07	4/3/07
S303 C-D-E	FOUNDATION TYPICAL DETAILS	04/02/07	4/3/07
S-401 C-D-E	SECOND FLOOR AND ROOF FRAMING PLAN	03/15/07	3/16/07
S402 C-D-E	THIRD FLOOR FRAMING PLAN	03/15/07	3/16/07

S403 C-D-E	FOURTH FLOOR FRAMING PLAN	03/15/07	3/16/07
S404 C-D-E	ROOF FRAMING PLAN	03/15/07	3/16/07
S-501 C-D-E	SECTIONS AND TYPICAL DETAILS	03/15/07	3/16/07
S-502 C-D-E	SECTIONS AND TYPICAL DETAILS	03/15/07	3/16/07
S503 C-D-E	SECTIONS AND TYPICAL DETAILS	03/15/07	3/16/07
S-601 C-D-E	COLUMN SCHEDULE	03/15/07	3/16/07
E100 C-D-E	ELECTRICAL NOTES & SYMBOLS	05/08/06	5/10/06
E100 C-E	ELECTRICAL NOTES & SYMBOLS RETAIL C/D/E	11/13/06	11/13/06
E201C	ELECTRICAL LIGHTING	05/08/06	5/10/06
E201 C-D	ELECTRICAL POWER PLAN RETAIL C & D	03/20/07	3/19/07
E201 E	ELECTRICAL POWER PLAN RETAIL E	03/20/07	3/19/07
E202C	ELECTRICAL POWER	05/08/06	5/10/06
E203DE	ELECTRICAL LIGHTING	05/08/06	5/10/06
E204DE	ELECTRICAL POWER	05/08/06	5/10/06
E300C	ELECTRICAL ROOF PLAN	05/08/06	5/10/06
E301DE	ELECTRICAL ROOF PLAN	05/08/06	5/10/06
E301 E	ELECTRICAL ROOF PLAN RETAIL E	11/13/06	11/13/06
E400CDE	ELECTRICAL ONE LINE DIAGRAM	05/08/06	5/10/06
E400 C-E	ELECTRICAL ONE LINE DIAGRAM RETAIL C/D/E	11/13/06	11/13/06
E500CDE	ELECTRICAL PANEL SCHEDULES	02/28/07	3/1/07
E500 C-E	ELECTRICAL PANEL SCHEDULES RETAIL C/D/E	03/20/07	3/19/07
E600CDE	ELECTRICAL DETAILS	05/08/06	5/10/06
E600 C-E	ELECTRICAL DETAILS RETAIL C/D/E	11/13/06	11/13/06
E700CDE	ELECTRICAL SPECIFICATIONS	05/08/06	5/10/06
E700 C-E	ELECTRICAL SPECIFICATIONS C/D/E	11/13/06	11/13/06
FA100C	FIRE ALARM NOTES, SYMBOLS & WIRING DIAGRAM	05/08/06	5/10/06
FA100 C-E	FIRE ALARM NOTES, SYMBOLS & WIRING DIAGRAM RETAIL C/D/E	11/13/06	11/13/06
FA201C	FIRE ALARM	05/08/06	5/10/06
M100C-E	MECHANICAL NOTES, SYMBOLS & SPECIFICATIONS RETAIL C/D/E	02/28/07	3/1/07
M100 C.D. E	MECHANICAL NOTES, SYMBOLS & SPECIFICATIONS RETAIL C/D/E	11/13/06	11/13/06
M201C	HVAC PLAN	03/20/07	3/19/07
M201 D	MECHANICAL FLOOR PLAN RETAIL C/D	03/20/07	3/19/07
M201 E	MECHANICAL 1ST FLOOR PLAN RETAIL E	03/20/07	3/19/07
M202DE	HVAC RCP	05/08/06	5/10/06
M202 E	MECHANICAL 2ND FLOOR PLAN RETAIL E	11/13/06	11/13/06
M203 E	MECHANICAL 3RD FLOOR PLAN RETAIL E	11/13/06	11/13/06
M204 E	MECHANICAL 4TH FLOOR PLAN RETAIL E	11/13/06	11/13/06
M301C	HVAC ROOF PLAN	05/08/06	5/10/06
M301 CD	MECHANICAL ROOF PLAN RETAIL C/D	03/20/07	3/19/07
M301 E	MECHANICAL ROOF PLAN RETAIL E	11/13/06	11/13/06
M302DE	HVAC ROOF PLAN	05/08/06	5/10/06
M400 C-E	MECHANICAL SCHEDULES & DETAILS RETAIL C/D/E	03/20/07	3/19/07
M500C-E	HVAC SPECIFICATIONS	05/08/06	5/10/06
P002	PLUMBING SITE PLAN	05/08/06	5/10/06
P100C-E	PLUMBING SCHEDULES, NOTES AND DETAILS C-E	02/28/07	3/1/07
P101C	PLUMBING FLOOR PLAN	05/08/06	5/10/06
P101DE	PLUMBING FLOOR PLANS	05/08/06	5/10/06
P201D-E	PLUMBING 1ST FLOOR PLAN D/E	03/20/07	3/19/07
P201E	PLUMBING FIRST FLOOR PLAN RETAIL E	11/13/06	1/18/07
P202 E	PLUMBING 2ND FLOOR PLAN STORAGE	03/20/07	3/19/07
P203 E	PLUMBING 3RD FLOOR PLAN STORAGE	03/20/07	3/19/07
P204E	PLUMBING 4TH FLOOR PLAN STORAGE	03/20/07	3/19/07
P301C	PLUMBING ROOF PLAN	05/08/06	5/10/06
P301 C-D	PLUMBING ROOF PLAN RETAIL C/D	02/28/07	3/1/07

P301 E	PLUMBING ROOF PLAN RETAIL E	03/20/07	3/19/07
P302DE	PLUMBING ROOF PLAN	05/08/06	5/10/06
P500C-E	PLUMBING SPECIFICATIONS C-E	11/13/06	11/13/06
SP100 C-E	SPRINKLER NOTES, LEGEND AND DETAILS C-E	11/13/06	11/13/06
SP201 C-D	SPRINKLER 1ST FLOOR PLAN RETAIL C/D	11/13/06	11/13/06
SP201 C-D	SPRINKLER 1ST FLOOR PLAN RETAIL C/D	11/13/06	11/13/06
SP201 E	SPRINKLER 1ST FLOOR PLAN RETAIL E	11/13/06	11/13/06
SP201 E	SPRINKLER 1ST FLOOR PLAN RETAIL E	11/13/06	11/13/06
SP500C-E	SPRINKLER SPECIFICATIONS	11/13/06	11/13/06
RETAIL F			
A000F	COVER SHEET	03/20/07	3/20/07
A001F	BUILDING CODE DATA	03/20/07	3/20/07
A002	SITE PLAN	03/20/07	3/20/07
A101F	FLOOR PLAN	03/20/07	3/20/07
A300F	ROOF PLAN	03/20/07	3/20/07
A400F	EXTERIOR ELEVATIONS	03/20/07	3/20/07
A500F	BUILDING SECTIONS	03/20/07	3/20/07
A600F	WALL SECTIONS	03/20/07	3/23/07
A700F	DOOR, WINDOW SCHEDULES AND DETAILS	03/20/07	3/23/07
A800F	DETAILS	03/20/07	3/20/07
S-101F	GENERAL NOTES	03/20/07	3/27/07
S-102F	GENERAL NOTES	03/20/07	3/20/07
S-201F	FOUNDATION PLAN	03/20/07	3/27/07
S-301F	TYPICAL FOUNDATION DETAILS AND SECTIONS	03/20/07	3/27/07
S-401F	ROOF FRAMING PLAN	03/20/07	3/20/07
S-501F	TYPICAL DETAIL AND SECTIONS	03/20/07	3/20/07
S-601F	COLUMN SCHEDULE	03/20/07	3/20/07
E100F	ELECTRICAL NOTES & SYMBOLS RETAIL F	03/20/07	3/19/07
E200 F	ELECTRICAL POWER PLAN RETAIL F	03/20/07	3/19/07
E300F	ELECTRICAL ROOF PLAN	01/09/07	1/9/07
E300F	ELECTRICAL ROOF PLAN	05/08/06	5/10/06
E400F	ELECTRICAL ONE LINE DIAGRAM	03/20/07	3/19/07
E600F	ELECTRICAL DETAILS	05/08/06	5/10/06
E700 F	ELECTRICAL SPECIFICATIONS RETAIL F	03/20/07	3/19/07
M100F	MECHANICAL NOTES & SYMBOLS	05/08/06	5/10/06
M201F	MECHANICAL RCP	05/08/06	5/10/06
M300F	HVAC ROOF PLAN	05/08/06	5/10/06
M400F	HVAC SCHEDULES & DETAILS	05/08/06	5/10/06
M500F	HVAC SPECIFICATIONS	05/08/06	5/10/06
P002	PLUMBING SITE PLAN	05/08/06	5/10/06
P100F	PLUMBING SCHEDULES, NOTES AND DETAILS	05/08/06	5/10/06
P101F	PLUMBING FLOOR PLAN RETAIL F	03/20/07	3/19/07
P300 F	PLUMBING ROOF PLAN RETAIL F	03/20/07	3/19/07
P500F	PLUMBING SPECIFICATIONS	05/08/06	5/10/06
SP101F	SPRINKLER FLOOR PLAN RETAIL F	03/20/07	3/21/07
SP500F	SPRINKLER PERFORMANCE SPECIFICATION	05/08/06	5/10/06
ARCHITECTURALS II			
A000 SS	COVER SHEET	02/28/07	3/16/07
A001-SS	BUILDING CODE DATA	02/28/07	3/16/07
A003-SS	SUGGESTED SECURITY PLANS	02/28/07	3/16/07
A101 SS	FIRST FLOOR PLAN	02/28/07	3/16/07
A102 SS	SECOND FLOOR PLAN	02/28/07	3/16/07
A103-SS	THIRD FLOOR PLAN	02/28/07	3/16/07
A104-SS	FOURTH FLOOR PLAN	02/28/07	3/16/07

SCHEDULE IV

CONSTRUCTION SCHEDULE

(See Attached)

ID	Task Name	Duration	Start	Finish	S	M	T	W	T	F	S
1	Pelham Manor Project	382 days?	Mon 11/13/06	Tue 4/29/08							
2	Rock Excavation	84 days	Tue 2/27/07	Fri 6/22/07							
3	Shework	382 days?	Mon 11/13/06	Tue 4/29/08							
4	Home Depot	39 days	Mon 5/7/07	Thu 6/28/07							
5	Grading	20 days	Mon 5/14/07	Fri 6/8/07							
6	Grading	3 days	Mon 6/11/07	Wed 6/13/07							
7	Temporary electric - Con Ed	5 days	Mon 6/11/07	Fri 6/8/07							
8	Temporary telephones - Verizon	3 days	Mon 6/11/07	Wed 6/13/07							
9	Temporary fire hydrant	3 days	Mon 6/11/07	Wed 6/13/07							
10	Permanent utility pping behind HD pad	5 days	Mon 6/11/07	Fri 6/8/07							
11	Retaining wall behind HD pad only	20 days	Mon 6/11/07	Fri 6/8/07							
12	Precast Pole bases behind Pad	3 days	Mon 6/11/07	Wed 6/13/07							
13	Install barriers around pad	15 days	Thu 5/24/07	Wed 6/13/07							
14	Provide pad for permanent transformer	3 days	Mon 6/11/07	Wed 6/13/07							
15	blender for the staging area	5 days	Thu 6/21/07	Wed 6/27/07							
16	Tender the pad	1 day	Thu 6/28/07	Thu 6/28/07							
17	On-site	364 days?	Thu 12/7/06	Tue 4/29/08							
18	Storm Water Protection	1 day	Mon 12/11/06	Mon 12/11/06							
19	E&S Controls - Best Management Practice	107 days	Fri 3/23/07	Mon 8/20/07							
20	Demo existing Fence	1 day	Fri 12/29/06	Fri 12/29/06							
21	Clear and Grub site	147 days	Thu 12/7/06	Fri 6/29/07							
22	Stone site access - All Construction entrances	93 days	Fri 3/23/07	Tue 7/31/07							
23	Rough grade site (cut and fill)	124 days	Wed 2/28/07	Mon 8/20/07							
24	Storm, sanitary and sewer system	7.55 months	Mon 2/12/07	Mon 9/10/07							
25	Underground utilities	4.25 months	Mon 6/11/07	Fri 9/28/07							
26	Con Ed Transformers	45 days	Mon 9/24/07	Fri 11/23/07							
27	Perform final site grading	2.75 months	Mon 7/16/07	Fri 9/28/07							
28	Curbs, Islands & sidewalks	3 months	Mon 7/16/07	Fri 10/5/07							
29	Slices for the irrigation system	5 days	Mon 8/13/07	Fri 8/17/07							
30	Irrigation	1 mon	Mon 9/10/07	Fri 10/5/07							
31	Landscaping	1 mon	Mon 10/8/07	Fri 11/2/07							
32	Blender	101 days	Mon 6/25/07	Mon 11/12/07							

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JUN 20 2007
ValCom Construction Consultants
New York, NY

Project: Pelham Drift
Date: Tue 6/18/07

Task
Spill
Progress

Milestone
Summary
Project Summary

External Tasks
External Milestone
Deadline

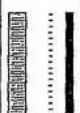
ID	Task Name	Duration	Start	Finish	Nov. 12, '96
					S S M T W T F S
33	Top coat	3 wks	Mon 3/31/08	Fri 4/18/08	
34	Line Striping	2 wks	Wed 4/16/08	Tue 4/29/08	
35	Site Lighting Procurement	3 mons	Mon 5/26/07	Fri 8/17/07	
36	Site lighting bases	1 day	Mon 8/20/07	Mon 8/20/07	
37	Site Lighting Installation	1 mon	Mon 8/20/07	Fri 9/14/07	
38	Off-Site work	270 days	Mon 1/13/06	Fri 1/12/07	
39	Con Ed approvals	80 days	Fri 1/12/07	Thu 5/3/07	
40	Con Ed Relocation of the poles	15 days	Mon 6/4/07	Fri 6/22/07	
41	Verizon Coordination for pole relocation	30 days	Mon 6/4/07	Fri 7/13/07	
42	Pelham Widening approvals (Permit application date)	122 days	Mon 11/13/06	Tue 5/7/07	
43	Off site bidding process	13 days	Wed 3/28/07	Fri 4/13/07	
44	Traffic lights approvals	30 days	Mon 5/7/07	Fri 6/15/07	
45	Off-Site work	60 days	Mon 5/28/07	Fri 8/17/07	
46	Traffic lights procurement	16 wks	Mon 6/25/07	Fri 10/12/07	
47	Traffic lights installation	30 days	Mon 10/15/07	Fri 11/23/07	
48	Demo / Env	81 days	Mon 1/8/07	Mon 4/30/07	
49	Demo 2 & 4 Palm Place	7 days	Mon 1/8/07	Tue 1/16/07	
50	Permit for water & sewer	75 days	Mon 1/8/07	Wed 4/18/07	
51	File Asbestos for Preble, Snapple, Calkor, 3 & 5 bligs	15 days	Mon 2/5/07	Fri 2/23/07	
52	Env Snapple Bldg	15 days	Mon 4/9/07	Fri 4/27/07	
53	Demo Snapple Bldg	20 days	Mon 4/23/07	Fri 4/27/07	
54	Env Calkore Bldg	20 days	Mon 4/23/07	Fri 4/27/07	
55	Demo Calkore Bldg	1 day	Mon 4/30/07	Mon 4/30/07	
56	Env Preble Bldg, 3 & 5	10 days	Mon 4/23/07	Fri 4/13/07	
57	Demo Preble, 3 & 5 Bldg	10 days	Mon 4/16/07	Fri 4/13/07	
58	Submittals	118 days	Wed 2/14/07	Fri 7/27/07	
59	Submit Concrete/Rebar Shop Drawings	15 days	Mon 4/30/07	Fri 5/18/07	
60	Prepare Anchor Bolts Drawings -	10 days	Thu 4/19/07	Wed 5/2/07	
61	Prepare Structural Steel Drawings A/B/F	18 days	Mon 3/26/07	Wed 4/18/07	
62	Prepare Structural Steel Drawings C/D/E - Phase I	20 days	Mon 4/16/07	Fri 5/11/07	
63	Prepare Structural Steel Drawings C/D/E - Phase II	33 days	Mon 4/16/07	Wed 5/30/07	
64	Submit/Appro Anchor Bolts Drawings -	20 days	Thu 5/3/07	Wed 5/30/07	



External Tasks
External Milestone
Deadline



Milestone
Summary
Project Summary



Task
Split
Progress

Project: Pelham Draft
Date: Tue 6/15/07

ID	Task Name	Duration	Start	Finish	S	S	M	T	W	T	F	S
65	Submit/Appro Structural Steel Drawings A/B/F&CID/E- Phase I	30 days	Thu 4/19/07	Wed 5/30/07	Wed 5/30/07							
66	Submit/Appro Structural Steel Drawings CID/E- Phase II	15 days	Wed 5/30/07	Tue 6/19/07	Tue 6/19/07							
67	Submit Sprinkler Shop Drawings	20 days	Mon 6/4/07	Fri 6/29/07	Fri 6/29/07							
68	Submit Electrical Shop Drawings	20 days	Mon 6/4/07	Fri 6/29/07	Fri 6/29/07							
69	Submit HVAC Shop Drawings	20 days	Mon 7/2/07	Fri 7/27/07	Fri 7/27/07							
70	Submit Plumbing Shop Drawings	20 days	Mon 6/4/07	Fri 6/29/07	Fri 6/29/07							
71	Submit Fireproofing Shop Drawings	20 days	Mon 7/2/07	Fri 7/27/07	Fri 7/27/07							
72	Submit Roof Shop Drawings	20 days	Mon 6/11/07	Fri 7/6/07	Fri 7/6/07							
73	Submit Sealants/ water stops	20 days	Mon 7/2/07	Fri 7/27/07	Fri 7/27/07							
74	Submit Waterproofing	20 days	Wed 2/14/07	Tue 3/13/07	Tue 3/13/07							
75	Submit Masonry Shop Drawings	15 days	Mon 6/4/07	Fri 6/22/07	Fri 6/22/07							
76	Submit Architectural Metals Shop Drawings	20 days	Mon 7/2/07	Fri 7/27/07	Fri 7/27/07							
77	Submit Glazing Drawings	20 days	Mon 7/2/07	Fri 7/27/07	Fri 7/27/07							
78	Submit Doors and Hardware	20 days	Mon 7/2/07	Fri 7/27/07	Fri 7/27/07							
79	Submit Rough Carpentry Shop Drawings	20 days	Mon 7/2/07	Fri 7/27/07	Fri 7/27/07							
80	AVB F Coord. Drawing Sign Off	3 days	Fri 6/29/07	Tue 5/29/07	Tue 5/29/07							
81	CID/E Coord. Drawing Sign Off	5 days	Fri 6/29/07	Thu 5/31/07	Thu 5/31/07							
82	Retail AVB	202 days?	Fri 3/16/07	Mon 12/24/07	Mon 12/24/07							
83	Install water, sewer & storm, S W Corner of Bldg AVB	10 days	Mon 6/4/07	Fri 6/15/07	Fri 6/15/07							
84	Foundations	36 days	Wed 5/16/07	Wed 7/4/07	Wed 7/4/07							
85	Drive piles	5 days	Wed 5/16/07	Tue 5/22/07	Tue 5/22/07							
86	Excavate pile caps and grade beams	5 days	Wed 5/23/07	Tue 5/29/07	Tue 5/29/07							
87	Compacted/retard Subgrade	3 days	Wed 5/30/07	Fri 6/1/07	Fri 6/1/07							
88	Piles and grade beams Formwork	10 days	Mon 6/4/07	Fri 6/15/07	Fri 6/15/07							
89	Rebar and inspection	7 days	Wed 5/30/07	Thu 6/7/07	Thu 6/7/07							
90	Place concrete piles and pile caps	7 days	Mon 6/4/07	Tue 6/12/07	Tue 6/12/07							
91	Insert Wall Sleeves/Embedded ALL Trades	3 days	Wed 5/30/07	Fri 6/1/07	Fri 6/1/07							
92	Backfill	5 days	Mon 6/4/07	Fri 6/8/07	Fri 6/8/07							
93	Set Base Piles & Anchor bolts by Steel Erector prior to grouting	1 day	Mon 6/25/07	Mon 6/25/07	Mon 6/25/07							
94	Survey Anchor Bolt Placement by Steel Erector	1 day	Mon 7/2/07	Mon 7/2/07	Mon 7/2/07							
95	Place Interior Underground Utilities	4 days	Mon 6/25/07	Thu 6/28/07	Thu 6/28/07							
96	Inspect Underground Utilities	2 days	Fri 6/29/07	Mon 7/2/07	Mon 7/2/07							

Project: Fallham Draft
Date: Tue 6/19/07

Task
Milestone
Summary
Project Summary

Split
Progress

External Tasks
External Milestone
Deadline

ID	Task Name	Duration	Start	Finish	S	S	M	T	W	T	F	S
97	Cover Underground Utilities to Subgrade	2 days	Tue 7/3/07	Wed 7/4/07								
98	Structural Steel	108 days	Fri 8/1/07	Tue 8/14/07								
99	Shipping	46 days	Fri 8/1/07	Fri 9/1/07								
100	Fabricate Steel A/B/F & C/D/E - Phase I	21 days	Fri 8/1/07	Fri 8/10/07								
101	Survey Anchor Bolt Placement by Steel Erector	1 day	Thu 7/26/07	Thu 7/26/07								
102	Steel Erection (crane) A/B	6 days	Mon 7/30/07	Thu 8/2/07								
103	Steel Erection (detailing) A/B	1 day	Fri 8/10/07	Fri 8/10/07								
104	Structural Inspection	1 day	Mon 7/23/07	Mon 7/23/07								
105	Sign off on all penetrations @ roof	1 day	Fri 8/10/07	Fri 8/10/07								
106	Initiate roof penetrations	2 days	Fri 8/10/07	Mon 8/13/07								
107	Roof Curbs / Openings	3 days	Fri 8/10/07	Tue 8/14/07								
108	Masonry	42 days	Fri 8/10/07	Thu 9/14/07								
109	Start Masonry Exterior S	9 days	Wed 8/15/07	Mon 8/27/07								
110	Start Masonry Exterior N	9 days	Tue 8/28/07	Fri 9/7/07								
111	Start Masonry Exterior E	7 days	Mon 9/10/07	Tue 9/18/07								
112	Start Masonry Exterior W	5 days	Wed 9/19/07	Thu 9/27/07								
113	Clean Masonry	5 days	Fri 10/5/07	Thu 10/11/07								
114	Concrete	27 days	Mon 7/23/07	Tue 8/28/07								
115	Prepare structural slab & fill	5 days	Mon 7/23/07	Fri 7/27/07								
116	Place structural slab	5 days	Mon 7/30/07	Fri 8/3/07								
117	Curing concrete	7 days	Mon 8/6/07	Tue 8/14/07								
118	Install Hangers	5 days	Wed 8/15/07	Tue 8/21/07								
119	Exterior steel stud & sheathing system	10 days	Wed 8/15/07	Tue 8/28/07								
120	Carpentry	38 days	Thu 11/1/07	Mon 12/24/07								
121	Install studs for Balbs & electricals	5 days	Thu 11/1/07	Wed 11/7/07								
122	Install interior GWB for Balbs & elect rooms	8 days	Thu 11/29/07	Mon 12/10/07								
123	Install toilet accessories	2 days	Fri 12/21/07	Mon 12/24/07								
124	Roof	59 days	Mon 8/28/07	Thu 11/8/07								
125	Roof & Parapet blocking	9 days	Fri 9/28/07	Wed 10/10/07								
126	Roofing	15 days	Thu 10/11/07	Wed 10/31/07								
127	Chairs copings & cap flashing	59 days	Mon 8/20/07	Thu 11/8/07								
128	Architectural Metals	13 days	Tue 10/23/07	Thu 11/8/07								

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External Tasks
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Deadline

ID	Task Name	Duration	Start	Finish	S	S	M	T	W	T	F	S
129	Steel studs / Exterior Caspities	13 days	Tue 10/23/07	Thu 11/8/07								
130	Doors & Hardware	49 days?	Tue 8/28/07	Fri 11/2/07								
131	Exterior-Steel frames	9 days	Tue 8/28/07	Fri 9/7/07								
132	Exterior doors & hardware	4 days	Tue 10/30/07	Fri 11/2/07								
133	Interior Doors & hardware	1 day?	Tue 10/30/07	Wed 10/31/07								
134	Glazed Storefront	37 days	Tue 8/28/07	Wed 10/17/07								
135	Glass Field Measure S Facade	1 day	Tue 8/28/07	Tue 8/28/07								
136	Glass Fabricate S facade	5 days	Wed 8/29/07	Tue 9/4/07								
137	Glass install S Facade	8 days	Wed 9/5/07	Fri 9/14/07								
138	Glass Field Measure N Facade	1 day	Mon 9/10/07	Mon 9/10/07								
139	Glass Fabricate N facade	5 days	Tue 9/11/07	Mon 9/17/07								
140	Glass install N Facade	8 days	Tue 9/18/07	Thu 9/27/07								
141	Glass Field Measure E Facade	1 day	Wed 9/19/07	Wed 9/19/07								
142	Glass Fabricate E facade	5 days	Thu 9/20/07	Wed 9/26/07								
143	Glass install E Facade	8 days	Thu 9/27/07	Mon 10/8/07								
144	Glass Field Measure W Facade	1 day	Fri 9/28/07	Fri 9/28/07								
145	Glass Fabricate W facade	5 days	Mon 10/1/07	Fri 10/5/07								
146	Glass install W Facade	8 days	Mon 10/8/07	Wed 10/17/07								
147	Building Finishes	44 days	Fri 10/12/07	Wed 12/12/07								
148	Tap & Finish	5 days	Wed 12/5/07	Tue 12/11/07								
149	Prime coat	4 days	Fri 12/7/07	Wed 12/12/07								
150	Exterior Caulking	3 days	Fri 10/19/07	Tue 10/23/07								
151	Building skidwalks	2 wks	Fri 10/12/07	Thu 10/25/07								
152	Sprinkler	20 days	Thu 11/8/07	Wed 12/5/07								
153	Riser, main & branches	10 days	Thu 11/8/07	Wed 11/21/07								
154	Install heads	10 days	Thu 11/22/07	Wed 12/5/07								
155	Plumbing	36 days	Thu 11/1/07	Thu 12/20/07								
156	Rough-in plumbing in walls	15 days	Thu 11/8/07	Wed 11/28/07								
157	Set plumbing fixtures	8 days	Tue 12/11/07	Thu 12/20/07								
158	Install gas piping from Manifold for RTUs	15 days	Thu 11/1/07	Wed 11/21/07								
159	HVAC	7 days	Tue 10/30/07	Wed 11/7/07								
160	Set RTUs	2 days	Tue 10/30/07	Wed 10/31/07								

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ID	Task Name	Duration	Start	Finish	Nov 12, '05
					S S M T W T F S
161	Rough HVAC for Start up	5 days	Thu 11/10/07	Wed 11/17/07	
162	Electrical	30 days	Thu 11/18/07	Wed 12/19/07	
163	Electrical rough-in walls	10 days	Thu 11/18/07	Wed 11/28/07	
164	Set Electrical panels	5 days	Thu 11/22/07	Wed 12/5/07	
165	Pull cables	5 days	Thu 11/29/07	Wed 12/5/07	
166	Fire Alarm	5 days	Thu 12/6/07	Wed 12/19/07	
167	Testing	5 days	Thu 12/13/07	Wed 12/19/07	
168	Final F	213 days?	Fri 3/16/07	Tue 1/8/08	
169	Install water/sewer & storm, SW Corner of Bldg A/B	12 days	Mon 7/23/07	Tue 7/17/07	
170	Foundations	27 days	Mon 7/23/07	Tue 8/7/07	
171	Drive piles	5 days	Mon 7/23/07	Fri 7/27/07	
172	Excavate Flip caps and grade beams	5 days	Mon 7/23/07	Fri 7/27/07	
173	Compacted/Tested Subgrade	3 days	Mon 7/16/07	Wed 7/18/07	
174	Piles and grade beams Formwork	10 days	Thu 7/19/07	Wed 8/1/07	
175	Rebar and Inspection	7 days	Mon 7/16/07	Tue 7/24/07	
176	Place Concrete piles and pile caps	7 days	Thu 7/19/07	Fri 7/27/07	
177	Insert Wall Sleeves/Embedded ALL Trades	3 days	Mon 7/16/07	Wed 7/18/07	
178	Backfill	5 days	Thu 7/19/07	Wed 7/25/07	
179	Set Base Plates & Anchor bolts by Steel Erector prior to grouting	2 days	Thu 7/26/07	Fri 7/27/07	
180	Survey Anchor Bolt Placement by Steel Erector	2 days	Mon 7/30/07	Tue 7/31/07	
181	Place Interior Underground Utilities	4 days	Fri 7/27/07	Wed 8/1/07	
182	Inspect Underground Utilities	2 days	Thu 8/2/07	Fri 8/3/07	
183	Cover Underground Utilities to Subgrade	2 days	Mon 8/6/07	Tue 8/7/07	
184	Structural Steel	131 days	Fri 3/16/07	Fri 3/14/07	
185	Shipping	46 days	Fri 3/16/07	Fri 5/18/07	
186	Fabricate Steel F	30 days	Tue 5/22/07	Mon 7/2/07	
187	Survey Anchor Bolt Placement by Steel Erector	1 day	Wed 8/1/07	Wed 8/1/07	
188	Steel Erection (crane)/F	15 days	Tue 8/14/07	Mon 9/3/07	
189	Steel Erection (detailing) F	6 days	Tue 9/4/07	Tue 9/11/07	
190	Structural Inspection	1 day	Wed 9/12/07	Wed 9/12/07	
191	Sign off on all penetrations @ roof	1 day	Tue 9/4/07	Tue 9/4/07	
192	Install roof penetrations	2 days	Wed 9/12/07	Thu 9/13/07	

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 Date: Tue 8/13/07

Task Split Progress
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External Tasks External Milestone Deadline

ID	Task Name	Duration	Start	Finish	S	M	T	W	T	F	S
193	Roof Curbs / Openings	3 days	Wed 9/12/07	Fri 9/14/07							
194	Masonry	42 days	Mon 9/17/07	Tue 11/13/07							
195	Start Masonry Exterior S	9 days	Mon 9/17/07	Thu 9/27/07							
196	Start Masonry Exterior N	9 days	Fri 9/28/07	Wed 10/10/07							
197	Start Masonry Exterior E	7 days	Thu 10/11/07	Fri 10/19/07							
198	Start Masonry Exterior W	7 days	Mon 10/22/07	Tue 10/30/07							
199	Clean Masonry	5 days	Wed 11/7/07	Tue 11/13/07							
200	Concrete	24 days	Tue 9/4/07	Fri 10/5/07							
201	Prepares structural slab & fill	5 days	Tue 9/4/07	Mon 9/10/07							
202	Place structural slab	5 days	Tue 9/4/07	Mon 9/10/07							
203	Curing concrete	5 days	Tue 9/11/07	Mon 9/17/07							
204	Install Hangers	7 days	Tue 9/18/07	Wed 9/25/07							
205	Exterior steel stud & sheathing system	7 days	Thu 9/27/07	Wed 10/3/07							
206	Carpentry	35 days	Wed 11/21/07	Fri 10/5/07							
207	Metel studs for Balbs & electricals	5 days	Wed 11/21/07	Tue 1/8/08							
208	Install interior GWB for Balbs & elect rooms	5 days	Wed 11/21/07	Tue 11/27/07							
209	Install toilet accessories	2 days	Wed 12/19/07	Tue 12/25/07							
210	Roof	59 days	Mon 1/7/08	Tue 1/8/08							
211	Roof & Parapet blocking	5 days	Thu 9/28/07	Tue 12/11/07							
212	Roofing	10 days	Wed 10/31/07	Tue 11/6/07							
213	Clasit copings & cap flashing	59 days	Wed 11/7/07	Tue 11/20/07							
214	Architectural Metals	13 days	Thu 9/20/07	Tue 12/11/07							
216	Steel studs / Exterior canopies	13 days	Mon 11/12/07	Wed 11/28/07							
216	Doors & Hardware	40 days?	Mon 11/12/07	Wed 11/28/07							
217	Exterior Steel frames	9 days	Fri 9/28/07	Thu 11/22/07							
218	Exterior doors & hardware	4 days	Fri 9/28/07	Wed 10/10/07							
219	Interior Doors & hardware	1 day?	Mon 11/19/07	Thu 11/22/07							
220	Glazed Storefront	37 days	Mon 11/19/07	Tue 11/20/07							
221	Glass Field Measure S Façade	1 day	Fri 9/28/07	Mon 11/19/07							
222	Glass Fabricate S Façade	5 days	Fri 9/28/07	Fri 9/28/07							
223	Glass Install S Façade	8 days	Mon 10/1/07	Fri 10/5/07							
224	Glass Field Measure N Façade	1 day	Thu 10/11/07	Thu 10/11/07							

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External Tasks
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ID	Task Name	Duration	Start	Finish	Nov 12 '06
					S M T W T F S
225	Glass Fabricate N Facade	5 days	Fri 10/12/07	Thu 10/18/07	
226	Glass Install N Facade	8 days	Fri 10/19/07	Tue 10/30/07	
227	Glass Field Measure E Facade	1 day	Mon 10/22/07	Mon 10/22/07	
228	Glass Fabricate E facade	5 days	Tue 10/23/07	Mon 10/29/07	
229	Glass Install E Facade	8 days	Tue 10/30/07	Thu 11/8/07	
230	Glass Field Measure W Facade	1 day	Wed 10/31/07	Wed 10/31/07	
231	Glass Fabricate W facade	5 days	Thu 11/1/07	Wed 11/7/07	
232	Glass Install W Facade	8 days	Thu 11/8/07	Mon 11/19/07	
233	Building Finishes	32 days	Wed 11/14/07	Thu 12/27/07	
234	Tape & Finish	5 days	Thu 12/20/07	Wed 12/26/07	
235	Prime coat	4 days	Mon 12/24/07	Thu 12/27/07	
236	Exterior Caulking	3 days	Wed 11/21/07	Fri 11/23/07	
237	Building sidewalks	2 wks	Wed 11/14/07	Tue 11/27/07	
238	Spurfinder	20 days	Wed 11/28/07	Tue 12/25/07	
239	Riser, main & branches	10 days	Wed 11/28/07	Tue 12/11/07	
240	Install heads	10 days	Wed 12/12/07	Tue 12/25/07	
241	Plumbing	33 days	Wed 11/21/07	Fri 12/14/07	
242	Rough-in plumbing in walls	15 days	Wed 11/28/07	Tue 12/18/07	
243	Set plumbing fixtures	8 days	Wed 12/26/07	Fri 12/28/07	
244	Install gas piping from Manifold for RTUs	15 days	Wed 11/21/07	Tue 12/11/07	
245	HVAC	7 days	Mon 11/19/07	Tue 11/27/07	
246	Set RTUs	2 days	Mon 11/19/07	Tue 11/20/07	
247	Rough HVAC for Start up	5 days	Wed 11/21/07	Tue 11/27/07	
248	Electrical	30 days	Wed 11/28/07	Tue 1/8/08	
249	Electrical rough-in walls	10 days	Wed 11/28/07	Tue 12/11/07	
250	Set Electrical panels	5 days	Wed 12/12/07	Tue 12/18/07	
251	Pull cables	5 days	Wed 12/19/07	Tue 12/25/07	
252	Fire Alarm	5 days	Wed 12/26/07	Tue 1/1/08	
253	Testing	5 days	Wed 12/26/07	Tue 1/8/08	
254	Retail C/D/E Modified Core Dark Shell	285 days	Fri 3/16/07	Thu 1/8/08	
255	Install water/sewer & storm, S W Corner of Bligg A/B	75 days	Mon 4/2/07	Thu 7/13/07	
256	Foundations	44 days	Mon 4/2/07	Thu 8/28/07	

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External Tasks: External Milestones: Deadline:

ID	Task Name	Duration	Start	Finish	Nov 12 '06
			..		S M T W T F S
257	Pile Drilling	13 days	Mon 4/30/07	Wed 5/16/07	
258	Excavate Pile caps and grade beams	8 days	Mon 5/7/07	Wed 5/16/07	
259	Piles and grade beams Formwork	7 days	Mon 5/14/07	Tue 5/22/07	
260	Rebar and Inspection	2 days	Mon 5/14/07	Tue 5/15/07	
261	Place Concrete piles and grade beams	12 days	Wed 5/16/07	Thu 5/31/07	
262	Wall Form 1 Side	5 days	Wed 5/23/07	Tue 5/29/07	
263	Rebar Inspection	3 days	Wed 5/30/07	Fri 6/1/07	
264	Insert Wall Steves/Embedded ALL Trades	2 days	Mon 6/4/07	Tue 6/5/07	
265	Wall Rebar and Inspection	3 days	Wed 6/6/07	Fri 6/8/07	
266	Close Stem Walls	2 days	Mon 6/11/07	Tue 6/12/07	
267	Compacted/Treated Subgrade	5 days	Wed 6/13/07	Tue 6/19/07	
268	Place Concrete Walls	4 days	Wed 6/20/07	Mon 6/25/07	
269	Backfill Walls	3 days	Tue 6/26/07	Thu 6/28/07	
270	Set Base Plates & Anchor bolts by Steel Erector prior to grouting	1 day	Wed 6/13/07	Wed 6/13/07	
271	Place Interior Underground Utilities	1 day	Thu 6/14/07	Thu 6/14/07	
272	Inspect Underground Utilities	3 days	Fri 6/15/07	Tue 6/19/07	
273	Cover Underground Utilities to Subgrade	1 day	Wed 6/20/07	Wed 6/20/07	
274	Structural Steel	3 days	Thu 6/21/07	Mon 6/25/07	
275	Shipping	114 days	Fri 3/16/07	Wed 8/22/07	
276	Fabricate Steel CID/E-Phase I	48 days	Fri 3/16/07	Fri 5/18/07	
277	Fabricate Steel CID/E-Phase II	20 days	Tue 5/22/07	Mon 6/18/07	
278	Survey Anchor Bolt Placement by Steel Erector	1 day	Tue 5/22/07	Mon 6/18/07	
279	Steel Erection (crane) CID/E-Phase I	13 days	Fri 6/15/07	Fri 7/6/07	
280	Steel Erection (detailing) AVB	10 days	Wed 6/20/07	Fri 7/20/07	
281	Steel Erection (detailing) CID/E-Phase II	20 days	Mon 7/23/07	Fri 8/17/07	
282	Structural Inspection	1 day	Mon 8/20/07	Mon 8/20/07	
283	Sign off on all penetrations @ roof	2 days	Mon 7/9/07	Mon 7/9/07	
284	Install roof penetrations	3 days	Mon 8/20/07	Tue 8/21/07	
285	Roof Cuts / Openings	65 days	Thu 8/23/07	Wed 8/22/07	
286	Masonry	12 days	Thu 8/23/07	Wed 11/7/07	
287	Start Masonry Exterior S		Thu 8/23/07	Fri 9/7/07	
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ID	Task Name	Duration	Start	Finish	Mon	Tue	Wed	Thu	Fri	Sat	Sun
289	Start Masonry Exterior N	12 days	Mon 9/10/07	Tue 9/25/07							
290	Start Masonry Exterior E	10 days	Wed 9/26/07	Tue 10/9/07							
291	Start Masonry Exterior W	10 days	Wed 10/10/07	Tue 10/23/07							
292	Clean Masonry	6 days	Wed 10/31/07	Wed 11/7/07							
293	Concrete	47 days	Mon 7/9/07	Tue 9/11/07							
294	Prepare slab on grade / Structural fill	10 days	Mon 7/9/07	Fri 7/20/07							
295	Place slab on grade	10 days	Mon 7/23/07	Fri 8/3/07							
296	Curing concrete	7 days	Mon 8/6/07	Tue 8/14/07							
297	Install Hangers	5 days	Wed 8/15/07	Tue 8/21/07							
298	Exterior steel stud & sheathing system	20 days	Wed 8/15/07	Tue 9/11/07							
299	Carpentry	92 days	Wed 12/12/07	Thu 4/17/08							
300	Metal studs for Storage, Baths & electrical	35 days	Wed 12/12/07	Tue 1/29/08							
301	Install interior GWB for Baths & elect rooms	20 days	Wed 12/27/08	Tue 3/25/08							
302	Install toilet accessories	5 days	Fri 4/11/08	Thu 4/17/08							
303	Roof	76 days	Tue 8/28/07	Tue 12/11/07							
304	Roof & Parapet blocking	15 days	Wed 10/24/07	Tue 11/13/07							
305	Roofing	20 days	Wed 11/14/07	Tue 12/11/07							
306	Chase copings & cap flashing	59 days	Tue 8/28/07	Fri 11/16/07							
307	Architectural Metals	25 days	Mon 12/3/07	Fri 1/4/08							
308	Steel studs / Exterior canopies	25 days	Mon 12/3/07	Fri 1/4/08							
309	Doors & Hardware	72 days	Mon 9/10/07	Tue 12/18/07							
310	Exterior Steel frames	12 days	Mon 9/10/07	Tue 9/25/07							
311	Exterior doors & hardware	7 days	Mon 12/10/07	Tue 12/18/07							
312	Interior Doors & hardware	10 days	Tue 11/27/07	Tue 12/11/07							
313	Glazed Storefront	46 days	Mon 9/10/07	Mon 11/12/07							
314	Glass Field Measure S Facade	1 day	Mon 9/10/07	Mon 9/10/07							
315	Glass Fabricate S facade	5 days	Tue 9/11/07	Mon 9/17/07							
316	Glass Install S Facade	8 days	Tue 9/18/07	Thu 9/27/07							
317	Glass Field Measure N Facade	1 day	Wed 9/26/07	Wed 9/26/07							
318	Glass Fabricate N facade	5 days	Thu 9/27/07	Wed 10/3/07							
319	Glass Install N Facade	8 days	Thu 10/4/07	Mon 10/15/07							
320	Glass Field Measure E Facade	1 day	Wed 10/10/07	Wed 10/10/07							

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ID	Task Name	Duration	Start	Finish	S	S	M	T	W	T	F	S
321	Glass Fabricate E facade	5 days	Thu 10/11/07	Wed 10/17/07								
322	Glass Install E Facade	8 days	Thu 10/18/07	Mon 10/29/07								
323	Glass Field Measure W Facade	1 day	Wed 10/24/07	Wed 10/24/07								
324	Glass Fabricate W facade	5 days	Thu 10/25/07	Wed 10/31/07								
325	Glass Install W Facade	8 days	Thu 11/1/07	Mon 11/12/07								
326	Building Finishes	109 days	Thu 11/8/07	Tue 4/8/08								
327	Tape & Finish	10 days	Thu 3/20/08	Wed 4/2/08								
328	Prime coat	7 days	Mon 3/31/08	Tue 4/8/08								
329	Exterior Caulking	5 days	Thu 11/15/07	Wed 11/21/07								
330	Building steelwalks	2 wks	Thu 11/8/07	Wed 11/21/07								
331	Sprinkler	30 days	Wed 1/30/08	Tue 3/11/08								
332	Riser, main & branches	15 days	Wed 1/30/08	Tue 2/19/08								
333	Install heads	15 days	Wed 2/20/08	Tue 3/11/08								
334	Pumbing	87 days	Wed 12/12/07	Thu 4/10/08								
335	Rough-in plumbing in walls	20 days	Wed 1/30/08	Tue 2/26/08								
336	Set plumbing fixtures	12 days	Wed 3/26/08	Thu 4/10/08								
337	Install gas piping from Manifold for RTUs	20 days	Wed 12/12/07	Tue 1/6/08								
338	HVAC	12 days	Mon 12/10/07	Tue 12/25/07								
339	Set RTUs	5 days	Mon 12/10/07	Fri 12/14/07								
340	Rough HVAC for Start up	7 days	Mon 12/17/07	Tue 12/25/07								
341	Electrical	44 days	Wed 1/30/08	Mon 3/31/08								
342	Electrical rough-in walls	15 days	Wed 1/30/08	Tue 2/19/08								
343	Set Electrical panels	10 days	Wed 2/20/08	Tue 3/4/08								
344	Put cables	7 days	Wed 3/5/08	Thu 3/13/08								
345	Fire Alarm	7 days	Fri 3/14/08	Mon 3/24/08								
346	Testing	5 days	Tue 3/25/08	Mon 3/31/08								

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External Tasks External Milestone Deadline

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SCHEDULE V

RENT ROLL

(See Attached)

Pelham -- Rent Roll

Printed: 12/1/07

Suite	Tenant	SF	Rent PSF	NCD	Bas Rent	Dec-06 Year 2	Dec-07 Year 3	Dec-08 Year 4	Dec-09 Year 5	Dec-10 Year 6	Dec-11 Year 7	Dec-12 Year 8	Dec-13 Year 9	Dec-14 Year 10
	Home Depot	129,576	13.51	8/13/08	1,750,000			666,438	1,750,000	1,750,000	1,750,000	1,750,000	1,816,667	1,850,000
D	Available	18,000	38.00	8/1/08	648,000			268,077	648,000	648,000	648,000	648,000	661,200	712,800
D	Available	9,000	38.00	8/1/08	342,000			141,489	342,000	342,000	342,000	342,000	342,000	376,200
C	Circuit City	20,279	32.00	8/1/08	648,928			268,461	648,928	648,928	648,928	648,928	692,190	713,821
	Anchor sub-total	178,855	18.18		3,388,928			1,344,461	3,388,928	3,388,928	3,386,928	3,388,928	3,842,097	3,652,821
E	Available	2,513	44.00	8/1/08	110,572			45,743	110,572	110,572	110,572	110,572	117,943	121,629
E2	Available	4,032	65.00	8/1/08	262,080			108,422	262,080	262,080	262,080	262,080	276,552	286,288
F	Available	1,800	48.00	8/1/08	86,400			35,744	86,400	86,400	86,400	86,400	91,244	100,161
F	Gamastop	2,000	43.00	8/1/08	86,000			35,578	86,000	86,000	86,000	86,000	91,733	94,600
F	Available	3,000	40.00	8/1/08	120,000			49,844	120,000	120,000	120,000	120,000	126,000	132,000
F	Available	3,000	43.50	8/1/08	130,500			54,768	130,500	130,500	130,500	130,500	137,040	142,280
F	Available	3,000	40.00	8/1/08	120,000			49,844	120,000	120,000	120,000	120,000	126,000	132,000
F	Available	3,300	40.00	8/1/08	132,000			55,288	132,000	132,000	132,000	132,000	139,000	144,180
AB	Stacy's	4,000	38.00	8/1/08	152,000			62,892	152,000	152,000	152,000	152,000	164,160	170,240
AB	Available	8,000	35.00	8/1/08	280,000			115,938	280,000	280,000	280,000	280,000	300,320	340,480
AB	Available	6,000	35.00	8/1/08	210,000			87,562	210,000	210,000	210,000	210,000	226,800	243,568
AB	Available	5,672	40.00	8/1/08	226,880			93,880	226,880	226,880	226,880	226,880	242,005	249,568
	Non-Anchor Subtotal	52,007	41.07		2,136,132			883,715	2,136,132	2,136,724	2,141,394	2,144,144	2,328,958	2,422,958
	Retail Total	228,862			5,525,060			2,228,176	5,525,060	5,527,652	5,530,322	5,533,072	5,871,015	6,075,687
	Self-Storage (4 floors)	88,127		7/1/08										
	TOTAL	316,989						2,228,176	5,525,060	5,527,652	5,530,322	5,533,072	5,871,015	6,075,687

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

BLANKET DESCRIPTION – LOTS 8, 9 AND 10:

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 90.55 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 ~9.10 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.

For information only: Said premises are known as 2 Penn Place, Pelham, NY, and designated as section 166.26 Block 1 Lots 8, 9 and 10 on the Westchester County Land and Tax Map.

EXHIBIT B
INTENTIONALLY OMITTED

EXHIBIT C

FORM OF DATE DOWN ENDORSEMENT

ENDORSEMENT

Attached to and forming a part of Policy No. _____

Issued By

COMMONWEALTH LAND TITLE INSURANCE COMPANY

herein called the Company

The Company has continued its title examinations and tax searches under the above Policy from _____, 200__ to _____, 200__. There have been no changes to title and the tax search shows all items have been paid. The effective date of the above Policy set forth in Schedule A is changed to _____, 200__.

The Company acknowledges that the amount of this advance is \$ _____ and that, with this advance, the total amount advanced to date and insured by the above Policy is \$ _____.

This Endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any prior Endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior Endorsements, nor does it extend the effective date of the Policy and any prior endorsements, nor does it increase the face amount thereof.

ROYAL ABSTRACT as agent for
COMMONWEALTH LAND TITLE INSURANCE
COMPANY

By: _____

Name:

Title: Authorized Signature

EXHIBIT D

NJ01/VIDUJ/127868.4

Exhibit D

AFFIDAVIT PURSUANT TO SECTION 22 OF THE
LIEN LAW OF THE STATE OF NEW YORK

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT MASTERS, being duly sworn, deposes and says that:

1. I reside at Westchester County, New York, and am the Senior Vice President of P/A-Acadia Pelham Manor, 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 10, 2007, between Borrower and Bear Stearns Commercial Mortgage, Inc., as lender (the "**Building Loan Agreement**").

3. The principal amount of the loan (the "**Building Loan**") under the Building Loan Agreement is \$23,026,906.60.

4. The consideration paid, or to be paid, by Borrower for the Building Loan described herein is \$ _____ 0 _____ [(which amount will be paid from sources other than the building loan)].

5. All other expenses incurred or to be incurred in connection with the Building Loan for the Costs of the Improvements and to be advanced pursuant to the Building Loan Agreement during the construction of the Improvement are:

- | | |
|---|--------------------|
| (a) Interest on the Building Loan during construction | \$ _____ 0 _____ |
| (b) Taxes, assessments, water rents and sewer rents, paid or to be paid for periods prior to or during construction | \$ _____ 0 _____ * |
| (c) Insurance during construction | \$ _____ 0 _____ |
| (d) Commitment fee, if any, in addition to the consideration stated above which is allocable to the Building Loan | \$ _____ 0 _____ * |
| (e) Commitment fee for subsequent financing either (i) required by Lender, or (ii) to be borrowed within four months after completion of the improvements | \$ _____ 0 _____ * |

[* to the extent applicable, sums attributable to these items will be paid from sources other than the building loan]

NJ01/VTDUJ/127802.4

(f)	Title examination, insurance premium and recording fees which are allocable to the Building Loan	\$ 0 *
(g)	Survey	\$ 0 *
(h)	Engineer's and Architect's fees	\$2,150,000.00*
(i)	Bond premiums	\$ 0 *
(j)	Legal fees of Lender's counsel which are allocable to the Building Loan	\$ 0 *
(k)	Broker's commissions incurred with respect to obtaining the Building Loan	\$ 0 *
(l)	Broker's commissions incurred with respect to obtaining subsequent financing either (i) required by Lender, or (ii) to be borrowed within four months after the completion of the improvements	\$ 0 *
(m)	Brokerage Commissions for leases of space (other than residential space) in the improvements with terms in excess of three (3) years	\$ 0 *
(n)	Ground rents accruing during construction	\$ 0 *
(o)	Mortgage recording tax allocable to Building Loan	\$ 0 *
(p)	Appraisal	\$ 0 *
(q)	Sums paid to take by assignment prior existing mortgages which are consolidated with building loan mortgages and also the interest charges on such mortgages	\$0
(r)	Sums paid to discharge or reduce the indebtedness under mortgages and accrued interest thereon and other prior	

[* to the extent applicable, sums attributable to these items will be paid from sources other than the building loan]

existing encumbrances	\$0
(s) Sums paid to discharge building loan mortgages whenever recorded	\$0*
(t) Contingency cost of the improvement, other than the "improvement", as defined in subdivision 4 of Section 2 of the Lien Law	<u>\$1,380,361.00*</u>
TOTAL	<u>\$3,530,361.00*</u>

6. In addition to the above items the following sums shall be disbursed to Borrower for the cost of the improvement incurred and paid for by Borrower subsequent to the commencement of construction of the improvement, but prior to the date of the initial advance of the Building Loan under the Building Loan Agreement:

\$5,566,117.27

7. The net sum available to Borrower for the Improvement is Thirteen Million Nine Hundred Thirty Thousand Four Hundred Twenty Eight and 33/100 Dollars (\$13,940,428.33) 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.

8. 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.

[No Further Text on This Page]


[* to the extent applicable, sums attributable to these items will be paid from sources other than the building loan]

NJ01/VIDUJ/127802.4

9. The facts stated above and any costs itemized on this statement are true, to the knowledge of the undersigned.


Name: ROBERT MASTERS

SWORN TO BEFORE ME this
10th day of December, 2007.


Notary Public

ROBERT P. SCHROEDER
Notary Public, State of New York
No. 01SC4803178
Qualified in Queens County
Commission Expires 7-31-10

EXHIBIT E

AIA FORM G706

(CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS)

[See Attached Form]

NJ01/VIDUJ/127868.4

Exhibit E

AIA Document G706™ - 1994

Contractor's Affidavit of Payment of Debts and Claims

PROJECT: (Name and address) ARCHITECT'S PROJECT NUMBER: OWNER:
ARCHITECT:
CONTRACTOR:
SURETY:
OTHER:
CONTRACT FOR: General Construction
TO OWNER: (Name and address) CONTRACT DATED:

STATE OF:
COUNTY OF:

The undersigned hereby certifies that, except as listed below, payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or Owner's property might in any way be held responsible or encumbered.

EXCEPTIONS:

SUPPORTING DOCUMENTS ATTACHED HERETO:

1. Consent of Surety to Final Payment. Whenever Surety is involved, Consent of Surety is required. AIA Document G707, Consent of Surety, may be used for this purpose.
Indicate Attachment Yes No

CONTRACTOR: (Name and address)

BY:

(Signature of authorized representative)

(Printed name and title)

The following supporting documents should be attached hereto if required by the Owner:

1. Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.
3. Contractor's Affidavit of Release of Liens (AIA Document G706A).

Subscribed and sworn to before me on this date:

Notary Public:
My Commission Expires:

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Use Notes: 1102-4116431

EXHIBIT F

ARCHITECT'S CERTIFICATE

[See Attached Forms]

1. Form of Architect's Certification and Consent to be delivered prior to the Initial Advance.
2. Form of Architect's Completion Certificate to be delivered prior to the Final Advance.

ARCHITECT'S CERTIFICATION AND CONSENT

[Letterhead of Borrower's Architect]

December __, 2007

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179

Re: 2 Penn Place, Pelham Manor, New York

Ladies and Gentlemen:

The undersigned ("**Architect**") understands that Bear Stearns Commercial Mortgage, Inc., a New York corporation ("**Lender**") has made a loan (the "**Loan**") to P/A-Acadia Pelham Manor, LLC, a Delaware limited liability company ("**Borrower**"), which Loan, among other things, will be used to finance construction and renovation by Borrower of the improvements (the "**Improvements**") on the land known as 2 Penn Place, Pelham Manor, New York (the "**Land**") and will be advanced pursuant to that certain Building Loan Agreement (the "**Building Loan Agreement**"), and that certain Project Loan Agreement, each entered into between Lender and Borrower and each dated as of December __, 2007. Capitalized terms not defined herein shall have the meanings ascribed to them in the Building Loan Agreement.

Architect has reviewed certain Plans and Specifications prepared by _____ in connection with the construction and renovation of the Improvements, which are described in Exhibit 1 attached hereto (the "**Plans and Specifications**"). In addition, Architect has been engaged to act as the architect for the Improvements and such engagement has been confirmed by that certain Agreement for Architectural Services between Borrower and Architect dated as of [_____] (the "**Contract**").

In its professional opinion, the Architect states to Lender that (a) upon completion in accordance with the Plans and Specifications, the Improvements shall be available for occupancy in accordance with their contemplated uses, as identified to Architect by Borrower (that is, as a _____), and will comply with applicable building codes and other governmental rules, laws and regulations relating to their design and engineering, to the extent applicable and in effect as of the date hereof, and a permanent certificate of occupancy for the use of the Improvements for their intended purposes will be able to be issued in due course upon review and inspection of the Improvements by the appropriate departments having jurisdiction over the Improvements, (b) the Land is zoned for use of the Improvements for their intended purposes, and there are sufficient development rights appurtenant to the Land in order to construct the Improvements in accordance with the Plans and Specifications as of right, and

Exhibit F – Page 2

(c) all building permits and other approvals listed below (collectively, the "Approvals") required for the construction of the Improvements in accordance with the Plans and Specifications have been obtained and paid for and are in full force and effect (or, with respect to approvals not obtained by the date of this Certificate, are capable of being obtained within time periods consistent with the projected completion dates of the Improvements). Copies of those Approvals that have been obtained as of the date hereof and applications for those Approvals that are pending as of the date hereof are enclosed.

	<u>Issuing Agency</u>	<u>Date Issued</u>
Building Permit		
Certificate of Occupancy		
Special Permit		

To the best of its professional knowledge, Architect states to Lender that there are no pending amendments or modifications of any laws, ordinances, regulations or permits relating to the Improvements.

To the best of its professional knowledge, Architect states to Lender that the Improvements shown on the Plans and Specifications will comply with applicable requirements of the applicable land use, zoning and building laws and ordinances which are in effect as of the date hereof.

To the best of its professional knowledge, Architect further states to Lender that (a) there will be sufficient access and egress to and from the Land and the Improvements for their use for their intended purposes, and (b) all utilities (including, if applicable, electric, gas, telephone, water and sewer services) necessary to service the Improvements are available to be delivered by the appropriate utility companies directly to the Property.

The Construction Schedule referenced in the Building Loan Agreement, a copy of which is enclosed, establishing a projected timetable for completion of the Improvements, appears realistic and, to the best of its professional experience, Architect believes that such schedule can be adhered to.

Architect understands that as additional security for the Loan, Borrower has assigned their interests under the Contract and in and to the Plans and Specifications to Lender pursuant to that certain Assignment of Agreements, Permits and Contracts made by Borrower to Lender dated as of December __, 2007, and Architect hereby consents to such assignment. Architect acknowledges that Lender shall not be obligated to perform or discharge, nor has Lender undertaken to perform or discharge, any of the obligations of Borrower under the Contract and that so long as no Event of Default exists under the Building Loan Agreement or the Project Loan Agreement or the Contract, Borrower shall have the right to enjoy and utilize the rights and privileges of the contracting party under the Contract.

Architect agrees that from and after the occurrence and during the continuance of an Event of Default (as defined in the Building Loan Agreement) by Borrower under any of the Loan Documents, Architect will, at Lender's request, continue performance on Lender's behalf under the Contract for all services rendered or to be rendered for the benefit of Lender, its nominee, wholly owned subsidiary or assign(s), provided that Lender shall pay Architect for all work and services rendered pursuant to the Contract, whether prior to or subsequent to such request, for which Architect has not otherwise received payment. Nevertheless, the time periods set forth in the Contract for the performance by owner of its obligations thereunder shall be deemed extended by the period of time necessary to allow Lender to obtain possession of the Property in the manner Lender decides pursuant to its remedies under the Loan Documents.

Architect hereby further agrees that if, at any time, Lender or its designee shall become the owner of the Property or otherwise requires the use of the Plans and Specifications in connection with the Property, Lender shall have the right to use the Plans and Specifications, together with any and all modifications thereof (including any additions, enlargements or extensions thereof) without any additional cost or expense, provided the scope of the project has not been substantively altered (should substantial changes to the scope or nature of the project be required by Lender, compensation of Architect shall be adjusted by mutual consent), other than payment of any balance and other sums that may be due or owing to Architect by Borrower for the preparation of the Plans and Specifications pursuant and subject to the terms of the Contract.

Architect's statements in this letter have been made to the best of Architect's knowledge and based upon Architect's performance of its service in accordance with the standards of care and skill of Architect's profession in the jurisdiction in which the Property is located for building projects of the scope and quality of the Improvements. This letter is being issued for the benefit of Lender, Lenders and their respective successors and assigns, in connection with the disbursements for the construction of the Improvements as contemplated by the Building Loan Agreement and the Project Loan Agreement and the other Loan Documents referenced therein, and any lender refinancing the Loan evidenced by the Loan Documents, and does not alter or increase the term, obligations or liabilities of the undersigned to Borrower or Lender and/or Lenders or their respective successor's and assigns under the Contract. No other party may rely thereon.

The provisions set forth in this letter shall be binding upon Architect and Architect's successors and assigns and shall inure to the benefit of Lender and Lenders and their successors and assigns, but to no other party.

a _____

By: _____
Name:
Title:

Exhibit 1
Plans and Specifications

EXHIBIT F-2

ARCHITECT'S COMPLETION CERTIFICATE

[Letterhead of Borrower's Architect]

_____, 200__

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179

Re: 2 Penn Place, Pelham Manor, New York :

Ladies and Gentlemen:

The undersigned ("Architect") understands that Bear Stearns Commercial Mortgage, Inc., a New York corporation ("Lender") has made a loan (the "Loan") to P/A-Acadia Pelham Manor, LLC, a Delaware limited liability company ("Borrower"), which Loan, among other things, was used to finance construction and renovation by Borrower of the improvements (the "Improvements") on the premises known as 2 Penn Place, Pelham Manor, New York (the "Land") and was advanced pursuant to that certain Building Loan Agreement (the "Building Loan Agreement") and that certain Project Loan Agreement, each entered into by Lender and Borrower and each dated as of December __, 2007. Capitalized terms not defined herein shall have the meanings ascribed to them in the Building Loan Agreement.

Architect reviewed certain Plans and Specifications prepared by _____ in connection with the construction and renovation of the Improvements. In addition, Architect has been engaged to act as the architect for the Improvements and such engagement has been confirmed by that certain Agreement for Architectural Services between Borrower and Architect dated as of _____ (the "Contract").

Based on its on-site observation of the Improvements pursuant to the Contract, to the date of this Certificate, to its best professional knowledge, Architect states to Lender that (a) except as the same relates to Punch List Items (as hereinafter defined), the Improvements and their contemplated uses, as identified to Architect by Borrower (that is, as a _____) are in accordance with the Plans and Specifications and comply with applicable building codes and all other similar or necessary governmental rules, laws and regulations relating to their design and engineering, to the extent applicable and in effect as of the date hereof, and (b) a [permanent] [temporary] certificate of occupancy for the Property, and all building permits and other approvals (collectively, the "Approvals") required for the construction and renovation of the Improvements in accordance with the Plans and Specifications have been obtained and paid for and are in full force and effect.

Exhibit F – Page 7

To the best of its professional knowledge, there is (and after the completion of the Punch List Items will be) sufficient access and egress to and from the Land and the Improvements for their use for their intended purposes.

Architect hereby states to the best of its professional knowledge to Lender that subject only to the completion of the Punch List Items, the Improvements have been completed in accordance with the Plans and Specifications. The term "Punch List Items" shall mean the work set forth on Exhibit 1 attached hereto.

This letter has been required in connection with the Lender's above referenced Loans made to Borrower. It is given for the benefit of Lender, its successors and assigns, and no other party may rely thereon.

The statements contained in this letter are an expression of the undersigned's professional opinion, are made to the best of the undersigned's knowledge, information and belief, and are based on the undersigned's performance of services under the Contract in accordance with generally accepted standards of professional practice. Accordingly, such statements do not constitute a guaranty or warranty of any sort.

Signed this ____ day of _____, 200_.

By: _____
Name:
Title:

By signing below, _____ hereby estimates, to the best of its professional knowledge, that the cost to complete the Punch List Items will not exceed \$ _____ in the aggregate and such work shall be limited to site work, interior finishes, mechanical adjustments, landscaping and decorative work. If the completion of the Punch List Items is diligently pursued, completion of all Punch List Items is expected within _____ () months after the date hereof.

[Construction Manager]

By: _____
Name:
Title:

Exhibit 1 to Architect's Completion Certificate

Punch List Items

EXHIBIT G

CONSTRUCTION MANAGER'S CERTIFICATE

[Letterhead of Construction Manager]

_____, 200__

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179

Re: Property Address: 2 Penn Place, Pelham Manor, New York
Project Name: Pelham Manor
Change Order Amount: \$ _____
Aggregate Change Order Amount: \$ _____

Ladies and Gentlemen:

The undersigned construction manager/general contractor ("CM") understands that Bear Stearns Commercial Mortgage, Inc. ("Lender") has made a loan (the "Loan") to P/A-Acadia Pelham Manor, LLC, a Delaware limited liability company, ("Borrower"), which Loan, among other things, will be used to finance construction and renovation by Borrower of the improvements (the "Improvements") on the premises known at 2 Penn Place, Pelham Manor, New York and will be advanced pursuant to that certain Building Loan Agreement (the "Building Loan Agreement") and that certain Project Loan Agreement (the "Project Loan Agreement"), each entered into by Lender and Borrower and each dated as of December __, 2007. CM has been engaged by Borrower to act as construction manager in connection with the construction and renovation of the Improvements as contemplated by those certain plans and specifications (the "Plans and Specifications") prepared by _____, and reviewed by _____, as architect (the "Architect") and such engagement of CM has been confirmed by that certain Standard Form of Agreement between Owner and Construction Manager where Construction Manager is NOT a Constructor (including the Conditions, if any, attached thereto, the "Contract"), dated as of February 22, 2006.

1. CM represents and warrants to Lender as follows:

(i) CM has reviewed and agreed to the Plans and Specifications for the Improvements, as defined in the Building Loan Agreement, and the Plans and Specifications have been approved by CM;

(ii) all building permits required for the construction of the Improvements in accordance with the Plans and Specifications have been obtained;

(iii) there are no liens in connection with the Improvements in favor of CM or any contractor hired by Borrower who have performed work, for the work so performed, and/or who have supplied labor and/or materials, for the labor and/or materials so supplied, except for such work or labor and/or materials for which payment thereof is requested; and

(iv) CM has not sent or received any notice of default or any notice for the purpose of terminating the Contract, and there is no existing circumstance or event which, but for the lapse of time or otherwise, would constitute a default by CM or Borrower under the Contract.

In addition, CM hereby agrees with Lender as follows:

1. CM shall not agree to any amendment, modification, release or discharge (in whole or in part) of the Contract, nor waive or claim any waiver in any respect of any provision thereof, without first obtaining the prior written consent of Lender, and no such amendment, modification, release, discharge or waiver, without such consent, shall be binding upon Lender.

2. CM shall send to Lender copies of all notices of default sent by CM to Borrower or by Borrower to CM pursuant to the Contract and no such notice shall be effective for any purpose unless and until a copy thereof shall have been received by Lender.

3. If Borrower shall default under the Contract, CM shall not exercise any remedies, including, but not limited to, any right to terminate the Contract.

4. If Borrower defaults under the Loan Documents (as defined in the Building Loan Agreement), or if there is a foreclosure of any mortgage securing payment of the Loan, or if Borrower becomes insolvent, at the election and option of Lender by notice from Lender to CM, either (i) CM will complete its obligations under the Contract with respect to the management of construction of the Improvements as set forth in the Plans and Specifications for the benefit of Lender, its nominee, wholly owned subsidiary or assign(s), or (ii) the Contract shall terminate and at Lender's election CM shall immediately assign all of its rights under the subcontracts to Lender. In the event that Lender elects to have CM continue performance on Lender's behalf under the Contract, the time periods set forth in the Contract for performance by owner of its obligations thereunder shall be deemed extended by the period of time necessary to allow Lender to obtain possession of the Property in the manner Lender decides pursuant to its remedies under the Loan Documents.

5. CM further agrees that it shall not perform work pursuant to any change order which will result in a change in the contract price in excess of the change order amount, nor pursuant to any such change order which, together with the aggregate of change orders theretofore executed between the Borrower and CM, excluding those theretofore specifically approved by Lender, will result in an increase or decrease in such price in excess of the aggregate change order amount, unless in either case CM shall have received Lender's specific written approval of such change order.

6. In the event any of the proceeds of the Loan are disbursed directly to CM, CM shall receive any such advances and shall hold the right to receive the same as a trust fund for the purpose of paying the costs of the Improvements as set forth in the Plans and Specifications and will apply the same first to such payment before using any part thereof for any other purpose.

7. CM hereby acknowledges and consents to that certain Assignment of Agreements, Permits and Contracts dated as of December __, 2007, by Borrower to Lender, which assigns all of Borrower's rights under the Contract. In the event Lender, its nominee, wholly owned subsidiary, successor(s) or assign(s) (the "Successor"), succeeds to the rights of Borrower under the Contract, then, at the request of the Successor, and upon the Successor's written agreement to accept CM's attornment, CM shall attorn and shall promptly execute and deliver any instrument the Successor may reasonably require to evidence such attornment. Upon such attornment, the Contract shall continue in full force and effect as if it were a direct agreement between the Successor and CM.

8. CM shall send all notices to Lender, as required by this letter, to the address of Lender set forth above by registered or certified mail, return receipt requested (or at such other address as Lender shall specify in writing from time to time).

9. The person executing this letter on behalf of CM hereby certifies that he or she has the authority to do so and that CM has full authority under all applicable state and local laws and regulations to perform all of its obligations under the Contract in accordance with the terms thereof.

10. The provisions set forth in this letter shall be binding upon CM and CM's successors and assigns and shall inure to the benefit of Lender and their successors and assigns.

Very truly yours,

By: _____

Name:

Title:

EXHIBIT H

FORM OF PERFORMANCE LETTER

[Letterhead of Major Contractor]

_____, 200__

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179

Re: Property Address: 2 Penn Place, Pelham Manor, New York
Project Name: Pelham Manor
Change Order Amount: \$ _____

Ladies and Gentlemen:

The undersigned, a contractor ("**Contractor**") on the captioned project (the "**Project**"), understands that Bear Stearns Commercial Mortgage, Inc. ("**Lender**") has made a loan (the "**Loan**") to P/A-Acadia Pelham Manor, LLC ("**Borrower**"), which Loan, among other things, will be used to finance construction and renovation by Borrower of the improvements (the "**Improvements**") at the Project and will be advanced pursuant to that certain Building Loan Agreement (the "**Building Loan Agreement**") and that certain Project Loan Agreement (the "**Project Loan Agreement**"), each entered into by Lender and Borrower and each dated as of December __, 2007. Attached hereto is a true and complete copy of our agreement with Borrower, dated as of _____, 200__, to construct and/or renovate a portion of the Improvements (including the Conditions attached thereto, the "**Contract**").

1. Contractor represents and warrants to Lender as follows:

(i) to the best of Contractor's knowledge, there are no liens in connection with the Improvements in favor of Contractor or any subcontractor hired by Contractor who has performed work and/or supplied labor and/or materials, for the work performed by Contractor or such subcontractor or for the labor and/or materials supplied by Contractor or such subcontractor, except for such work or labor and/or materials for which payment thereof is requested; and

(ii) Contractor has not sent or received any notice of default or any notice for the purpose of terminating the Contract, and to the best of Contractor's knowledge, there is no existing circumstance or event which, but for the lapse of time or otherwise, would constitute a default by Borrower under the Contract.

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In addition, Contractor hereby agrees with Lender as follows:

1. Contractor shall not agree to any amendment, modification, release or discharge (in whole or in part) of the Contract, nor waive or claim any waiver in any respect of any provision thereof, without first obtaining the prior written consent of Lender, and no such amendment, modification, release, discharge or waiver, without such consent, shall be binding upon Lender.

2. Contractor shall send to Lender copies of all notices of default sent by Contractor to Borrower or by Borrower to Contractor pursuant to the Contract and no such notice shall be effective for any purpose unless and until a copy thereof shall have been received by Lender.

3. If Borrower shall default under the Contract, Contractor shall not exercise any remedies, including, but not limited to, any right to terminate the Contract, until and unless Contractor shall give notice of intention to do so to Lender, and Lender shall fail to either (i) remedy the default of Borrower within thirty (30) days after receipt of such notice or (ii) deliver within such thirty (30) day period to Contractor an undertaking to remedy such default at the cost and expense of Lender and thereafter diligently pursue such remedy.

4. If Borrower defaults under the Loan Documents (as defined in the Building Loan Agreement), or if there is a foreclosure of any mortgage securing payment of the Loan, or if Borrower becomes insolvent, at the election and option of Lender by notice from Lender to Contractor, either (i) Contractor will complete its obligations under the Contract with respect to the construction of the Improvements for the benefit of Lender, its nominee, wholly owned subsidiary or assign(s), [if the Contractor is not an Affiliate of Borrower, provided that, Lender shall pay Contractor for all work and services rendered, pursuant to the Contract whether prior to or subsequent to such election, for which Contractor has not otherwise received payment,] or (ii) the Contract shall terminate and at Lender's election Contractor shall immediately assign all of its rights under the subcontracts to Lender. In the event that Lender elects to have Contractor continue performance on Lender's behalf under the Contract, the time periods set forth in the Contract for performance by owner of its obligations thereunder shall be deemed extended by the period of time necessary to allow Lender to obtain possession of the Property in the manner Lender decides pursuant to its remedies under the Loan Documents.

5. Contractor further agrees that it shall not perform work pursuant to any change order that will result in a change in the contract price in excess of the change order amount, unless Contractor shall have received specific written approval of such change order from Lender or Lender's consulting engineer.

6. In the event any of the proceeds of the Loan are disbursed directly to Contractor, Contractor shall receive any such advances and shall hold the right to receive the same as a trust fund for the purpose of paying the costs of the Improvements as set forth in the Plans and Specifications and will apply the same first to such payment before using any part thereof for any other purpose.

7. Contractor hereby acknowledges and consents to that certain Assignment of Agreements, Permits and Contracts dated as of December __, 2007, by Borrower to Lender,

EXHIBIT I
FORM OF ANTICIPATED COST REPORT

[Attached]

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Exhibit I - Page 1

Polkman Mueser
Cost to Complete Summary

	Final Budget	Change Orders	Reserve	To Date	This Draw	Total
PROJECT LOAN						
PURCHASE PRICE						
Purchase of adjacent lot	953,859.00	-	-	953,859.00	-	953,859.00
Legal - New Lender	403,689.00	-	-	393,689.24	-	393,689.24
Zoning Expenses	124,292.00	-	-	124,292.00	-	124,292.00
Mechanical Costs (Storage)	45,000.00	-	-	-	-	-
Development Fee (Storage)	172,128.00	-	-	43,784.00	-	43,784.00
Landmark Commission:						
Home Depot	735,000.00	-	-	735,600.00	-	735,600.00
Payment	487,775.00	-	-	-	-	-
Grand City	46,700.00	-	-	46,700.00	-	46,700.00
Resort II	483,284.00	-	-	-	-	-
Resort F	591,494.00	-	-	-	-	-
Resort A + B	103,800.00	-	-	-	-	-
Other	230,000.00	-	-	230,000.00	-	230,000.00
Lease Buy-Out Fee	5,970,235.00	-	-	5,970,235.00	-	5,970,235.00
Interest & Carry (Bank Service, ILE Trust, Inc & Grand East)	178,230.00	-	-	178,230.00	-	178,230.00
Commitment Fee	463,632.00	-	-	463,632.00	-	463,632.00
Message Recording Tax	2,072.45	-	-	2,072.45	-	2,072.45
Bank and Utility Reports (Appraisal, Environmental, Engineering, Ins)	26,000.00	-	-	26,000.00	-	26,000.00
Bank Administration Fee	95,000.00	-	-	95,000.00	-	95,000.00
Lender Legal Fee	74,094.00	-	-	74,094.00	-	74,094.00
Other Closing Costs	786,311.00	-	-	786,311.00	-	786,311.00
Builder Risk Insurance				54,265.60	-	54,265.60
Liability Insurance				489,954.29	-	489,954.29
Commission Management Fee(1)				394,750.23	-	394,750.23
Sub-Cost Contingency	854,167.25	-	-	854,167.25	-	854,167.25
TOTAL PROJECT LOAN COSTS	11,871,793.48	-	-	11,871,793.48	-	11,871,793.48
BUILDING LOAN						
SOFT COSTS						
Site Work	750,000.00	-	-	749,000.00	-	749,000.00
Sitework(1)	6,034,599.00	-	-	6,034,599.00	-	6,034,599.00
Environmental Remediation	3,200,835.00	-	-	3,200,835.00	-	3,200,835.00
SUB-TOTAL SITE COSTS	10,985,434.00	-	-	10,985,434.00	-	10,985,434.00
HARD COSTS						
Demolition	2,752,913.00	-	-	2,752,913.00	-	2,752,913.00
Construction:						
Home Depot	4,118,077.00	-	-	4,118,077.00	-	4,118,077.00
Recall D	1,702,331.00	-	-	1,702,331.00	-	1,702,331.00
Grand City	3,032,588.00	-	-	3,032,588.00	-	3,032,588.00
Resort F	3,810,833.00	-	-	3,810,833.00	-	3,810,833.00
Resort A+B	5,200,000.00	-	-	5,200,000.00	-	5,200,000.00
Storage	43,568.00	-	-	43,568.00	-	43,568.00
Bank	22,691.49	-	-	22,691.49	-	22,691.49
Police	61,201.00	-	-	61,201.00	-	61,201.00
Investigation	1,538,548.00	-	-	1,538,548.00	-	1,538,548.00
Construction Contingency Fee	26,007,795.00	-	-	26,007,795.00	-	26,007,795.00
Grand Conditions				275,810.61	-	275,810.61
SUB-TOTAL HARD COSTS	36,623,899.00	-	-	36,623,899.00	-	36,623,899.00
SUB-TOTAL BUILDING LOAN COSTS	47,609,333.00	-	-	47,609,333.00	-	47,609,333.00
Land Cost Contingency	38,911,223.00	-	-	38,911,223.00	-	38,911,223.00
TOTAL BUILDING LOAN COSTS	86,520,556.00	-	-	86,520,556.00	-	86,520,556.00
TOTAL COSTS	98,392,349.48	-	-	98,392,349.48	-	98,392,349.48

Pelham Manor
Cost to Complete Summary

Project #	Change Order #	Quantity	Unit Price	Subtotal	Unit Price	Quantity	Unit Price	Subtotal
1277897								

PROJECT LOAN

PURCHASE PRICE

Purchase of Adjacent Lot	905,059.00			905,059.00
Legal - Non-Lender	463,449.00			463,449.00
Zoning Expense (Survey)	124,202.00			124,202.00
Survey	172,128.00			172,128.00
Development Fee (Storage)				
Leasing Commission:				
Home Depot	795,000.00			795,000.00
Home Depot	422,724.00			422,724.00
Crutch City	340,047.00			340,047.00
Real Estate	46,200.00			46,200.00
Real Estate	46,200.00			46,200.00
Real Estate	591,494.00			591,494.00
Real Estate	163,800.00			163,800.00
Bank				
Other	250,000.00			250,000.00
Lease Buy-Out Fee	5,970,216.00			5,970,216.00
Interest & Carry (Bank Service, RE Taxes, Ins & Growth Rent)				
Client Cost:				
Marketing Fee	178,200.00			178,200.00
Mortgage Recording Tax	463,022.00			463,022.00
Bank Third Party Reports (Hygeinal, Environmental, Engineering, Ins)	48,720.00			48,720.00
Bank Administrative Fee	26,000.00			26,000.00
Bank Administrative Fee	26,000.00			26,000.00
Lender Legal Fee	95,000.00			95,000.00
Other Closing Costs				
Builder Risk Insurance	71,094.00			71,094.00
Liability Insurance	765,211.00			765,211.00
Construction Management Fee(s)				
Sub-Total Contingency	105,167.25			105,167.25
Total Project Loan Costs	12,677,993.48			12,677,993.48

BUILDING LOAN

PERMITS

Home Depot	4,118.75			4,118.75
Crutch City	1,202,231.00			1,202,231.00
Real Estate	640,959.00			640,959.00
Real Estate	3,803,184.00			3,803,184.00
Storage	5,232,669.00			5,232,669.00
Bank	820,943.00			820,943.00
Bank	61,201.00			61,201.00
Investigation	2,140,000.00			2,140,000.00
Architectural/Engineering Fee	1,318,450.00			1,318,450.00
General Contingency	20,000,000.00			20,000,000.00
Sub-Total Hard Costs	36,623,899.00			36,623,899.00

SOFT COSTS

Home Depot	1,387,214.00			1,387,214.00
Crutch City	30,000,000.00			30,000,000.00
Real Estate	30,000,000.00			30,000,000.00
Storage	50,000,000.00			50,000,000.00
Bank	50,000,000.00			50,000,000.00
Investigation	50,000,000.00			50,000,000.00
Architectural/Engineering Fee	50,000,000.00			50,000,000.00
General Contingency	50,000,000.00			50,000,000.00
Sub-Total Soft Costs	306,613,214.00			306,613,214.00

TOTAL BUILDING LOAN COSTS

Hard Costs	36,623,899.00			36,623,899.00
Soft Costs	306,613,214.00			306,613,214.00
Total Building Loan Costs	343,237,113.00			343,237,113.00

TOTAL COSTS

Project Loan	12,677,993.48			12,677,993.48
Building Loan	343,237,113.00			343,237,113.00
Total Costs	355,915,106.48			355,915,106.48

EXHIBIT J
FORM OF
LIEN WAIVER

THIS WAIVER OF LIEN dated as of _____, 200____,
is made by _____, a _____,
having an office at _____ (“Contractor”),
to and for the benefit of ACRS, INC, a New York corporation, having an office at c/o Acadia
Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605
(“Construction Manager”)] P/A-ACADIA PELHAM MANOR, 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 (“Owner”), and BEAR
STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation (“Lender”), having
an address at 383 Madison Avenue, New York, New York 10179, pursuant to that certain Trade
Contract dated as of _____, 200____, between Contractor and [Construction Manager]
[Owner] (as amended and supplemented from time to time, the “Contract”). [Words and
phrases defined in that certain Standard Form of Agreement between Owner and Construction
Manager where Construction Manager is NOT a Constructor dated as of February 22, 2006,
between Construction Manager and Owner, as amended and supplemented from time to time,
shall have the same meanings in this instrument.] [Words and phrases defined in the Contract
shall have the same meanings in this instrument.]

This waiver of lien is given in connection with the construction of the Project and
the payment to Contractor of sums in the amount of \$_____ requisitioned by Contractor
pursuant to its Requisition No. _____ dated _____, 200____ (the “Requisition”) for
Work supplied, furnished, or performed for the Project to the date of the Requisition.

For the benefit of Construction Manager, Owner and Lender, Contractor does
hereby certify and acknowledge that:

1. Contractor has supplied [Construction Manager] [Owner] with a list of all
subcontractors of Contractor supplying, furnishing, or performing Work or services, or
furnishing materials or equipment, for the Project, and that such list is true and complete
as of the date of the Requisition;
2. Contractor has received all sums due and owing to Contractor, other than
sums (if any) withheld by [Construction Manager] [Owner] pursuant to the Contract, for
Work, materials and equipment performed, furnished, or supplied for the Project to the
date of the Requisition immediately prior to the Requisition (the “**Prior Requisition
Date**”);
3. In consideration of such payment, Contractor (for itself and its
subcontractors and their respective successors and assigns) does hereby forever release
and waive any and all rights, claims and demands which Contractor has, or may have, to
file any lien or notice of lien against the Project or any property of Construction Manager

Exhibit J

NJ01/VIDUJ/127868.4

or Owner, on account of, or deriving from, Work, materials and/or equipment supplied, furnished and/or performed for the Project to the Prior Requisition Date; and

4. Contractor hereby agrees to indemnify and hold harmless Construction Manager, Owner and Lender from and against any and all rights, claims and demands of any of Contractor's subcontractors on account of, or deriving from, Work, materials and/or equipment supplied, furnished and/or performed by any of them for the Project to the Prior Requisition Date.

The following amounts are true and accurate as of the date hereof:

Original Contract Amount:	\$ _____
Change Order Amount:	\$ _____
Adjusted Contract Amount to Date:	\$ _____
Amount of Work Done to Date:	\$ _____
Retainage Amount Not Yet Due:	\$ _____
Net Amount Due to Date:	\$ _____
Total Payments Received to Date:	\$ _____

IN WITNESS WHEREOF, Contractor has caused this Waiver of Lien to be duly executed, and the seal of Contractor to be affixed, as of the date of the Requisition, by the undersigned officer of Contractor, who is duly authorized to do so.

By: _____
Name:
Title:

Subscribed and sworn to before
me this ____ day of _____, 200__.

Notary Public

Exhibit J

EXHIBIT K

FORM OF INSOLVENCY OPINION - TO BE DELIVERED UPON COMPLETION

WACHTEL & MASYR, LLP

110 EAST 59TH STREET
NEW YORK, NEW YORK 10022

TELEPHONE: (212) 908-9500
FACSIMILE: (212) 371-0320

WRITER'S DIRECT DIAL:

LONG ISLAND OFFICE
1055 FRANKLIN AVENUE, SUITE 305
GARDEN CITY, N. Y. 11530
TELEPHONE: (516) 248-4300
FACSIMILE: (516) 478-6798

EUROPEAN OFFICE
VIA ALFONSO LAMARMORA, 36
FLORENCE, ITALY 50121
TELEPHONE: (055) 5048386
FACSIMILE: (055) 5031698

_____, 200____

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, NY 10179

Re: \$23,026,906.60 Building Loan and \$12,637,093.40 Project Loan (collectively the "Loan"), made as of December ____, 2007, by Bear Stearns Commercial Mortgage, Inc. (the "Lender") to P/A Acadia Pelham Manor, LLC, a Delaware limited liability company (the "Borrower")

Ladies and Gentlemen:

We have acted as special counsel to the Borrower in connection with the Loan. We understand that the Lender has made the final advances under that certain Building Loan Agreement and the certain Project Loan Agreement, each between the Lender and Borrower, and, in connection therewith, the Guaranty of Completion from Guarantor (as hereinafter defined) in favor of Lender has been discharged (collectively the "Final Advance"). The Borrower has requested that we deliver this opinion letter to you and we understand that the Lender will rely on this opinion in making the Final Advance.

The sole member of the Borrower is Acadia-P/A Holding Company, LLC, a Delaware limited liability company (the "Managing Member"). The members of the Managing Member are Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company ("Acadia Strategic" or "Guarantor"), which owns 90% of the membership interests in the Managing Member and P/A Associates, LLC, a New York limited liability company, which owns 10% of the membership interests in the Managing Member. The Borrower has two Independent Managers.

The Property (as hereinafter defined) will be managed by Acadia P/A Management Services LLC, a Delaware limited liability company (the "Property Manager").

I. OPINION REQUESTED

In connection with the Final Advance, we have been requested and authorized by Borrower to render an opinion on whether, in the event that any one or more of the Managing Member, Acadia Strategic or the Property Manager (each, a "Relevant Entity" and collectively, the "Relevant Entities") were to be a debtor or debtor acting as a debtor-in-possession in a case

under 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code"), under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and competently argued case, a United States Bankruptcy Court or other United States court exercising jurisdiction of such case under the Bankruptcy Code (a "Bankruptcy Court") would disregard the separate existence of the Borrower and order substantive consolidation under the Bankruptcy Code of the assets and liabilities of Borrower with the assets and liabilities of one or more of such Relevant Entities and treat such assets and liabilities as though Borrower and such Relevant Entity or Relevant Entities were one entity (a "Substantive Consolidation").

II. ASSUMPTIONS

Our opinion herein is expressly predicated on the assumption that a party in interest or Lender or other holder(s) of the Loan would, within any and all applicable time limitations set forth in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and any applicable local rules, (a) object to any written motion or other formal proceeding in Bankruptcy Court seeking a Substantive Consolidation, and (b) competently brief and argue such objection.

In rendering this opinion, we have reviewed the documents evidencing and relating to the Loan (as listed and identified on Schedule 1 hereto, the "Loan Documents"), and the Borrower's organizational documents (the "Organizational Documents", as listed on Schedule 1 attached hereto), and certificates of good standing for Borrower. As to matters of fact, we have relied, with your acknowledgement and without any independent confirmation, investigation, or inquiry, upon the representations, warranties and covenants contained in the Loan Documents and the Organizational Documents of Borrower in all material respects insofar as they are material to the separateness of the Borrower. As to matters of fact, we also have reviewed, and with your acknowledgement and without any independent confirmation, investigation or inquiry, relied upon the representations made by Borrower and the certifications of the Relevant Entities, in the Certificate annexed hereto as Exhibit A and incorporated herein (the "Certificate") in all material respects insofar as they are material to the separateness of the Borrower. We have further assumed that such statements, representations and warranties are true and accurate in all respects material to Borrower's separateness, and that such covenants will, to the extent they regard the future, be kept, observed and otherwise performed in all respects material to Borrower's separateness, until the Loan is paid in full and the lien and security interests of the Building Loan Leasehold Mortgage, and the other Loan Documents are discharged. We have no actual knowledge of any facts indicating that any such statements, representations, or warranties are false or misleading or that our reliance thereon would be unreasonable. Notwithstanding anything to the contrary in this Opinion or the Certificate, we have not assumed that the Borrower: (i) will remain solvent, be able to pay its debts as they become due, or be adequately capitalized, (ii) will not become a debtor under the Bankruptcy Code or otherwise subject to bankruptcy proceedings, or (iii) will make any payment or discharge any obligation to the extent that Borrower does not have access to available funds that enable it to do so.

Additionally, in rendering this opinion, we have assumed, to the extent material to Borrower's separateness, the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons, and the conforming to the originals of all documents submitted to us as copies and the authenticity of the originals

thereto. We have assumed, to the extent material to Borrower's separateness, that all parties had the corporate, partnership or limited liability company power and authority, as the case may be, to enter into and perform all obligations under all such documents, and, as to such parties, we also have assumed, to the extent material to Borrower's separateness, the due authorization by all requisite corporate, partnership and limited liability company action, and the due execution and delivery, and validity, binding effect and enforceability of such documents, except as enforceability may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally, and (ii) general principles of equity (regardless of whether considered in a proceeding in equity or at law) (such limitations, collectively referred to as the "Insolvency Exception"); provided, however, that our recitation of the Insolvency Exception herein is not intended to and does not alter or provide a defense to our opinion set forth in this opinion.

We have also assumed for purposes of this opinion that the facts outlined below, all of which are reflected in written agreements and instruments executed in connection with the transactions described herein, upon which facts we rely, are now and will remain accurate in all material respects insofar as they are material to the separateness of Borrower.

1. The Borrower is a limited liability company organized on September 1, 2004 and validly existing under the laws of the State of Delaware.

2. The sole member of the Borrower is the Managing Member.

3. Borrower's Amended and Restated Operating Agreement, dated as of September 7, 2007 ("Borrower's LLC Agreement") provides that Borrower's purposes shall be to (i) own the real property known as 2 Penn Place, Pelham Manor, New York (the "Property"), and to develop the Property for a mixed use retail and self storage facility, and to operate, lease, manage and finance the Property and take any and all actions in furtherance of the foregoing; and (ii) engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes so long as the same are permitted under the Loan Documents.

4. The Loan Documents include certain obligations for which Lender has recourse to Borrower under certain limited circumstances as set forth more particularly therein (the "Recourse Obligations").

5. To the extent material to Borrower's separateness, Borrower will comply with its obligations under the Borrower's LLC Agreement and the Loan Documents which are material for the purposes of this opinion, including without limitation, the requirement that, until the Loan is paid in full, Borrower shall observe the separateness criteria, as contained therein.

6. To the extent material to Borrower's separateness, the provisions of the Loan Documents which are material for purposes of this opinion, including without limitation the separateness warranties and covenants contained herein, will not be changed from and after the date hereof.

7. Lender has reasonably relied on, among other things, Borrower's separateness from each of the Relevant Entities in making the Final Advance.

8. Lender would suffer prejudice from, or be harmed by, a Substantive Consolidation.

9. Neither Borrower nor any Relevant Entity will engage in any type of fraudulent activity with respect to any matter that is material for purposes of this opinion.

10. Except as set forth in the Loan Documents, none of the Relevant Entities will hold its credit out as available to pay the debts of Borrower or pay the debts of Borrower or commingle its assets with those of the Borrower.

III. LEGAL BACKGROUND

Substantive Consolidation Generally

Substantive consolidation is an equitable doctrine that permits a bankruptcy court, in appropriate circumstances, to disregard the legal separateness of a debtor and a related but distinct legal entity, which may or may not itself be a debtor in bankruptcy, and to merge their respective assets and liabilities for bankruptcy purposes. Substantive consolidation typically results in the pooling of liabilities and assets of the entities to be consolidated, the satisfaction of liabilities from the resultant common fund of assets, and the elimination of all duplicate and inter-entity claims. *E.g.*, *Union Sav. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 518 (2nd Cir. 1988) (citing 5 *Collier on Bankruptcy* § 1100.06, at 1100-32 n.1 (L. King ed. 15th ed. 1988)); *In re Ltd. Gaming of Am., Inc.*, 228 B.R. 275, 286 (Bankr. N.D. Okla. 1998); *In re Standard Brands Paint Co.*, 154 B.R. 563, 569 (Bankr. C.D. Cal. 1993). Substantive consolidation being an equitable remedy, however, its exact consequences vary from case to case. *E.g. Moran v. Hong Kong & Shanghai Banking Corp. (In re Deltacorp, Inc.)*, 179 B.R. 773, 777 (Bankr. S.D.N.Y. 1995) (noting that court is afforded great deal of discretion in constructing consolidation order and retains the power to order less than complete consolidation) (citing cases); 2 *Collier on Bankruptcy* P.105.09[2], at 105-88 - 105-89 (15th ed. rev. 2002) (stating that substantive consolidation cases are factually specific and must be decided on a case-by-case basis).

Because the entities sought to be consolidated frequently will have different debt-to-asset ratios, substantive consolidation usually redistributes wealth among the entities' creditors. *E.g.*, *Eastgroup Props. v. S. Motel Assn, Ltd.*, 935 F.2d 245, 248 (11th Cir. 1991) (quoting *Drabkin v. Midland-Ross Co. (In re Auto-Train Corp.)*, 810 F.2d 270, 276 (D.C. Cir. 1987)); *In re Ltd. Gaming*, 228 B.R. at 286-287. Thus, as courts have emphasized repeatedly, consolidation vitally affects parties' substantive rights and should be used only sparingly after careful scrutiny of the evidence. *E.g.*, *FDIC v. Colonial Realty Corp.*, 966 F.2d 57, 61 (2nd Cir. 1992) (quoting *Chem. Bank N.Y. Trust Co. v. Kheel*, 369 F.2d 845, 847 (2nd Cir. 1966)); *In re Ltd. Gaming*, 228 B.R. at 287. Some court decisions, however, have noted a "modern" or "liberal" trend toward allowing substantive consolidation. *E.g. Eastgroup*, 935 F.2d at 248-49

& n.10 (citing cases); *In re Walnut Equip. Leasing Co., Inc.*, No. 97-19699-DWS, 1999 WL 288651, at *3 n.9 (Bankr. E.D. Pa. May 4, 1999); *In re Bonham*, 226 B.R. 56, 83 (Bankr. D. Alaska 1998), *aff'd*, 229 F.3d 750 (9th Cir. 2000).

Substantive consolidation is analogous to the non-bankruptcy-law remedy of "piercing the corporate veil," which permits a plaintiff to disregard the corporate entity when necessary to prevent fraud or to enforce a paramount equity. In fact, early cases applied a test for substantive consolidation that was virtually identical to the test for piercing the corporate veil. *In re Standard Brands*, 154 B.R. at 567 (citing cases). Substantive consolidation was accomplished in early cases by finding that the entity with which consolidation was sought was the "alter-ego" or an "instrumentality" of the debtor which was used by the debtor to hinder, delay or otherwise defraud creditors. *E.g.*, *Maule Indus., Inc. v. Gerstel*, 232 F.2d 294, 297 (5th Cir. 1956) (citing *Fish v. East*, 114 F.2d 177, 191 (10th Cir. 1940)).

Although in early substantive consolidation cases courts looked to state corporate veil-piercing law for guidance, modern courts have increasingly looked to a growing body of federal common-law opinions decided under federal bankruptcy law. *E.g.*, *Eastgroup*; *In re Augie/Restivo Baking Co. Ltd.*, *supra*; *In re Auto-Train*, *supra*; *In re Cont 'l Vending Machine Corp.*, 517 F.2d 997 (2nd Cir. 1975); *In re Flora Mir Candy Corp.*, 432 F.2d 1060 (2nd Cir. 1970); *Kheel*, *supra*; *Soviero v. Franklin Nat'l Bank*, 328 F.2d 446 (2nd Cir. 1964); *Stone v. Eacho* (*In re Tip Top Tailors, Inc.*), 127 F.2d 284 (4th Cir.), *cert. denied*, 317 U.S. 635 (1942). *But see In re Alico Mining, Inc.*, 278 B.R. 586 (Bankr. M.D. Fla. 2002) (basing substantive consolidation on alter-ego theory); *In re Moran Pipe & Supply Co., Inc.*, 130 B.R. 588 (Bankr. E.D. Okla. 1991) (same). Consequently, federal courts rely almost uniformly on the federal common law instead of on state corporate law in deciding whether or not to substantively consolidate.

Substantive consolidation sounds in equity, and its general purpose is to ensure the equitable treatment of all creditors, not just a particular plaintiff. *Colonial Realty*, 966 F.2d at 61; *In re Augie/Restivo*, 860 F.2d at 518; *In re Cooper*, 147 B.R. 678, 684 (Bankr. D.N.J. 1992); (but see discussion *infra* at note 2). As a result, substantive consolidation does not require a finding of fraud or an intent to hinder or delay creditors, but a finding that consolidation would be more equitable to all parties under the circumstances. *In the Matter of Munford, Inc.*, 115 B.R. 390, 394 (Bankr. N.D. Ga. 1990); see *In re Tureaud*, 59 B.R. 973, 975-76 (N.D. Okla. 1986). While later cases have relaxed the requirement of fraud in favor, of other factors warranting substantive consolidation, courts will still pierce the corporate veil to effect a substantive consolidation if fraud or similar activity is present. *E.g.*, *Carte Blanche (Singapore) Pte., Ltd. v. Diners Club Int'l. Inc.*, 2 F.3d 24, 26 (2nd Cir. 1993) (noting that exceptions to corporate separateness are made "to prevent fraud or other wrong, or where a parent dominates and controls a subsidiary"); *In re Daily*, 107 B.R. 996 (Bankr. D. Haw. 1989), *rev'd on other grounds*, 940 F.2d 1306 (9th Cir. 1991); *In re Stop & Go of Am., Inc.*, 49 B.R. 743 (Bankr. D. Mass. 1985); *Walter E. Heller & Co. v. Langenkamp* (*In re Tureaud*), 45 B.R. 658, 662-63 (Bankr. N.D. Okla. 1985), *aff'd*, 59 B.R. 973 (N.D. Okla. 1986). In sum, however, substantive consolidation is different from piercing the corporate veil. *E.g.*, *Colonial Realty*, 966 F.2d at 61; *In re Bonham*, 226 B.R. at 76-77; *Helena Chem. Co. v. Circle Land & Cattle Corp.* (*In re Circle Land & Cattle Corp.*), 213 B.R. 870, 874-875 (Bankr.

D. Kan. 1997).

While the issue of substantive consolidation typically arises in the context of an affiliated group of corporations, one or more of which is in bankruptcy, the doctrine is equally applicable in cases involving non-corporate entities, such as partnerships and their individual partners. See, e.g., *Colonial Realty*, 966 F.2d at 60-61 (consolidating estates of general partnership and two of its general partners) (citing cases); *Eastgroup*, 935 F.2d at 252 (consolidating limited partnership with related management corporation); *In re Ltd. Gaming*, 228 B.R. at 287-88 (confirming liquidating plan which consolidated estates of limited partnership and its corporate partner); *In re Palumbo Family Ltd. P'ship*, 182 B.R. 447, 471 (Bankr. E.D. Va. 1995) (consolidating estates of limited partnership and individual general partner); *Sender v. Buchanan (In re Hedged-Invs. Assocs., Inc.)*, 163 B.R. 841, 844, 849-50 (Bankr. D. Colo. 1994) (finding "no logical reason" why estate of corporate entity, the general partner of at least two of three related limited partnerships, could not be substantively consolidated with the consolidated partnership estates), *aff'd*, 84 F.3d 1286 (10th Cir. 1996); *Gill v. Sierra Pac. Constr., Inc. (In re Parkway Calabasas Ltd.)*, 89 B.R. 832, 834-35 (Bankr. C.D. Cal. 1988) (consolidating estates of four limited partnerships and one of their principals), *aff'd*, 949 F.2d 1058 (9th Cir. 1991).¹

Court's Authority To Grant Substantive Consolidation

The authority of a bankruptcy court to substantively consolidate two or more bankruptcy debtors is well-established. That authority stems both from Section 105 of the Bankruptcy Code, which expressly empowers bankruptcy courts to issue any order necessary or appropriate to carry out the provisions of the Bankruptcy Code, and more generally from the bankruptcy court's being a so-called "court of equity." *Colonial Realty*, 966 F.2d at 60 (citing *Pepper v. Litton*, 308 U.S. 295, 304 (1939)); *In re Bonham*, 226 B.R. at 75; *In re Standard Brands*, 154 B.R. at 567 (citing cases).

Most courts have held that bankruptcy courts also have the power under Section 105 of the Bankruptcy Code to consolidate a bankruptcy debtor with an entity not in bankruptcy. See, e.g., *In re Bonham*, 226 B.R. at 75 ("[I]n what appears to be a slight majority of the cases which have decided the issue, courts have held that the estate of a non-debtor can be consolidated into that of a debtor under the appropriate circumstances."); *White v. Creditors Serv. Corp. (In re Creditors Serv. Corp.)*, 195 B.R. 680, 689 (Bankr. S.D. Ohio 1996); *Simon*

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¹ A few reported opinions involve substantive consolidation in which at least one of the legal entities was a statutory limited liability company. See e.g., *In re American Homepatient, Inc.*, 298 B.R. 152, 155 & n.1, 156 (Bankr. M.D. Tenn. 2003) (substantive consolidation was appropriate for a number of corporations and three limited liability companies involved in home health care services); *In re Edwards Theatres Circuit, Inc.*, 281 B.R. 675, 677 & n.1, 678 (Bankr. C.D. Cal. 2002) (noting that bankruptcy estates of five California corporations and two Delaware limited liability companies, and their affiliates, were substantively consolidated in confirmed chapter 11 plan); *In re Summit Financial Services, Inc.*, 240 B.R. 105, 108 (Bankr. N.D. Ga. 1999) (three corporations and one limited liability company substantively consolidated in involuntary Chapter 7 of financial institutions). "Based on the development of the case law with respect to both corporations and partnerships, however, there does not appear to be any reason why materially different standards or principles should apply to an analysis of these [substantive consolidation] issues as they relate to a limited liability company." 2 *Collier on Bankruptcy* P.105.09[1][c], at 105-87 (15th ed. rev., Release 67, August 1998) (footnote omitted). The similarities between limited liability companies and limited partnerships suggest that the courts would view the substantive consolidation of limited partnerships by the same standards as the substantive consolidation of limited liability companies and corporations. Accordingly, the legal status of Borrower as a Delaware limited liability company does not change our substantive-consolidation analysis herein.

v. *New Ctr. Hosp. (Matter of New Ctr. Hosp.)*, 187 B.R. 560, 566-67 (E.D. Mich. 1995); *Bracaglia v. Manzo (In re United Stairs Corp.)*, 176 B.R. 359, 368 (Bankr. D.N.J. 1995); *In re Gucci*, 174 B.R. 401, 413 (Bankr. S.D.N.Y. 1994) (“[I]t is not a requirement that all the entities be debtors.”); *Munford*, 115 B.R. at 396-97 (citing *Sampsel v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941)). But see *In re Circle Land & Cattle Corp.*, 213 B.R. at 877 (reasoning that because bankruptcy court lacks subject-matter jurisdiction over non-debtor, it cannot consolidate debtor with non-debtor); *In re Colfor, Inc.*, No. 96-60306, 1997 WL 605100, at *2 (Bankr. N.D. Ohio Sept. 4, 1997); *In re Julien Co.*, 120 B.R. 930, 934 (Bankr. W.D. Tenn. 1990) (questioning bankruptcy court’s power under Section 105 to consolidate a non-debtor); *In re Alpha & Omega Realty, Inc.*, 36 B.R. 416, 417 (Bankr. D. Idaho 1984) (concluding that non-debtor status of entity precluded consolidation). In this connection, some courts have argued that the consolidation of a debtor with a non-debtor essentially circumvents the requirements in Section 303 of the Bankruptcy Code for filing an involuntary bankruptcy petition against the non-debtor. See *In re Circle Land & Cattle Corp.*, 213 B.R. at 876-77; *Morse Operations, Inc. v. Robins Le-Cocq, Inc. (In re Lease-A-Fleet, Inc.)*, 141 B.R. 869, 875 (Bankr. E.D. Pa. 1992); *Goldman v. Haverstraw Assocs. (In re R.H.N. Realty Corp.)*, 84 B.R. 356, 358 (Bankr. S.D.N.Y. 1988). Other courts, however, have rejected this argument. E.g., *In re Alico Mining, Inc.*, 278 B.R. at 588, 589 (rejecting involuntary-bankruptcy limitation, but requiring party seeking substantive consolidation of debtor with non-debtor to establish debtor nothing more than alter ego of non-debtor); *Matter of Munford*, 115 B.R. at 397-398.

Standards for Substantive Consolidation

The standards for substantive consolidation have evolved exclusively through case law, not by statute. Although Sections 302 and 1123(a)(5)(C) of the Bankruptcy Code refer to “consolidation,” they do not articulate a legal standard for substantive consolidation.² Additionally, Rule 1015(b) of the Federal Rules of Bankruptcy Procedure expressly permits the “joint administration” of separate debtors’ estates, but the Official Advisory Committee Note to Rule 1015(b) makes it clear that Rule 1015(b) has nothing to do with substantive consolidation. *In re Bonham*, 226 B.R. at 76.

In determining whether substantive consolidation is appropriate, courts have assayed a multitude of factors in lieu of applying a rigid, bright-line test. These factors are as follows:

(a) Common Ownership or Control.

Common ownership or control of the debtor and the entities sought to be consolidated increases the likelihood of consolidation, but will not by itself result in consolidation. E.g., *Bruce Energy Ctr. Ltd. v. Orfa Corp. of Am. (In re Orfa Corp. of Phila.)*, 129 B.R. 404, 415 (Bankr. E.D. Pa. 1991) (citing cases); *In re DRW Prop. Co. 82*, 54 B.R. 489, 495 (Bankr.

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² Though a provision for merger or consolidation of the debtor with one or more persons may be a permissible means for the mandatory adequate implementation of a chapter 11 plan, 11 U.S.C. § 1123(a)(5)(C), the mere inclusion of a substantive-consolidation provision in a chapter 11 plan does not automatically mean that such a provision will be or can be automatically confirmed over proper objection. See *In re Stone & Webster, Inc.*, 286 B.R. 532, 542, 545 n.8, 546 (Bankr. D. Del. 2002) (reserving examination of facts of chapter 11 case bearing upon numerous substantive-consolidation factors and concomitant determination whether substantive consolidation warranted).

N.D. Tex. 1985).

(b) Identical or Overlapping Officers or Directors.

When the debtor and the entities sought to be consolidated have identical or overlapping officers or directors, this increases the likelihood of consolidation, but is not controlling. *See, e.g., In re Lid. Gaming*, 228 B.R. at 288; *In re Lease-A-Fleet*, 141 B.R. at 871, 877; *In re Buckhead Am. Corp.*, No. 91-978, 1992 Bankr. LEXIS 2506 (Bankr. D. Del. Aug. 13, 1992); *In re Drexel Burnham Lambert Group Inc.*, 138 B.R. 723, 766 (Bankr. S.D.N.Y. 1992).

(c) Consolidated Tax Returns or Financial Reporting.

When the debtor and its affiliates file consolidated tax returns, or report their assets and liabilities on a consolidated basis in financial statements or Securities and Exchange Commission documents, consolidation becomes more likely. *See, e.g., In re Richton Int'l, Corp.*, 12 B.R. 555 (Bankr. S.D.N.Y. 1981); *In re Food Fair, Inc.*, 10 B.R. 123 (Bankr. S.D.N.Y. 1981); *Soviero*, 328 F.2d 446; *compare Sacurato v. Shawmut Bank N.A. (In re Mars Stores, Inc.)*, 150 B.R. 869, 880 (Bankr. D. Mass. 1993) (consolidated financials in 10-Q weighed in favor of consolidation), *with In re Auto-Train*, 810 F.2d at 278 (S-1 registration statement supported creditor's claim of reliance on separate credit of entity sought to be consolidated).

The presentation of consolidated financial statements and tax returns to the public and creditors can factor significantly into a court's decision to consolidate. *See In re Murray Indus., Inc.*, 119 B.R. 820 (Bankr. M.D. Fla. 1990); *In re Richton Int'l, Corp.*, 12 B.R. at 557. Consolidated tax returns and financial statements can form a basis from which a court can decide that the practical impossibility of reconstructing a debtor's financial records makes substantive consolidation necessary. *See In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723. Still, a court may not consolidate a debtor with its related entities if the existence of consolidated financial statements or tax returns does not raise a substantial difficulty or expense in separating the finances of the entities. *In re World Access, Inc.*, 301 B.R. 217 (Bankr. N.D. Ill. 2003); *In re Snider Bros., Inc.*, 18 B.R. 230, 239 (Bankr. D. Mass. 1982) (consolidation not warranted because debtor kept separate books and the allegation that it would take considerable time and expense to verify accounting entries was not sufficient). Moreover, entities not employing consolidated records may still be substantively consolidated when their affairs are greatly entangled in a functional sense. *In re Standard Brands Paint Co.*, 154 B.R. at 572-73.

(d) Inter-Affiliate Debts or Guarantees.

The presence of numerous inter-affiliate debts or guarantees among the affiliates sought to be consolidated typically weighs strongly in favor of consolidation, particularly if such debts or guarantees are very extensive so that untangling would be difficult or costly. *See In re GC Cos.*, 274 B.R. 663, 673 (Bankr. D. Del. 2002) (significant loans of parent guaranteed by subsidiaries reinforced necessity for substantive consolidation), *rev'd in part on other grounds*, 298 B.R. 226 (D. Del. 2003); *In re Standard Brands Paint Co.*, 154 B.R. at 572 (multiple interdebtor guarantees and interdebtor debts pointed towards substantive consolidation even though the debtors were not "entangled in a records sense"); *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. at 766

(numerous and well known intercompany guarantees a factor in allowing substantive consolidation of debtor and subsidiaries); *In re Food Fair*, 10 B.R. at 126 (extensive cross corporate guarantees factor in the interrelationship of the companies and in approving substantive consolidation); *In re Richton Int'l Co.*, 12 B.R. at 558 (same); *In re Vecco Constr. Indus., Inc.*, 4 B.R. 407, 411 (Bankr. E.D. Va. 1980) (existence of inter-company guarantee on major secured obligation added support to substantive consolidation).

However, courts have found that the presence of inter-affiliate guarantees and loans does not demand the imposition of substantive consolidation without the existence of other factors such as commingling of assets and one set of records. *In re World Access, Inc.*, 301 B.R. 217 (intercorporate guarantees were one of several factors that had relevance to the propriety of consolidation, but other, more important factors such as commingling of assets and poor record keeping, had not been established to justify consolidation); *In re Donut Queen, Ltd.*, 41 B.R. 706, 711-12 (Bankr. E.D.N.Y. 1984) (guarantees were not of such a character as to mandate consolidation because they related to one specific transaction and did not evidence a great commonality of business purpose); *In re Snider Bros., Inc.*, 18 B.R. at 239 (consolidation not warranted despite the frequency of intercorporate transactions, loans, direct sales and guarantees because debtor kept separate books and the allegation that it would take considerable time and expense to verify accounting entries was not sufficient).

(e) Undercapitalization.

When the affiliates sought to be consolidated are grossly undercapitalized for their business undertakings, the likelihood of consolidation increases. *See, e.g., In re 1438 Meridian Place, N. W, Inc.*, 15 B.R. 89, 96 (Bankr. D.D.C. 1981).

(f) Commingling of Assets or Business Functions.

The debtor's commingling of assets or business functions with its affiliates weighs in favor of consolidation, but generally is not dispositive unless the commingling is so extensive as to make the separation of the entities' assets impossible or not cost-effective. *See, e.g., Soviero v. Franklin Nat'l Bank*, 328 F.2d at 448. Consolidation may also be appropriate where the debtor and its affiliates are merely functionally integrated, if other factors favoring consolidation are present. *E.g., In re Standard Brands*, 154 B.R. at 572.

(g) Failure To Maintain Corporate and Other Formalities.

The failure of the debtor to maintain corporate formalities, particularly in dealings with its affiliates, weighs in favor of substantive consolidation; but without more, this will not warrant consolidation except in the most egregious cases. *See, e.g., In re Snider Bros.*, 18 B.R. at 234; *In re Buckhead Am. Corp.*, *supra*; *see also Soviero*, 368 F.2d at 448 (featuring flagrant disregard of corporate forms); *In re Tureaud*, 45 B.R. at 660-61 (featuring egregious disregard of corporate formalities).

(h) Fraudulent or Preferential Transfers.

When significant fraudulent or preferential transfers exist between the debtor and the entity sought to be consolidated, courts sometimes will grant consolidation to obviate the cost of avoiding or recovering such transfers. *See, e.g., In re Tureaud*, 59 B.R. at 977; *In re Standard Brands*, 154 B.R. at 571. Other courts, however, have held that the traditional statutory methods for avoiding and recovering such transfers expressly provided in the Bankruptcy Code are always preferable to the more radical remedy of substantive consolidation. *See, e.g., In re Lease-A-Fleet*, 141 B.R. at 875-76.

(i) Fraudulent or Inequitable Use of an Affiliate.

When the debtor uses an affiliate to hide or perpetrate fraud, to hinder creditors, or otherwise to advance an inequitable result, consolidation is likely. *See, e.g., Sampsell*, 313 U.S. at 216-17; *Maule Indus.*, 232 F.2d at 297; *In re Tureaud*, 45 B.R. at 663.

(j) Economic Benefits of Consolidation.

A factor frequently considered by courts is the potential profitability of consolidating the debtor and its related entities. *See, e.g., In re Veeco Constr. Indus., Inc.*, 4 B.R. at 410. Consolidation has been granted where it improved the debtor's chances for a successful financial reorganization. *See, e.g., In re Orfa Corp.*, 129 B.R. at 414-15 (citing *In re F.A. Potts & Co., Inc.*, 23 B.R. 569, 572 (Bankr. E.D. Pa. 1982)).

(k) Degree of Difficulty in Segregating Assets and Liabilities.

An extremely probative and sometimes decisive factor in consolidation decisions is the degree of difficulty in segregating the various entities' respective assets and liabilities. Consolidation probably will be granted if the entities' assets and liabilities are so entangled that their segregation is impossible or can only be achieved at great expense. *See, e.g., In re Augie/Restivo*, 860 F.2d at 519; *In re Drexel Burnham*, 138 B.R. at 766. *But see In re DRW Prop.*, 54 B.R. at 496-497 (refusing to grant consolidation even though it would cost over \$2 million to disentangle the various entities).

(l) Reliance on Separate Credit of Entities To Be Consolidated.

In honoring settled commercial expectations, courts frequently eschew consolidation where objecting creditors have reasonably relied on the separate credit of one of the entities sought to be consolidated. *See, e.g., In re Augie/Restivo*, 860 F.2d at 515; *In re Auto-Train*, 810 F.2d at 277-78. A creditor may be estopped from asserting such reliance, however, where the creditor knew or should have known of the close association of the debtor and the entities sought to be consolidated. *Eastgroup*, 935 F.2d at 249 n.11 (citing *In re Snider Bros.*, 18 B.R. at 235, 237, 233). Alternatively, if creditors have dealt with the debtor and its related entities as a single integrated entity, that fact weighs in favor of consolidation but is not controlling. Compare *In re Leslie Fay Cos., Inc.*, 207 B.R. 764, 780 (Bankr. S.D.N.Y. 1997) (granting consolidation), and *In re Munford*, 115 B.R. at 395-96 (granting consolidation), with *In re Crown Mach. & Welding, Inc.*, 100 B.R. 25, 28 (Bankr. D. Mont. 1989) (refusing to consolidate even though creditors believed they were dealing with one entity).

(m) Prejudice or Benefit to Creditors.

Inequitable prejudice to creditors generally precludes consolidation. *See, e.g., In re Augie/Restivo*, 860 F.2d at 517-19 (refusing to consolidate where secured lender's unsecured deficiency claim would have been subordinated as a result). However, that some creditors will be adversely affected by consolidation is not controlling. *In re Murray Indus., Inc.*, 119 B.R. at 828. *See In re Owens Corning*, 419 F. 3d 195 at 214 (3d Cir. 2005) (noting that "mere benefit to some creditors...falls far short" of justifying consolidation.) Thus, if consolidation would directly benefit certain creditors, it may be granted over the objections of other creditors. *E.g., Eastgroup*, 935 F.2d at 251 (permitting consolidation in part because it would increase the pro rata distribution to priority creditors).

(n) Individual or Non-Debtor Status of Entities To Be Consolidated.

A number of courts have expressed reluctance to consolidate a debtor with individuals or with entities that are not themselves bankruptcy debtors. Accordingly, in such cases a higher standard for consolidation may be imposed. *See, e.g., In re Lease-A-Fleet*, 141 B.R. at 874, 875-76 (noting that consolidation of a non-debtor "should be reserved for unusual circumstances"); *In re Julien Co.*, 120 B.R. at 935 (noting that the bankruptcy trustee's attempt to consolidate assets of individual contemplated a "broader and more invasive result").

Methodologies for Applying Substantive Consolidation Factors

As the overriding concern guiding the application of the above factors is the equitable treatment of creditors, the central inquiry in evaluating a motion for substantive consolidation is whether the economic prejudice resulting from continued recognition of the entities' separateness outweighs the economic prejudice that would be caused by the entities' consolidation. *E.g., Eastgroup*, 935 F.2d at 249 (quoting *In re Snider Bros.*, 18 B.R. at 234). Nevertheless, the federal courts have implemented different approaches for assaying the numerous factors discussed above. While our opinion is not limited to the application of any specific methodology, three basic methodologies have emerged. *See generally In re Bonham*, 226 B.R. at 81-83. They are as follows:

(a) First Methodology.

The first methodology relies on the factors listed above, or some subset thereof, as a means for measuring the equities, benefits, and detriments of consolidation. *See, e.g., In re Creditors Serv.*, 195 B.R. at 690 ("The factors merely provide the framework to assist the Court's inquiry whether harm will result in the absence of consolidation."); *In re Vecco Constr.*, 4 B.R. at 410. According to this view, no one factor is decisive, and not all of the factors favoring consolidation need be present in order for consolidation to be justified. *E.g., In re Orfa Corp.*, 129 B.R. at 415. In situations where some factors favoring consolidation are present to a significant degree, but other critical factors are absent or are in conflict, a court nonetheless may conclude that substantive consolidation is sufficiently beneficial to be appropriate. *Ibid.* Courts following this approach, however, generally place

the burden on the proponent of consolidation of proving that the benefits from consolidation outweigh any resulting prejudice. *E.g., In re Crown Mach.*, 100 B.R. at 27 (citing *Matter of Steury*, 94 B.R. 553, 554 (Bankr. N.D. Ind. 1988)); *In re Snider Bros.*, 18 B.R. at 238.

(b) Second Methodology.

The United States Court of Appeals for the Second Circuit has articulated a similar, but not identical, methodology that has gained acceptance in a number of courts. This standard treats the relevant factors outlined above as mere variants of two critical criteria: (i) whether creditors dealt with the entities sought to be consolidated as a single economic unit and did not rely on their separate identity in extending credit, and (ii) whether the affairs of the entities sought to be consolidated are so entangled that consolidation will benefit all creditors because segregating the entities' respective affairs is impossible or so costly as to threaten the realization of any net assets for creditors. *In re Augie/Restivo*, 860 F.2d at 518-19; *see also Colonial Realty*, 966 F.2d at 61 (affirming the *Augie/Restivo* standard). If the proponent of consolidation establishes that either of these criteria is satisfied, consolidation may be granted. *In re Standard Brands*, 154 B.R. at 569. *See also In re Bonham*, 226 B.R. at 97. More recently, in *In re Owens Corning*, 419 F.3d 195 (3d Cir. 2005), the United States Court of Appeals for the Third Circuit articulated the following five principles in determining whether to order consolidation:

(1) Limiting the cross-creep of liability by respecting entity separateness is a 'fundamental ground [].' As a result, the general expectation of state law and of the Bankruptcy Code, and thus of commercial markets, is that courts respect entity separateness absent compelling circumstances calling equity (and even then only possibly substantive consolidation) into play.

(2) The harms substantive consolidation addresses are nearly always those caused by *debtors* (and entities they control) who disregard separateness. Harms caused by creditors typically are remedied by provisions found in the Bankruptcy Code (*e.g.*, fraudulent transfers § 548 and 544(b)(1), and equitable subordination, § 510(c)).

(3) Mere benefit to the administration of the case (for example, allowing a court to simplify a case by avoiding other issues or to make postpetition accounting more convenient) is hardly a harm calling substantive consolidation into play.

(4) Indeed, because substantive consolidation is extreme (it may affect profoundly creditors' rights and recoveries) and imprecise, this 'rough justice' remedy should be rare and, in any event, one of the last resort after considering and rejecting other remedies (for example, the possibility of more precise remedies conferred by the Bankruptcy Code).

(5) While substantive consolidation may be used defensively to remedy the identifiable harms caused by entangled affairs, it may not be used offensively (for example, having a primary purpose to disadvantage tactically a group of creditors in the plan or to alter creditor rights).

Id. at 211(citations omitted).

(c) **Third Methodology.**

The third methodology has been adopted in the Eleventh Circuit, the District of Columbia Circuit and Third Circuit and may constitute the prevailing standard for substantive consolidation in many jurisdictions. This standard allows the proponent of consolidation to establish a prima facie case for consolidation by demonstrating (i) a substantial identity between the entities sought to be consolidated, and (ii) that consolidation is necessary to avoid some harm or to realize some benefit. The proponent of consolidation may rely upon the usual factors relied on in substantive consolidation cases, or some subset thereof, to prove either or both elements of the prima facie case. Upon establishing a prima facie case, the burden shifts to objecting creditors to prove that they reasonably relied on the separate credit of one of the entities sought to be consolidated in extending credit and that they would be prejudiced by consolidation. If a creditor proves reasonable reliance and prejudice, consolidation may be granted only if its benefits "heavily outweigh" its detriments. If such a creditor fails to prove either reasonable reliance or prejudice, however, consolidation may be granted regardless of whether the benefits of consolidation "heavily outweigh" its detriments. *E.g., In re New Ctr. Hosp.*, 187 B.R. at 569 ("Since reliance and prejudice have not been shown, the Court need not reach the issue of whether the benefits of consolidation 'heavily' outweigh the harm."). *See also Eastgroup*, 935 F.2d at 249; *In re AutoTrain*, 810 F.2d at 276; *In re Ltd Gaming*, 228 B.R. at 287; *In re Standard Brands*, 154 B.R. at 568-69; *In re Lewellyn*, 26 B.R. 246, 251-252 (Bankr. S.D. Iowa 1982).

Because the disregard of separate corporate existences is not generally favored, there is a presumption against substantive consolidation, and the party seeking it has the burden of establishing the necessity for it. *E.g., In re Auto-Train*, 810 F.2d at 276. Courts have generally treated substantive consolidation as the exception rather than the rule because of the "possibility of unfair treatment of creditors who have dealt solely with the corporation having a surplus as opposed to those who have dealt with the related entities with deficiencies." *In re Cont'l Vending Mach. Corp.*, 517 F.2d at 1001; *see also Kheel*, 369 F.2d at 847 (it should be the "rare case" where substantive consolidation is granted); *In re DRW Prop.*, 54 B.R. at 494 (courts should grant substantive consolidation sparingly because of the possibility of unfair treatment of some creditors). Thus, although "the term [consolidation] has a disarmingly innocent sound, ... [it] is no mere instrument of procedural convenience ... but a measure vitally affecting substantive rights" in equity. *In re Flora Mir Candy Corp.*, 432 F.2d at 1062. Furthermore, because the rules for substantive consolidation are not statutorily provided, courts must examine the facts and circumstances of each case to determine if such an order is warranted.

The factors weighed by the federal courts in determining whether substantive consolidation is appropriate fall within two general categories. First, courts have evaluated the internal relationships of the affiliated entities to determine whether "there is substantial identity between the entities to be consolidated." *Eastgroup*, 935 F.2d at 249. Second, courts have evaluated whether "consolidation is necessary to avoid some harm or to realize some

benefit” with respect to the creditors of the entities to be consolidated. *Id.* This second factor relates to whether “creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit.” *In re Augie/Restivo*, 860 F.2d at 518.

Substantive Consolidation as Applied

Substantial Identity.

In analyzing the pre-bankruptcy interrelationship between the parties with an eye toward their potential substantial identity, many federal courts have articulated an objective list of factors to be applied in substantive consolidation cases. For example, the court in *In re Vecco Construction* set forth seven factors for determining whether substantive consolidation is appropriate:

1. The commingling of assets and business functions.
2. The degree of difficulty in segregating and ascertaining individual assets and liabilities.
3. The existence of parent and intercorporate guarantees on loans.
4. The transfer of assets without observance of corporate formalities.
5. The presence or absence of consolidated financial statements.
6. The unity of interests and ownership between the various corporate entities.
7. The profitability of consolidation at a single physical location.

In re Vecco Constr., 4 B.R. at 410. *Accord In re Murray Indus., Inc.*, 119 B.R. at 830; *In re Mortgage Inv. Co.*, 111 B.R. 604, 610 (Bankr. W.D. Tex. 1990). *See also Fish*, 114 F.2d at 191 (setting forth a list of ten substantially similar factors). It must be stressed, however, that the factors set forth in *In re Vecco Construction*, along with additional factors formulated in other cases, are merely “examples of information that may be useful to courts charged with deciding whether there is a substantial identity between the entities to be consolidated and whether consolidation is necessary to avoid some harm or to realize some benefit.” *Eastgroup*, 935 F.2d at 250. Therefore, although a proponent of consolidation may want to frame his argument using the seven factors outlined in *In re Vecco Construction*, the existence or absence of any number of those factors is not necessarily determinative. *Eastgroup*, 935 F.2d at 249.

Benefit or harm to creditors.

In considering whether or not to impose substantive consolidation, courts have also weighed the potential harm or benefit to creditors. The United States Court of Appeals for the Second Circuit has stated that the “sole purpose of substantive consolidation is to ensure the equitable treatment of all creditors,” *In re Augie/Restivo*, 860 F.2d at 518, and that the *Vecco Construction* factors are “merely variants on two critical factors: (i) whether creditors dealt with the entities as a single economic unit and ‘did not rely on their separate identity in extending credit,’ . . . or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors.” *In re Augie/Restivo*, 860 F.2d at 518. Where creditors rely on the separate existence of corporate entities in extending credit, or would suffer more than minimal harm

from disregarding such separate existence, the balance of equities weighs against substantive consolidation. *In re Donut Queen*, 41 B.R. at 710. The United States Court of Appeals for the Eleventh Circuit, like the Court of Appeals for the Second Circuit, has stressed creditor reliance and prejudice as the key factors in any consolidation analysis: if a party opposing substantive consolidation establishes that "(1) it has relied on the separate credit of one of the entities to be consolidated; and (2) it will be prejudiced by substantive consolidation," then substantive consolidation may be ordered only if the "demonstrated benefits of consolidation 'heavily' outweigh the harm." *Eastgroup*, 935 F.2d at 249 (citing *In re Auto-Train*, 810 F.2d at 276). Courts have relied upon the existence of such prejudice as grounds for denying substantive consolidation. *In re Augie/Restivo*, 860 F.2d 515; *In re Auto-Train*, 810 F.2d at 277-78; *In re Flora Mir Candy*, 432 F.2d at 1062-63; *Anaconda Bldg. Materials Co. v. Newland*, 336 F.2d 625, 628 (9th Cir. 1964).³

Some courts have considered whether substantive consolidation increases the likelihood of the debtor's rehabilitation and reorganization. Factors considered include the potential savings in cost and time, the elimination of duplicate claims, and whether there is a question who among potentially consolidated parties is liable. *Cont'l Vending*, 517 F.2d at 1001.⁴ Eliminating the need to disentangle assets, however, does not, without more, justify consolidation. "[S]ubstantive consolidation should be used only after it has been determined that all creditors will benefit because untangling is either impossible or so costly as to consume the assets." *In re Augie/Restivo*, 860 F.2d at 519.

IV. ANALYSIS

Based on the representations, warranties, assumptions, and covenants relied upon for purposes of this opinion as specified in Section II above, the accuracy in all respects material to Borrower's separateness of such representations and warranties and the compliance in all respects material to Borrower's separateness, with such covenants we have assumed for purposes of this opinion, we believe it would be difficult for a creditor or other party in interest (a) to establish a prima facie case for Substantive Consolidation, (b) to prove that Borrower is so entangled with any Relevant Entity as to cause any difficulty in segregating their respective assets and liabilities, or (c) to establish that any of such parties has been organized or used for any illicit or illegal purpose, or for the purpose of working any injustice upon their creditors.

More specifically, none of the seven factors recited in *In re Vecco Construction*, 4 B.R. at 410, would militate in favor of substantial identity between the Borrower and any Relevant Entity,

1. _____

³ Conversely, courts have also noted the absence of objecting parties as a factor favoring consolidation. *Standard Brands*, 154 B.R. at 571-572 (inferring lack of harm to creditors from lack of objection to consolidation); *In re Buckhead Am. Corp.*, No. 91-978, 1992 Bankr. LEXIS 2506 (order granting substantive consolidation of a special-purpose subsidiary with its parent after all objections from the subsidiary's creditors had been resolved through settlement); *In re Drexel Burnham Lambert*, 138 B.R. at 766 (citing lack of objections from creditors in approving a plan of reorganization premised on substantive consolidation); *In re Frontier Airlines, Inc.*, 93 B.R. at 1016 (granting substantive consolidation where "complete financial separation of the entities would be difficult to accomplish" and "[n]o party in interest" had objected). Accordingly, we express no opinion as to whether a bankruptcy court would order substantive consolidation should none of the parties to these transactions object to consolidation.

⁴ See also *In re Drexel Burnham Lambert*, 138 B.R. at 766 (approving a plan of reorganization premised on substantive consolidation where no creditors had objected and where establishing to whom actual liability, if any, should be allocated would be a "[H]erculean task consuming years of costly professional services, thereby draining significant amounts of value from the Debtors' estates.").

given such representations, warranties, and covenants set forth above with respect to the Loan Documents, the Organizational Documents, and the Certificate. We note that Guarantor has (a) pursuant to that certain Environmental Indemnity Agreement, agreed to indemnify Lender for any Losses (as defined therein) incurred by Lender as a result of certain environmental conditions with respect to the Property, as set forth therein (the "Environmental Indemnity"); (b) pursuant to that certain Guaranty Agreement, indemnified Lender for certain "bad boy" acts as set forth therein (the "Non-Recourse Guaranty" and together with the Environmental Indemnity, collectively referred to herein as the "Guaranty"), implicating *Veeco's* guaranty factor. However, this factor should not be significant with respect to the Environmental Indemnity and Non-Recourse Guaranty, given that Guarantor's obligations pursuant to said Environmental Indemnity and Non-Recourse Guaranty are limited in scope in the following manner: (a) the Environmental Indemnity extends only to liability of the Lender as a result of the presence of Hazardous Substances on the Property or the release of Hazardous Substances (each as defined therein); (b) the Non-Recourse Guaranty extends only to what we believe to be customary liability for such matters as fraud, intentional misrepresentation, misapplication or conversion of security deposits, insurance proceeds, condemnation awards and other "bad boy acts", as specifically set forth in the Non-Recourse Guaranty. Lender has relied upon Borrower's assets as separate from the Relevant Entities in making the Loan. Lender's reasonable reliance upon the Borrower's separateness from the Relevant Entities militates strongly against Substantive Consolidation. See *In re Cent. European Indus. Dev. Co.*, 288 B.R. 572 (Bankr. N.D. Cal. 2003); see also *In re Owens Corning* 419 F.3d 195 (3d Cir. 2005).

Further, with respect to the Guaranty, we note that the presence or absence of potential liability of Guarantor pursuant to the Guaranty is one factor in evaluating whether a bankruptcy court would order substantive consolidation of the assets and liabilities of the Borrower with those of Guarantor or with those of any other Relevant Entity. The presence of this potential liability might be found to blur the separate identity of the subject entities and to indicate that in making the Loan the Lender relied on the combined assets of Borrower and its affiliated entities, but would not in it of itself, in our opinion, cause the Bankruptcy Court to consolidate.

We fully recognize that Substantive Consolidation can potentially benefit unsecured and undersecured creditors of a Relevant Entity by rendering such creditors' claims payable *pari passu* with those of Borrower's unsecured or undersecured creditors out of any net equity in the Property or other assets of Borrower. Such benefit is offset, however, by the inequitable prejudice such substantive consolidation would work upon Borrower's unsecured and undersecured creditors, if any, whose ability to recover upon Borrower's obligations would be diluted by the availability of the net equity in the Property or other assets of Borrower to unsecured and undersecured creditors of such Relevant Entity.

With respect to potential harm to the Lender or other holder of the Loan from a Substantive Consolidation, we acknowledge that bankruptcy courts have ordered substantive consolidation over the objection of a fully-secured creditor on the ground that such a creditor is not harmed by substantive consolidation. See *In re F.A. Potts*, 23 B.R. at 573; see also *In re Mortgage Inv. Co.*, 111 B.R. 604, 610 (Bankr. W.D. Tex. 1990) (overruling secured creditor's objection to reorganization plan calling for substantive consolidation of affiliates where secured

creditor was receiving "indubitable equivalent" of its secured claim). However, the facts of those bankruptcy cases, and the legal conclusions flowing from the facts of those cases, are materially distinguishable from the facts and legal principles that underlie the Loan. Contrary to the assumptions set forth in Section II above and the Certificate with respect to Borrowers' separateness, upon which we rely, the entities in *In re F.A. Potts* had always closely interrelated their financial affairs, had engaged in inter-entity loans, and had formed "essentially one operation." *In re F.A. Potts*, 23 B.R. at 573. The entities in *In re Mortgage Investment* had unitary ownership, had commingled assets and business functions, and had transferred assets among themselves without observing corporate formalities. *In re Mortgage Inv.*, 111 B.R. at 610. As we assume, to the extent set forth above, that Borrower will comply with the Loan Documents and Borrower's LLC Agreement regarding compliance by it with respect to the separateness of Borrower, and as the separateness covenants contained therein forbid the abovementioned conduct committed by the entities in *In re F.A. Potts* and in *In re Mortgage Investment*, Substantive Consolidation should not occur nor be countenanced under the holdings of *In re F.A. Potts* or *In re Mortgage Investment*.

Though Lender is secured, it would foreseeably be harmed by Substantive Consolidation of Borrower with a Relevant Entity. In such event, the various assets of Borrower would be pooled with the assets of the Relevant Entity to form a unitary bankruptcy estate from which allowed claims of creditors and allowed interests of equity security interest holders would receive distributions (if and to the extent the estate contains assets) in accordance with the distributional and priority schemes in the Bankruptcy Code. In such event, the Lender also would likely be enjoined from foreclosing upon its Security Instrument on the Property by the automatic stay provisions of Section 362 of the Bankruptcy Code, and would then have to meet the standard enunciated in Section 362(d) of the Bankruptcy Code, and thereby obtain relief from the automatic stay, in order to foreclose upon its Security Instrument on the Property.

There can be no assurance that the Loan will be deemed fully secured as of the date of Borrower's bankruptcy, if any, or a proceeding for Substantive Consolidation. If the Loan is undersecured, by definition no equity exists in the Lender's collateral of the Borrower for the Loan. This may eliminate the incentive for creditors to seek the substantive consolidation of Borrower with any Relevant Entity, as Borrower would have no assets that are not collateral for the Loan and that remain after satisfaction of the Lender's security interest to which unsecured creditors may look for satisfaction of their own claims.

The Loan is a non-recourse obligation of Borrower except to the extent of the Recourse Obligations specifically set forth in the Loan Documents, which we believe to be customary recourse carve-outs for loss suffered by Lender as a result of "bad acts". No Relevant Entity has any liability for repayment of the Loan, except pursuant to the Guaranty, as discussed above. Accordingly, all in all, it appears that Lender relied, among other things, primarily upon the creditworthiness of Borrower and the value of the Property in making the Loan. Moreover, we conclude that Lender would not have made the Loan on the same favorable terms if Borrower were not organized as a single purpose entity for the express purpose of insulating its assets from liabilities external to the Property. Thus, it is clear that Substantive Consolidation, with its attendant imposition on Borrower of liabilities

external to the Property, would frustrate one of the primary considerations of Lender in making the Loan.

Finally, it should be noted that if Borrower is not a debtor under the Bankruptcy Code at the time substantive consolidation is sought, a bankruptcy court likely would impose a significantly higher standard for its substantive consolidation. The cases in which courts have permitted the substantive consolidation of a non-debtor have been characterized either by fraud, *see, e.g., Sampsell*, 313 U.S. 215, or by an egregious disregard for corporate formalities, extensive commingling of assets, and a complete failure to maintain separate books and records, rendering the segregation of the entities' respective assets and liabilities virtually impossible. *See, e.g., Soviero*, 328 F.2d 446; *Tureaud*, 45 B.R. 658. Inasmuch as the assumptions above, with respect to the separateness covenants of Borrower, forbid such activities, it is even more unlikely that a bankruptcy court would order Substantive Consolidation when Borrower is not itself a debtor under the Bankruptcy Code. *See In re Lease-A-Fleet*, 141 B.R. at 877 (noting that common ownership, overlapping as opposed to identical directorships, common use of space, and the existence of a "substantial yet informal" debtor-creditor relationship as opposed to an intermingling of assets are "patently insufficient" to establish the degree of entanglement necessary to render substantive consolidation of a non-debtor an appropriate remedy). Our opinion, however, is not affected by whether the Borrower is itself a debtor under the Bankruptcy Code.

V. OPINION

Based on the foregoing and subject to the qualifications and assumptions set forth in this opinion, it is our opinion that in the event that any one or more of the Relevant Entities were to be a debtor or a debtor acting as a debtor-in-possession in a case under the Bankruptcy Code, under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and competently argued case, a United States Bankruptcy Court or other United States court exercising jurisdiction of such case under the Bankruptcy Code would not, in the proper exercise of its equitable discretion, disregard the separate existence of the Borrower so as to order substantive consolidation of the assets and liabilities of Borrower with the assets and liabilities of such Relevant Entity or Relevant Entities and treat such assets and liabilities as though Borrower and such Relevant Entities were one entity, regardless of whether Borrower was also a debtor under the Bankruptcy Code.

VI. QUALIFICATIONS

We note that a bankruptcy court, as a court of equity, has the express power to issue any order or process necessary to carry out the purposes and provisions of the Bankruptcy Code. Substantive consolidation analysis requires an extremely fact-intensive inquiry, and so substantive consolidation cases are largely *sui generis*. Accordingly, it is difficult to ascertain a consistent factual pattern upon which legal precedent of general applicability may be based. The foregoing opinion, therefore, necessarily is based upon a reasoned analysis of cases decided by courts under the laws of various jurisdictions, which cases would not necessarily be controlling in all jurisdictions.

The opinion expressed herein does not constitute an empirical prediction as to the actual result or holding in any particular litigation, but is, rather, our considered legal judgment as to the proper application of legal and equitable principles applicable in bankruptcy cases to the facts set forth herein and relied upon for purposes of this opinion. We note that legal opinions on bankruptcy law matters unavoidably have inherent limitations that generally do not exist in respect of other legal issues on which opinions to third parties typically are given. These inherent limitations exist primarily because of the pervasive equity powers of bankruptcy courts, the overriding goal of reorganization to which other legal rights and policies may be subjugated, the potential relevance to the exercise of judicial discretion of future-arising facts and circumstances, and the nature of the bankruptcy process. These limitations should be taken into account in analyzing the bankruptcy-related risks associated with the Loan.

We do not purport to express an opinion on any laws other than the laws of the United States of America under the Bankruptcy Code (including reported decisions thereunder) in effect as of the date this opinion is given. This opinion is given only on the date hereof, and we assume no obligation to inform you of changes in the facts or law bearing on this opinion even if such changes are brought to our attention.

The opinion expressed herein is given only for the benefit of, and may be relied upon by, Lender, its successors and assigns (including, without limitation, any assignee of Lender's interest in the Loan and any participant of Lender's interest in the Loan), Lender's counsel in connection with the Loan, any servicer of the Loan, any purchaser of the Loan or any portion thereof in any securitization, any rating agency which rates any securities in connection with the Loan, the issuer of securities in a securitization of the Loan, and any trustee, servicer or special servicer appointed in connection with a securitization of the Loan, solely in connection with the transactions contemplated by the Loan Documents, and may not be relied upon by any other party or for any other purpose without our prior written consent.

Very truly yours,

SCHEDULE I

A) Documents relating to the Loan (dated as of the date of this opinion unless otherwise stated):

- A. Building Loan Agreement Between Borrower and Lender;
 - B. Project Loan Agreement Between Borrower and Lender;
 - C. Building Loan Promissory Note from Borrower in favor of Lender;
 - D. Project Loan Promissory Note in favor of Lender;
 - E. Building Loan Fee and Leasehold Mortgage and Security Agreement from Borrower in favor of Mortgage Electronic Registration Systems, Inc.;
 - F. Project Loan Fee and Leasehold Mortgage and Security Agreement from Borrower in favor of Mortgage Electronic Registration Systems, Inc. (Documents (F) and (G) collectively referred to as the "Mortgages");
 - G. Building Loan Assignment of Leases and Rents from Borrower in favor of Mortgage Electronic Registration Systems, Inc.;
 - H. Project Loan Assignment of Leases and Rents from Borrower in favor of Mortgage Electronic Registration Systems, Inc. (Documents (H) and (I) collectively referred to as the "Assignments");
 - I. Administration Fee Letter from Borrower to Lender;
 - J. Cash Management Agreement among Borrower, Lender, Agent and Manager;
 - K. Assignment of Management Agreement and Subordination of Management Fees from Borrower in favor of Lender;
 - L. Assignment of Management Agreement and Subordination of Management Fees from Borrower in favor of Lender;
 - M. Assignment of Agreements, Permits and Contracts from Borrower to Lender;
 - N. Guaranty of Recourse Carve Outs from Guarantor in favor of Lender;
 - O. Environmental Indemnity Agreement from Borrower and Guarantor to Lender; and
 - P. Deposit Account Control Agreement between Borrower, Lender and Bank of America, N.A.
-

B) Organizational Documents.

- (1) Certificate of Formation of Borrower, dated as of September 21, 2004;
 - (2) Amended and Restated Limited Liability Company Agreement of Borrower, dated as of September 7, 2007.
-

EXHIBIT A
CERTIFICATE

With respect to the non-consolidation opinion dated December __, 2007 (the "Opinion") to be delivered by Wachtel & Masyr, LLP ("W&M") in connection with the \$23,026,906.60 Building Loan and \$12,637,093.40 Project Loan (collectively, the "Loan") from Bear Stearns Commercial Mortgage, Inc. (the "Lender") to P/A Acadia Pelham Manor, LLC, a Delaware limited liability company, the undersigned hereby certifies that, after due inquiry and review of the Opinion.

The undersigned hereby certify that, after due inquiry and review of the Opinion:

1. The undersigned has personal knowledge of the matters set forth herein.
2. The undersigned acknowledges that (i) Wachtel & Masyr, LLP will rely on the representations contained in this Certificate in rendering the Opinion, (ii) the Lender and its successors and assigns will rely on the Opinion in granting the Loan to Borrower, and (iii) the representations contained in this Certificate may also be relied on by nationally recognized statistical rating organizations in connection with such rating organizations' rating of the Note and others as set forth in the Opinion Letter.
3. The facts and assumptions contained in the Opinion are true and correct in all material respects with respect to the undersigned, as of the date hereof.
4. The undersigned has no reason to believe that any statement or fact expressed in the Opinion Letter is untrue, inaccurate or incomplete in any material respect.
5. The individual signing below has been duly authorized by the undersigned entity to execute this Certificate on its behalf.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date of the Opinion.

P/A ACADIA PELHAM MANOR, LLC

By: _____
Name: Robert Masters
Title: Senior Vice President

ACADIA-P/A HOLDING COMPANY, LLC

By: _____
Name: Robert Masters
Title: Senior Vice President

ACADIA STRATEGIC OPPORTUNITY FUND II, LLC

By: Acadia Realty Acquisition II, LLC,
its managing member

By: Acadia Realty Limited Partnership,
its sole member

By: Acadia Realty Trust,
its general partner

By: _____
Name: Robert Masters
Title: Senior Vice President

ACADIA REALTY LIMITED PARTNERSHIP

By: Acadia Realty Trust,
its general partner

By: _____
Name: Robert Masters
Title: Senior Vice President

ACADIA P/A MANAGEMENT SERVICES, LLC

By: _____

Name: Robert Masters

Title: Senior Vice President

EXHIBIT L

BORROWER'S REQUISITION
(Building Loan)

[Letterhead of Borrower]

_____, 200__

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179

Re: 2 Penn Place, Pelham Manor, New York

Ladies and Gentlemen:

In accordance with that certain [Building Loan Agreement (the "**Building Loan Agreement**") [Project Loan Agreement (the "**Project Loan Agreement**")]] dated as of December __, 2007, between Bear Stearns Commercial Mortgage, Inc. ("**Lender**") and P/A-Acadia Pelham Manor, LLC ("**Borrower**"), this letter will serve as the Borrower's Requisition requesting an Advance in the amount of \$_____ under the [Building Loan Agreement] [Project Loan Agreement]. All capitalized terms used herein and not defined herein have the same meaning as in the Building Loan Agreement.

Please wire the requested Advance on _____, 200__, as follows:

Amount:
Bank:
ABA#:
Account:
Account Number:

The support for the above Advance is provided in the attached draw schedules. Please advise the undersigned as soon as the Advance has been credited.

Borrower hereby acknowledges that it has no outstanding defenses, claims, counterclaims or offsets against Lender under the Loan Documents.

Borrower represents and warrants to Lender as of the date hereof as follows:

- (i) All amounts shown on all previous Borrower's Requisitions have been paid in full and all amounts requested herein have been paid or will be paid in full from the proceeds of the disbursement requested hereby.
- (ii) All work on the Property to the date of this Requisition has been performed in accordance with the Plans and Specifications, and there have

Exhibit L

NJ01/VIDUJ/127868.4

been no changes to the Plans and Specifications except as approved by Lender or as authorized by the Building Loan Agreement.

- (iii) All labor, materials, and/or services shown on each draw schedule, for which funds have been or are requested, are incorporated into the Property at this date, or in the case of Stored Materials, have been stored in accordance with, and otherwise satisfy the requirements of, the Building Loan Agreement.
- (iv) None of the amounts for which payment is requested in this Requisition have been included in any prior Borrower's Requisition.
- (v) All required Governmental Approvals of the Plans and Specifications by any Governmental Authority have been obtained.
- (vi) There have been obtained all required Governmental Approvals by all Governmental Authorities required to complete the work described in the Plans and Specifications which work is now in progress or was previously completed.
- (vii) To the best knowledge of Borrower, all work on the Property, which has been completed or which is in progress as of this date, does not violate any applicable Legal Requirement.
- (viii) There is no Default or Event of Default under the Building Loan Agreement.
- (ix) The representations and warranties reaffirmed by this Draw Request pursuant to Section 2.11.3 of the Building Loan Agreement are true and correct in all material respects on and as of the date of this Borrower's Requisition and will be true and correct in all material respects on and as of the date of such disbursement.
- (x) The Improvements have not been injured or damaged by fire, explosion, accident, flood or other casualty.
- (xi) There has been, since the date of the Building Loan Agreement, no change in the respective properties, business prospects, profits or conditions (financial or otherwise) of Borrower or any Guarantor, except changes occurring in the ordinary course of business, none of which individually or in the aggregate have been materially adverse.

Very truly yours,

By: _____
Name:
Title:

Exhibit L

NJ01/VIDUJ/127868.4

EXHIBIT M

AIA DOCUMENT NO. G702
(FORM OF APPLICATION AND CERTIFICATE FOR PAYMENT)

[See Attached Form]

NJ01/VIDUJ/127868.4

Exhibit L

AIA Document G702™ - 1992

Application and Certificate for Payment

TO OWNER CONTRACTOR: PROJECT: APPLICATION NO: 001
 PERIOD TO: OWNER:
 SUBCONTRACT FOR: General Construction ARCHITECT:
 SUBCONTRACT DATE: CONTRACTOR:
 PROJECT NOS: / / FIELD:
 FROM SUBCONTRACTOR: OTHER:

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Subcontract, Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL SUBCONTRACT SUM..... \$ 0.00
2. Net change by Change Orders \$ 0.00
3. SUBCONTRACT SUM TO DATE (Line 1 + 2) \$ 0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 0.00
5. RETAINAGE:
 - a. 0 % of Completed Work (Column D + E on G703) \$ 0.00
 - b. 0 % of Stored Material (Column F on G703) \$ 0.00

Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 0.00

6. TOTAL EARNED LESS RETAINAGE \$ 0.00
(Line 4 Less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 0.00
(Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE \$ 0.00
(Line 6 from prior Certificate)
9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ 0.00
(Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
TOTALS	\$ 0.00	\$ 0.00
NET CHANGES by Change Order	\$	\$ 0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor-Subcontractor for Work for which previous Certificates for Payment were issued and payments received from the Owner-Contractor, and that current payment shown herein is now due.

By: _____
 Date: _____
 County of: _____
 State of: _____
 Subscribed and sworn to before me this _____ day of _____

Notary Public: _____
 My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT NOT APPLICABLE
 In accordance with the Contract Documents, based on an on-site observation and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$ _____
 (Attach explanation of amount certified, if different from the amount applied. Initial all figures on this application and on the Continuation Sheet that are changed to conform with the amount certified.)

By: _____
 Date: _____
 This Certificate is not responsible. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner-Contractor under this Contract.

AIA Document G702™ - 1992. Copyright © 1992 and 1992 by The American Institute of Architects. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the Copyright Owner. This document is intended for use in the United States of America only. This document is not to be used in any other country. This document is not to be used in any other country. This document is not to be used in any other country. This document is not to be used in any other country.

AIA Document G702TM - 1992

Application and Certificate for Payment

TO OWNER: PROJECT: _____ APPLICATION NO: 002
 PERIOD TO: _____
 DISTRIBUTION TO:
 OWNER: ARCHITECT:
 CONTRACTOR: FIELD:
 OTHER:

FROM CONTRACTOR: VIA ARCHITECT: _____
 CONTRACT FOR: General Construction
 CONTRACT DATE: / /
 PROJECT NOS: / /

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract, Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 0.00
2. Net change by Change Orders \$ 0.00
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 0.00
5. RETAINAGE:
 - a. 0 % of Completed Work (Column D + E on G703) \$ 0.00
 - b. 0 % of Stored Material (Column F on G703) \$ 0.00

Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 0.00

6. TOTAL EARNED LESS RETAINAGE \$ 0.00
 (Line 4 Less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 0.00
 (Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$ 0.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
TOTALS	\$ 0.00	\$ 0.00
NET CHANGES by Change Order	\$ 0.00	\$ 0.00

AMOUNT CERTIFIED \$ 0.00
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: _____ Date: _____
 By: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: _____ Date: _____
 By: _____
 State of: _____
 County of: _____
 Subscribed and sworn to before me this _____ day of _____
 Notary Public: _____
 My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

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PROJECT LOAN AGREEMENT

Dated as of December 26, 2007

Between

ACADIA ATLANTIC AVENUE LLC.

as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,

as Lender

MERS MIN: 8000101-0000007166-1

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PROJECT LOAN AGREEMENT

THIS PROJECT LOAN AGREEMENT, dated as of December 26, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement**" or sometimes, this "**Project Loan Agreement**"), is made by and between **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 ("**Lender**") and **ACADIA ATLANTIC AVENUE LLC**, a Delaware limited liability company, having its principal place of business c/o Acadia Realty Trust, 1311 Mamaroneck Avenue - Suite 260, White Plains, New York 10605 ("**Borrower**").

WITNESSETH:

WHEREAS, Borrower desires to obtain the Project Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Project Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent, all capitalized terms used herein but not otherwise defined shall have their respective meanings set forth in the Building Loan Agreement and:

"Advance" or **"Advances"** shall mean any disbursement of the proceeds of the Project Loan by Lender pursuant to the terms of this Agreement.

"Agreement" shall mean this Project Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Borrower" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

"Building Loan" shall mean the loan made by Lender to Borrower pursuant to the Building Loan Agreement in the principal amount of up to the Building Loan Amount.

"Building Loan Agreement" shall mean that certain Building Loan Agreement dated as of the date hereof between Borrower and Lender as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Building Loan Amount” shall have the meaning set forth in the Building Loan Agreement.

- “Building Loan Assignment of Leases” shall have the meaning set forth in the Building Loan Agreement.

- “Building Loan Documents” shall have the meaning set forth in the Building Loan Agreement.

- “Building Loan Earn Out Advance” shall have the meaning set forth in Section 2.12.2 hereof.

- “Building Loan Mortgage” shall have the meaning set forth in the Building Loan Agreement.

- “Building Loan Note” shall have the meaning set forth in the Building Loan Agreement.

- “Contingency Excess” shall have the meaning set forth in Section 2.1.7(b) hereof.

- “Debt” shall mean the outstanding principal amount of the Project Loan set forth in, and evidenced by, this Agreement, the Project Loan Note and the other Project Loan Documents, together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Project Loan under the Project Loan Note, this Agreement, the Project Loan Mortgage or any other Project Loan Document.

- “Debt Service” shall mean, with respect to any particular period of time, the aggregate scheduled principal and interest payments due under this Agreement and the Project Loan Note.

- “Defeasance Date” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

- “Defeasance Event” shall have the meaning set forth in Section 2.5.1(a) hereof.

- “Earn Out Advances” shall have the meaning set forth in Section 2.12.2 hereof.

- “Event of Default” shall have the meaning set forth in Section 8.1(a) hereof.

- “Final Advance” shall have the meaning set forth in Section 2.12.1 hereof.

- “Final Building Loan Advance” shall mean the Final Advance as defined in Section 2.12.1 of the Building Loan Agreement.

- “Indemnified Liabilities” shall have the meaning set forth in Section 10.13(a) hereof.

- “Initial Advance” shall have the meaning set forth in Section 2.10 hereof.

- “Initial Advance Conditions” shall have the meaning set forth in Section 2.10 hereof.

- “Interest Period” shall mean: (a) the period commencing on the Closing Date and ending on the last day of the month in which the Closing Date occurs, both dates inclusive; and (b) the period commencing on and including the first day of each calendar month thereafter during the term of Loan and ending and including the last day of such calendar month.

- “Interest Rate” shall mean seven and one hundred forty-four one-thousandths percent (7.144%), provided, however, in the event that on or before January 1, 2011, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.0 using a debt service constant of 7.50%, and Borrower delivers to Lender a MAI appraisal performed, at Borrower’s sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender’s internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 75% assuming a fully advanced Loan, Lender shall, upon Borrower’s written request, reduce the Interest Rate to a per annum rate equal to five and seven hundred ninety-four one-thousandths percent (5.794%), commencing on the first Payment Date after Borrower’s request. Any reduction in the Interest Rate as set forth above shall be effective commencing on the first Payment Date after Borrower’s request for such reduction and satisfaction of the conditions set forth above and no reduction in the Interest Rate shall be retroactive. In the event that Borrower fails to satisfy the conditions for a reduction of the Interest Rate within the time periods set forth above, time being of the essence, Borrower shall have no further right to obtain a reduction in the Interest Rate. Notwithstanding anything to the contrary contained herein, Lender shall have the right, in its sole discretion, at any time after the expiration of the Construction Term and prior to a Securitization of the Loan, to increase the Interest Rate by up to two-tenths of one percent (0.20%).

- “Interest Reserve Line Item” shall mean the interest reserve Line Item of the Project Loan Budget.

- “Lender” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

- “Loan” shall mean collectively, the Building Loan and the Project Loan.

- “Loan Agreement” shall mean collectively, this Project Loan Agreement and the Building Loan Agreement.

- “Loan Documents” shall mean collectively, the Building Loan Documents and the Project Loan Documents, the Environmental Indemnity, the Guaranty of Completion, the Guaranty of Recourse Carveouts, the Cash Management Agreement, the Clearing Account Agreement, the Assignment of Contracts, the Administration Fee Agreement, the Rate Lock Agreement and all other documents executed and/or delivered in connection with the Loan.

-
- **“Maturity Date”** shall mean January 1, 2020 or such earlier date on which the final payment of principal of the Project Loan Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

- **“MERS”** shall have the meaning set forth in **Section 10.25** hereof.

- **“Monthly Debt Service Payment Amount”** shall mean (a) an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with **Section 2.2** hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in January, 2015, and (b) a constant monthly payment of \$33,215.06 commencing with the Payment Date occurring in February, 2015 and on each Payment Date thereafter, provided, however, that in the event that the Interest Rate is modified in accordance with the provisions of the definition of “Interest Rate,” the Monthly Debt Service Payment Amount shall be adjusted by Lender based upon the modified Interest Rate and a thirty (30) year amortization schedule, Lender’s determination of the Monthly Debt Service Payment Amount being binding absent manifest error.

- **“Open Period Date”** shall have the meaning set forth in **Section 2.4.1** hereof.

- **“Other Debt”** shall mean the “Debt” as defined in both the Building Loan Agreement and the Mezzanine Loan Documents, if applicable.

- **“Other Obligations”** shall have the meaning as set forth in the Mortgage.

- **“Payment Date”** shall mean February 1, 2008, and the 1st day of every month thereafter during the term of the Loan until and including the Maturity Date or, if such day is not a Business Day, the immediately preceding Business Day.

- **“Prepayment Date”** shall have the meaning set forth in **Section 2.4.4** hereof.

- **“Project Loan”** shall mean the loan being made by Lender to Borrower pursuant to this Project Loan Agreement in the principal amount of up to the Project Loan Amount.

- **“Project Loan Amount”** shall mean Four Million, Nine Hundred Twenty Thousand, Seven Hundred Thirty-Nine and 67/100 Dollars (\$4,920,739.67).

- **“Project Loan Assignment of Leases”** shall mean that certain Project Loan Assignment of Leases and Rents, dated the date hereof, from Borrower, as assignor, to Lender, as assignee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- **“Project Loan Documents”** shall mean, collectively, this Agreement, the Project Loan Note, the Project Loan Mortgage, the Project Loan Assignment of Lease as well as all other documents not or hereafter executed and/or delivered with respect to the Project Loan.

- “Project Loan Earn Out Advance” shall have the meaning set forth in Section 2.12.2 hereof.

- “Project Loan Mortgage” shall mean that certain Project Loan Mortgage and Security Agreement dated the date hereof, executed and delivered by Borrower to Lender as security for the Project Loan and encumbering the Property, as the same may be amended, restated, supplemented or otherwise modified from time to time.

- “Project Loan Note” shall mean that certain Project Loan Promissory Note, dated the date hereof, in the principal amount of up to the Project Loan Amount made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Required Equity Funds” shall have the meaning set forth in Section 2.11.13.

- “Scheduled Defeasance Payments” shall have the meaning set forth in Section 2.5.1(b) hereof.

- “Security Agreement” shall have the meaning set forth in Section 2.5.1(a)(v) hereof.

- “Severed Loan Documents” shall have the meaning set forth in Section 8.2(c), hereof.

- “Shortfall” shall have the meaning set forth in Section 2.1.10 hereof.

- “Successor Borrower” shall have the meaning set forth in Section 2.5.3 hereof.

- “Unsatisfied Initial Advance Conditions” shall have the meaning set forth in Section 2.1.20.

- Section 1.2 Principles of Construction.

- (a) All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Any reference in this Agreement or in any other Loan Document to any Loan Document shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, replaced and/or restated from time to time (and, in the case of any note or other instrument, to any instrument issued in substitution thereof). Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

- (b) With respect to any cross-reference to the Building Loan Documents or the Project Loan Documents or any combination thereof, as the case may be, for terms defined therein or provisions set forth therein or Schedules or Exhibits thereto, such cross-references shall be to referenced defined terms or provisions or Schedules or Exhibits, as the case may be, as the same are set forth in the Building Loan Documents or the Project Loan Documents or any combination thereof, as the case may be, as of the date hereof, and as the same may be amended, modified, supplemented, extended, replaced or restated or any combination thereof from time to time, and shall survive the repayment or satisfaction of the Building Loan or the Project Loan as the case may be, or the termination of the Building Loan Agreement or this Agreement or any combination thereof, as the case may be, for so long as the Project Loan remains outstanding.

ARTICLE II.

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept Advances in respect of the Project Loan as more particularly set forth in **Section 2.10**.

2.1.2 No Reborrowings. Any amount borrowed and repaid hereunder in respect of the Building Loan may not be reborrowed.

2.1.3 The Note, Mortgage and Loan Documents. The Project Loan shall be evidenced by the Project Loan Note and secured by the Project Loan Mortgage, the Project Loan Assignment of Leases and the other Project Loan Documents.

2.1.4 Use of Proceeds. Borrower hereby agrees that Borrower shall use the proceeds of the Project Loan to pay or reimburse itself for Project-Loan Costs actually incurred in connection with the construction of the Project Improvements if and to the extent that such Project-Loan Costs are reflected in the Project Loan Budget, subject to reallocation pursuant to **Sections 2.1.6** and **2.1.7** hereof, and **5.1.33** of the Building Loan Agreement (or other reallocations approved by Lender in its sole discretion).

2.1.5 Advances. The Project Loan Budget shall reflect, by category and line item, the purposes and amounts for which funds to be advanced by Lender under this Agreement are to be used. Lender shall not be required to Advance funds hereunder for any category or line item of Project Loan Costs in excess of the amount specified for such line item or category in the Project Loan Budget, subject to **Sections 2.1.6** and **2.1.7** hereof and **5.1.33** of the Building Loan Agreement (or other reallocations approved by Lender in its sole discretion). No Advances shall be made to pay for Affiliate Fees.

2.1.6 Cost Overruns. If Borrower becomes aware of any change in actual or projected Project Loan Costs which will increase any one or more category or line item of costs reflected in the Project Loan Budget, Borrower shall immediately notify Lender in writing and promptly submit to Lender for its approval a revised Project Loan Budget. Any reallocation of any category or line items in the Project Loan Budget in connection with cost overruns shall be subject to Lender's approval in Lender's sole discretion except as set forth in **Sections 2.1.7** hereof and **5.1.33** of the Building Loan Agreement, provided, however, under no circumstances shall Borrower be permitted, or Lender obligated to approve, the reallocation of line items from the Building Loan Budget to the Project Loan Budget. Lender shall have no obligation to make any further Advances unless and until the revised Project Loan Budget so submitted by Borrower is approved by Lender and Borrower has satisfied its obligations with respect to any resulting Shortfall under **Section 2.1.10**. Lender reserves the right to approve or disapprove any revised Project Loan Budget in its sole and absolute discretion (except with respect to reallocations in accordance with **Sections 2.1.7** and **5.1.33**).

2.1.7 Contingency Reserve.

(a) Following the satisfaction of the Initial Advance Conditions, and subject to the prior approval of Lender in its sole discretion, Borrower may revise the Project Loan Budget to move amounts available under any Line Item that are designated to "Contingency" to other Line Items in the Project Loan Budget. In no event may the Contingency Line Item of the Building Loan Budget be reallocated to any Line Item in the Project Loan Budget. Provided no Event of Default exists and with Lender's consent (which shall not be unreasonably withheld), after Completion of the Improvements, Borrower may draw amounts available under the Contingency Line Item of the Project Loan Budget to fund Shortfalls in monthly interest due, which amounts shall be deposited in the Interest Reserve. Such drawing shall be in addition to any Interest Reserve Line Item advanced under the Project Loan pursuant to Section 2.14.10 hereof.

(b) Following the occurrence of Final Completion, Lender shall reasonably cooperate with Borrower to amend the Project Loan Budget, Building Loan Budget, Project Loan Documents and Building Loan Documents such that: (x) the Building Loan Budget is amended to remove the amounts then available under the Building Loan Budget either in the contingency Line Item or as cost savings from other Line Items (the "Contingency Excess") and the Building Loan Amount is reduced by the Contingency Excess; and (y) the contingency line item of the Project Loan Budget and the Project Loan Amount are increased by the Contingency Excess. Borrower and Lender shall execute and deliver such documents, certificates and instruments as may be reasonably required to effect the above described re-allocation, including, without limitation, the filing of an amended Section 22 Affidavit and the modification of the Project Loan Documents and Building Loan Documents to reflect the respective changes in the Project Loan Amount and the Building Loan Amount and Borrower shall obtain such other evidence as Lender may reasonably request to confirm that none of the foregoing shall adversely impact the validity or priority of its security interests in the Property or otherwise adversely impact its rights and remedies under the Loan Documents including, without limitation, appropriate endorsements to the title insurance policy. Borrower shall pay any and all title insurance, recording and other charges and all reasonable costs and expenses (including legal fees) incurred by Lender in connection with the foregoing.

2.1.8 Intentionally Omitted.

2.1.9 Amount of Advances. In no event shall any Advance exceed the full amount of Project Loan Costs theretofore paid or to be paid with the proceeds of such Advance plus any Project Loan Costs incurred by Borrower through the date of the Draw Request for such Advance minus (i) the applicable Retainage for each Contract and Subcontract, and (ii) the aggregate amount of any Advances previously made by Lender. It is further understood that the Retainage described above is intended to provide a contingency fund protecting Lender against failure of Borrower or Guarantor to fulfill any obligations under the Loan Documents, and that Lender may charge amounts to pay for Project Loan Costs against such Retainage in the event Lender is required or elects to expend funds to cure any Default or Event of Default, in either instance, in accordance with the terms of this Agreement. No Advance of the Loan by Lender shall be deemed to be an approval or acceptance by the Lender of any work performed thereon or the materials furnished with respect thereto.

2.1.10 Loan-In-Balance. As used herein, a “**Shortfall**” shall mean, as to any Line Item in the Development Budget as of any date, the amount determined by Lender, in Lender’s sole but reasonable judgment, by which (A) the cost of completing or satisfying such Line Item, exceeds (B) the remaining undisbursed portion of the Loan allocated to such Line Item in the Development Budget plus any sums deposited with Lender pursuant to this **Section 2.1.10** to pay for such Line Item and not previously disbursed plus any Reserve Funds to the extent such Reserve Funds are available hereunder for the payment of such Line Item. From time to time and at any time during the Construction Period, Lender shall have the right, but not the obligation, to notify Borrower that it has determined a Shortfall exists as to any one or more Line Items. If Lender at any time shall so notify Borrower, Borrower shall, at its option within five (5) days of Lender’s notification as aforesaid, either: (i) deposit with Lender an amount equal to such Shortfall, which Lender disburse to Borrower to the satisfaction of the costs of such Line Item prior to advancing any further Loan proceeds on account of such costs; (ii) post an irrevocable standby Letter of Credit in the amount of such Shortfall, in favor of Lender; (iii) to the extent permitted under **Sections 2.1.7** hereof and **5.1.33** of the Building Loan Agreement, and following the satisfaction of the Initial Advance Conditions allocate the Contingency Reserve, with respect to the Line Item(s) in question, to the Shortfall, and provided, further that the amount of the remaining Contingency Reserve for such Line Item(s) (following the allocation to the Shortfall) is sufficient for such Line Item(s), as determined by Lender in its sole discretion; and (iv) to the extent permitted under **Section 5.1.33** of the Building Loan Agreement, and then only following the satisfaction of the Initial Advance Conditions, r eallocate cost savings from the Development Budget in respect of the Loan (or other reallocations which are approved by Lender, in its sole discretion) in accordance with the terms of this Agreement, but only to the extent such cost savings can be allocated to the related Line Items. Borrower hereby agrees that Lender shall have a lien on and security interest in, for the benefit of Lender, any sums deposited pursuant to clause (i) above and that Borrower shall have no right to withdraw any such sums except for the payment of the aforesaid costs as approved by Lender. Lender shall have no obligation to make any further Advances of proceeds of the Loan as to any Line Item until the sums required to be deposited pursuant to clause (i) above as to such Line Item have been exhausted, or until Borrower has posted an irrevocable standby Letter of Credit pursuant to clause (iii) above, as the case may be, and, in any such case, the Loan is back “in balance”. Any such sums not used as provided in said clause (i) shall be released to Borrower when and to the extent that Lender reasonably determines that the amount thereof is more than the excess, if any, of the remaining Project-Related Costs over the undisbursed balance of the Loan, provided, however, that should an Event of Default occur, Lender, in its sole discretion, may apply such amounts either to the remaining Project-Related Costs or to the immediate reduction of outstanding principal and/or interest under the Note.

- 2.1.11 Quality of Work. No Advance or any portion thereof shall be made with respect to defective work or to any contractor that has performed work that is defective and that has not been cured, as confirmed by the report of the Construction Consultant, but Lender may disburse all or part of any Advance before the sum shall become due if Lender believes it advisable to do so, and all such Advances or parts thereof shall be deemed to have been made pursuant to this Agreement.

- 2.1.12 Required Equity Funds. All Required Equity Funds shall be contributed (i.e., expended by Borrower and invested by Borrower in the Property, for Project Related Costs set forth on the approved Development Budget) before the Closing Date.

- 2.1.13 Trust Fund. Pursuant to Section 13 of the New York Lien Law, Borrower shall receive the Advances hereunder and shall hold the right to receive the Advances as a trust fund to be applied first for the purpose of paying the Costs of the Improvements and shall apply the Advances first to the payment of the Cost of the Improvements on the Property before using any part of the total of the same for any other purpose.

- 2.1.14 Final Project Report and Development Budget. The provisions of Section 2.1.14 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein.

- 2.1.15 Miscellaneous.

- (a) The making of an Advance by Lender shall not constitute Lender's approval or acceptance of the construction theretofore completed. Lender's inspection and approval of the Plans and Specifications, the construction of the Project Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Lender, the sole obligation of Lender as the result of such inspection and approval being to make the Advances if and to the extent, required by this Agreement.

- (b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT LENDER TO MAKE ADVANCES OF THE LOAN IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. MOREOVER, ALL POTENTIAL LIENORS ARE REMINDED THAT SUBDIVISION (3) OF SECTION 13 OF THE NEW YORK LIEN LAW PROVIDES THAT "NOTHING IN THIS SUBDIVISION SHALL BE CONSIDERED AS IMPOSING UPON THE LENDER ANY OBLIGATION TO SEE THE PROPER APPLICATION OF SUCH ADVANCES BY THE OWNER," AND LENDER DOES NOT IMPOSE SUCH AN OBLIGATION ON ITSELF.

- **Section 2.2 Interest Rate.**

- 2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate calculated as set forth in Section 2.2.2 below.

2.2.2 Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under 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 Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Loan Payment.

2.3.1 Monthly Debt Service Payments. Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from and including the Closing Date up to and including December 31, 2007, which interest shall be calculated in accordance with the provisions of Section 2.2 hereof, and (b) on each Payment Date commencing on the Payment Date occurring in February, 2008, and thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to interest due for the related Interest Period at the Interest Rate, for such related Interest Period and then to the principal amount of the Loan due in accordance with this Agreement, and lastly, to any other amounts due and unpaid pursuant to the Loan Documents hereto. Borrower and Lender acknowledge and agree that, on the 15th calendar day of the month preceding each Payment Date during the Construction Term: (a) if and to the extent undrawn funds remain available for Advance under the Project Loan from the Interest Reserve Line Item of the Project Loan Budget, and provided that that no Event of Default or monetary Default then exists under any of the Loan Documents or would occur as a result of such Advance, the Monthly Debt Service Amount then due and owing shall be advanced by Lender by an Advance under Interest Reserve Line Item of the Project Loan Budget; and (b) if no amount remains available under the Interest Reserve Line Item but and to the extent Interest Reserve Funds are on deposit in the Interest Reserve Account, and no Event of Default or monetary Default then exists under any of the Loan Documents, the Monthly Debt Service Payment Amount then due and payable shall be paid by application of funds from the Interest Reserve Account. Borrower and Lender acknowledge and agree that Lender may automatically make an Advance or apply Interest Reserve Funds on deposit in the Interest Reserve Account on each Payment Date occurring during the Construction Term, in either instance, in accordance with this Section 2.3.1, without the need for Borrower to submit a Draw Request or otherwise request such an Advance or application.

2.3.2 Payments Generally

(b) . The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include December 31, 2007. Thereafter each Interest Period shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 Late Payment Charge . If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment . Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 Prepayments

2.4.1 Voluntary Prepayments. Except as otherwise provided in this Section 2.4.1 and Section 2.4.2, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. 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. Notwithstanding anything to the contrary contained herein, commencing after the Payment Date three (3) months prior to the Maturity Date (the "**Open Period Date**"), or on any Payment Date thereafter (or on any date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole, but not in part, without payment of the Yield Maintenance Premium.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to **Section 6.4** of the Building Loan Agreement, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest through the end of the related Interest Period and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; *provided, however*, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this **Section 2.4.2**.

2.4.3 Prepayments After Default. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in **Section 2.4.1** hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a "**Prepayment Date**") provided no Event of Default exists and upon payment of an amount equal to the Yield Maintenance Premium. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. 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.

2.4.5 Application of Prepayments to Components. Any prepayment of the principal of the Loan, in whole or in part, voluntary or involuntary, shall be applied (a) first, to the reduction of the outstanding principal balance of the Project Loan until reduced to zero, and (b) second, to the reduction of the outstanding principal balance of the Building Loan until reduced to zero. Subsequent to any Event of Default, any payment of principal from whatever source may be applied by Lender between the various components of the Loan in Lender's sole discretion.

Section 2.5 Defeasance.

2.5.1 Voluntary Defeasance(a). Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntary prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a "**Defeasance Event**");

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the "**Defeasance Date**") on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the Payment Date immediately preceding the next Payment Date, provided, however, if the Defeasance Deposit shall include short-term interest computed from the date of such prepayment through to the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

(iv) Borrower shall use the Defeasance Deposit to purchase U.S. Obligations in accordance with Section 2.5.1(b) below;

(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this Section 2.5 (the "**Security Agreement**");

(vi) Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of such Defeasance Event;

(vii) Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;

(viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.5.1(a) have been satisfied;

(ix) Borrower shall deliver a certificate of Borrower's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in Section 2.6 hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Open Period Date (the "Scheduled Defeasance Payments"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Clearing Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this Section 2.5 and satisfy Borrower's other obligations under this Section 2.5 and Section 2.6 shall be remitted to Borrower.

2.5.2 Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 Successor Borrower. In connection with any Defeasance Event, Borrower shall establish a successor entity (the "**Successor Borrower**"), which shall be a Special Purpose Entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this **Section 2.5.3**, but Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 Release of Property. Except as set forth in this **Section 2.6**, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 Release of Property.

(a) If Borrower has elected to defease the Loan and the requirements of **Section 2.5** and this **Section 2.6** have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

- 2.6.2 Release on Payment in Full. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

- Section 2.7 Clearing Account/Cash Management. The provisions of Section 2.7 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein

- Section 2.8 Intentionally Omitted.

- Section 2.9 Payments Not Conditional. All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

- Section 2.10 Initial AdvanceThe obligation of Lender to make the initial Advance of the Project Loan (the "**Initial Advance**") shall be subject to the following conditions precedent (collectively, the "**Initial Advance Conditions**") on or prior to the Required Initial Advance Date, all of which conditions precedent must be satisfied prior to Lender making any such Initial Advance:< /font>

- 2.10.1 Prior Conditions Satisfied. All conditions precedent to closing shall continue to be satisfied as of the date of the Initial Advance (in the same manner in which they were satisfied for the closing without reimposing any one-time condition).

- 2.10.2 Performance; No Default. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Initial Advance, and on the date of such Initial Advance there shall exist no Default or Event of Default.

- 2.10.3 Representations and Warranties. The representations and warranties made by Borrower or Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of the Initial Advance.

- 2.10.4 No Damage. The Project Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall be satisfied that sufficient insurance proceeds will be available in the reasonable judgment of Lender to effect the satisfactory restoration of the Project Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

- 2.10.5 Deliveries. Lender shall have received:

- (a) Draw Request. A Draw Request complying with the requirements hereof;

- (b) Intentionally Omitted;

- (c) Title Insurance Policy. A Title Insurance Policy for the full amount of the Loan, which includes a pending disbursement clause to increase the coverage of the Title Insurance Policy by the amount of the any Advance, insuring the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances;

- (d) Lien Waivers. Duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form set forth in Exhibit J to the Building Loan Agreement from the General Contractor and all Contractors and Subcontractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials, for the labor and/or materials so supplied, except for such work or labor and/or materials for which payment thereof is requested, as to which duly executed lien waivers shall be delivered to Lender with the next request for an Advance;

- (e) Ratios. Evidence satisfactory to Lender that following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 75%.

- (f) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents;

- (g) Anticipated Costs Report. An Anticipated Costs Report; and

- (h) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

- 2.10.6 Initial Building Loan Advance. All conditions to the initial advance of the Building Loan set forth in Section 2.10 of the Building Loan Agreement shall have been satisfied.

- 2.10.7 Rate Lock Agreement. Simultaneously with the Initial Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Initial Advance bears to the Total Loan Amount.

- 2.10.8 Initial Reserve Deposits Borrower shall have deposited the Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit with Lender. The Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit shall be funded on the date of the Initial Advance with a portion of the Initial Advance under the Project Loan.

2.10.9 Satisfaction of Initial Advance Conditions. Borrower acknowledge that certain Initial Advance Conditions, including, without limitation, [SUBJECT TO REVIEW BY LENDER] [(i) delivery to and approval by Lender of final Plans and Specifications; (ii) delivery to and approval by Lender of the final Development Budget, Building Loan Budget, and Project Loan Budget; (iii) delivery to Lender of all permits required for the demolition of the existing improvements on the Property; (iv) delivery to Lender of evidence that Borrower maintains the Policies required under this Agreement; and (v) delivery to Lender of Borrower's Requisition and all required accompanying documents with respect to the Initial Advance in accordance with Section 2.14.1 of this Agreement (the "**Unsatisfied Initial Advance Conditions**")]. Borrower covenants and agrees that, prior to the Required Initial Advance Date, time being of the essence, it shall cause all of the Initial Advance Conditions, including, without limitation, the Unsatisfied Initial Advance Conditions, to be satisfied. Borrower shall not perform any work at the Property, including, without limitation, any demolition of the existing improvements, until all of the Initial Advance Conditions have been satisfied. Borrower's failure to satisfy, or cause the satisfaction of, any of the Initial Advance Conditions on or prior to the Required Initial Advance Date shall, at Lender's election, constitute an Event of Default. In addition to any and all other remedies that may be available to Lender hereunder, under the other Loan Documents, at law or in equity, upon the occurrence of an Event of Default resulting from the failure of any Initial Advance Condition to have been satisfied, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, with full power of substitution to complete or undertake such steps as may be necessary, in Lender's sole determination, to satisfy the Initial Advance Condition in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (ii) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Initial Advance Conditions, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the Project; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement and the other Loan Documents. In addition, upon such Event of Default, Lender shall have the right to unwind any interest rate hedge entered into by Lender and apply any deposits or other amounts held by Lender pursuant to the Rate Lock Agreement to costs and expenses incurred by Lender under this Agreement, the Rate Lock Agreement or any of the other Loan Documents.

2.10.10 Government Approvals. Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the demolition of the existing improvements as contemplated by the Plans and Specifications, have been obtained and are in full force and effect.

Section 2.11 Project Loan Advances. The obligation of Lender to make the Advances of the Project Loan after the Initial Advance shall be subject to the following conditions precedent, all of which conditions precedent must be satisfied prior to Lender making any such Advance:

2.11.1 Prior Conditions Satisfied. All conditions precedent to any prior Advance (in the same manner in which they were satisfied for the Initial Advance or prior Advance, as applicable, and without reimposing any one-time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

2.11.2 Performance; No Default. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Advance, and on the date of such Advance there shall exist no Default or Event of Default or Shortfall.

- 2.11.3 Representations and Warranties. The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of such Advance.

- 2.11.4 No Damage. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall have received insurance proceeds sufficient in the reasonable judgment of Lender to effect the satisfactory restoration of the Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

- 2.11.5 Deliveries. The following items or documents shall have been delivered to Lender:

- (a) Anticipated Costs Report. An Anticipated Costs Report in the form set forth in **Exhibit I** to the Building Loan Agreement executed by the General Contractor which sets forth the anticipated costs to complete construction of the Project Improvements, after giving effect to costs incurred during the previous month and any anticipated change orders;

- (b) Endorsement to Title Insurance Policy. A "datedown" endorsement to Lender's title insurance policy as described in the form set forth in **Exhibit C** to the Building Loan Agreement which continuation or endorsement shall increase the coverage of the Title Insurance Policy by the amount of the Advance through the pending disbursement clause (but not the overall policy amount which shall be for the full amount of the Loan), amend the effective date of the Title Insurance Policy to the date of such Advance, continue to insure the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances and which shall state that since the last disbursement of the Loan there have been no changes in the state of title to the Property (other than Permitted Encumbrances) and that there are no additional survey exceptions not previously approved by Lender;

- (c) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents.

- (d) Draw Request. A Draw Request complying with the provisions of this Agreement which shall constitute Borrower's representation and warranty to Lender that: (a) any completed construction is substantially in accordance with the Plans and Specifications, (b) all costs for the payment of which Lender have previously advanced funds have in fact been paid, (c) all the representations and warranties contained in Article IV of this Agreement continue to be true and correct in all material respects, (d) no Event of Default shall have occurred and be continuing hereunder, and (e) Borrower continues to be in compliance in all respects with all of the other terms, covenants and conditions contained in this Agreement.

- (e) _____ Affirmation of Payment. General Contractor's Affirmation of Payment (AIA Form G706) in the form attached as **Exhibit E** to the Building Loan Agreement.

- (f) _____ Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

- 2.11.6 Construction Consultant Certificate. Each draw request relating to Hard Costs shall be accompanied by a certificate or report of the Construction Consultant to Lender based upon a site observation of the Property made by the Construction Consultant not more than thirty (30) days prior to the date of such draw, in which the Construction Consultant shall in substance: (i) verify that the portion of the Project Improvements completed as of the date of such site observation has been completed substantially in accordance with the Plans and Specifications; and (ii) state its estimate of (1) the percentages of the construction of the Project Improvements completed as of the date of such site observation on the basis of work in place as part of the Project Improvements and the Building Loan Budget, (2) the Hard Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (3) the sum necessary to complete construction of the Project Improvements in accordance with the Plans and Specifications, and (4) the amount of time from the date of such inspection that will be required to achieve Completion of the Improvements.

- 2.11.7 Intentionally Omitted.

- 2.11.8 Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

- 2.11.9 Lien Waivers. Borrower shall have delivered duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as applicable, and otherwise substantially in the form set forth as **Exhibit J** to the Building Loan Agreement, from the General Contractor, all Major Contractors and Major Subcontractors for all work performed, and all labor or material supplied for which payment thereof has been made prior to the date of the Advance.

- 2.11.10 Construction Consultant Approval. Lender has received advice from the Construction Consultant, satisfactory to Lender, as to Construction Consultant's determination, acting seasonably, based on on-site inspections of the Improvements and the data submitted to and reviewed by it as part of Borrower's Requisition of the value of the labor and materials in place, that the construction of the Project Improvements is proceeding satisfactorily and according to schedule and that the work on account of which the Advance is sought has been completed in a good and workmanlike manner to such Construction Consultant's satisfaction and substantially in accordance with the Plans and Specifications.

2.11.11 Ratios. Following such Advance (and any Building Loan Advance being made on such date), the Loan-to-Cost Ratio shall be no greater than 75%.

2.11.12 Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

2.11.13 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of each Advance, Borrower has invested Cash equity in an amount equal to or greater than (a) \$5,356,660.00 or (b) 25% of the Total Project Costs or (c) the difference between the Development Budget and the maximum Loan amount of \$16,150,000.00 for approved Project-Related Costs (the "**Required Equity Funds**"). Notwithstanding the foregoing, if the Borrower realizes cost savings from the development of the Project, either in the form of Hard Costs or Soft Costs, Advances may be advanced to Borrower provided that (i) the Borrower would not have less than \$5,356,660.00 of cash equity in the Project through such Advance and (ii) the Debt Service Coverage Ratio shall be equal to or greater than 1.70 to 1.0 assuming a fully advanced Loan using a debt service constant of 7.50%, (iii) the Debt Service Coverage Ratio shall be equal to or greater than 1.20 to 1.0 assuming a fully advanced Loan using a debt service constant of 10.65%, and (iv) the loan-to-value ratio for the Property is greater than 75% assuming a fully advanced Loan. If Borrower is in non-compliance solely with respect to condition (i) above, at Borrower's option, either (A) any excess cost savings (funds in excess of the amount so that the Required Equity Funds shall continue to be satisfied) shall be deposited as follows: (1) 100% into the Replacement Reserve Account, or (2) at Lender's discretion, into any other Reserves required by Lender pursuant to this Agreement, or (B) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement. If Borrower is in compliance with respect to condition (i) above but is not in compliance with conditions (ii), (iii) and (iv) above, any excess cost savings shall, at Borrower's option, (A) be held back by Lender as additional collateral for the Loan until satisfaction of each of the requirements are satisfied, or (B) be deposited as follows: (1) 100% into the Replacement Reserve Account, or (2) at Lender's discretion, into any other Reserves required by Lender pursuant to this Agreement, or (C) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement.

2.11.14 Rate Lock Agreement. Simultaneously with each Construction Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Construction Advance bears to the Total Loan Amount, provided, however, that in the event that any of the conditions of Section 2.11.13 are not satisfied, Lender shall have the right to apply the portion of the deposit under the Rate Lock Agreement to be returned to Borrower to satisfy the conditions of Section 2.11.13.

2.11.15 Government Approvals. Lender shall not be required to make Construction Advances for any phase of the construction of the Project Improvements unless and until Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the construction of the phase of the Project Improvements to be constructed by Borrower as contemplated by the Plans and Specifications have been obtained and are in full force and effect, including, without limitation, the final approval of the Plans and Specifications by the City of New York for the Project Improvements and a building permit(s) covering the entire scope of work contemplated by the Project Improvements in accordance with the approved Plans and Specification "lawfully issued" to Borrower within the meaning of Section 11-31(a) of the Zoning Resolution of the City of New York (the "**Zoning Resolution**").

Section 2.12 **Final Advance.**

2.12.1 Conditions to Release of Final Advance . In addition to the conditions set forth in **Section 2.10** and **Section 2.11**, above, Lender's obligation to make the final Advance in the amount calculated pursuant to **Section 2.12.2** of this Agreement (the "**Final Advance**") shall be subject to receipt by Lender of the following:

- (a) Completion of Improvements. Evidence satisfactory to Lender and the Construction Consultant that the Completion of the Improvements has occurred.
- (b) Final Building Loan Advance. All conditions to the Final Building Loan Advance have been satisfied and the Final Building Loan Advance shall have been made or will be made simultaneously therewith.
- (c) Lien Waivers. Duly executed final lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form as **Exhibit J** to the Building Loan Agreement from the General Contractor and Major Contractors and Major Subcontractors who have performed work for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied.
- (d) "As-Built" Plans and Specifications. A full and complete set of "as built" Plans and Specifications certified to by Borrower's Architect.
- (e) Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.
- (f) Certificates. Completed AIA Form G704 (Certificate of Substantial Completion) and completed AIA Form G707 (Consent of Surety to Final Payments) shall have been executed and delivered by Borrower's Architect, General Contractor and each surety issuing any of the Required Construction Bonds.
- (g) Deposits to Reserves. All deposits to the Reserve Funds required under the Building Loan Agreement have been made.
- (h) Other Documents. Such documents, letters, affidavits, reports and assurances, as Lender, Lender's counsel and the Construction Consultant may reasonably require.

(i) Required Ratios at Completion. Lender shall have determined that, following the Final Advance (and taking into consideration the Final Building Loan Advance to be made simultaneously under the Building Loan) the Required Ratios at Completion have been satisfied, or Borrower shall have deposited with Lender Cash or a Letter of Credit to satisfy the Required Ratios at Completion in accordance with **Section 2.12.2**.

(j) Tenant Estoppel Certificates. Borrower shall have delivered to Lender estoppel certificates from all of the tenants at the Property in form and substance satisfactory to Lender.

(k) Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of the Final Advance, Borrower has invested Cash equity in an amount equal to or greater than the Required Equity Funds or has otherwise complied with the provisions of **Section 2.11.13** with respect thereto.

(l) Insolvency Opinion. The issuance of and delivery to Lender of six (6) original counterparty Insolvency Opinions in the form attached hereto as **Exhibit K** to the Building Loan Agreement from Wachtel & Masyr, LLP or another law firm reasonably acceptable to Lender.

(m) ICIP Eligibility. Evidence satisfactory to Lender that Borrower has obtained a Certificate of Eligibility under the Industrial and Commercial Incentive Program.

2.12.2 Amount of Final Advance. Except as expressly provided for below, the amount of the Final Advance shall be equal to the sum of: (a) any Retainage not previously released and advanced to Borrower; plus (b) the amount of any Punch List and Deferred Maintenance Reserve Deposit not funded pursuant to the Building Loan Agreement; plus (c) the positive difference, if any, between, (i) the Building Loan Amount and (ii) all amounts previously Advanced under the Building Loan (including the amounts described in clauses (a) and (b) of the sentence). The portion of the Final Advance described in clause (c) of the foregoing sentence is referred to herein as the "**Project Loan Earn Out Advance**" and the corresponding portion of the Final Building Loan Advance is referred to herein as the "**Building Loan Earn Out Advance**" and together with the Project Loan Earn Out Advance, the "**Earn Out Advances**". Notwithstanding anything to the contrary provided for herein, the Earn Out Advances shall be reduced, pro rata, but not below \$0.00, if and to the extent necessary for the Required Ratios at Completion to be achieved following the Final Advances. In addition, if the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00, Lender shall have the right, but not the obligation, to apply any deposits held by Lender pursuant to the Rate Lock Agreement and any Interest Reserve Funds to the payment of the Building Loan and the Project Loan in such order and priority as Lender shall determine in its sole discretion. If the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00 and the deposits, if any under the Rate Lock Agreement and the Interest Reserve Funds are applied to the payment of the Loan, Borrower shall deposit with Lender Cash or a Letter of Credit satisfactory to Lender in an amount equal to the amount which, if used to pay down the Loan, would result in Stabilized Loan-to-Value Ratio of 75%, and a Debt Service Coverage Ratio of 1.70 to 1.0, calculated based upon Lender's determination on a pro-forma basis of Lender's Stabilized Net Cash Flow for the 12 months immediately following and assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 7.50%, and a Debt Service Coverage Ratio of 1.20 to 1.0, calculated based upon Lender's determination on a pro-forma basis of Lender's underwritten Net Operating Income for the 12 months immediately following and assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 10.65%.

- 2.12.3 Rate Lock Agreement. Upon satisfaction of all of the conditions to the Final Advance set forth in **Section 2.12.1**, and subject to the provisions of **Section 2.12.2**, Lender shall return to Borrower, the remaining deposits, if any, held by Lender under the Rate Lock Agreement and not applied by Lender in accordance with the provisions of the Rate Lock Agreement and any Interest Reserve Funds held by Lender pursuant to the Building Loan Agreement.

- **Section 2.13** **No Reliance.** All conditions and requirements of this Agreement are for the sole benefit of Lender and no other person or party (including, without limitation, the Construction Consultant, the General Contractor and subcontractors (including, without limitation, Major Contractors and Major Subcontractors) and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower. Lender shall have the right, in its sole and absolute discretion, to waive any such condition or requirement.

- **Section 2.14** **Method of Disbursement of Loan Proceeds.**

- 2.14.1 Draw Request to Be Submitted to Lender. At such time as Borrower shall desire to obtain an Advance, Borrower shall complete, execute and deliver to Lender a Borrower's Requisition in the form attached as **Exhibit L** to the Building Loan Agreement.

- (a) Borrower's Requisition shall be accompanied by a completed and itemized Application and Certificate for Payment (AIA Document No. G702) attached as **Exhibit M** to the Building Loan Agreement or similar form approved by Lender, containing the certification of the General Contractor or contractor or subcontractor to whom such payment is made, as applicable, and Borrower's Architect as to the accuracy of same, together with invoices relating to all items of Hard Costs covered thereby and accompanied by a cost breakdown showing the cost of work on, and the cost of materials incorporated into, the Improvements to the date of the requisition. The cost breakdown shall also show the percentage of completion of each line item on the Project Loan Budget, and the accuracy of the cost breakdown shall be certified by Borrower and by Borrower's Architect. All such applications for payment shall also show all contractors and subcontractors, including Major Contractors and Major Subcontractors, by name and trade, the total amount of each contract or subcontract, the amount theretofore paid to each subcontractor as of the date of such application, and the amount to be paid from the proceeds of the Advance to each contractor and subcontractor;

- (b) the completed construction will be reviewed by the Construction Consultant who will certify to Lender as to the value of completed construction, percentage of completion and compliance with Plans and Specifications;

(c) _____ lien waivers from each other Major Contractor and Major Subcontractors for work done and materials supplied by them which were paid for pursuant to any prior Draw Request;

(d) _____ a written request of Borrower for any necessary changes in the Plans and Specifications, the Project Loan Budget, the Disbursement Schedule or the Construction Schedule;

(e) _____ copies of all executed change orders, contracts and subcontracts, and, to the extent requested by Lender, of all inspection or test reports and other documents relating to the construction of the Project Improvements not previously delivered to Lender; and

(f) _____ such other information, documentation and certification as Lender shall reasonably request.

2.14.2 Procedure of Advances.

(a) _____ Each Draw Request shall be submitted to Lender and Construction Consultant at least ten (10) Business Days prior to the Requested Advance Date, and no more frequently than monthly. Lender shall make the requested Advance on the Requested Advance Date so long as all conditions to such Advance are satisfied or waived.

(b) _____ Not later than 11:00 A.M. New York City time, on the Requested Advance Date, Lender shall make such Advance available to Borrower in accordance with the terms of this Section 2.14.

(c) _____ Each Advance (other than the Final Advance) shall be in an amount of not less than \$250,000.00.

(d) _____ Each Advance shall be made on a Payment Date.

2.14.3 Funds Advanced. Each Advance shall be made by Lender by wire transfer to such checking account of Borrower as specified to Lender in writing or as provided in Section 2.14.4 below. All proceeds of all Advances shall be used by Borrower only for the purposes for which such Advances were made. Borrower shall not commingle such funds with other funds of Borrower.

2.14.4 Direct Advances to Third Parties. Lender may make, at Lender's option, any or all Advances directly or through the Title Company to (i) any Contractor, as applicable, for construction expenses which shall theretofore have been approved by Lender and for which Borrower shall have failed to make payment after receipt by Borrower of such applicable Advance, (ii) Borrower's Architect to pay its fees to the extent funds are allocated thereto in the Building Loan Budget if Borrower shall have failed to do so, (iii) the Construction Consultant to pay its fees, (iv) Lender's counsel to pay its fees, (v) to pay (x) any installment of interest due under the Note, (y) any expenses incurred by Lender which are reimbursable by Borrower under the Loan Documents (including, without limiting the generality of the foregoing, reasonable attorneys' fees and expenses and other fees and expenses incurred by Lender), provided that Borrower shall theretofore have received notice from Lender that such expenses have been incurred and Borrower shall have failed to reimburse Lender for said expenses beyond any grace periods provided for said reimbursement under the Note, this Agreement or any of the other Loan Documents, or (z) following the occurrence and continuation of an Event of Default, any other sums due to Lender under the Note, this Agreement or any of the other Loan Documents, all to the extent that the same are not paid by the respective due dates thereof, and (vi) any other Person to whom Lender in good faith determines payment is due and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan directly to any such Person or through the Title Company to such Persons in accordance with this Section 2.14.4 as amounts become due and payable to them hereunder and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. No further authorization from Borrower shall be necessary to warrant such direct Advances to such relevant Person, and all such Advances shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the Mortgage and the other Loan Documents as fully as if made directly to Borrower.

- 2.14.5 One Advance Per Month. Lender shall have no obligation to make Advances of the Loan more often than once in each calendar month except that Lender, in its sole discretion, shall have the right but not the obligation, to make additional advances per month for interest, fees and expenses due under the Loan Documents.

- 2.14.6 Advances Do Not Constitute a Waiver. No Advance shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances nor, in the event Borrower is unable to satisfy any such condition, shall any Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default hereunder.

- 2.14.7 Trust Fund Provisions. All proceeds advanced hereunder shall be subject to the trust fund provisions of **Section 13** of the Lien Law. Nothing contained in this Agreement is intended to constitute a promise by Borrower, express or implied, or to create any obligation, express or implied, on the part of Borrower, to make an "improvement," as such term is defined in the Lien Law of the State of New York, and no advance of proceeds of the Loan shall at any time be conditioned, directly or indirectly, upon the making of any such "improvement".

- 2.14.8 Advances and Disbursements Under Completion Guaranty. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, Borrower hereby irrevocably and unconditionally authorizes Lender to make any disbursements of proceeds of the Loan or of any Reserve Funds held by Lender to Guarantor in accordance with the Guaranty of Completion.

- Section 2.15 Interest Advances. Notwithstanding the requirements contained in Section 2.10, Section 2.11 and Section 2.12, and provided that no Event of Default shall have occurred, Lender shall make an Advance on each Payment Date during the Construction Term from the Interest Reserve Line Item, if and to the extent funds remain available under such line item, to pay interest then due under the Note. Notwithstanding the foregoing, if and to the extent that funds are available in the Additional Interest Reserve Deposit, Lender shall first apply funds available in the Additional Interest Reserve Deposit to the payment of interest due, prior to making an Advance for such purpose. Nothing contained in this Section 2.15 shall limit or derogate from Borrower's absolute and unconditional obligation to pay interest due under the Note.

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ARTICLE III.

CONDITIONS PRECEDENT

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Section 3.1 **Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the conditions precedent set forth in Section 3.1 of the Building Loan Agreement no later than the Closing Date.

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ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

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Section 4.1 **Borrower Representations.** The representations and warranties of Borrower set forth in Section 4.1 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

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Section 4.2 **Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

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ARTICLE V.

BORROWER COVENANTS

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Section 5.1 **Affirmative Covenants.** The affirmative covenants of Borrower set forth in Section 5.1 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

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Section 5.2 **Negative Covenants.** The negative covenants of Borrower set forth in Section 5.2 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

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ARTICLE VI.

INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

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Section 6.1 **Insurance.** Borrower, at its sole cost and expense, shall obtain and maintain, or cause to be maintained, insurance policies necessary to satisfy the requirements of Section 6.1 of the Building Loan Agreement.

- Section 6.2 Casualty and Condemnation. Section 6.2 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

- Section 6.3 Application of Net Proceeds. Section 6.3 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

- **ARTICLE VII**

- **RESERVE FUNDS**

- Section 7.1 Reserve Funds. Borrower shall establish such accounts and make such deposits as are required by Article VII of the Building Loan Agreement. The provisions of Article VII of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein.

- Section 7.2 Other Loan Documents. Borrower's obligations under this Article VII shall be suspended for so long as sufficient amounts are on deposit and reserved as required by the Building Loan Agreement.

- Section 7.3 Reserve Funds, Generally. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. All interest on a Reserve Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

ARTICLE VIII.

DEFAULTS

Section 8.1 **Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an "Event of Default");

(i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);

(ii) if any of the Taxes (other than Taxes being contested pursuant to Section 5.1.2 of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after Borrower receives notice of same;

(iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;

(iv) if Borrower Transfers or otherwise encumbers any portion of the Property without Lender's prior written consent in violation of the provisions of this Agreement or the Mortgage;

(v) if any material representation or warranty made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mezzanine Borrower, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mezzanine Borrower, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) _____ if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) _____ if Borrower breaches any covenant contained in **Section 4.1.30;**

(x) _____ with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) _____ if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) _____ if Borrower fails to pay the Administration Fee, or any portion or installment thereof, within five (5) days of the date when due;

(xiii) _____ If Borrower fails to deposit with Lender the cash deposit or Letter of Credit required in accordance with **Section 2.12.2** hereof;

(xiv) _____ if Borrower fails to materially comply with the Construction Schedule;

(xv) _____ if the Completion of the Improvements has not occurred on or prior to the Required Completion Date, subject to Force Majeure or if Lender or the Construction Consultant determines that Completion of the Improvements cannot occur on or prior to the Required Completion Date;

(xvi) _____ if any voucher or invoice is fraudulently submitted by Borrower or in connection with any Advance for services performed or for materials used in or furnished for the Property;

(xvii) _____ if there is any cessation at any time in construction of the Project Improvements for more than twenty (20) consecutive Business Days, other than as a result of Force Majeure;

(xviii) _____ if Borrower expressly confesses in writing to Lender its inability to continue or complete construction of the Project Improvements in accordance with this Agreement;

(xix) _____ if Lender, the Construction Consultant or their representatives are not permitted at all reasonable times upon not less than three (3) Business Days notice to enter upon the Property, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all the Plans and Specifications, or if Borrower shall fail to furnish to Lender or its authorized representative, when requested upon not less than five (5) Business Days notice, copies of the Plans and Specifications;

(xx) _____ if a material adverse change in Borrower's financial condition shall occur which would, in Lender's reasonable determination, materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any other document evidencing or securing the Loan beyond any applicable notice and grace periods expressly set forth in the Loan Documents;

(xxi) _____ if the conditions precedent to the Final Advance have not been satisfied on or prior to the Required Completion Date;

(xxii) _____ If the Guarantor fails to maintain the Required Liquidity and the Required Net Worth covenants specified in the Guaranty of Completion or if the Guarantor shall default under the Guaranty of Completion or the Guaranty of Recourse Carveouts;

(xxiii) _____ if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xxiv) _____ if Borrower shall continue to be in Default under any of the terms, covenants or conditions of **Section 9.1** hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of **Section 9.1** hereof, in either case for three (3) Business Days after notice to Borrower from Lender;

(xxv) _____ if an Event of Default (as defined in the Building Loan Agreement) shall have occurred;

(xxvi) _____ if there shall be default by Borrower or Guarantor under any of the other Loan Documents, beyond applicable cure periods, if any, contained in such documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such other default, event or condition is to accelerate the maturity of all or any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xxvii) _____ if Guarantor shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of **Section 5.2.15** of the Building Loan Agreement;

(xxviii) _____ if all of the Initial Advance Conditions, including, without limitation, the Unsatisfied Initial Advance Conditions, are not satisfied by the Required Initial Advance Date; or

(xxix) _____ if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xxviii) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 Remedies.

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing, (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

ARTICLE IX.

SPECIAL PROVISIONS

Article 9 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

ARTICLE X.

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 Lender's Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law.

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

- National Registered Agents, Inc. -
- 875 Avenue of the Americas, Suite 501 -
- New York, New York 10001 -

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

- Section 10.4 **Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

- Section 10.5 **Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

- Section 10.6 **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

- If to Lender: Bear Stearns Commercial Mortgage, Inc.
- 383 Madison Avenue
- New York, New York 10179
- Attention: J. Christopher Hoeffel
- Facsimile No.: (212) 272-7047
- with a copy to: Kelley Drye & Warren LLP
- 101 Park Avenue
- New York, New York 10178
- Attention: Paul A. Keenan, Esq.
- Facsimile No.: (212) 808-7897
- If to Borrower: Acadia Atlantic Avenue LLC
- c/o Acadia Realty Trust
- 1311 Mamaroneck Avenue, Suite 260
- White Plains, New York 10605
- Attention: Robert Masters, Esq., General Counsel
- Facsimile No.: (914) 288-2162
- If to MERS: MERS Commercial
- P.O. Box 2300
- Flint, Michigan 48501-2300

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

- Section 10.7 **Trial by Jury.**

- **BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.**

- Section 10.8 **Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

- Section 10.9 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

- Section 10.10 **Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11 **Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.12 **Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 **Expenses; Indemnity.** (1) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Account or Cash Management Account, as applicable.

(a) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "Indemnified Liabilities"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(b) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 Schedules and Exhibits Incorporated. The Schedules and Exhibits annexed to the Building Loan Agreement are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

Section 10.18 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 Identical Obligations; Conflict; Construction of Documents; Reliance. To the extent that Borrower has identical obligations under this Agreement and under any of the other Loan Agreements, performance by Borrower of such obligations under this Agreement or any of the other Loan Agreements shall be deemed performance by Borrower, as applicable, under all such Loan Agreements and hereunder of such obligations. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

- Section 10.21 **Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this **Section 10.21** shall survive the expiration and termination of this Agreement and the payment of the Debt.

- Section 10.22 **Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated June 28, 2007 between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

- Section 10.23 **Joint and Several Liability.** If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

- Section 10.24 **Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) _____ the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, *that* such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) _____ the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) _____ the right, in accordance with the terms of this Agreement, including, without limitation, **Section 5.1.11** hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) _____ the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property and/or construction of the Project Improvements).

The rights described above in this **Section 10.24** may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 **MERS.** Mortgage Electronic Registration Systems, Inc., a Delaware corporation ("**MERS**"), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Mortgage and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to "Mortgagee" shall include Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement 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

LENDER

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York
corporation

By: /s/ Joseph E. Geoghan
Name: Joseph E. Geoghan
Title: Authorized Signatory Managing Director

BUILDING LOAN AGREEMENT

Dated as of December 26, 2007

Between

ACADIA ATLANTIC AVENUE LLC,

as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,

as Lender

MERS MIN: 8000101-000007166-1

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BUILDING LOAN AGREEMENT

THIS BUILDING LOAN AGREEMENT, dated as of December 26, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement**" or sometimes, this "**Building Loan Agreement**"), is made by and between **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 ("**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, as Borrower ("**Borrower**").

WITNESSETH:

WHEREAS, Borrower desires to obtain the Building Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Building Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I.

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"ADA" shall mean the Americans with Disabilities Act of 1992, as amended from time to time.

"Additional Insolvency Opinion" shall have the meaning set forth in **Section 4.1.30(c)**.

"Additional Interest Reserve Deposit" shall have the meaning set forth in **Section 5.1.28** hereof.

"Additional Mezzanine Borrower" shall have the meaning set forth in **Section 5.2.13(g)** hereof.

- “Additional Mezzanine Loan” shall have the meaning set forth in Section 5.2.13 hereof.

- “Additional Mezzanine Loan Documents” shall have the meaning set forth in Section 5.2.13(f) hereof.

- “Administration Fee” shall have the meaning set forth in the Administration Fee Agreement.

- “Administration Fee Agreement” shall mean that certain Administration Fee Agreement dated as of the date hereof between Borrower and Lender.

- “Advance” or “Advances” shall mean any disbursement of the proceeds of the Building Loan by Lender pursuant to the terms of this Agreement.

- “Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

- “Affiliated Manager” shall mean any Manager in which Borrower or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

- “Affiliate Fees” shall mean collectively, any development fee, management fee, brokerage fee, commission, distribution, reimbursement, salary, consideration sum or amount, however characterized, payable to any Restricted Party with respect to the Property and/or the Project.

- “Affirmation of Payment” shall have the meaning as set forth in Section 2.11.5(e).

- “Aggregate Debt Service Coverage Ratio” shall have the meaning set forth in Section 5.2.13 hereof.

- “Agreement” shall mean this Building Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “ALTA” shall mean American Land Title Association, or any successor thereto.

- “Annual Budget” shall mean the operating budget, including all planned Capital Expenditures, for the Property prepared by Borrower in accordance with Section 5.1.11.(e) hereof for the applicable Fiscal Year or other period.

- “Anticipated Costs Report” shall have the meaning as set forth in Section 2.11.5(a).

- “Approved Annual Budget” shall have the meaning set forth in Section 5.1.11(e) hereof.

- “Approved Bank” shall mean a bank or other financial institution which has a minimum long term unsecured debt rating of at least “AA” by S&P and Fitch and “Aa2” by Moody’s.

- “Architect’s Certificate” shall have the meaning as set forth in Section 2.10.10.

- “Architect’s Contract” shall mean that certain Professional Services Authorization between Borrower and Borrower’s Architect dated as of March 16 2007, as the same may be amended from time to time in compliance with the terms hereof.

- “Assignment of Contracts” shall mean that certain Assignment of Agreement Permits and Contracts dated as of the date hereof from Borrower, as assignor, to Lender, as assignee.

- “Assignment of Leases” shall mean, collectively, the Building Loan Assignment of Leases and the Project Loan Assignment of Leases.

- “Assignment of Management Agreement” shall mean that certain Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Award” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

- “Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which such Person colludes with, or otherwise assists such Person, or causes to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

- “Bankruptcy Code” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

- “Borrower” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

- “Borrower’s Architect” shall mean Butz Wilbern, Ltd.

-

“Borrower’s Requisition” shall have the meaning set forth in Section 2.14.1 hereof.

“BSCMI” shall mean Bear Stearns Commercial Mortgage, Inc., a New York corporation, and its successors in interest.

“Budget Line” shall have the meaning set forth in Section 2.1.14 hereof.

“Building Loan” shall mean the loan made by Lender to Borrower pursuant to this Agreement in the principal amount of up to the Building Loan Amount.

“Building Loan Amount” shall mean Eleven Million, Two Hundred Twenty-Nine Thousand, Two Hundred Sixty and 33/100 Dollars (\$11,229,260.33).

“Building Loan Assignment of Leases” shall mean that certain Building Loan Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to Lender, as assignee.

“Building Loan Budget” shall have the meaning set forth in Section 2.1.14 hereof.

“Building Loan Costs” shall mean all Project-Related Costs (including Hard Costs and Soft Costs) that are Costs of the Improvements.

“Building Loan Documents” shall mean, collectively, this Agreement, the Building Loan Note, the Building Loan Mortgage, the Building Loan Assignment of Leases, as well as all other documents now or hereafter executed and/or delivered with respect to the Building Loan.

“Building Loan Earn Out Advance” shall have the meaning set forth in Section 2.12.2 hereof.

“Building Loan Mortgage” shall mean that certain Building Loan Mortgage, Assignment of Leases and Rents and Security Agreement dated the date hereof, executed and delivered by Borrower to Lender as security for the Building Loan and encumbering the Property.

“Building Loan Note” shall mean that certain Building Loan Promissory Note, dated the date hereof, in the principal amount of up to the Building Loan Amount made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York, or the place of business of any Servicer are not open for business.

- “Capital Expenditures” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs),

- “Carrying Costs” shall mean, the sum of the following costs associated with the Property for any specified period: (a) Taxes, (b) Other Charges, (c) Insurance Premiums and (d) Operating Expenses.

- “Cash” shall mean the legal tender of the United States of America.

- “Cash and Cash Equivalents” shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Obligations, and (iii) an irrevocable standby Letter of Credit.

- “Cash Management Account” shall have the meaning set forth in Section 2.7.2(a) hereof.

- “Cash Management Agreement” shall mean that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Manager, Cash Management Bank and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Cash Management Bank” shall mean Wells Fargo Bank, N.A., a national banking association, or any successor Eligible Institution acting as Agent under the Cash Management Agreement.

- “Cash Management Conditions” shall have the meaning set forth in Section 2.7 hereof.

- “Cash Trap Event” shall mean the occurrence of any of the following: (a) an Event of Default; (b) any Bankruptcy Action of Borrower or Mezzanine Borrower; (c) any Bankruptcy Action of Manager; or (d) on or after the last day of the Construction Term, a DSCR Trigger.

- “Cash Trap Event Cure” shall mean:

- (a) _____ if the Cash Trap Event is caused solely by the occurrence of:

- (i) _____ clause (a) in the definition of “Cash Trap Event”, a cure of the Event of Default which gave rise to the Cash Trap Event which is accepted or waived in writing by Lender, in its sole discretion, prior to Lender exercising any of its rights, to accelerate the Loan, move to appoint a receiver, or commence a foreclosure action;

- (ii) _____ clause (c) in the definition of “Cash Trap Event”, either (A) if such Cash Trap Event is as a result of the filing of an involuntary petition against Manager and not consented to by Manager, upon the same being discharged, stayed or dismissed within thirty (30) days of such filing and such filing (after dismissal or discharge), provided, that such dismissal or discharge in Lender’s reasonable opinion does not adversely impact the Loan or the Property, or (B) if Borrower replaces the Manager with a Qualified Manager pursuant to a Replacement Management Agreement approved by Lender;

(iii) _____ a DSCR Trigger Event, if the Debt Service Coverage Ratio is greater than 1.05 to 1:00 based upon the trailing six (6) month period annualized as of two (2) consecutive Debt Service Coverage Ratio Determination Dates occurring thereafter.

(b) _____ provided, that, each such Cash Trap Event Cure set forth in this definition shall be subject to the following conditions: (i) no Event of Default (other than that giving rise to the Cash Trap Event) shall have occurred and be continuing under this Agreement or any of the other Loan Documents; (ii) Borrower shall have notified Lender in writing of its election to cure the respective Cash Trap Event; (iii) a Cash Trap Event Cure under clauses (a)(i) and (a)(ii) may occur no more than 3 times during the term of the Loan; (iv) Borrower shall have paid all of Lender's reasonable expenses incurred in connection with such cure including, re asonable attorney's fees and costs; and (v) in no event shall Borrower have the right to "cure" a Cash Trap Event occurring by reason of a Bankruptcy Action of Borrower or Mezzanine Borrower.

"Cash Trap Period" shall mean each period commencing on the occurrence of a Cash Trap Event and continuing until the earlier of (a) the Payment Date next occurring following the related Cash Trap Event Cure, or (b) until payment in full of all principal and interest on the Loan and all other amounts payable under the Loan Documents in accordance with the terms and provisions of the Loan Documents.

"Casualty" shall have the meaning set forth in Section 6.2 hereof.

"Casualty Consultant" shall have the meaning set forth in Section 6.2.4(d) hereof.

"Casualty Retainage" shall have the meaning set forth in Section 6.2.4(e) hereof.

"Clearing Account" shall have the meaning set forth in Section 2.7 hereof.

"Clearing Account Agreement" shall have the meaning set forth in Section 2.7.1 hereof.

"Clearing Bank" shall have the meaning set forth in Section 2.7 hereof.

"Closing Date" shall mean the date of this Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Completion of the Improvements" shall mean the substantial completion (i.e., completion of the Project Improvements other than Punch List Items) of the construction and renovation of the Project Improvements substantially in accordance with all Plans and Specifications, all Legal Requirements, all Permitted Encumbrances and this Agreement, and that all utilities necessary to service the Project Improvements have been connected and are in operation, such completion to be evidenced to the reasonable satisfaction of Lender and the Construction Consultant; together with the delivery to Lender of:

(i) _____ a permanent or temporary certificate(s) of occupancy for the Project Improvements and evidence that all other Governmental Approvals have been issued and all other Legal Requirements have been satisfied so as to allow the Project Improvements to be used and operated in accordance with the Loan Documents and the Plans and Specifications; and

(ii) _____ AIA Form G704 (Certificate of Substantial Completion) completed and executed by Borrower's Architect certifying the substantial completion of the Project Improvements in accordance with the Plans and Specifications.

"Condemnation" shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

"Condemnation Proceeds" shall have the meaning set forth in Section 6.2.1 hereof.

"Construction Advance Conditions" shall have the meaning set forth in Section 2.11 hereof.

"Construction Consultant" shall mean EMG Consulting Group, or such other Person as Lender may designate and engage as a replacement to inspect the Project Improvements and the Property as construction progresses and consult with and to provide advice to and to render reports to Lender, which Person may be, at Lender's option upon notice to Borrower, either an officer or employee of Lender or consulting architects, engineers or inspectors appointed by Lender.

"Construction Schedule" shall mean the construction schedule attached hereto as Schedule IV, broken down by trade, of Borrower's best good faith estimate of the dates of commencement and completion of the Project Improvements certified by Borrower to Lender in final form approved by Lender and the Construction Consultant prior to the Closing.

"Construction Term" shall mean the period commencing on the date hereof and ending on the first to occur of (i) the Maturity Date, whether by acceleration or otherwise, (ii) the 24th Payment Date, and (iii) the Final Advance.

"Contingency" shall mean the contingency Line Item in the Building Loan Budget and/or Project Loan Budget.

"Contract" shall mean shall mean any agreement (including the General Contractor's Agreement) entered into by Borrower or by General Contractor, in which the Contractor or Subcontractor thereunder agrees to provide services, labor and/or materials in connection with the Project Improvements. All Contracts shall require that the Contractor or Subcontractor thereunder use union labor.

- "Contractor" shall mean any contractor hired by Borrower, including, without limitation, the General Contractor (including subsidiaries and affiliates), supplying services, labor and/or materials in connection with the Project.

- "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. "Controlled" and "Controlling" shall have correlative meanings.

- "Costs of the Improvement" shall mean those items defined as an "improvement" and/or a "cost of improvement" under Section 2 of Article 1 the Lien Law.

- "Covered Disclosure Information" shall have the meaning set forth in Section 9.2(b) hereof.

- "Debt" shall mean the outstanding principal amount of the Building Loan set forth in, and evidenced by, this Agreement, the Building Loan Documents and the Building Loan Note, together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Building Loan under the Building Loan Note, this Agreement, the Building Loan Mortgage or any other Building Loan Document.

- "Debt Service" shall mean, with respect to any particular period of time, the aggregate scheduled principal and interest payments due under this Building Loan Agreement and the Building Loan Note.

- "Debt Service Coverage Ratio" shall mean a ratio for the applicable period in which:

- (a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, adjusted for a vacancy rate equal to the greater of the actual vacancy rate, the market vacancy rate and an assumed vacancy rate equal to five percent (5%), without deduction for (i) 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 Total Debt Service for such period assuming a thirty (30) year amortization schedule.

- "Debt Service Coverage Ratio Determination Date" shall mean the earlier of the Required Completion Date and the date of the Final Advance and the first day of each calendar month thereafter.

- “Default” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

- “Default Rate” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the maximum rate permitted by applicable law or (b) five percent (5%) above the Interest Rate.

- “Defeasance Date” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

- “Defeasance Deposit” shall mean an amount equal to the remaining principal amount of the Note, the Defeasance Payment Amount, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of Section 2.5 hereof (including, without limitation, any fees and expenses of accountants, attorneys and the Rating Agencies incurred in connection therewith).

- “Defeasance Event” shall have the meaning set forth in Section 2.5.1(a) hereof.

- “Defeasance Expiration Date” shall mean the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust.

- “Defeasance Payment Amount” shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

- “Deferred Maintenance Condition” shall have the meaning set forth in Section 7.4.1.

- “Development Budget” shall have the meaning set forth in Section 2.1.14 hereof.

- “Disbursement Schedule” shall mean the schedule of the amounts of Advances hereunder and Project Loan Advances under the Project Loan anticipated to be requisitioned by Borrower each month during the term of the Loan, attached hereto as part of the Development Budget and in final form approved by Lender and the Construction Consultant prior to the Closing Date.

- “Disclosure Document” shall mean a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, or such other information reasonably requested by Lender, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

- “Dollars” or “\$” shall mean lawful money of the United States of America.

- “Draw Request” shall mean, with respect to each Advance, Borrower’s Requisition for such Advance, along with such other documents required by this Agreement to be furnished to Lender as a condition to such Advance.

- **“DSCR Trigger Event”** shall mean, that as of any Debt Service Coverage Ratio Determination Date, the Debt Service Coverage Ratio as determined by Lender based on the trailing six (6) month period (annualized) immediately preceding the date of such determination is less than 1.00 to 1.0.

- **“Earn Out Advance”** shall have the meaning set forth in **Section 2.12.2** hereof.

- **“Eligible Account”** shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least Fifty Million and 00/100 Dollars (\$50,000,000.00) and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

- **“Eligible Institution”** shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P “P-1” by Moody’s and “F-1+” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long-term unsecured debt obligations of which are rated at least “AA” by Fitch and S&P and “Aa2” by Moody’s).

- **“Embargoed Person”** shall have the meaning set forth in **Section 5.1.42** hereof.

- **“Environmental Engineer”** shall mean such environmental engineering or similar inspection firms approved by Lender.

- **“Environmental Indemnity”** shall mean that certain Environmental Indemnification Agreement, dated as of the date hereof, executed by Borrower and Acadia Strategic Opportunity Fund II, LLC in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- **“Equipment”** shall have the meaning as set forth in the granting clause of the Building Loan Mortgage.

- **“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

- **“Event of Default”** shall have the meaning set forth in **Section 8.1(a)** hereof.

- **“Excess Cash Flow”** shall have the meaning set forth in **Section 3.4(i)** of the Cash Management Agreement.

“**Excess Cash Flow Funds**” shall have the meaning set forth in **Section 7.6** hereof.

“**Excess Cash Flow Reserve**” shall have the meaning set forth in **Section 7.6** hereof.

“**Exchange Act**” shall have the meaning set forth in **Section 9.2(a)** hereof.

“**Extraordinary Expense**” shall have the meaning set forth in **Section 5.1.11(f)** hereof.

“**Final Advance**” shall have the meaning set forth in **Section 2.12.1**.

“**Final Project Loan Advance**” shall mean the Final Advance as defined in the Project Loan Agreement.

“**Final Project Report**” shall mean the report to be prepared by the Construction Consultant of its review of the Development Budget, Building Loan Budget, Project Loan Budget, the Plans and Specifications, the Construction Schedule in final form, the Disbursement Schedule, all in final form, the General Contractor’s Agreement, the Contracts, the Major Contracts and such other documents and information reasonably required by the Construction Consultant.

“**FIRREA**” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**Fixtures**” shall have the meaning set forth in the Mortgage.

“**Force Majeure**” shall mean, with respect to the obligations of any Person, actual delay beyond the reasonable control of such Person, which is due to any of the following: (a) natural disaster, fire or other casualty, earthquake, flood, explosion, abnormally inclement weather for the season in question (as reported by an appropriate authority) or any other act of God, (b) declared or undeclared war, acts of domestic or international terrorism, riot, mob violence, insurrection or sabotage, (c) the inability to procure labor, equipment, facilities, energy, materials or supplies, the failure of transportation, any other labor disturbance, strikes, lockouts or actions of labor unions, in each such case, so long as such cause is not within the reasonable control of such Person, (d) condemnation, temporary restraining orders or injunctions, changes after the date hereof in the requirements or interpretations of relevant laws, in each such case, so long as such cause is not within the reasonable control of such Person, or (e) any other cause not within the reasonable control of such Person; provided that, with respect to any of the circumstances described in the foregoing clauses (a) through (e) inclusive: (i) for the purposes of this Agreement, any period of Force Majeure shall apply only to such person’s performance of the obligations necessarily affected by such circumstance and shall continue only so long as such person is continuously and diligently using all reasonable efforts to minimize the effect and duration thereof; and (ii) notwithstanding the foregoing, Force Majeure shall not include (A) the unavailability or insufficiency of funds as a result of the insolvency of such Person or any of its Affiliates, (B) any breach of contract or default by Borrower’s Architect, the General Contractor or any Major Contractor under their respective contracts and agreements concerning the Project Improvements.

- “GAAP” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

- “General Contractor” shall mean Designline Construction Services, Inc. or any other general contractor or construction manager, as applicable, approved by Lender and the Construction Consultant in accordance with the terms of this Agreement.

- “General Contractor’s Agreement” shall have the meaning set forth in Section 2.10.9.

- “General Contractor’s Certificate” shall have the meaning set forth in Section 2.10.10.

- “Governmental Approvals” shall mean all approvals, consents, waivers, orders, acknowledgments, authorizations, permits and licenses required under applicable Legal Requirements to be obtained from any Governmental Authority for the performance of the demolition work and construction of the Project Improvements and/or the use, occupancy and operation of the Project Improvements before the commencement, during and following completion of construction and Building Loan, as the context requires, including, without limitation, all land use, building, subdivision, zoning and similar ordinances and regulations promulgated by any Governmental Authority.

- “Governmental Authority” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

- “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, open for business and paying full contractual rent without right of offset or credit, utility charges, escalations, forfeited security deposits, interest on credit accounts, 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, 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.

- “Guarantor” shall mean, collectively, Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, and Post Management, L.L.C., a Delaware limited liability company.

- “Guaranty of Completion” shall mean that certain Guaranty of Completion, dated as of the date hereof, executed and delivered by Acadia Strategic Opportunity Fund II, LLC in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Guaranty of Recourse Carveouts” shall mean that certain Guaranty of Recourse Carveouts, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

- “Hard Costs” shall mean those Building Loan Costs which are for labor, materials, equipment and fixtures.

- “Improvements” shall have the meaning set forth in the granting clause of the Mortgage

- “Indebtedness” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

- “Indemnified Liabilities” shall have the meaning set forth in Section 10.13(a) hereof.

- “Indemnified Persons” shall have the meaning set forth in Section 9.2(b) hereof.

- “Indemnifying Person” shall mean Borrower and Guarantor.

- “Independent Director” shall mean a director of a corporation or a limited liability company that is a Special Purpose Entity and “Independent Manager” shall mean a manager of a limited liability company that is a Special Purpose Entity, in either case, who is not at the time of initial appointment, or at any time while serving as an Independent Director or Independent Manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director or Independent Manager of a Special Purpose Entity), officer, employee, partner, member, attorney or counsel of Guarantor, Borrower, or any Affiliate of any of them (unless such natural person is an Independent Director or Independent Manager provided by a nationally recognized company that provides professional independent managers and which also provides other corporate services in the ordinary course of business, in which case such Person may receive reasonable fees for servicing as Independent Director or Independent Manager of a Special Purpose Entity); (b) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with Guarantor, Borrower or any Affiliate of any of them; (c) a Person controlling or under common control with any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other Person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

- “Initial Advance” shall have the meaning set forth in Section 2.10 hereof.

- “Initial Advance Conditions” shall have the meaning set forth in Section 2.10 hereof.

- “Initial Interest Reserve Deposit” shall have the meaning set forth in Section 7.2.1.

- “Initial Tax and Insurance Escrow Deposit” shall have the meaning set forth in Section 7.1 hereof.

- “Insolvency Opinion” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Wachtel & Masyr, LLP in connection with the Loan.

- “Insurance Premiums” shall have the meaning set forth in Section 6.1.1(e) hereof.

- “Insurance Proceeds” shall have the meaning set forth in Section 6.2.1.

- “Intellectual Property” shall have the meaning set forth in Section 4.1.43 hereof.

- “Interest Period” shall mean: (a) the period commencing on the Closing Date and ending on the last day of the month in which the Closing Date occurs, both dates inclusive; and (b) the period commencing on and including the first day of each calendar month thereafter during the term of Loan and ending and including the last day of such calendar month.

- “Interest Rate” shall mean seven and one hundred forty-four one-thousandths percent (7.144%), provided, however, in the event that on or before January 1, 2011, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.0 using a debt service constant of 7.50%, and Borrower delivers to Lender a MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 75% assuming a fully advanced Loan, Lender shall, upon Borrower's written request, reduce the Interest Rate to a per annum rate equal to five and seven hundred ninety-four one-thousandths percent (5.794%), commencing on the first Payment Date after Borrower's request. Any reduction in the Interest Rate as set forth above shall be effective commencing on the first Payment Date after Borrower's request for such reduction and satisfaction of the conditions set forth above and no reduction in the Interest Rate shall be retroactive. In the event that Borrower fails to satisfy the conditions for a reduction of the Interest Rate within the time periods set forth above, time being of the essence, Borrower shall have no further right to obtain a reduction in the Interest Rate. Notwithstanding anything to the contrary contained herein, Lender shall have the right, in its sole discretion, at any time after the expiration of the Construction Term and prior to a Securitization of the Loan, to increase the Interest Rate by up to two-tenths of one percent (0.20%).

- “Interest Reserve Account” shall have the meaning set forth in Section 7.2.1.

- “Interest Reserve Deposit” shall have the meaning set forth in Section 7.2.1.

- “Interest Reserve Fund” shall have the meaning set forth in Section 7.2.1.

- “Interest Reserve Line Item” shall mean the interest reserve Line Item of the Project Loan Budget.

- “Land” shall mean the land described on Exhibit “A” attached hereto.

- “Lease” shall mean 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.

- “Legal Requirements” shall mean, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting the Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

- “Lender” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

- “Letter of Credit” shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit, as the same may be replaced, split, substituted, modified, amended, supplemented, assigned or otherwise restated from time to time, (either an evergreen letter of credit or a letter of credit which does not expire until at least two (2) Business Days after the Maturity Date or such earlier date as such Letter of Credit is no longer required pursuant to the terms of this Agreement) in favor of Lender and entitling Lender to draw thereon based solely on a statement purportedly executed by an officer of Lender stating that it has the right to draw thereon, and issued by a domestic Approved Bank or the U.S. agency or branch of a foreign Approved Bank, or if there are no domestic Approved Banks or U.S. agencies or branches of a foreign Approved Bank then issuing letters of credit, then such letter of credit may be issued by a domestic bank, the long term unsecured debt rating of which is the highest such rating then given by the Rating Agency or Rating Agencies, as applicable, to a domestic commercial bank.

- “Liabilities” shall have the meaning set forth in Section 9.2(b) hereof.

- “Lien” shall mean, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

- “Lien Law” shall mean the Lien Law of the State of New York.

- “Line Item” shall have the meaning set forth in Section 2.1.14 hereof.

- “Liquidity” means unrestricted and unencumbered Cash and Cash Equivalents acceptable to Lender.

- “Loan” shall mean collectively, the Building Loan and the Project Loan.

- “Loan Agreement” shall mean collectively, this Building Loan Agreement, and the Project Loan Agreement.

- “Loan Documents” shall mean collectively, the Building Loan Documents and the Project Loan Documents, the Environmental Indemnity, the Guaranty of Completion, the Guaranty of Recourse Carveouts, the Cash Management Agreement, the Clearing Account Agreement, the Assignment of Contracts, the Administration Fee Agreement, the Rate Lock Agreement, and all other documents executed and/or delivered in connection with the Loan.

- “Loan-to-Cost Ratio” shall mean, as of any date, the ratio of (i) the Total Loan Amount to (ii) the aggregate amount of Project-Related Costs (excluding any Affiliate Fees) actually paid as of such date plus Project-Related Costs to be paid with the proceeds of the Advance(s) being requested by Borrower on such date hereunder and under the Project Loan Agreement.

- “Major Contractor” shall mean any contractor hired by Borrower, including, without limitation, the General Contractor (including subsidiaries and affiliates), supplying services, labor and/or materials in connection with the Project which is for an aggregate contract price equal to or greater than \$500,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders, or which relates to major project elements such as steel, concrete, HVAC systems, windows, doors and other similar items.

- “Major Contracts” shall mean any Contract with a Major Contractor or Major Subcontractor.

- “Major Subcontractor” shall mean any subcontractor supplying services, labor and/or materials in connection with the Project which is for an aggregate contract price equal to or greater than \$500,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders, or which relates major project elements such as steel, concrete, HVAC systems, windows, doors and other similar items.

- “Management Agreement” shall mean the Management Agreement dated as of October 23, 2007 by and between Borrower and Manager pursuant to which Manager is to provide management and other services with respect to the Property, or, if the context requires, the Replacement Management Agreement.

- “Manager” shall mean Post Management, L.L.C., a Delaware limited liability company, or, if the context requires, a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

- “Material Action” means, with respect to any Person, to file any insolvency or reorganization case or proceeding, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against such Person, to file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, to make any assignment for the benefit of creditors of such Person, to admit in writing such Person’s inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

- “Maturity Date” shall mean January 1, 2020 or such earlier date on which the final payment of principal of the Building Loan Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

- “Maximum Legal Rate” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

- “MERS” shall have the meaning set forth in Section 10.25 hereof.

“Mezzanine Borrower” shall have the meaning set forth in Section 9.1.

“Mezzanine Loan Documents” shall have the meaning set forth in Section 9.1.

“Monthly Debt Service Payment Amount” shall mean (a) an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with Section 2.2 hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in January, 2015, and (b) a constant monthly payment of \$75,797.67 commencing with the Payment Date occurring in February, 2015 and on each Payment Date thereafter, provided, however, that in the event that the Interest Rate is modified in accordance with the provisions of the definition of “Interest Rate,” the Monthly Debt Service Payment Amount shall be adjusted by Lender based upon the modified Interest Rate and a thirty (30) year amortization schedule, Lender’s determination of the Monthly Debt Service Payment Amount being binding absent manifest error.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Mortgage” shall mean, collectively, the Building Loan Mortgage and the Project Loan Mortgage, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Net Cash Flow” shall mean, for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

“Net Operating Income” shall mean the amount obtained by subtracting Operating Expenses from Gross Income from Operations.

“Net Proceeds” shall have the meaning set forth in Section 6.2.1 hereof.

“Net Proceeds Deficiency” shall have the meaning set forth in Section 6.2.4(g) hereof.

“Net Worth” means with respect to any Person for any period, assets less liabilities of such Person, determined in accordance with GAAP.

“Note” shall mean, collectively, the Building Loan Note and the Project Loan Note.

“Officer’s Certificate” shall mean a certificate delivered to Lender by Borrower that is signed by an authorized officer of the general partner or managing member of Borrower.

“Open Period Date” shall have the meaning set forth in Section 2.4.1 hereof.

“Operating Expenses” shall mean the total of all expenditures, computed in accordance with GAAP, of whatever kind relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments as approved by Lender, and other similar costs, but excluding depreciation, Debt Service, Capital Expenditures and contributions to the Reserve Funds.

- “Operating Reserve Account” shall have the meaning set forth in Section 7.7.1 hereof.

- “Operating Reserve Deposit” shall have the meaning set forth in Section 7.7.1 hereof.

- “Operating Reserve Funds” shall have the meaning set forth in Section 7.7.1 hereof.

- “Other Charges” shall mean all maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

- “Other Debt” shall mean the “Debt” as defined in both the Project Loan Agreement, and the Mezzanine Loan Documents, if applicable.

- “Other Design Professionals” shall mean all architects (other than Borrower’s Architect) and engineers engaged by Borrower and/or Borrower’s agent to work on the Project Improvements.

- “Other Obligations” shall have the meaning as set forth in the Mortgage.

- “Payment Date” shall mean February 1, 2008, and the 1st day of every month thereafter during the term of the Loan until and including the Maturity Date or, if such day is not a Business Day, the immediately preceding Business Day.

- “Performance Letter” shall have the meaning set forth in Section 2.10.11(a) hereof.

- “Permitted Encumbrances” shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, unless and to the extent being contested by Borrower in compliance with the terms of this Agreement, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to complete the Project or repay the Loan.

- “Permitted Investments” shall have the meaning set forth in the Cash Management Agreement.

- “Permitted Mezzanine Lender” shall have the meaning set forth in Section 5.2.13 hereof.

- “Permitted Release Date” shall mean the earlier of (i) the Defeasance Expiration Date or (ii) the date that is the third (3rd) anniversary of the Completion of the Improvements.

- “Permitted Transfer” means any of the following:

- (a) any transfer, directly as a result of the death of a natural Person, of stock, membership interests, partnership interests or other ownership interests in any Restricted Party previously held by the decedent in question to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower delivers notice to Lender as soon as practicable thereafter and that such Restricted Party is promptly reconstituted, if applicable, following the death of such member, partner or shareholder and there is no change in Control of such Restricted Party as a result of such transfer;

- (b) any transfer, directly as a result of the legal incapacity of a natural Person, of stock, membership interests, partnership interests or other ownership interests previously held by the such natural Person to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower delivers notice to Lender as soon as practicable thereafter and that such Restricted Party is promptly reconstituted, if applicable, following the death of such member, partner or shareholder and there is no change in Control of such Restricted Party as a result of such transfer.

- (c) transfers for estate planning purposes of a natural Person's stock, membership interests, partnership interests or other ownership interests in a Restricted Party by the current partner(s), shareholder(s) or member(s), as applicable, to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as such Restricted Party is reconstituted, if required, following such transfer and there is no change in Control of such Restricted Party as a result of such transfer;

- (d) transfers permitted pursuant to Section 5.2.10(d) of this Agreement;

- (e) the sale, transfer, or issuance of stock in Acadia Realty Trust, in the ordinary course of business, provided such stock is listed on the NYSE or other nationally recognized stock exchange; and

- (f) a Transfer by Slayton Properties Atlantic, LLC of 100% of its membership interest in Borrower to Acadia 3319 Atlantic Avenue LLC or an Affiliate of Acadia Strategic Opportunity Fund II, LLC Controlled by Acadia Realty Trust.

- “Person” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

- “Personal Property” shall have the meaning set forth in the granting clause of the Mortgage.

- “Physical Conditions Report” shall mean, a structural engineering report prepared by a company satisfactory to Lender regarding the physical condition of the Property, satisfactory in form and substance to Lender in its sole discretion, which report shall, among other things, confirm that the Property and its use complies, in all material respects, with all applicable Legal Requirements (including, without limitation, zoning, subdivision and building laws).

- “Plans and Specifications” shall mean the final plans and specifications for the performance of the Project Improvements prepared by Borrower’s Architect and the Other Design Professionals and approved by Lender, the Construction Consultant, as the same may be amended and supplemented from time to time in accordance with the terms of this Agreement. The Preliminary Plans and Specifications submitted to Lender are listed on **Schedule III** attached hereto

- “Policies” shall have the meaning specified in **Section 6.1.1(e)** hereof.

- “Policy” shall have the meaning specified in **Section 6.1.1(e)** hereof.

- “Prepayment Date” shall have the meaning set forth in **Section 2.4.4** hereof.

- “Prepayment Rate” shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date as most recently published in the “Treasury Bonds, Notes and Bills” section in The Wall Street Journal as of such Prepayment Rate Determination Date. If more than one issue of United States Treasury Securities has the same remaining term to the Maturity Date, the “Prepayment Rate” shall be the yield on such United States Treasury Security most recently issued as of the Prepayment Rate Determination Date. The rate so published shall control absent manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

- “Prepayment Rate Determination Date” shall mean the date which is five (5) Business Days prior to the date that such prepayment shall be applied in accordance with the terms and provisions of **Section 2.4.1** hereof.

- “Prescribed Laws” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

- "Principal" shall mean the Special Purpose Entity that is the general partner of Borrower, if Borrower is a limited partnership, or member of Borrower, if Borrower is a limited liability company.

- "Proceeds" shall mean Insurance Proceeds or Condemnation Proceeds.

- "Project" shall mean the development and construction of Project Improvements, all in accordance with the Plans and Specifications, all Legal Requirements, this Agreement and the other Loan Documents.

- "Project Improvements" shall mean the demolition of all existing improvements located on the Land and the development and construction thereon by Borrower of a modern self-storage facility containing approximately 110,000 square feet of floor area, substantially as depicted on the Plans and Specifications, as the same will be developed, renovated and constructed in accordance with the Plans and Specifications and all Legal Requirements.

- "Project Loan" shall mean the loan being made by Lender to Borrower pursuant to the Project Loan Agreement in the principal amount of up to the Project Loan Amount.

- "Project Loan Advance" shall mean "Advance" as such term is defined in the Project Loan Agreement.

- "Project Loan Agreement" shall mean that certain Project Loan Agreement dated the date hereof among Lender and Borrower.

- "Project Loan Amount" shall mean Four Million, Nine Hundred Twenty Thousand, Seven Hundred Thirty-Nine and 67/100 Dollars (\$4,920,739.67).

- "Project Loan Assignment of Leases" shall mean that certain Project Loan Assignment of Leases and Rents, dated the date hereof, from Borrower, as assignor, to Lender, as assignee.

- "Project Loan Budget" shall have the meaning set forth in Section 2.1.14.

- "Project Loan Costs" shall mean all Projected Related Costs that are not Costs of the Improvements.

- "Project Loan Documents" shall have the meaning as set forth in the Project Loan Agreement.

- "Project Loan Earn Out Advance" shall have the meaning set forth in Section 2.12.1 hereof.

- "Project Loan Mortgage" shall have the meaning as set forth in the Project Loan Agreement.

- "Project Loan Note" shall have the meaning as set forth in the Project Loan Agreement.

- “Project-Related Costs” shall mean all direct and indirect costs and expenses of acquiring the Property, demolishing the existing improvements on the Property, designing, inspecting, renovating, constructing and developing the Project Improvements, including, without limitation, Hard Costs and Soft Costs, along with all Carrying Costs, Debt Service, financing charges, Operating Expense and other costs and expenses associated with the Property during the Construction Term.

- “Property” shall mean the Land, all Improvements now or hereafter located thereon, the easements and other rights, licenses and privileges and appurtenance to the Land, and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the Mortgage and referred to therein as the “Mortgaged Property”.

- “Provided Information” shall mean any and all financial and other information provided at any time prepared by, or on behalf of, any Indemnifying Person with respect to the Property, Borrower, Principal, Guarantor and/or Manager, including, without limitation, any financial data or financial statements required under Section 5.1.11.

- “Punch List and Deferred Maintenance Reserve Deposit” shall have the meaning set forth in Section 7.4.1.

- “Punch List and Deferred Maintenance Reserve Funds” shall have the meaning set forth in Section 7.4.1.

- “Punch List Items” shall mean, collectively, any Punch List items identified by the Construction Consultant and other minor or insubstantial details of construction, decoration, mechanical adjustment or installation, which do not hinder or impede the use, operation, or maintenance of the Property or the ability to obtain a permanent certificate of occupancy with respect thereto.

- “Qualified Manager” shall mean in the reasonable judgment of Lender, a reputable and experienced management organization (which may be an Affiliate of Borrower) possessing experience in managing properties similar in size, scope, use and value as the Property, provided, that Borrower shall have obtained (i) prior written confirmation from the applicable Rating Agencies that management of the Property by such Person will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof and (ii) if such Person is an Affiliate of Borrower, an Additional Insolvency Opinion.

- “Rate Lock Agreement” shall mean that certain Extended Rate Lock Agreement-Application Stage dated April 23, 2007 between Borrower and Lender, as amended by that certain First Amendment to Extended Rate Lock Agreement-Application Stage dated as of the date hereof.

- “Rating Agencies” shall mean each of S&P, Moody's and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender.

- “Related Entities” shall have the meaning set forth in Section 5.2.10(e).

- “REMIC Trust” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds any portion of the Note.

- “Rentable Space Percentage” shall have the meaning set forth in Section 6.2.4(a)(B)(iii).

- “Rents” shall mean, all rents (including percentage rents), rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to the Property, including, without limitation, charges for electricity, oil, gas, water, steam, heat, ventilation, air-conditioning and any other energy, telecommunication, telephone, utility or similar items or time use charges, HVAC equipment charges, sprinkler charges, escalation charges, license fees, maintenance fees, charges for Taxes, Operating Expenses or other reimbursables payable to Borrower (or to the Manager, for the account of Borrower) under any Lease, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property, and proceeds, if any, from business interruption or other loss of income or insurance.

- “Replacements” shall have the meaning set forth in Section 7.3.1.

- “Replacement Management Agreement” shall mean, collectively, (a) either (i) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (ii) a management agreement with a Qualified Manager, which management agreement shall be reasonably acceptable to Lender in form and substance, provided, with respect to this subclause (ii), Lender, at its option, may require that Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that such management agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (b) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or of such other form and substance reasonably acceptable to Lender), executed and delivered to Lender by Borrower and such Qualified Manager at Borrower’s expense.

- “Replacement Reserve Account” shall have the meaning set forth in Section 7.3.1.

- “Replacement Reserve Fund” shall have the meaning set forth in Section 7.3.1.

- “Replacement Reserve Monthly Deposit” shall have the meaning set forth in Section 7.3.1.

- “Requested Advance Date” shall have the meaning set forth in Section 2.14.2(a), hereof.

- "Required Completion Date" shall mean June 1, 2009, provided, however, that the Required Completion Date may be extended by Lender to December 1, 2009 in Lender's sole discretion.

- "Required Equity Funds" shall have the meaning set forth in **Section 2.11.13**.

- "Required Initial Advance Date" shall mean March 21, 2008, provided that Lender shall have the right to extend the Required Initial Advance Date in Lender's sole discretion.

- "Required Ratios at Completion" shall have the meaning set forth in **Section 2.12(j)** hereof.

- "Reserve" or "Reserve Funds" shall mean, collectively, the Tax and Insurance Escrow Fund, the Interest Reserve Funds, the Excess Cash Flow Reserve Funds, the Replacement Reserve Fund, the Punch List and Deferred Maintenance Fund, the Operating Reserve Fund and any other escrow fund established by the Loan Documents.

- "Restoration" shall mean the repair and restoration of the Property after a Casualty or Condemnation to substantially the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

- "Restoration Threshold" shall have the meaning set forth in **Section 6.2.3(a)** hereof.

- "Restricted Party" shall mean collectively, (a) Borrower, any Guarantor, and any Affiliated Manager and (b) any shareholder, partner, member, non-member manager, any direct or indirect legal or beneficial owner of, Borrower, any Guarantor, any Affiliated Manager or any non-member manager.

- "Retainage" shall mean, for each Contract and Subcontract, the greater of (a) ten percent (10%) of all costs funded to the Contractor or Subcontractor under the Contract or Subcontract, or (b) the actual retainage required under such Contract or Subcontract.

- "S&P" shall mean Standard & Poor's Ratings Group, a division of the McGraw-Hill Companies.

- "Sale or Pledge" shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

- "Scheduled Defeasance Payments" shall have the meaning set forth in **Section 2.5.1(b)**

- "Second Tax and Insurance Escrow Deposit" shall have the meaning set forth in **Section 7.1** hereof.

“Securities” shall have the meaning set forth in Section 9.1 hereof.

“Securities Act” shall have the meaning set forth in Section 9.2(a) hereof.

“Securitization” shall have the meaning set forth in Section 9.1 hereof.

“Servicer” shall have the meaning set forth in Section 9.5 hereof.

“Servicing Agreement” shall have the meaning set forth in Section 9.5 hereof.

“Severed Loan Documents” shall have the meaning set forth in Section 8.2(c) hereof.

“Shortfall” shall have the meaning set forth in Section 2.1.10.

“Soft Costs” shall mean those Building Loan Costs which are not Hard Costs, including but not limited to, architect’s, engineer’s and general contractor’s fees, interest on the Building Loan, recording taxes and title charges in respect of the Building Loan Mortgage and such other non-construction costs as are part of the Cost of the Improvements.

“Special Purpose Entity” shall mean a corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date thereof, has complied with and shall at all times comply with the following requirements unless it has received either prior consent to do otherwise from Lender or a permitted administrative agent thereof, or, while the Loan is securitized, confirmation from each of the applicable Rating Agencies that such noncompliance would not result in the requalification, withdrawal, or downgrade of the ratings of any Securities or any class thereof:

(i) _____ is and shall be organized solely for the purpose of (A) in the case of Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Property, entering into and performing its obligations under the Loan Documents with Lender, refinancing the Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (B) in the case of a Principal, acting as a general partner of the limited partnership that owns the Property or as member of the limited liability company that owns the Property and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) _____ has not engaged and shall not engage in any business unrelated to (A) the acquisition, development, ownership, management or operation of the Property, or (B) in the case of a Principal, acting as general partner of the limited partnership that owns the Property or acting as a member of the limited liability company that owns the Property, as applicable;

(iii) _____ has not owned and shall not own any real property other than, in the case of Borrower, the Property;

(iv) _____ does not have, shall not have and at no time had any assets other than (A) in the case of Borrower, the Property and personal property necessary or incidental to its ownership and operation of the Property or (B) in the case of a Principal, its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Property and personal property necessary or incidental to its ownership of such interests;

(v) _____ has not engaged in, sought, consented or permitted to and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger, (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents, or (C) in the case of a Principal, any transfer of its partnership or membership interests;

(vi) _____ shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) _____ if such entity is a limited partnership, has and shall have at least one general partner and has and shall have, as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability company, (B) has two (2) Independent Directors, and (C) holds a direct interest as general partner in the limited partnership of not less than 0.5% (or 0.1%, if the limited partnership is a Delaware entity);

(viii) _____ if such entity is a corporation, has and shall have at least two (2) Independent Director, and shall not cause or permit the board of directors of such entity to take any Material Action either with respect to itself or, if the corporation is a Principal, with respect to Borrower or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two Independent Directors shall have participated in such vote and shall have voted in favor of such action;

(ix) _____ if such entity is a limited liability company (other than limited liability company meeting all of the requirements applicable to a single-member limited liability company set forth in this definition of "Special Purpose Entity"), has and shall have at least one (1) member that is a Special Purpose Entity, that is a corporation, that has at least two (2) Independent Directors and that directly owns at least one-half-of-one percent (0.5%) of the equity of the limited liability company (or 0.1% if the limited liability company is a Delaware entity);

(x) _____ if such entity is a single-member limited liability company, (A) is and shall be a Delaware limited liability company, (B) has and shall have at least two (2) Independent Directors serving as a manager of such company, (C) shall not take any Material Action and shall not cause or permit the members or managers of such entity to take any Material Action, either with respect to itself or, if the company is a Principal, with respect to Borrower, in each case unless one Independent Director then serving as a manager of the company, shall have participated and consented in writing to such action, and (D) has and shall have either (1) a member which owns no economic interest in the company, has signed the company's limited liability company agreement and has no obligation to make capital contributions to the company, or (2) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(xi) _____ has not and shall not (and, if such entity is (a) a limited liability company, has and shall have a limited liability agreement or an operating agreement, as applicable, (b) a limited partnership, has a limited partnership agreement, or (c) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity shall not) (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets; (3) amend its organizational documents with respect to the matters set forth in this definition without the consent of Lender; or (4) without the affirmative vote of two (2) Independent Directors or Independent Managers of itself or the consent of a Principal that is a member or general partner in it: (A) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the entity or a substantial portion of its property; (C) make an assignment for the benefit of the creditors of the entity; or (D) take any action in furtherance of any of the foregoing;

(xii) _____ has at all times been and shall at all times remain solvent and has paid and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and has maintained and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xiii) _____ has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) _____ has maintained and shall maintain its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is required by law to file consolidated tax returns and, if it is a corporation, has not filed and shall not file a consolidated federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;

(xv) _____ has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) _____ has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) _____ has held and shall hold its assets in its own name;

(xviii) _____ has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially-reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;

(xix) _____ (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity;

(xx) _____ has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and shall maintain a sufficient number of employees in light of its contemplated business operations;

(xxi) _____ has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) _____ has not incurred any Indebtedness other than (i) acquisition financing with respect to the Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by the Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property;

(xxiii) _____ shall have no Indebtedness other than (i) the Loan, (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of Borrower, in amounts not to exceed \$323,000, which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to this Agreement;

(xxiv) _____ has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets for the benefit of any other Person, in each case except as permitted pursuant to this Agreement;

(xxv) _____ has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate;

(xxvi) _____ has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing (individually, a "Related Party" and collectively, the "Related Parties"), including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) _____ has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxviii) _____ has not pledged and shall not pledge its assets to or for the benefit of any other Person other than with respect to loans secured by the Property and no such pledge remains outstanding except to Lender to secure the Loan;

(xxix) _____ has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(xxx) _____ has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxi) _____ has not made and shall not make loans to any Person and has not held and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(xxxii) _____ has not identified and shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(xxxiii) _____ other than capital contributions and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's-length transaction with an unrelated third party;

(xxxiv) _____ has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;

(xxxv) _____ if such entity is a corporation, has considered and shall consider the interests of its creditors in connection with all corporate actions;

(xxxvi) _____ has not had and shall not have any of its obligations guaranteed by any Affiliate except as provided by the Loan Documents;

(xxxvii) _____ has not formed, acquired or held and shall not form, acquire or hold any subsidiary, except that a Principal may acquire and hold its interest in Borrower;

(xxxviii) _____ has complied and shall comply with all of the terms and provisions contained in its organizational documents.

(xxxix) _____ has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion are true;

(xl) _____ has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;

(xli) _____ is, has always been and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business;

(xlii) _____ has paid all taxes which it owes and is not currently involved in any dispute with any taxing authority;

(xliii) _____ is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that resulted in a judgment against it that has not been paid in full;

(xliv) _____ has no judgments or Liens of any nature against it except for tax liens not yet due and the Permitted Encumbrances;

(xlv) _____ has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and

(xlvi) _____ has no material contingent or actual obligations not related to the Property.

- "Stabilized Net Cash Flow" shall mean underwritten Gross Income from Operations calculated using an vacancy rate equal to the greater of five percent (5%), the actual vacancy rate for the Property and the market vacancy rate ("Effective Gross Income"), less (i) Operating Expenses including a management fee of not less than six percent (6%) of Effective Gross Income and (ii) an adjustment for Replacement Reserves of \$16,500.00 per annum.

- "Stabilized Value" shall mean the value of the Property, determined following the Completion of the Improvements. The Stabilized Value shall be determined based upon an MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days or the date of the Completion of the Improvement occurs made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error.

- "Stabilized Loan-to-Value Ratio" shall mean the ratio of the Total Loan Amount to the Stabilized Value.

- "State" shall mean, the State or Commonwealth in which the Property or any part thereof is located.

- "Stored Materials" shall have the meaning set forth in Section 2.1.8 hereof.

- "Subcontract" shall mean shall mean any agreement (other than the Architect's Contract and the General Contractor's Agreement) entered into by Borrower or by General Contractor, in which the Subcontractor thereunder agrees to provide services, labor and/or materials in connection with the Project Improvements.

- "Subcontractor" shall mean any subcontractor supplying services, labor and/or materials in connection with the Project Improvements.

- "Subordinate Financing" shall have the meaning set forth in Section 9.1.2(b).

- "Successor Borrower" shall have the meaning set forth in Section 2.5.3 hereof.

- "Survey" shall mean a survey of the Property prepared by a Surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

- "Surveyor" shall mean Control Point Associates, Inc., or such other land surveyor registered as such in the State of New York.

- "Tax and Insurance Escrow Fund" shall have the meaning set forth in Section 7.1 hereof.

- "Taxes" shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

- “Tenant” shall mean the tenant under any Lease.

- “Threshold Amount” shall have the meaning set forth in Section 5.1.21(a) hereof.

- “Title Company” shall have the meaning set forth in Section 3.1.3(b) hereof.

- “Title Insurance Policy” shall mean, an ALTA mortgagee title insurance policy in the form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to the Property and insuring the lien of the Mortgage.

- “Total Debt” shall mean, collectively, the Debt and Other Debt.

- “Total Debt Service” shall mean, with respect to any particular period of time, scheduled payments of principal, if any, and interest under the Building Loan, the Project Loan and, if applicable, the Subordinate Financing.

- “Total Loan Amount” shall mean the sum of the Building Loan Amount, the Project Loan Amount and the Subordinate Financing, if applicable.

- “Transfer” shall have the meaning set forth in Section 5.2.10(b) hereof.

- “Transferee” shall have the meaning set forth in Section 5.2.10(e).

- “Transferee’s Principals” shall mean collectively, (A) Transferee’s managing members, general partners or principal shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee.

- “UCC” or “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located.

- “Unsatisfied Initial Advance Conditions” shall have the meaning set forth in Section 2.1.20.

- “U.S. Obligations” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (b) to the extent acceptable to the Rating Agencies, other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

- “Yield Maintenance Default Premium” shall mean an amount equal to the greater of (a) five percent (5%) of the outstanding principal balance of the Loan to be prepaid or satisfied and (b) the Defeasance Payment Amount that would be required if a Defeasance Event were to occur at such time (whether or not then permitted) in an amount equal to the outstanding principal amount of the Loan to be prepaid or satisfied.

Yield Maintenance Premium” shall mean an amount equal to the greater of (a) one percent (1%) of the outstanding principal of the Loan to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under the Note assuming that all outstanding principal and interest on the Loan is paid on the Open Period Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount being prepaid.

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Any reference in this Agreement or in any other Loan Document to any Loan Document shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, replaced and/or restated from time to time (and, in the case of any note or other instrument, to any instrument issued in substitution thereof). Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II.

GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept Advances in respect of the Building Loan as more particularly set forth in **Section 2.10**.

2.1.2 No Reborrowings. Any amount borrowed and repaid hereunder in respect of the Building Loan may not be reborrowed.

2.1.3 The Note, Mortgage and Loan Documents. The Building Loan shall be evidenced by the Building Loan Note and secured by the Building Loan Mortgage, the Building Loan Assignment of Leases and the other Building Loan Documents.

2.1.4 Use of Proceeds. Borrower hereby agrees that Borrower shall use the proceeds of the Building Loan to pay or reimburse itself for Building Loan Costs actually incurred in connection with demolition and the construction of the Project Improvements if and to the extent that such Building Loan Costs are reflected in the Building Loan Budget, subject to reallocation pursuant to **Sections 2.1.6, 2.1.7 and 5.1.33** (or other reallocations approved by Lender in its sole discretion).

- 2.1.5 Advances. Lender shall not be required to Advance funds hereunder for any category or line item of Building Loan Costs in excess of the amount specified for such line item or category in the Building Loan Budget, subject to Sections 2.1.6, 2.1.7 and 5.1.33 (or other reallocations approved by Lender in its sole discretion). No Advances shall be made to pay for Affiliate Fees.

- 2.1.6 Cost Overruns. If Borrower becomes aware of any change in actual or projected Project-Related Costs which will increase any one or more category or line item of costs reflected in the Development Budget, Borrower shall immediately notify Lender in writing and promptly submit to Lender for its approval a revised Development Budget. Any reallocation of any category or line items in the Development Budget in connection with cost overruns shall be subject to Lender's approval in Lender's sole discretion except as set forth in Sections 2.1.7 and 5.1.33, provided, however, under no circumstances shall Borrower be permitted, or Lender obligated to approve, the reallocation of line items from the Building Loan Budget to the Project Loan Budget. Lender shall have no obligation to make any further Advances unless and until the revised Development Budget so submitted by Borrower is approved by Lender and Borrower has satisfied its obligations with respect to any resulting Shortfall under Section 2.1.10. Lender reserves the right to approve or disapprove any revised Development Budget in its sole and absolute discretion (except with respect to reallocations in accordance with Sections 2.1.7 and 5.1.33).

- 2.1.7 Contingency Reserve. Following the satisfaction of the Initial Advance Conditions, and subject to the prior approval of Lender in its sole discretion, Borrower may revise the Building Loan Budget to move (i) amounts available under any Line Item for Hard Costs that are designated to "Contingency" to other Line Items for Hard Costs in the Building Loan Budget, or (ii) amounts available under any Line Item for Soft Costs that are designated "Contingency" to other Line Items for Soft Costs in the Building Loan Budget. Any cost savings shall be allocated in accordance with Section 5.1.33 hereof. In no event may the Contingency Line Item of the Building Loan Budget be reallocated to any Line Item in the Project Loan Budget. The Contingency Line Item in the Building Loan Budget for Hard Costs shall contain at least five percent (5%) of the total projected Hard Costs, separate from the Contingency Line Items in the Project Loan Budget.

- 2.1.8 Stored Materials. Lender shall not be required to disburse any funds for any materials, machinery or other Personal Property not yet incorporated into the Project Improvements (the "Stored Materials"), unless the following conditions are satisfied:

- (a) Borrower shall deliver to Lender bills of sale or other evidence reasonably satisfactory to Lender of the cost of, and, subject to the payment therefor, Borrower's title in and to such Stored Materials;

- (b) The Stored Materials are identified to the Property and Borrower, are segregated so as to adequately give notice to all third parties of Borrower's title in and to such materials, and are components in substantially final form ready for incorporation into the Project Improvements;

(c) The Stored Materials are stored at the Property or at such other third-party owned and operated site as Lender shall reasonably approve, and are protected against theft and damage in a manner satisfactory to Lender, including, if requested by Lender, storage in a bonded warehouse in the greater metropolitan area in which the Property is located;

(d) The Stored Materials will be paid for in full with the funds to be disbursed, and all lien rights or claims of the supplier will be released upon full payment;

(e) Lender has or will have upon payment with disbursed funds a perfected, first priority security interest in the Stored Materials;

(f) The Stored Materials are insured for an amount equal to their replacement costs in accordance with Section 6.1 of this Agreement;

(g) The aggregate cost of Stored Materials stored at the Property is approved by the Construction Consultant and, if required by Lender, the Construction Consultant shall certify that it has inspected such Stored Materials and they are in good condition and suitable for use in connection with the Project Improvements; and

(h) The aggregate cost of Stored Materials stored on the Property at any one time shall not exceed ten percent (10%) of the maximum amount of the Loan and the aggregate cost of Stored Materials stored off the Property at any one time shall not exceed five percent (5%) of the maximum amount of the Loan.

2.1.9 Amount of Advances. In no event shall any Advance exceed the full amount of Building Loan Costs theretofore paid or to be paid with the proceeds of such Advance plus any Building Loan Costs incurred by Borrower through the date of the Draw Request for such Advance minus (i) the applicable Retainage for each Contract and Subcontract, and (ii) the aggregate amount of any Advances previously made by Lender. It is further understood that the Retainage described above is intended to provide a contingency fund protecting Lender against failure of Borrower or Guarantor to fulfill any obligations under the Loan Documents, and that Lender may charge amounts to pay for Building Loan Costs against such Retainage in the event Lender is required or elects to expend funds to cure any Default or Event of Default, in either instance, in accordance with the terms of this Agreement. No Advance of the Loan by Lender shall be deemed to be an approval or acceptance by the Lender of any work performed thereon or the materials furnished with respect thereto.

2.1.10 Loan-In-Balance. As used herein, a "Shortfall" shall mean, as to any Line Item in the Development Budget as of any date, the amount determined by Lender, in Lender's sole but reasonable judgment, by which (A) the cost of completing or satisfying such Line Item, exceeds (B) the remaining undisbursed portion of the Loan allocated to such Line Item in the Development Budget plus any sums deposited with Lender pursuant to this Section 2.1.10 to pay for such Line Item and not previously disbursed plus any Reserve Funds to the extent such Reserve Funds are available hereunder for the payment of such Line Item. From time to time and at any time during the Construction Period, Lender shall have the right, but not the obligation, to notify Borrower that it has determined a Shortfall exists as to any one or more Line Items. If Lender at any time shall so notify Borrower, Borrower shall, at its option within five (5) days of Lender's notification as aforesaid, either: (i) deposit with Lender an amount equal to such Shortfall, which Lender disburse to Borrower to the satisfaction of the costs of such Line Item prior to advancing any further Loan proceeds on account of such costs; (ii) post an irrevocable standby Letter of Credit in the amount of such Shortfall, in favor of Lender; (iii) to the extent permitted under Sections 2.1.7 and 5.1.33, and following the satisfaction of the Initial Advance Conditions allocate the Contingency Reserve, with respect to the Line Item(s) in question, to the Shortfall, and provided, further that the amount of the remaining Contingency Reserve for such Line Item(s), (following the allocation to the Shortfall) is sufficient for such Line Item(s), as determined by Lender in its sole discretion; and (iv) to the extent permitted under Section 5.1.33, and then only following the satisfaction of the Initial Advance Conditions, reallocate cost savings from the Development Budget in respect of the Loan (or other reallocations which are approved by Lender, in its sole discretion) in accordance with the terms of this Agreement, but only to the extent such cost savings can be allocated to the related Line Items. Borrower hereby agrees that Lender shall have a lien on and security interest in, for the benefit of Lender, any sums deposited pursuant to clause (i) above and that Borrower shall have no right to withdraw any such sums except for the payment of the aforesaid costs as approved by Lender. Lender shall have no obligation to make any further Advances of proceeds of the Loan as to any Line Item until the sums required to be deposited pursuant to clause (i) above as to such Line Item have been exhausted, or until Borrower has posted an irrevocable standby Letter of Credit pursuant to clause (iii) above, as the case may be, and, in any such case, the Loan is back "in balance". Any such sums not used as provided in said clause (i) shall be released to Borrower when and to the extent that Lender reasonably determines that the amount thereof is more than the excess, if any, of the remaining Project-Related Costs over the undisbursed balance of the Loan, provided, however, that should an Event of Default occur, Lender, in its sole discretion, may apply such amounts either to the remaining Project-Related Costs or to the immediate reduction of outstanding principal and/or interest under the Note.

2.1.11 *Quality of Work*

(k) No Advance or any portion thereof shall be made with respect to defective work or to any contractor that has performed work that is defective and that has not been cured, as confirmed by the report of the Construction Consultant, but Lender may disburse all or part of any Advance before the sum shall become due if Lender believes it advisable to do so, and all such Advances or parts thereof shall be deemed to have been made pursuant to this Agreement.

2.1.12 *Required Equity Funds.* All Required Equity Funds shall be contributed (i.e., expended by Borrower and invested by Borrower in the Property, for Project-Related Costs set forth on the approved Development Budget) before the Closing Date.

2.1.13 *Trust Fund.* Pursuant to Section 13 of the New York Lien Law, Borrower shall receive the Advances hereunder and shall hold the right to receive the Advances as a trust fund to be applied first for the purpose of paying the Costs of the Improvements and shall apply the Advances first to the payment of the Cost of the Improvements on the Property before using any part of the total of the same for any other purpose.

2.1.14 *Final Project Report and Development Budget.* Attached hereto as **Schedule II** is Borrower's detailed and definitive budget of all Project-Related Costs to be incurred by Borrower during the Construction Term and that will be disbursed out of Loan proceeds subject to availability and satisfaction of all applicable conditions to Advances hereunder and under the Project Loan Agreement, being so indicated, delineated by each category of Project-Related Costs (each a "**Line Item**" or "**Budget Line**") and further broken down to segregate Building Loan Costs and Project Loan Costs, which budget has been approved by Lender and Construction Consultant (the "**Development Budget**"). The portion of the Development Budget that includes only Building Loan Costs is referred to herein as the "**Building Loan Budget**" and the portion of the Development Budget that includes only Project Loan Costs is referred to herein as the "**Project Loan Budget**."

2.1.15 Miscellaneous.

(a) The making of an Advance by Lender shall not constitute Lender's approval or acceptance of the construction theretofore completed. Lender's inspection and approval of the Plans and Specifications, the construction of the Project Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Lender, the sole obligation of Lender as the result of such inspection and approval being to make the Advances if and to the extent, required by this Agreement.

(b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT LENDER TO MAKE ADVANCES OF THE LOAN IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. MOREOVER, ALL POTENTIAL LIENORS ARE REMINDED THAT SUBDIVISION (3) OF SECTION 13 OF THE NEW YORK LIEN LAW PROVIDES THAT "NOTHING IN THIS SUBDIVISION SHALL BE CONSIDERED AS IMPOSING UPON THE LENDER ANY OBLIGATION TO SEE THE PROPER APPLICATION OF SUCH ADVANCES BY THE OWNER," AND LENDER DOES NOT IMPOSE SUCH AN OBLIGATION ON ITSELF.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate calculated as set forth in Section 2.2.2 below.

2.2.2 Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under 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 Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Loan Payment.

2.3.1 Monthly Debt Service Payments. Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from and including the Closing Date up to and including December 31, 2007, which interest shall be calculated in accordance with the provisions of Section 2.2 hereof, and (b) on each Payment Date commencing on the Payment Date occurring in February, 2008 and thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to interest due for the related Interest Period at the Interest Rate, for such related Interest Period and then to the principal amount of the Loan due in accordance with this Agreement, and lastly, to any other amounts due and unpaid pursuant to the Loan Documents hereto. Borrower and Lender acknowledge and agree that, on the 15th calendar day of the month preceding each Payment Date during the Construction Term: (a) if and to the extent undrawn funds remain available for Advance under the Project Loan from the Interest Reserve Line Item of the Project Loan Budget, and provided that that no Event of Default or monetary Default then exists under any of the Loan Documents or would occur as a result of such Project Loan Advance the Monthly Debt Service Amount then due and owing shall be advanced by Lender by a Project Loan Advance under Interest Reserve Line Item of the Project Loan Budget; and (b) if no amount remains available under the Interest Reserve Line Item but and to the extent Interest Reserve Funds are on deposit in the Interest Reserve Account, and no Event of Default or monetary Default then exists under any of the Loan Documents, the Monthly Debt Service Payment Amount then due and payable shall be paid by application of funds from the Interest Reserve Account. Borrower and Lender acknowledge and agree that Lender may automatically make a Project Loan Advance or apply Interest Reserve Funds on deposit in the Interest Reserve Account on each Payment Date occurring during the Construction Term, in either instance, in accordance with this Section 2.3.1, without the need for Borrower to submit a Draw Request or otherwise request such an Advance or application.

2.3.2 Payments Generally. The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include December 31, 2007. Thereafter each Interest Period shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided in this Section 2.4.1 and Section 2.4.2, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. 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. Notwithstanding anything to the contrary contained herein, commencing after the Payment Date three (3) months prior to the Maturity Date (the "**Open Period Date**"), or on any Payment Date thereafter (or on any date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole, but not in part, without payment of the Yield Maintenance Premium.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to Section 6.4 hereof, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest through the end of the related Interest Period and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; *provided, however*, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

- 2.4.3 Prepayments After Default. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in **Section 2.4.1** hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

- 2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a "**Prepayment Date**") provided no Event of Default exists and upon payment of an amount equal to the Yield Maintenance Premium. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. 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.

- 2.4.5 Application of Prepayments to Components. Any prepayment of the principal of the Loan, in whole or in part, voluntary or involuntary, shall be applied (a) first, to the reduction of the outstanding principal balance of the Project Loan until reduced to zero, and (b) second, to the reduction of the outstanding principal balance of the Building Loan until reduced to zero. Subsequent to any Event of Default, any payment of principal from whatever source may be applied by Lender between the various components of the Loan in Lender's sole discretion.

- **Section 2.5** Defeasance.

- 2.5.1 Voluntary Defeasance(a). Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntary prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a "**Defeasance Event**")

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the "Defeasance Date") on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the Payment Date immediately preceding the next Payment Date, provided, however, if the Defeasance Deposit shall include short-term interest computed from the date of such prepayment through to the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

(iv) Borrower shall use the Defeasance Deposit to purchase U.S. Obligations in accordance with Section 2.5.1(b) below;

(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this Section 2.5 (the "Security Agreement");

(vi) Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of such Defeasance Event;

(vii) Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;

(viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.5.1(a) have been satisfied;

(ix) Borrower shall deliver a certificate of Borrower's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in Section 2.6 hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Open Period Date (the "Scheduled Defeasance Payments"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Clearing Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this Section 2.5 and satisfy Borrower's other obligations under this Section 2.5 and Section 2.6 shall be remitted to Borrower.

2.5.2 Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 Successor Borrower. In connection with any Defeasance Event, Borrower shall establish a successor entity (the “**Successor Borrower**”), which shall be a Special Purpose Entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this **Section 2.5.3**, but Borrower shall pay all costs and expenses incurred by Lender, including Lender’s attorneys’ fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 **Release of Property.** Except as set forth in this **Section 2.6**, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 Release of Property.

(a) If Borrower has elected to defease the Loan and the requirements of **Section 2.5** and this **Section 2.6** have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer’s Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

2.6.2 Release on Payment in Full

(b) Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

Section 2.7 **Clearing Account/Cash Management.** On or prior to the Closing Date, Borrower shall, at its sole cost and expense, cause each of the following to occur to the satisfaction of Lender (collectively, the “**Cash Management Conditions**”): (a) Borrower shall establish an Eligible Account (the “**Clearing Account**”) with an Eligible Institution selected by Borrower and approved by Lender (the “**Clearing Bank**”); (b) Borrower shall cause the Clearing Bank to execute and deliver the Clearing Account Agreement in accordance with **Section 2.7.1(b)**; (c) Borrower shall establish an Eligible Account (the “**Cash Management Account**”) with an the Cash Management Bank designated by Lender pursuant to and in accordance with the Cash Management Agreement and **Section 2.7.2** hereof; (d) Borrower shall deliver a Payment Direction Letter to the Tenant under any Lease then or thereafter in effect and provide Lender with reasonably satisfactory evidence that the Tenant under such Lease has confirmed that it shall comply with the terms thereof; (e) Borrower will take all actions necessary to establish and maintain in favor of Lender a perfected first priority security interest in the Clearing Account and Cash Management Account and all deposits at any time contained in either such account and the proceeds thereof, including, without limitation, executing and filing UCC-1 Financing Statements; (f) Borrower shall deliver to Lender an opinion of Borrower’s counsel with respect to the due execution, authority, enforceability of the Cash Management Agreement and Clearing Account Agreement and confirming that Lender has first priority perfected security interest in the Cash Management Account and Clearing Account and such other matters as Lender may reasonably require, all such opinions in form, scope and substance satisfactory to Lender and Lender’s counsel; and (g) Borrower shall reimburse Lender for any and all cost and expenses, including reasonable attorney’s fees and disbursements, resulting from the foregoing.

2.7.1 Clearing Account.

(a) Borrower shall establish and maintain the Clearing Account with the Clearing Bank on or prior to the Closing Date, and thereafter Borrower shall maintain the Clearing Account at all times during the remainder of the term of the Loan. The Clearing Account shall be entitled "Acadia Atlantic Avenue LLC, as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 26, 2007 - Clearing Account". Borrower hereby grants to Lender a first-priority security interest in the Clearing Account and all deposits at any time contained therein and the proceeds thereof. All monies now or hereafter deposited into the Clearing Account shall be deemed additional security for the Debt.

(b) Borrower shall obtain from the Clearing Bank and deliver to Lender an agreement, in form and substance satisfactory to Lender (the "**Clearing Account Agreement**"), pursuant to which: (i) Borrower and Clearing Bank acknowledge and agree that during a Cash Trap Period, Lender shall have the sole right to make withdrawals from the Clearing Account and all costs and expenses for establishing and maintaining the Clearing Account shall be paid by Borrower; (ii) upon notice from Lender that a Cash Trap Period exists, the Clearing Bank agrees to transfer to the Cash Management Account in immediately available funds by federal wire transfer all amounts on deposit in the Clearing Account once every Business Day during the term of the Loan.

(c) Borrower shall (i) deliver irrevocable written instructions to all tenants under Leases to deliver all Rents (including additional rent, payable thereunder directly to the Clearing Account, and (ii) deliver irrevocable written instructions to each of the credit card companies or credit card clearing banks with which Borrower or Manager has entered into merchant's agreements to deliver all receipts payable with respect to the Property directly to the Clearing Account (collectively, the "**Payment Direction Letters**."). Borrower and Manager shall deposit all amounts received by Borrower or Manager constituting Rents into the Clearing Account within one (1) Business Day after receipt thereof.

(d) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Clearing Account to the payment of the Debt in any order in its sole discretion.

(e) The Clearing Account shall be an Eligible Account and shall not be commingled with other monies held by Borrower or Clearing Bank.

(f) Borrower shall not further pledge, assign or grant any security interest in the Clearing Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Clearing Account and/or the Clearing Account Agreement (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Clearing Account was established.

2.7.2 Cash Management Account.

(a) Pursuant to and in accordance with the Cash Management Agreement, Borrower shall establish and maintain a segregated Eligible Account (the "**Cash Management Account**") to be held by an Eligible Institution selected by Lender (the "**Cash Management Bank**") in trust and for the benefit of Lender, which Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account shall be entitled "Acadia Atlantic Avenue LLC as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 26, 2007 - Cash Management Account." Borrower hereby grants to Lender a first priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, executing and filing UCC-1 Financing Statements and continuations thereof. Borrower will not in any way alter or modify the Cash Management Account and will notify Lender of the account number thereof. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower.

(b) During a Cash Trap Period, and provided no Event of Default shall have occurred, on each Payment Date (or, if such Payment Date is not a Business Day, on the immediately preceding Business Day), all funds on deposit in the Cash Management Account shall be applied as set forth in the Cash Management Agreement.

(c) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(d) Borrower hereby agrees that Lender may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Lender shall provide notice thereof to Borrower.

(e) All funds on deposit in the Cash Management Account following the occurrence of an Event of Default may be applied by Lender in such order and priority as Lender shall determine.

(f) Notwithstanding anything to the contrary herein, all transfers of Borrower's funds from the Cash Management Account or other sources to or for the benefit of any mezzanine lender under any Subordinate Financing pursuant to this Agreement or any of the other Loan Documents shall constitute distributions from Borrower to the Mezzanine Borrower and must comply with the requirements as to distributions of the Delaware Limited Liability Company Act. No provision of any of the Loan Documents shall create a debtor-creditor relationship between Borrower and any mezzanine or subordinate lender.

2.7.3 Payments Received Under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited on a monthly basis into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to the Cash Management Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

Section 2.8 Intentionally Omitted.

Section 2.9 Payments Not Conditional. All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

Section 2.10 Initial Advance. The obligation of Lender to make the initial Advance of the Building Loan (the "Initial Advance") shall be subject to the following conditions precedent (collectively, the "Initial Advance Conditions") on or prior to the Required Initial Advance Date, all of which conditions precedent must be satisfied prior to Lender making any such Initial Advance:

2.10.1 Prior Conditions Satisfied. All conditions precedent to closing shall continue to be satisfied as of the date of the Initial Advance (in the same manner in which they were satisfied for the closing without reimposing any one-time condition),

2.10.2 Performance; No Default. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Initial Advance, and on the date of such Initial Advance there shall exist no Default or Event of Default.

- 2.10.3 Representations and Warranties. The representations and warranties made by Borrower or Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of the Initial Advance.

- 2.10.4 No Damage. The Project Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall be satisfied that sufficient insurance proceeds will be available in the reasonable judgment of Lender to effect the satisfactory restoration of the Project Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

- 2.10.5 Government Approvals. Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the demolition of the existing improvements as contemplated by the Plans and Specifications, have been obtained and are in full force and effect.

- 2.10.6 Final Project Report. The Final Project Report shall have been delivered to Lender by the Construction Consultant.

- 2.10.7 Development Budget. Borrower shall have prepared and Lender and Construction Consultant shall have approved the Development Budget (including both the Building Loan Budget and the Project Loan Budget) and the Disbursement Schedule.

- 2.10.8 Plans and Specifications. Two (2) complete sets of the Plans and Specifications and any and all modifications and amendments made thereto which have been reviewed and approved by (A) Lender, and (B) the Construction Consultant. Borrower shall deliver to Lender a list identifying the Plans and Specifications and any and all modifications and amendments made thereto.

- 2.10.9 General Contractor's Agreement. Borrower and an unaffiliated General Contractor have entered into a Standard Form of Agreement between Owner and Contractor (Where the basis for payment is a STIPULATED SUM), dated as of October 18, 2007, that obligates the General Contractor to cause the Completion of the Improvements to occur prior to the Required Completion Date at a fixed price, reasonably acceptable to Lender and the Construction Consultant in both form and substance (once approved, the "General Contractor's Agreement"). The General Contractor's Agreement, shall have been duly executed and delivered by the parties thereto, shall be in full force and effect and Lender shall have received a certified copy or a fully executed duplicate original thereof. The General Contractor shall have duly executed and delivered to Lender a consent to the assignment of the General Contractor's Agreement, in form and substance reasonably satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. If General Contractor consist of more than one Person, then each such Person shall deliver a consent to the assignment of the General Contractor's Agreement, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof.

2.10.10 Architect's and General Contractor's Certificates. Certificates from the Borrower's Architect (the "**Architect's Certificate**") substantially in the form attached hereto as **Exhibit F** and from the General Contractor (the "**General Contractor's Certificate**") substantially in the form attached hereto as **Exhibit G**.

2.10.11 Contracts and Subcontracts. Borrower shall have delivered to Lender, and Lender and Construction Consultant shall have approved a list, certified by Borrower, of all Contractors and Subcontractors who have been or, to the extent identified by Borrower, will be supplying labor or materials for the Property. The list of Contractors and Subcontractors may be amended from time to time subject to the approval of Lender and Construction Consultant, in accordance with the terms hereof. Borrower shall have delivered to Lender all Contract and Major Contracts for all of the work necessary for Completion of the Improvements, and Lender and Construction Consultant shall have approved all such Major Contracts. No Advance shall be made by Lender with regard to work done by or on behalf of any Contractor or Subcontractor unless Borrower shall have delivered to Lender and Construction Consultant originals of the following documents as to such Contractor or Subcontractor, each in form and substance reasonably satisfactory to Lender:

(a) Performance Letters. if requested by Lender, a performance letter ("**Performance Letter**") substantially in the form attached hereto as **Exhibit H** from such Contractors and/or Subcontractors as Lender shall designate.

(b) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.10.12 Contractors' Consent to Assignment. Each Contractor, Sub-Contractor and Other Design Professionals shall have delivered a consent to the assignment of each of their Contracts, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original of each such Contract.

2.10.13 Cash Management. Lender has determined that the Cash Management Conditions have been satisfied.

2.10.14 Notices. All notices required by any Governmental Authority or by any applicable Legal Requirement to be filed prior to commencement of construction of the Project Improvements shall have been filed.

2.10.15 Deliveries. Lender shall have received:

(a) Draw Request. A Draw Request complying with the requirements hereof;

(b) Affirmation of Payment. An Affirmation of Payment;

(c) Title Insurance Policy. A Title Insurance Policy for the full amount of the Loan, which includes a pending disbursement clause to increase the coverage of the Title Insurance Policy by the amount of the any Construction Advance, insuring the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances;

(d) Lien Waivers. Duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form set forth in **Exhibit J** from the General Contractor and all Contractors and Subcontractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials, for the labor and/or materials so supplied, except for such work or labor and/or materials for which payment thereof is requested, as to which duly executed lien waivers shall be delivered to Lender with the next request for an Advance;

(e) Ratios. Evidence satisfactory to Lender that following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 75%;

(f) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents;

(g) Anticipated Costs Report. An Anticipated Costs Report; and

(h) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.10.16 Building Loan Agreement Filed. This Building Loan Agreement shall have been filed in the Kings County Clerk's Office.

2.10.17 Initial Project Loan Advance. All conditions to the initial advance of the Project Loan set forth in Section 2.10 of the Project Loan Agreement shall have been satisfied.

2.10.18 Rate Lock Agreement. Simultaneously with the Initial Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Initial Advance bears to the Total Loan Amount.

2.10.19 Initial Reserve Deposits Borrower shall have deposited the Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit with Lender. The Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit shall be funded on the date of the Initial Advance with a portion of the Initial Advance under the Project Loan.

2.10.20 Satisfaction of Initial Advance Conditions. Borrower acknowledge that certain Initial Advance Conditions, including, without limitation, [SUBJECT TO REVIEW BY LENDER], (i) delivery to and approval by Lender of final Plans and Specifications, (ii) delivery to and approval by Lender of the final Development Budget, Building Loan Budget, and Project Loan Budget, (iii) delivery to Lender of all permits required for the demolition of the existing improvements on the Property, (iv) delivery to Lender of evidence that Borrower maintains the Policies required under this Agreement, and (v) delivery to Lender of Borrower's Requisition and all required accompanying documents with respect to the Initial Advance in accordance with Section 2.14.1 of this Agreement (the "**Unsatisfied Initial Advance Conditions**"); Borrower covenants and agrees that, prior to the Required Initial Advance Date, time being of the essence, it shall cause all of the Initial Advance Conditions, including, without limitation, the Unsatisfied Initial Advance Conditions, to be satisfied. Borrower shall not perform any work at the Property, including, without limitation, any demolition of the existing improvements, until all of the Initial Advance Conditions including, without limitation, the Unsatisfied Initial Advance Conditions, have been satisfied. Borrower's failure to satisfy, or cause the satisfaction of, any of the Initial Advance Conditions on or prior to the Required Initial Advance Date shall, at Lender's election, constitute an Event of Default. In addition to any and all other remedies that may be available to Lender hereunder, under the other Loan Documents, at law or in equity, upon the occurrence of an Event of Default resulting from the failure of any Initial Advance Condition to have been satisfied, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, with full power of substitution to complete or undertake such steps as may be necessary, in Lender's sole determination, to satisfy the Initial Advance Condition in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iii) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Initial Advance Conditions, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the Project; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement and the other Loan Documents. In addition, upon such Event of Default, Lender shall have the right to unwind any interest rate hedge entered into by Lender and apply any deposits or other amounts held by Lender pursuant to the Rate Lock Agreement to costs and expenses incurred by Lender under this Agreement, the Rate Lock Agreement or any of the other Loan Documents.

- Section 2.11 **Construction Advances.** The obligation of Lender to make the Advances of the Building Loan after the Initial Advance shall be subject to the following conditions precedent (collectively, the "**Construction Advance Conditions**"), all of which conditions precedent must be satisfied prior to Lender making any such Advance:

- 2.11.1 *Prior Conditions Satisfied.* All conditions precedent to any prior Advance (in the same manner in which they were satisfied for the Initial Advance or prior Advance, as applicable, and without reimposing any one-time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

- 2.11.2 *Performance: No Default.* Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Advance, and on the date of such Advance there shall exist no Default or Event of Default or Shortfall.

- 2.11.3 *Representations and Warranties.* The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of such Advance.

2.11.4 No Damage. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall have received insurance proceeds sufficient in the reasonable judgment of Lender to effect the satisfactory restoration of the Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.11.5 Deliveries. The following items or documents shall have been delivered to Lender:

(a) Anticipated Costs Report. An anticipated cost report ("**Anticipated Costs Report**") in the form set forth in **Exhibit I** executed by the General Contractor which sets forth the anticipated costs to complete construction of the Project Improvements, after giving effect to costs incurred during the previous month and any anticipated change orders;

(b) Endorsement to Title Insurance Policy. A "datedown" endorsement to Lender's title insurance policy as described in the form set forth in **Exhibit C** hereto, which continuation or endorsement shall increase the coverage of the Title Insurance Policy by the amount of the Advance through the pending disbursement clause (but not the overall policy amount which shall be for the full amount of the Loan), amend the effective date of the Title Insurance Policy to the date of such Advance, continue to insure the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances and which shall state that since the last disbursement of the Loan there have been no changes in the state of title to the Property (other than Permitted Encumbrances) and that there are no additional survey exceptions not previously approved by Lender.

(c) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents.

(d) Draw Request. A Draw Request complying with the provisions of this Agreement which shall constitute Borrower's representation and warranty to Lender that: (a) any completed construction is substantially in accordance with the Plans and Specifications, (b) all costs for the payment of which Lender have previously advanced funds have in fact been paid, (c) all the representations and warranties contained in **Article IV** of this Agreement continue to be true and correct in all material respects, (d) no Event of Default shall have occurred and be continuing hereunder, and (e) Borrower continues to be in compliance in all respects with all of the other terms, covenants and conditions contained in this Agreement.

(e) Affirmation of Payment. General Contractor's Affirmation of Payment ("**Affirmation of Payment**") (AIA Form G706) in the form attached hereto as **Exhibit E**.

(f) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.11.6 Construction Consultant Certificate. Each draw request relating to Hard Costs shall be accompanied by a certificate or report of the Construction Consultant to Lender based upon a site observation of the Property made by the Construction Consultant not more than thirty (30) days prior to the date of such draw, in which the Construction Consultant shall in substance: (i) verify that the portion of the Project Improvements completed as of the date of such site observation has been completed substantially in accordance with the Plans and Specifications; and (ii) state its estimate of (1) the percentages of the construction of the Project Improvements completed as of the date of such site observation on the basis of work in place as part of the Project Improvements and the Building Loan Budget, (2) the Hard Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (3) the sum necessary to complete construction of the Project Improvements in accordance with the Plans and Specifications, and (4) the amount of time from the date of such inspection that will be required to achieve Completion of the Improvements.

- 2.11.7 Other Bids. If in the reasonable judgment of Lender and the Construction Consultant all Contracts, Major Contracts, and the General Contractor's Agreement do not cover all of the work necessary for Completion of the Improvements, Borrower shall cause to be furnished firm bids from responsible parties, or estimates and other information reasonably satisfactory to Lender, for the work not so covered, to enable Lender to ascertain the total estimated cost of all work done and to be done.

- 2.11.8 Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

- 2.11.9 Lien Waivers. Borrower shall have delivered duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as applicable, and otherwise substantially in the form set forth in Exhibit J, from the General Contractor, all Major Contractors and Major Subcontractors for all work performed, and all labor or material supplied for which payment thereof has been made prior to the date of the Advance.

- 2.11.10 Construction Consultant Approval. Lender has received advice from the Construction Consultant, satisfactory to Lender, as to Construction Consultant's determination, acting reasonably, based on on-site inspections of the Improvements and the data submitted to and reviewed by it as part of Borrower's Requisition of the value of the labor and materials in place, that the construction of the Project Improvements is proceeding satisfactorily and according to schedule and that the work on account of which the Advance is sought has been completed in a good and workmanlike manner to such Construction Consultant's satisfaction and substantially in accordance with the Plans and Specifications.

- 2.11.11 Ratios. Following such Advance (and any Project Loan Advance being made on such date), the Loan-to-Cost Ratio shall be no greater than 75%.

- 2.11.12 Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

2.11.13 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of each Advance, Borrower has invested Cash equity in an amount equal to or greater than (a) \$5,356,660.00 or (b) 25% of the Total Project Costs or (c) the difference between the Development Budget and the maximum Loan amount of \$16,150,000.00 for approved Project-Related Costs (the "Required Equity Funds"). Notwithstanding the foregoing, if the Borrower realizes cost savings from the development of the Project, either in the form of Hard Costs or Soft Costs, Advances may be advanced to Borrower provided that (i) the Borrower would not have less than \$5,356,660.00 of cash equity in the Project through such Advance, (ii) the Debt Service Coverage Ratio shall be equal to or greater than 1.70 to 1.0 assuming a fully advanced Loan using a debt service constant of 10.65%, and (iv) the loan-to-value ratio for the Property is no greater than 75% assuming a fully advanced Loan. If Borrower is in non-compliance solely with respect to condition (i) above, at Borrower's option, either (A) any excess cost savings (funds in excess of the amount so that the Required Equity Funds shall continue to be satisfied) shall be deposited as follows: (1) 100% into the Replacement Reserve Account, or (2) at Lender's discretion, into any other Reserves required by Lender pursuant to this Agreement, or (B) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement. If Borrower is in compliance with respect to condition (i) above but is not in compliance with conditions (ii), (iii) and (iv) above, any excess cost savings shall, at Borrower's option, (A) be held back by Lender as additional collateral for the Loan until satisfaction of each of the requirements are satisfied, or (B) be deposited as follows: (1) 100% into the Replacement Reserve Account, or (2) at Lender's discretion, into any other Reserves required by Lender pursuant to this Agreement, or (C) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement.

2.11.14 Rate Lock Agreement. Simultaneously with each Construction Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Construction Advance bears to the Total Loan Amount, provided, however, that in the event that any of the conditions of Section 2.11.13 are not satisfied, Lender shall have the right to apply the portion of the deposit under the Rate Lock Agreement to be returned to Borrower to satisfy the conditions of Section 2.11.13.

2.11.15 Government Approvals. Lender shall not be required to make Construction Advances for any phase of the construction of the Project Improvements unless and until Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the construction of the phase of the Project Improvements to be constructed by Borrower as contemplated by the Plans and Specifications have been obtained and are in full force and effect, including, without limitation, the final approval of the Plans and Specifications by the City of New York for the Project Improvements and a building permit(s) covering the entire scope of work contemplated by the Project Improvements in accordance with the approved Plans and Specification "lawfully issued" to Borrower within the meaning of Section 11-31(a) of the Zoning Resolution of the City of New York (the "**Zoning Resolution**").

Section 2.12 **Final Advance.**

2.12.1 Conditions to Release of Final Advance. In addition to the conditions set forth in **Section 2.10** and **Section 2.11**, above, Lender's obligation to make the final Advance in the amount calculated pursuant to **Section 2.12.2** of this Agreement (the "**Final Advance**":) shall be subject to receipt by Lender of the following:

- (a) Completion of Improvements. Evidence satisfactory to Lender and the Construction Consultant that the Completion of the Improvements has occurred.
- (b) Final Project Loan Advance. All conditions to the Final Project Loan Advance have been satisfied and the Final Project Loan Advance shall have been made or will be made simultaneously therewith.
- (c) Lien Waivers. Duly executed final lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form attached hereto as **Exhibit J** from the General Contractor and Major Contractors and Major Subcontractors who have performed work for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied.
- (d) "As-Built" Plans and Specifications. A full and complete set of "as built" Plans and Specifications certified to by Borrower's Architect.
- (e) Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.
- (f) Certificates. Completed AIA Form G704 (Certificate of Substantial Completion) and completed AIA Form G707 (Consent of Surety to Final Payments) shall have been executed and delivered by Borrower's Architect and General Contractor.
- (g) Deposits to Reserves. If Lender determines that any Punch List Work or Deferred Maintenance Condition exists, the Punch List and Deferred Maintenance Deposit has been made, if Lender determines that the deposits are required to the Operating Reserve Account, the Operating Reserve Deposit has been made, and all other deposits to the Reserve Funds required by this Agreement have been made.
- (h) Other Documents. Such documents, letters, affidavits, reports and assurances, as Lender, Lender's counsel and the Construction Consultant may reasonably require.
- (i) Required Ratios at Completion. Lender shall have determined that, following the Final Advance (and taking into consideration the Final Project Loan Advance under the Project Loan): (i) the Loan-to-Cost Ratio shall be no more than 75%; (ii) the Stabilized Loan-to-Value Ratio shall be no more than 75%; (iii) the Stabilized Net Cash Flow for the entire Property shall be not less than \$2,064,000; (iv) the Debt Service Coverage Ratio based on Lender's underwritten Net Operating Income and the greater of the actual debt service constant or 10.65% shall be 1.20 to 1.0 or greater; and (v) the Debt Service Coverage Ratio based on the Stabilized Net Cash Flow and the greater of the actual debt service constant or 7.50% shall be 1.70 to 1.0 or greater (the "**Required Ratios at Completion**"), or Borrower shall have deposited with Lender Cash or a Letter of Credit to satisfy the Required Ratios at Completion in accordance with **Section 2.12.2**.

- (j) Compliance with Environmental Covenants. Lender shall have determined that Borrower has complied with all environmental covenants set forth in **Section 5.1.43** of this Agreement.

- (k) Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of the Final Advance, Borrower has invested Cash equity in an amount equal to or greater than the Required Equity Funds or has otherwise complied with the provisions of **Section 2.11.13** with respect thereto.

- (l) Insolvency Opinion. The issuance of and delivery to Lender of six (6) original counterparty Insolvency Opinions in the form attached hereto as **Exhibit K** from Wachtel & Masyr, LLP or another law firm reasonably acceptable to Lender.

- (m) ICIP Eligibility. Evidence satisfactory to Lender that Borrower has obtained a Certificate of Eligibility under the Industrial and Commercial Incentive Program.

- 2.12.2 Amount of Final Advance. Except as expressly provided for below, the amount of the Final Advance shall be equal to the sum of: (a) any Retainage not previously released and advanced to Borrower; plus (b) the amount of any Punch List and Deferred Maintenance Reserve Deposit; plus (c) the positive difference, if any, between (i) the Building Loan Amount and (ii) all amounts previously Advanced under the Building Loan (including the amounts described in clauses (a) and (b) of the sentence). The portion of the Final Advance described in clause (c) of the foregoing sentence is referred to herein as the **"Building Loan Earn Out Advance"** and the corresponding portion of the Final Project Loan Advance is referred to herein as the **"Project Loan Earn Out Advance"** and together with the Building Loan Earn Out Advance, the **"Earn Out Advances"**. Notwithstanding anything to the contrary provided for herein, the Earn Out Advances shall be reduced, pro rata, but not below \$0.00, if and to the extent necessary for the Required Ratios at Completion to be achieved following the Final Advances. In addition, if the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00, Lender shall have the right, but not the obligation, to apply any deposits held by Lender pursuant to the Rate Lock Agreement and any Interest Reserve Funds to the payment of the Building Loan and the Project Loan in such order and priority as Lender shall determine in its sole discretion. If the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00 and the deposits, if any under the Rate Lock Agreement and the Interest Reserve Funds are applied to the payment of the Loan, Borrower shall deposit with Lender Cash or a Letter of Credit satisfactory to Lender in an amount equal to the amount which, if used to pay down the Loan, would result in Stabilized Loan-to-Value Ratio of 75%.

2.12.3 Rate Lock Agreement. Upon satisfaction of all of the conditions to the Final Advance set forth in **Section 2.12.1**, and subject to the provisions of **Section 2.12.2**, Lender shall return to Borrower, the remaining deposits, if any, held by Lender under the Rate Lock Agreement and not applied by Lender in accordance with the provisions of the Rate Lock Agreement and any Interest Reserve Funds held by Lender pursuant to this Agreement.

Section 2.13 No Reliance. All conditions and requirements of this Agreement are for the sole benefit of Lender and no other person or party (including, without limitation, the Construction Consultant, the General Contractor and subcontractors (including, without limitation, Major Contractors and Major Subcontractors) and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower. Lender shall have the right, in its sole and absolute discretion, to waive any such condition or requirement.

Section 2.14 Method of Disbursement of Loan Proceeds.

2.14.1 Draw Request to Be Submitted to Lender. At such time as Borrower shall desire to obtain an Advance, Borrower shall complete, execute and deliver to Lender a Borrower's Requisition in the form attached hereto as **Exhibit L** ("**Borrower's Requisition**").

(a) Borrower's Requisition shall be accompanied by a completed and itemized Application and Certificate for Payment (AIA Document No. G702) attached hereto as **Exhibit M** or similar form approved by Lender, containing the certification of the General Contractor or contractor or subcontractor to whom such payment is made, as applicable, and Borrower's Architect as to the accuracy of same, together with invoices relating to all items of Hard Costs covered thereby and accompanied by a cost breakdown showing the cost of work on, and the cost of materials incorporated into, the Improvements to the date of the requisition. The cost breakdown shall also show the percentage of completion of each line item on the Building Loan Budget, and the accuracy of the cost breakdown shall be certified by Borrower and by Borrower's Architect. All such applications for payment shall also show all contractors and subcontractors, including Major Contractors and Major Subcontractors, by name and trade, the total amount of each contract or subcontract, the amount theretofore paid to each subcontractor as of the date of such application, and the amount to be paid from the proceeds of the Advance to each contractor and subcontractor;

(b) the completed construction will be reviewed by the Construction Consultant who will certify to Lender as to the value of completed construction, percentage of completion and compliance with Plans and Specifications;

- (c) _____ lien waivers from each other Major Contractor and Major Subcontractors for work done and materials supplied by them which were paid for pursuant to any prior Draw Request;
- (d) _____ a written request of Borrower for any necessary changes in the Plans and Specifications, the Building Loan Budget, the Disbursement Schedule or the Construction Schedule;
- (e) _____ copies of all executed change orders, contracts and subcontracts, and, to the extent requested by Lender, of all inspection or test reports and other documents relating to the construction of the Project Improvements not previously delivered to Lender; and
- (f) _____ such other information, documentation and certification as Lender shall reasonably request.
- 2.14.2 Procedure of Advances.
- (a) _____ Each Draw Request shall be submitted to Lender and Construction Consultant at least ten (10) Business Days prior to the date of the requested Advance (the "**Requested Advance Date**"), and no more frequently than monthly. Lender shall make the requested Advance on the Requested Advance Date so long as all conditions to such Advance are satisfied or waived.
- (b) _____ Not later than 11:00 A.M. New York City time, on the Requested Advance Date, Lender shall make such Advance available to Borrower in accordance with the terms of this **Section 2.14**.
- (c) _____ Each Advance (other than the Final Advance) shall be in an amount of not less than \$250,000.00.
- (d) _____ Each Advance shall be made on a Payment Date.
- 2.14.3 Funds Advanced. Each Advance shall be made by Lender by wire transfer to such checking account of Borrower as specified to Lender in writing or as provided in **Section 2.14.4** below. All proceeds of all Advances shall be used by Borrower only for the purposes for which such Advances were made. Borrower shall not commingle such funds with other funds of Borrower.
- 2.14.4 Direct Advances to Third Parties. Lender may make, at Lender's option, any or all Advances directly or through the Title Company to (i) any Contractor, as applicable, for construction expenses which shall theretofore have been approved by Lender and for which Borrower shall have failed to make payment after receipt by Borrower of such applicable Advance, (ii) Borrower's Architect to pay its fees to the extent funds are allocated thereto in the Building Loan Budget if Borrower shall have failed to do so, (iii) the Construction Consultant to pay its fees, (iv) Lender's counsel to pay its fees, (v) to pay (x) any installment of interest due under the Note, (y) any expenses incurred by Lender which are reimbursable by Borrower under the Loan Documents (including, without limiting the generality of the foregoing, reasonable attorneys' fees and expenses and other fees and expenses incurred by Lender), provided that Borrower shall theretofore have received notice from Lender that such expenses have been incurred and Borrower shall have failed to reimburse Lender for said expenses beyond any grace periods provided for said reimbursement under the Note, this Agreement or any of the other Loan Documents, or (z) following the occurrence and continuation of an Event of Default, any other sums due to Lender under the Note, this Agreement or any of the other Loan Documents, all to the extent that the same are not paid by the respective due dates thereof, and (vi) any other Person to whom Lender in good faith determines payment is due and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan directly to any such Person or through the Title Company to such Persons in accordance with this **Section 2.14.4** as amounts become due and payable to them hereunder and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. No further authorization from Borrower shall be necessary to warrant such direct Advances to such relevant Person, and all such Advances shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the Mortgage and the other Loan Documents as fully as if made directly to Borrower.

- 2.14.5 One Advance Per Month. Lender shall have no obligation to make Advances of the Loan more often than once in each calendar month except that Lender, in its sole discretion, shall have the right but not the obligation, to make additional advances per month for interest, fees and expenses due under the Loan Documents.

- 2.14.6 Advances Do Not Constitute a Waiver. No Advance shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances nor, in the event Borrower is unable to satisfy any such condition, shall any Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default hereunder.

- 2.14.7 Trust Fund Provisions. All proceeds advanced hereunder shall be subject to the trust fund provisions of **Section 13** of the Lien Law. The affidavit attached hereto as **Exhibit D** is made pursuant to and in compliance with **Section 22** of the Lien Law, and, if so indicated in said affidavit, Building Loan proceeds will be used, in part, for reimbursement for payments made by the Borrower prior to the Initial Advance hereunder but subsequent to the commencement of the construction and equipping of the Improvements for items constituting Costs of the Improvement.

- 2.14.8 Advances and Disbursements Under Completion Guaranty. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, Borrower hereby irrevocably and unconditionally authorizes Lender to make any disbursements of proceeds of the Loan or of any Reserve Funds held by Lender to Guarantor in accordance with the Guaranty of Completion.

- **Section 2.15 Plan Review Process.**

- (a) Borrower hereby acknowledges and agrees that neither Lender nor the Construction Consultant's approval of any Plans and Specifications (or any revisions thereto), nor its inspection of the performance of the construction, nor its right to inspect such work, shall impose upon Lender and/or Construction Consultant any obligation or liability whatsoever with respect thereto, including, without limitation, any obligation or liability that might arise as a result of such work not being performed in accordance with applicable laws and/or requirements of public authorities or with the Plans and Specifications (and revisions thereto) approved by Lender and Construction Consultant or otherwise. The review or approval by Lender and Construction Consultant of any Plans and Specifications or any revisions thereto is solely for Lender's benefit, and is without any representation or warranty whatsoever with respect to the adequacy, correctness or efficiency thereof or otherwise. The granting by Lender and/or Construction Consultant of its approval of any Plans and Specifications or any revisions thereto, shall not in any manner constitute or be deemed to constitute a judgment or acknowledgment by Lender as to their legality or compliance with laws and/or requirements of public authorities.

ARTICLE III.

CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Closing.** The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

3.1.1 **Representations and Warranties; Compliance with Conditions.** The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

3.1.2 **Loan Agreement and Note.** Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

3.1.3 **Delivery of Loan Documents; Title Insurance; Reports; Leases.**

(a) **Mortgage, Assignment of Leases.** Lender shall have received from Borrower fully executed and acknowledged counterparts of the Mortgage and the Assignment of Leases and evidence that counterparts of the Mortgage and Assignment of Leases have been delivered to the Title Company for recording, in the reasonable judgment of Lender, so as to effectively create upon such recording valid and enforceable Liens upon the Property, of the requisite priority, in favor of Lender or Lender's nominee (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) **Title Insurance.** Lender shall have received the Title Insurance Policy issued by a title company acceptable to Lender (the "Title Company") and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Insurance Policy shall (i) provide coverage in amounts satisfactory to Lender, (ii) insure Lender that the Mortgage creates a valid lien on the Property of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Insurance Policy have been paid.

- (c) Survey. Lender shall have received a title survey for the Property, certified to the Title Company and Lender and their successors and assigns, in form and content satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by American Land Title Association, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 1999 or in such other form as Lender shall approve (the "Survey"). The Survey shall reflect the same legal description contained in the Title Insurance Policy referred to in clause (b) above and shall include, among other things, a metes and bounds description of the real property comprising part of the Property reasonably satisfactory to Lender. The surveyor's seal shall be affixed to the Survey and the surveyor shall provide a certification for the Survey in form and substance acceptable to Lender.

- (d) Insurance. Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its sole discretion, and evidence of the payment of all premiums payable for the existing policy period.

- (e) Environmental Reports. Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of the Property, in each case satisfactory in form and substance to Lender.

- (f) Zoning. Evidence reasonably acceptable to Lender confirming that the Project Improvements can be developed and constructed in accordance with the Plans and Specifications "as of right" without requiring the issuance of any zoning variance or other discretionary permit and/or approval and such other matters as Lender may reasonably require.

- (g) Encumbrances. Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date with respect to the Mortgage, subject only to applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

- 3.1.4 Related Documents. Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

- 3.1.5 Delivery of Organizational Documents. On or before the Closing Date, Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, amendments (as requested by Lender), good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

- 3.1.6 *Opinions of Borrower's Counsel.* Lender shall have received opinions from Borrower's counsel with respect to due execution, authority, enforceability of the Loan Documents and such other matters as Lender may reasonably require, including, without limitation, the Insolvency Opinion, all such opinions in form, scope and substance satisfactory to Lender and Lender's counsel in their sole discretion.

- 3.1.7 *Development Budget.* Borrower shall have delivered, and Lender and Construction Consultant shall have approved, the Development Budget and the Disbursement Schedule attached thereto, and certified by Borrower as being true, correct and complete.

- 3.1.8 *Carrying Costs.* Borrower shall have paid all Carrying Costs relating to the Property then due and payable including without limitation, (a) accrued but unpaid Insurance Premiums due pursuant to the Policies, (b) currently due Taxes (including any in arrears) relating to the Property, and (c) currently due Other Charges relating to the Property, which amounts shall be funded with proceeds of the Loan.

- 3.1.9 *Completion of Proceedings.* All organizational and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance satisfactory to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

- 3.1.10 *Payments.* All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

- 3.1.11 *Payment of Fees.* Payment by Borrower of all fees and expenses required by this Agreement and/or the other Loan Documents, to the extent due and payable, including, without limitation, Lender's reasonable attorneys' fees and expenses, all origination fees, and brokerage commissions.

- 3.1.12 *Transaction Costs.* Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of environmental reports, Physical Conditions Report, appraisals and other reports, the fees and costs of Lender's counsel, and all other third party out-of-pocket expenses incurred in connection with the origination and closing of the Loan.

- 3.1.13 *Material Adverse Change.* There shall have been no material adverse change in the financial condition or business condition of Borrower, any one or more of the Persons comprising Guarantor that, in the aggregate, constitutes a material adverse change in the financial condition of the Guarantor collectively, or a material adverse change in the Property since the date of the most recent financial statements delivered to Lender. The income and expenses of the Property, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower, Guarantor nor any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

- 3.1.14 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that Borrower has contributed the Required Equity Funds for approved Project-Related Costs.

- 3.1.15 Ratios. Following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 75%.

- 3.1.16 Intentionally Omitted.

- 3.1.17 Physical Conditions Report. Lender shall have received a Physical Conditions Report with respect to the Property, which report shall be issued by an engineer selected by Lender and shall be reasonably satisfactory in form and substance to Lender.

- 3.1.18 The Architect's Contract. The Architect's Contract in form and substance satisfactory to Lender, shall have been duly executed and delivered by the parties thereto, shall be in full force and effect and Lender shall have received a certified copy or a fully executed duplicate original thereof. Borrower's Architect shall have duly executed and delivered to Lender a consent to the assignment of the Architect's Contract, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. If Borrower's Architect consists of more than one Person, then each such Person shall deliver a consent to the assignment of the Architect's Contract in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. All Other Design Professionals shall deliver a consent to the assignment to each of their Contracts, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original of each such Contract.

- 3.1.19 Appraisal. Lender shall have received an appraisal of the Property, from an appraiser selected by Lender, which appraisal shall be satisfactory in form and substance to Lender.

- 3.1.20 Deliveries. The following items or documents shall have been delivered to Lender:

- (a) Plans and Specifications. Two (2) complete sets of the Plans and Specifications and any and all modifications and amendments made thereto which have been reviewed and approved by Lender and the Construction Consultant. Borrower shall deliver to Lender a list identifying the Plans and Specifications and any and all modifications and amendments made thereto.

- (b) Insurance. All Policies of insurance (or certificates thereof) required by **Section 6.1** of this Agreement or any other Loan Document.

- (c) Final Project Report. The Final Project Report shall have been delivered to Lender by the Construction Consultant.
- (d) Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.
- (e) Construction Schedule. The Construction Schedule, certified by Borrower as being true, correct and complete, which shall have been approved by Lender and the Construction Consultant.
- (f) Evidence of Vacancy. Evidence that the Property and Existing Improvements are free of tenants, occupants and any claims of tenancy or a right of occupancy.
- (g) ICIP Eligibility. Evidence satisfactory to Lender that Borrower has applied for a Certificate of Eligibility under the Industrial and Commercial Incentive Program.
- 3.1.21 Management Agreement. Lender shall have received a certified copy of each Management Agreement with respect to the Property which shall be satisfactory in form and substance to Lender.
- 3.1.22 Subordination. Lender shall have received the Subordination of Affiliate Fee executed by Borrower, Guarantor, each member of Borrower or any other Affiliate of Borrower entitled to an Affiliate Fee.
- 3.1.23 Conditional Use Permit. Borrower shall have delivered to Lender evidence satisfactory to Lender that Borrower has obtained an extension or renewal of the conditional use permit for the Property permitting the Property to be used for a self-storage facility.
- 3.1.24 Further Documents. Lender or its counsel shall have received such other documents and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.1 **Borrower Representations.** Borrower represents and warrants as of the date hereof and as of the Closing Date that:

- 4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Property. The ownership interests in Borrower are as set forth on the organizational chart attached hereto as **Schedule I**.

- 4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

- 4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

- 4.1.4 Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending, or threatened against or affecting Borrower, Guarantor or the Property, which actions, suits or proceedings, if determined against Borrower, Guarantor or the Property, might materially adversely affect the condition (financial or otherwise) or business of Borrower, Guarantor or the condition or ownership of the Property.

- 4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property as permitted pursuant to clause (xx) of the definition of "Special Purpose Entity" set forth in **Section 1.1** hereof and (b) obligations under the Loan Documents.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or Borrower's ability to repay the Loan. The Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into this transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower or any Guarantor in the last seven (7) years, and neither Borrower nor any Guarantor in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any Guarantor is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

4.1.8 Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which adversely affects, nor as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

- 4.1.9 *No Plan Assets.* Borrower does not sponsor, is not obligated to contribute to, and is not itself an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state or other statute, regulation or other restriction regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement, including but not limited to the exercise by Lender of any of its rights under the Loan Documents.

- 4.1.10 *Compliance.* Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. To the best of Borrower’s knowledge, Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents.

- 4.1.11 *Financial Information.* All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Borrower and the Property, as applicable, as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof as a self-storage facility, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower from that set forth in said financial statements.

- 4.1.12 *Condemnation.* No Condemnation or other proceeding has been commenced or, to Borrower’s best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

- 4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

- 4.1.14 Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

- 4.1.15 Not a Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

- 4.1.16 Separate Lots. The Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

- 4.1.17 Assessments. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

- 4.1.18 Enforceability. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and neither Borrower nor Guarantor have asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

- 4.1.19 No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

- 4.1.20 Insurance. Borrower has obtained and has delivered to Lender certified copies of the Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policy, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policy.

- 4.1.21 Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

- 4.1.22 ICIP Eligibility. Borrower has obtained a Certificate of Eligibility under the Industrial and Commercial Incentive Programs and Borrower shall comply with all of the requirements of the Industrial and Commercial Incentive Program in order to maintain such eligibility.

- 4.1.23 Flood Zone. None of the Improvements on the Property is located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to **Section 6.1.1(a)(A)** is in full force and effect with respect to the Property.

- 4.1.24 Required Equity Funds. Borrower represents and warrants to Lender that Borrower has contributed the Required Equity Funds for approved Project-Related Costs.

- 4.1.25 Boundaries. All of the improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy.

- 4.1.26 Leases. The Property is not subject to any leases other than the Leases described in the rent roll attached hereto as Schedule V and made a part hereof. Borrower is the owner and lessor of landlord's interest in the Leases. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and, to the best of Borrower's knowledge, (a) there are no defaults thereunder by either party and (b) there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent (including security deposits) has been paid more than one (1) month in advance of its due date. To the best of Borrower's knowledge, all work to be completed by Borrower prior to the date hereof under each Lease has been performed as required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein. To the best of Borrower's knowledge, no tenant listed on Schedule I has assigned its Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No Tenant has no right or option for additional space in the Improvements. Except as otherwise disclosed by the Environmental Report (as defined in the Mortgage), no hazardous wastes or toxic substances, as defined by applicable federal, state or local statutes, rules and regulations, have been disposed, stored or treated by any tenant under any Lease on or about the Property nor does Borrower have any knowledge of any Tenant's intention to use its premises for any activity which, directly or indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum product or any toxic or hazardous chemical, material, substance or waste. True, correct and complete copies of the Leases have been provided to Lender and such Leases have not been modified or amended in any way.

- 4.1.27 Survey. The Survey for the Property delivered to Lender in connection with this Agreement has been prepared in accordance with the provisions of **Section 3.1.3(c)** hereof, and does not fail to reflect any material matter affecting the Property or the title thereto.

- 4.1.28 Inventory. Borrower is the owner of all of the Equipment, Fixtures and Personal Property (as such terms are defined in the Mortgage) located on or at the Property and shall not lease any Equipment, Fixtures or Personal Property other than as permitted hereunder. All of the Equipment, Fixtures and Personal Property are sufficient to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

- 4.1.29 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid, and, under current Legal Requirements, the Mortgage is enforceable in accordance with its terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

- 4.1.30 Special Purpose Entity/Separateness.

- (a) Until the Total Debt has been paid in full, Borrower hereby represents, warrants and covenants, that Borrower is, shall be and shall continue to be a Special Purpose Entity.

- (b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

- (c) All of the facts stated and all of the assumptions made in the Insolvency Opinion, including, but not limited to, in any exhibits attached thereto, are true and correct in all respects and all facts stated and all assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "Additional Insolvency Opinion"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all respects. Borrower has complied and will comply with, all of the assumptions made with respect to Borrower in the Insolvency Opinion. Borrower will have complied and will comply with all of the assumptions made with respect to Borrower in any Additional Insolvency Opinion. Each entity other than Borrower with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

- 4.1.31 Property Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

- 4.1.32 Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

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

- 4.1.34 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

- 4.1.35 Embargoed Person. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable have been derived from any unlawful activity with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

- 4.1.36 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. The Borrower is organized under the laws of the State of Delaware.

- 4.1.37 Conditional Use Permit. Borrower has obtained an extension or renewal of the conditional use permit for the Property permitting the Property to be used for a self-storage facility.

- 4.1.38 Mortgage Taxes. As of the date hereof, Borrower represents that it has paid all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

- 4.1.39 Zoning. The Project Improvements can be developed and constructed in accordance with the Plans and Specifications "as of right" without requiring the issuance of any zoning variance or other discretionary permit and/or approval.

- 4.1.40 ICIP Eligibility. Borrower has applied for a Certificate of Eligibility under the Industrial and Commercial Incentive Program and has submitted all documents necessary to obtain such Certificate of Eligibility.

- 4.1.41 Single Purpose; Borrower's Prior Acts. Borrower hereby represents and warrants to Lender that:

- (a) Since its formation, Borrower has not owned any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of the Property.

- (b) Since its formation, Borrower has not engaged in any business other than the ownership, management and operation of the Property and Borrower has conducted and operated its business as presently conducted and operated.

- (c) Since its formation, Borrower has not entered into any contract or agreement with any of its Affiliates, any of its constituent parties or any Affiliate of any constituent party, except those (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are substantially similar to those that would be obtained in a comparable arm's-length transaction with an unrelated third party, and (ii) in connection with this Agreement.

- (d) Since its formation, Borrower has not incurred any Indebtedness.

- (e) Since its formation, Borrower has not made any loans to any Person or held evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity).

- (f) Since its formation, Borrower has remained solvent and has paid its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its own assets and generally as the same have become due.

- (g) Since its formation, Borrower, has done or caused to be done all things necessary to observe its respective organizational formalities applicable to a business entity of its type and to preserve their respective existence or has promptly taken curative action with respect thereto.

- (h) _____ Since its formation, (i) Borrower has maintained all of its respective accounts (including bank accounts), books and records separate from those of its Affiliates and any constituent party; (ii) Borrower has maintained separate financial statements and its respective assets have not been listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity; (iii) Borrower has filed its own tax returns and has not filed a consolidated federal income tax return with any other Person, except to the extent that Borrower was required to file consolidated tax returns by law; and (iv) Borrower has maintained books, records, resolutions and agreements as official records.

- (i) _____ Since its formation, Borrower has been, and at all times has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person, except for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in **Subsection (h)** above, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower, has conducted business in its own name; has not identified itself or any of its Affiliates as a division or part of the other; and has used separate stationery, invoices and checks bearing its own name and not the name of any Affiliate.

- (j) _____ Since its formation, Borrower has maintained adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

- (k) _____ Since its formation, neither Borrower has, nor have any of its constituent parties, have sought or effected the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

- (l) _____ Since its formation, Borrower has not commingled its funds or other assets with those of any Affiliate or constituent party or any other Person, and Borrower, has held all of its assets in its own name.

- (m) _____ Since its formation, Borrower has maintained its assets in such a manner that it would not be costly or difficult to segregate, ascertain or identify their respective individual assets from those of any Affiliate or constituent party or any other Person.

- (n) _____ Since its formation, Borrower has not guaranteed or become obligated for the debts of any other Person and has not held itself out to be responsible for or to have their respective credit available to satisfy the debts or obligations of any other Person.

- (g) Borrower is presently conducting its business so that the assumptions made with respect to Borrower in the Insolvency Opinion are currently true and correct in all material respects.

- (p) Since its formation, Borrower has not permitted any Affiliate or constituent party independent access to its bank accounts.

- (q) Since its formation, Borrower has paid the salaries of its own employees (if any) from its own funds and has maintained a sufficient number of employees (if any) in light of their respective contemplated business operations.

- (r) Since its formation, Borrower has compensated each of its consultants and agents from its own funds for services provided to it and pay from its own respective assets all obligations of any kind incurred.

- (s) Since its date of formation, Borrower has not acquired any obligations or securities of any of its Affiliates.

- (t) Since the date of its formation, Borrower has not acquired or held any interest in or formed any entity or subsidiary.

- 4.1.42 Cash Management Account. Borrower hereby represents and warrants to Lender that:

- (a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code of the State of Delaware) in the Clearing Account and Cash Management Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold, pledged, transferred or otherwise conveyed the Clearing Account and Cash Management Account;

- (b) Each of the Clearing Account and Cash Management Account constitutes a "deposit account" within the meaning of the Uniform Commercial Code of the State of Delaware;

- (c) Pursuant and subject to the terms hereof, the Clearing Bank and the Cash Management Bank have agreed to comply with all instructions originated by Lender, without further consent by Borrower, directing disposition of the Clearing Account and Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities; and

- (d) The Clearing Account and Cash Management Account are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to the Clearing Bank and the Cash Management Bank complying with instructions with respect to the Clearing Account and Cash Management Account from any Person other than Lender.

- 4.1.43 Trade Name; Other Intellectual Property. Borrower owns and possesses or licenses (as the case may be) all such patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights, websites, domain names and copyrights, as Borrower considers necessary for the conduct of its business as now conducted without, individually or in the aggregate, any infringement upon rights of other Persons, in each case except as could not reasonably be expected to (i) materially and adversely affect the value of the Property, (ii) impair the use and operation of the Property or (iii) impair Borrower's ability to pay its obligations in a timely manner, and there is no individual patent, patent right, trademark, trademark right, trade name, trade name right, service mark, service mark right or copyright the loss of which would (i) materially and adversely affect the value of the Property, (ii) impair the use and operation of the Property or (iii) impair Borrower's ability to pay its obligations in a timely manner (collectively, the "**Intellectual Property**").

- 4.1.44 General Contractor's Agreement. As of the date hereof, (i) the General Contractor's Agreement is in full force and effect; (ii) Borrower and General Contractor are in full compliance with their respective obligations under the General Contractor's Agreement; (iii) the work to be performed by General Contractor under the General Contractor's Agreement is the work called for by the Plans and Specifications; and (iv) all work on the Project Improvements heretofore completed has been completed in accordance with the Plans and Specifications in a good and workmanlike manner and is free of any defects. Borrower shall from time to time, upon request by Lender, cause General Contractor to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

- 4.1.45 Architect's Contract. As of the date hereof, (i) the Architect's Contract is in full force and effect; (ii) both Borrower and, to the best of Borrower's knowledge, Borrower's Architect are in compliance in all material respects with their respective obligations under the Architect's Contract; (iii) the work to be performed by Borrower's Architect under the Architect's Contract is the architectural services required to design the Project Improvements to be built in accordance with the Plans and Specifications and all architectural services required to complete the Project Improvements in accordance with the Plans and Specifications is provided for under the Architect's Contract; and (iv) all work on the Project Improvements heretofore completed has been completed in accordance with the Plans and Specifications in a good and workmanlike manner and is free of any defects. Upon request by Lender, Borrower shall or Borrower shall cause Borrower's Architect to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

- 4.1.46 Plans and Specifications. As of the date hereof, Borrower has furnished Lender true and complete sets of the preliminary Plans and Specifications. The preliminary Plans and Specifications comply with all applicable Legal Requirements, all Governmental Approvals, and all restrictions, covenants and easements affecting the Property, and have been approved by each such Governmental Authority as is required for construction and renovation of the Project Improvements and the General Contractor, Guarantor and Borrower's Architect.

4.1.47 Budget. The Development Budget accurately reflects all anticipated Project-Related Costs. Upon the making of the Advances requested in Borrower's Requisition in the manner set forth therein, all materials and labor therefore supplied or performed in connection with the Property will have been paid for in full (subject to the Retainage).

4.1.48 Feasibility. Each of the Construction Schedule and the Disbursement Schedule is accurate.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V.

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall never permit any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Mortgage. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (vi) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of **Section 7.1** hereof. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to **Section 7.1** hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (vi) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien.

- 5.1.3 Litigation. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower and/or Guarantor which might materially adversely affect Borrower's or Guarantor's condition (financial or otherwise) or business or the Property.

- 5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice and subject to the rights of Tenants under Leases.

- 5.1.5 Notice of Default. Borrower shall promptly advise Lender of any material adverse change in Borrower's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

- 5.1.6 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

- 5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and reasonable expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

- 5.1.8 Award and Insurance Benefits. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) out of such Insurance Proceeds.

- 5.1.9 Further Assurances. Borrower shall, at Borrower's sole cost and expense:

- (a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

- (b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require including, without limitation, the execution and delivery of all such writings necessary to transfer any licenses with respect to the Property into the name of Lender or its designee after the occurrence of an Event of Default; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

5.1.10 Principal Place of Business, State of Organization. Borrower will not cause or permit any change to be made in its name, identity (including its trade name or names), place of organization or formation (as set forth in **Section 4.1.36** hereof) or Borrower's corporate or partnership structure unless Borrower shall have first notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all reasonable action required by Lender for the purpose of perfecting or protecting the lien and security interests of Lender pursuant to this Agreement, the Cash Management Agreement and the other Loan Documents and, in the case of a change in Borrower's structure, without first obtaining the prior consent of Lender. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in the introductory paragraph of this Agreement. Borrower shall promptly notify Lender of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Lender of such organizational identification number.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire at Lender's expense unless an Event of Default shall have occurred. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's reasonable request, Borrower shall deliver to Lender such other information necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's annual financial statements covering the Property for such Fiscal Year audited by a "Big Four" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include, but not be limited to, amounts representing annual Net Cash Flow, Net Operating Income, Gross Income from Operations and Operating Expenses. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (ii) an Officer's Certificate stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Property being reported upon and has been prepared in accordance with GAAP; (iii) a list of tenants, if any, occupying more than twenty percent (20%) of the total floor area of the Improvements, (iv) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and cumulative basis, and (v) a schedule audited by such independent certified public accountant reconciling Net Operating Income to Net Cash Flow (the "Net Cash Flow Schedule"), which shall itemize all adjustments made to Net Operating Income to arrive at Net Cash Flow deemed material by such independent certified public accountant. Together with Borrower's annual financial statements, Borrower shall furnish to Lender an Officer's Certificate certifying as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar month throughout the term of the Loan the following items, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable: monthly and year-to-date operating statements (including Capital Expenditures) prepared for each calendar month, noting all Net Operating Income, Gross Income from Operations and Operating Expenses (not including any contributions to the Reserve Funds) and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar month, and containing (i) a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, for any individual items in excess of \$10,000, all in form satisfactory to Lender, (ii) a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month accompanied by an Officers' Certificate with respect thereto; and (iii) a Net Cash Flow Schedule. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 and Section 4.1.35 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than sixty (60) days.

(d) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar month throughout the term of the Loan, an rent roll for the subject month, accompanied by an Officer's Certificate stating that such rent roll is true, correct, accurate, and complete and fairly presents the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable.

(e) For the partial year period commencing on the date of the Closing Date, and for each Fiscal Year thereafter, Borrower shall submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval (each such Annual Budget, an "Approved Annual Budget"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, the most recent Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges.

(f) In the event that Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an "Extraordinary Expense"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval, except in the case of emergency (provided that Borrower will notify Lender promptly after such emergency).

(g) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a diskette, and (iii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with the Securitization to such parties requesting such information in connection with such Securitization.

5.1.12 *Business and Operations.* Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower will qualify to do business and will remain in good standing under the laws of all relevant jurisdictions as and to the extent the same are required for the ownership, maintenance, management and operation of the Property. Borrower shall at all times during the term of the Loan, continue to own and/or maintain all of the Equipment, Fixtures and Personal Property which are necessary to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

- 5.1.13 Title to the Property. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Mortgage and the Assignment of Leases on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

- 5.1.14 Costs of Enforcement. In the event (a) that the Mortgage encumbering the Property is foreclosed in whole or in part or that the Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage encumbering the Property prior to or subsequent to the Mortgage in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

- 5.1.15 Estoppel Statement.

- (a) After written request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Agreement, the Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

- (b) Borrower shall deliver to Lender upon written request, tenant estoppel certificates from each tenant paying base rent in an amount equal to or exceeding five percent (5%) of the Gross Income from Operations from the Property occupied by such tenant in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

- (c) After written request by Borrower, Lender shall within ten (10) days furnish Borrower with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, and (iv) the date installments of interest and/or principal were last paid.

5.1.16 Loan Proceeds. Borrower shall use the proceeds of the Loan solely and exclusively for the purposes of constructing and renovating the Project Improvements in accordance herewith and in accordance with the Building Loan Budget which shall be subject to no change except as permitted hereby. Borrower will receive the Advances to be made hereunder and will hold the right to receive the same as a trust fund for the purpose of paying the Costs of the Improvement and it will apply the same first to such payment before using any part thereof for any other purpose.

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.18 Confirmation of Representations. Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower and Guarantor as of the date of the Securitization.

5.1.19 ICIP Eligibility. Borrower shall take all actions necessary to obtain a Certificate of Eligibility under the Industrial and Commercial Incentive Program as soon as possible.

5.1.20 Leasing Matters. Borrower may not enter into a Lease, license or other occupancy agreement for any portion of the Property without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that after the Property shall have achieved the Required Ratios at Completion, Borrower shall not be required to obtain Lender's approval of Leases for less than 15,000 square feet that otherwise satisfy the requirements of this Agreement. Upon request, Borrower shall furnish Lender with executed copies of all Leases. All renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates. All proposed Leases shall be on commercially reasonable terms and shall not contain any terms which would materially affect Lender's rights under the Loan Documents. All Leases executed after the date hereof shall provide that they are subordinate to the Mortgage and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale. Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Property involved except that no termination by Borrower or acceptance of surrender by a tenant of any Leases shall be permitted unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Property; provided, however, that no such termination or surrender of any Lease will be permitted without the written consent of Lender, provided, further, that after the Property shall have achieved the Required Ratios at Completion, Borrower shall not be required to obtain Lender's approval for termination of Leases for less than 15,000 square feet that otherwise satisfy the requirements of this Agreement; (iii) shall not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents without Lender's prior written consent which shall not be unreasonably withheld; and (vi) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, Borrower shall not enter into a lease of all or substantially all of the Property without Lender's prior written consent.

5.1.21 Alterations.

(a) Following the Completion of the Improvements, Borrower shall obtain Lender's prior written consent to any subsequent alterations to any Improvements, which consent shall not be unreasonably withheld or delayed except with respect to alterations that may have a material adverse effect on Borrower's financial condition or the value of the Property or the Net Operating Income. Notwithstanding the foregoing, Lender's consent shall not be required in connection with (i) any alterations that will not have a material adverse effect on Borrower's financial condition or the value of the Property or the Net Operating Income, and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (ii) alterations performed in connection with the Restoration of the Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement. If the total unpaid amounts due and payable with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) shall at any time exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "Threshold Amount"), Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond, or (E) a Letter of Credit. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and Lender may apply such security from time to time at the option of Lender to pay for such alterations.

(b) Notwithstanding anything contained herein to the contrary, the construction, Building Loan and alteration of the Improvements in accordance with the Plans and Specifications shall not constitute "alterations" to the Improvements and will not be subject to the terms of this Section 5.1.21.

5.1.22 No Fees or Payments to Affiliates. In no event shall Borrower pay any fees or make any payments to any Affiliates without Lender's approval, which may be withheld in its sole discretion.

5.1.23 Payment of Administration Fee. Borrower shall pay to Lender on the first (1st) day of each calendar month the Administration Fee in advance.

5.1.24 General Contractor's Agreement. Borrower shall (a) enforce the General Contractor's Agreement in the best interests of the Improvements using sound business judgment, (b) waive none of the material obligations of any of the parties thereunder, (c) do no act which would relieve the General Contractor from its material obligations to construct the Project Improvements according to the Plans and Specifications, (d) make no amendments to or change orders under the General Contractor's Agreement, except as permitted under this Agreement, without the prior approval of Lender, (e) ensure that the work to be performed by General Contractor under the General Contractor's Agreement is the work called for by the Plans and Specifications, and (f) ensure that all work on the Improvements shall be completed in accordance with the Plans and Specifications in a good and workmanlike manner and shall be free of any defects. Borrower shall from time to time, upon request by Lender, use reasonable efforts to cause General Contractor to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

5.1.25 Architect's Contract. Borrower shall enforce the Architect's Contract in the best interests of Borrower consistent with the construction of the Project Improvements using sound business judgment, (b) waive none of the material obligations of Borrower's Architect thereunder, (c) do no act which would relieve Borrower's Architect from its material obligations under the Architect's Contract and (d) make no amendments to the Architect's Contract without the prior approval of Lender. Upon request by Lender, Borrower shall cause Borrower's Architect to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

5.1.26 Building Loan Costs and Expenses. Borrower shall promptly pay when due all Building Loan Costs.

5.1.27 Fees. Borrower shall pay when due the reasonable fees of the Construction Consultant, all reasonable costs and expenses, including, without limitation, appraisal fees (only if required by law after the initial appraisal) recording fees and charges, abstract fees, title policy fees, escrow fees, reasonable attorneys' fees, fees of inspecting architects and engineers to the extent provided hereunder in connection with Advances, fees of environmental consultants to the extent provided in the Mortgage, and all other reasonable and customary costs and expenses which have been incurred or which may hereafter be incurred by Lender in connection with the preparation and execution of the Loan Documents, including any extension, amendment or modification thereof; the funding of the Loan, the administration and enforcement of this Agreement, the Mortgage, the Note, and the other Loan Documents, including, without limitation, reasonable attorneys' fees in any action for the foreclosure of the Mortgage and the collection of the Loan, and all such fees incurred in connection with any bankruptcy or insolvency proceeding; and Borrower will, within twenty (20) days after demand by Lender, reimburse Lender for all such expenses which have been incurred; and Borrower will indemnify and hold harmless Lender from and against, and reimburse it for all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against Lender or Borrower on account of any act performed or omitted to be performed hereunder by Borrower or on account of any transaction arising out of or in any way connected with the Property, or with this Agreement or any of the indebtedness evidenced by the Note, provided that the foregoing indemnity shall not apply to any such liabilities, losses, damages and expenses of Lender to the extent arising from the willful misconduct or gross negligence of Lender. All amounts incurred or paid by Lender under this Section 5.1.27, together with interest thereon at the Default Rate from the due date until paid by Borrower, shall be added to the Debt and shall be secured by the lien of the Mortgage.

5.1.28 Completion of Construction.

(a) Borrower shall cause the Project Improvements to be constructed in accordance with the Plans and Specifications and any Permitted Encumbrance and in full compliance with the Building Loan Budget, as the same may be amended from time to time in accordance with the terms hereof.

(b) Borrower shall cause the Completion of the Improvements to occur on or before the Required Completion Date.

(c) Borrower shall diligently pursue construction of the entire Project Improvements to cause the Complete of the Improvements and obtain a temporary or permanent certificate of occupancy (and to the extent the same are conditional or require performance by Borrower, satisfy all conditions to the issuance of and/or performed all obligations required for the continued validity of the same) for the Property on or prior to the Required Completion Date, in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Property, all applicable Legal Requirements, and all Governmental Approvals, and with all terms and conditions of the Loan Documents; pay all sums and to perform such duties as may be necessary to complete such construction of the Project Improvements substantially in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Property, all Legal Requirements and all Governmental Approvals, and with all terms and conditions of the Loan Documents, all of which shall be accomplished on or before the Required Completion Date, free from any liens, claims or assessments (actual or contingent) asserted against the Property for any material, labor or other items furnished in connection therewith unless bonded and removed as a Lien on the Property. The renovation of the Project Improvements shall include all work necessary to put the Property in conformity with, and eliminate any breaches from, the ADA. Evidence of satisfactory compliance with all of the foregoing shall be furnished by Borrower to Lender on or before the Required Completion Date. In addition, if such certificate of occupancy or other Governmental Approvals are temporary in nature, Borrower shall diligently pursue procuring final Governmental Approvals. In addition, Borrower shall diligently pursue construction of the entire Project Improvements to Final Completion after the Required Completion Date.

(d) _____ If at any time prior to the Completion of the Improvements and satisfaction of the conditions to the Final Advance Lender determines in its sole discretion that the undrawn funds then available under the Interest Reserve Line Item of the Project Loan Budget and the amount of Interest Reserve Funds on deposit with Lender is insufficient to pay the Debt Service on the Loan, then, Borrower shall deposit with Lender, on demand, either (i) an amount reasonably determined by Lender to pay interest on the Loan as it comes due prior to the Completion of the Improvements and the satisfaction of the conditions to the Final Advance (the "Additional Interest Reserve Deposit"), or (ii) a Letter of Credit in such amount (the "Additional Interest Reserve Letter of Credit"). In determining the amount of the Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit, Lender will consider, among other things, (i) the degree of completion of the Improvements on such date, and (ii) the amount, if any, of undrawn funds then available under the Interest Reserve Line Item of the Project Loan Budget. In addition, and subject to the applicable terms hereof and the applicable terms of the Project Loan Agreement regarding the re-allocation of Line Items, Lender shall not unreasonably withhold its consent to Borrower's request at the time of the deposit of the Additional Interest Reserve Deposit or the Additional Interest Reserve Letter of Credit to re-allocate a portion of the then undrawn Contingency Line Item (or any other Line Item within the Building Loan Budget) from the Project Loan Budget to the Interest Reserve Line Item of the Project Loan Budget, provided, however, under no circumstances may any portion of the Contingency Line Item of the Building Loan Budget be reallocated to the Interest Reserve Line Item. The Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit shall be a Reserve Fund for all purposes hereunder. Lender shall apply the Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit in accordance with Section 7.2 hereof.

5.1.29 Inspection of Property. Borrower shall permit Lender, the Construction Consultant and their respective representatives, to enter upon the Property, inspect the Project Improvements and all materials to be used in the construction and Building Loan thereof and to examine the Plans and Specifications which are or may be kept at the construction site and will cooperate, and cause the General Contractor, the Major Contractors and the Major Subcontractors to cooperate with the Construction Consultant to enable him or her to perform his or her functions hereunder.

5.1.30 Construction Consultant. Borrower acknowledges that (i) the Construction Consultant has been retained by Lender to act as a consultant and only as a consultant to Lender in connection with the construction of the Project Improvements and has no duty to Borrower, (ii) the Construction Consultant shall in no event have any power or authority to give any approval or consent or to do any other act or thing which is binding upon Lender, (iii) Lender reserves the right to make any and all decisions required to be made by Lender under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Lender under this Agreement and to accept or not accept any matter or thing required to be accepted by Lender under this Agreement, and without being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by the Construction Consultant with respect thereto, (iv) Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by the Construction Consultant to Lender or any other person or party, and (v) Lender reserves the right to replace the Construction Consultant with another construction consultant at any time and without prior notice to or approval by Borrower.

5.1.31 Construction Consultant/Duties and Access. Borrower shall permit Lender to retain the Construction Consultant at the reasonable cost of Borrower to perform the following services on behalf of Lender:

(a) Prepare the Final Project Report;

(b) To review and advise Lender whether, in the opinion of the Construction Consultant, the Plans and Specifications are satisfactory;

(c) To review Draw Requests and change orders; and

(d) To make periodic inspections in accordance with **Section 5.1.29** (approximately at the date of each Draw Request) for the purpose of assuring that construction of the Project Improvements to date is in accordance with the Plans and Specifications and to approve Borrower's then current Draw Request as being consistent with Borrower's Obligations under this Agreement.

The fees of the Construction Consultant shall be paid by Borrower within thirty (30) days after billing therefor and expenses incurred by Lender on account thereof shall be reimbursed to Lender within thirty (30) days after request therefor, but neither Lender nor the Construction Consultant shall have any liability to Borrower on account of (i) the services performed by the Construction Consultant, (ii) any neglect or failure on the part of the Construction Consultant to properly perform its services or (iii) any approval by the Construction Consultant of construction of the Project Improvements. Neither Lender nor the Construction Consultant assumes any obligation to Borrower or any other Person concerning the quality of construction of the Project Improvements or the absence thereof of defects.

5.1.32 Correction of Defects. Borrower shall promptly correct all material defects in the Project Improvements or any material departure from the Plans and Specifications not previously approved by Lender to the extent required hereunder. Borrower agrees that the advance of any proceeds of the Loan whether before or after such defects or departures from the Plans and Specifications are discovered by, or brought to the attention of, Lender shall not constitute a waiver of Lender's right to require compliance with this covenant.

5.1.33 Approval of Change Orders; Cost Savings. Borrower shall permit no deviations from the Plans and Specifications during construction without the prior approval of Lender; provided, however, that Borrower may make changes without Lender's prior written approval so long as (a) with respect to any Major Contract or Major Subcontract, such changes do not exceed two percent (2%) of the amount of the applicable contract, (b) such changes do not exceed in the aggregate \$250,000.00, provided that changes which have been approved by Lender either before or after such changes have been made shall be disregarded in calculating said \$250,000.00 threshold, (c) such changes do not cause any line item in the Building Loan Budget to be exceeded (after taking into account use of the Contingency Reserve to the extent permitted under **Section 2.1.7**, reallocations under this **Section 5.1.33** and other reallocations approved by Lender in its sole discretion), (d) Borrower uses reasonable efforts to deliver to Lender and Construction Consultant prior notice of such change orders or, if Borrower is unable to deliver prior notice, Borrower shall submit to Lender and Construction Consultant copies of all change orders entered into with respect to the Project Improvements within fifteen (15) days after the same are entered into, irrespective of whether the same require the prior approval of Lender and Construction Consultant pursuant to this Agreement, (e) such changes will not materially change the gross square feet or the net rentable square feet of commercial space to be contained in the Improvements, or the basic layout of the Improvements, or involve the use of materials, furniture, fixtures and equipment that will not be at least equal in quality to the materials, furniture, fixtures and equipment originally specified in or required by the approved Plans and Specifications, and (f) such change will not prevent Borrower from completing the Project Improvements by the Required Completion Date. The foregoing to the contrary notwithstanding, Borrower may allocate cost savings actually achieved and verifiable in any line item of the Building Loan Budget to other line items of the Building Loan Budget, provided that if such cost savings are being allocated from a line item of the Building Loan Budget, (i) such Building Loan Budget line item has a firm contract or sub-contract in place, (ii) the work has commenced and is proceeding in accordance with the Construction Schedule and (iii) the Construction Consultant is satisfied with said contract or sub-contract, including, without limitation, with regard to the scope of said contract or sub-contract.

5.1.34 Building Permits. Prior to commencing any phase of the demolition or construction of the Project Improvements, Borrower shall obtain and deliver to Lender all building permits and other Governmental Approvals required for the phase of construction of the Project Improvements to be undertaken by Borrower.

5.1.35 Easements and Restrictions; Zoning. Borrower shall submit to Lender for Lender's approval prior to the execution thereof by Borrower all proposed easements, restrictions, covenants, permits, licenses, and other instruments which would affect the title to the Property, accompanied by a Survey showing the exact proposed location thereof and such other information as Lender shall reasonably require. Borrower shall not subject the Property or any part thereof to any easement, restriction or covenant (including any restriction or exclusive use provision in any lease or other occupancy agreement) without the prior approval of Lender (not to be unreasonably withheld or delayed in the case of utility easements only). Notwithstanding the foregoing, Lender shall consent to a reciprocal easement agreement in connection with the future development of the adjacent development site provided that such reciprocal easement agreement is reasonably acceptable to Lender. With respect to any and all existing easements, restrictions, covenants or operating agreements which benefit or burden the Property and any easement, restriction or covenant to which the Property may hereafter be subjected in accordance with the provisions hereof, Borrower shall: (a) observe and perform in all material respects the obligations imposed upon Borrower or the Property; (b) not alter, modify or change the same in any material respect without the prior approval of Lender; (c) enforce its rights thereunder in a commercially reasonable manner so as to preserve for the benefit of the Property the full benefits of the same; and (d) deliver to Lender a copy of any notice of default or other material notice received by Borrower in respect of the same promptly after Borrower's receipt of such notice.

5.1.36 Laborers, Subcontractors and Materialmen. Borrower shall notify Lender promptly, and in writing, if Borrower receives any default notice, notice of lien or demand for past due payment, written or oral, from any laborer, subcontractor or materialmen. Borrower will also furnish to Lender at any time and from time to time upon reasonable demand by Lender, lien waivers in form reasonably satisfactory to Lender bearing a then current date from the Major Contractors and the Major Subcontractors.

5.1.37 Ownership of Personalty. Borrower shall furnish to Lender, if Lender so requests, photocopies of the fully executed contracts, bills of sale, receipted vouchers and agreements, or any of them, under which Borrower claims title to the materials, articles, fixtures and other personal property used or to be used in the construction or operation of the Improvements.

5.1.38 Comply with Other Loan Documents. Borrower shall perform all of Borrower's Obligations under the Note and the other Loan Documents.

5.1.39 Purchase of Material Under Conditional Sale Contract. Borrower shall not permit any materials, equipment, fixtures or any other part of the Improvements to be purchased or installed under any security agreement or other arrangements wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation in the Property, unless authorized by Lender in writing and in advance.

5.1.40 Further Assurance of Title. If at any time Lender has reason to believe in its reasonable opinion that any Advance is not secured or will or may not be secured by the Mortgage as a first priority lien or security interest on the Improvements (subject only to the Permitted Encumbrances and the Loan Documents), then Borrower shall, within ten (10) days after written notice from Lender, do all things and matters necessary (including execution and delivery to Lender of all further documents and performance of all other acts which Lender reasonably deems necessary or appropriate) to assure to the reasonable satisfaction of Lender that any Advance previously made hereunder or to be made hereunder is secured or will be secured by the Mortgage as a first priority lien or security interest with respect to the Improvements (subject only to the Permitted Encumbrances and the Loan Documents). Lender, at Lender's option, may decline to make further Advances hereunder until Lender has received such assurance.

5.1.41 Management Agreement.

(a) From and after Final Completion, Borrower shall cause the Property to be operated, in all material respects, in accordance with the Management Agreement (or Replacement Management Agreement, as applicable). In the event that the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Management Agreement with Manager or another Qualified Manager, as applicable.

(b) _____ Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement; and (iv) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner.

(c) _____ If: (a) an Event of Default shall have occurred and be continuing, (b) Manager shall become bankrupt or insolvent; (c) a default beyond any applicable notice and/or cure period, if any, occurs under the Management Agreement, or (d) following the Completion of the Improvements, the Debt Service Coverage Ratio (based upon the trailing six (6) month period, annualized) as of any Debt Service Coverage Determination Date is less than 1.05 to 1.0, then, in any such event, Borrower shall, at the request of Lender, terminate the Management Agreement and replace the Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

5.1.42 Embargoed Person. Borrower has performed and shall perform reasonable due diligence to insure that at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA PATRIOT Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law ("Embargoed Person"); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Principal or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure.

5.1.43 Environmental Covenants. Borrower shall remove all underground storage tanks ("USTs") and above-ground storage tanks ("ASTs") as part of the proposed construction of the Project Improvements in accordance with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property. In addition, all documented and suspected impacted soil and groundwater will be addressed by Borrower in conjunction with the proposed construction. Upon removal of the USTs and AST, all impacted soil and all free product and the residual contamination sources, Borrower shall monitor the natural attenuation of groundwater contamination in accordance with a monitoring plan approved by Lender. Borrower shall install a sub-slab ventilation system and vapor barrier in conjunction with the Project Improvements as set forth in the Plans and Specifications. Following removal of the ASTs and USTs, Borrower shall notify the New York State Department of Environmental Conservation and all other Governmental Authorities having jurisdiction and shall take all action necessary to "de-list" the former Riteway Laundry Company as a RCRIS SQG. Borrower shall perform asbestos abatement in accordance with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property prior to the demolition of the existing structures on the Property.

- Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

- 5.2.1 Intentionally Omitted.

- 5.2.2 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except:

- (i) Permitted Encumbrances;

- (ii) Liens created by or permitted pursuant to the Loan Documents; and

- (iii) Liens for Taxes or Other Charges not yet due.

- 5.2.3 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction in each case, without obtaining the prior written consent of Lender or Lender's designee.

- 5.2.4 Change In Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.5 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.6 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

5.2.7 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

5.2.8 Intentionally Omitted.

5.2.9 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (A) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) Borrower is not subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.2.10 Transfers.

(a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender, and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any Restricted Party do any of the following (collectively, a "Transfer"): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or (ii) permit a Sale or Pledge of an interest in any Restricted Party, other than (A) pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 5.1.20 and (B) Permitted Transfers.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of the managing agent (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.1.22 hereof.

(d) Notwithstanding the provisions of this Section 5.2.10, Lender's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) of the stock, the limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such Transfer shall result in the change of Control in a Restricted Party, and as a condition to each such Transfer, Lender shall receive not less than thirty (30) days prior notice of such proposed Transfer. If after giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in a Restricted Party are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) direct or indirect interest in such Restricted Party as of the Closing Date, Borrower shall, no less than thirty (30) days prior to the effective date of any such Transfer, deliver to Lender an Additional Insolvency Opinion acceptable to Lender and the Rating Agencies. In addition, at all times, (a) Guarantor must continue to Control, and own, directly or indirectly, in the aggregate, at least a 51% legal and beneficial interest in, Borrower, and (b) Acadia Realty Trust must continue to Control, and own, directly or indirectly, at least a 20% legal and beneficial interest in, each of Guarantor and any Affiliated Manager.

(e) _____ No consent to any assumption of the Loan shall occur on or before the date that is twelve (12) Payment Dates after the Completion of the Improvements. Thereafter, Lender's consent to a Transfer of the Property and assumption of the Loan shall not be unreasonably withheld provided that Lender receives sixty (60) days prior written notice of such Transfer and no Event of Default has occurred and is continuing, and further provided that the following additional requirements are satisfied for all Transfers other than those described in subsection (d) above:

(i) _____ Borrower shall pay Lender at the time of such Transfer a transfer fee equal to one half of one percent (0.5%) of the outstanding principal balance of the Loan for the first Transfer and one percent (1.0%) of the outstanding principal balance of the Loan for each subsequent Transfer;

(ii) _____ Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Lender's counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (x) below);

(iii) _____ The proposed transferee (the "**Transferee**") or Transferee's Principals must have demonstrated expertise in owning and operating properties similar in location, size, class and operation to the Property, which expertise shall be reasonably determined by Lender;

(iv) _____ Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate Net Worth and Liquidity reasonably acceptable to Lender;

(v) _____ Transferee, Transferee's Principals and all other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(vi) _____ Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;

(viii) Transferee, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Lender;

(ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in Sections 4.1.30, 4.1.35, 5.1.46 and 5.2.10 of this Agreement, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and (B) all certificates, agreements and covenants reasonably required by Lender;

(x) Transferee shall be approved by the Rating Agencies selected by Lender, which approval, if required by Lender, shall take the form of a confirmation in writing from such Rating Agencies to the effect that such Transfer will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such assumption or transfer for the Securities or any class thereof issued in connection with a Securitization which are then outstanding;

(xi) Borrower or Transferee, at its sole cost and expense, shall deliver to Lender an Additional Insolvency Opinion reflecting such Transfer satisfactory in form and substance to Lender;

(xii) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty of Completion, the Guaranty of Recourse Carveouts and the Environmental Indemnity executed by Guarantor or execute replacement guaranties and environmental indemnity reasonably satisfactory to Lender;

(xiii) Borrower shall deliver, at its sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the Title Policy issued on the date hereof and the Permitted Encumbrances; and

(xiv) The Property shall be managed by a Qualified Manager pursuant to a Replacement Management Agreement.

Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the Mortgage and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower.

5.2.11 No Distributions. Until Completion of the Improvements and satisfaction of the conditions to the Final Advance, Borrower shall not make any distributions or other disbursements to its partners, shareholders, members or Persons owned by or related to any of its partners, shareholders or members. Borrower shall use any and all Rents collected from the Property to pay operating expenses of and real property taxes on the Property.

5.2.12 Management Agreement. Borrower shall not, without Lender's prior written consent (which consent shall not be unreasonably withheld): (i) surrender, terminate, cancel, amend or modify the Management Agreement; provided, that Borrower may, without Lender's consent, replace the Manager so long as the replacement manager is a Qualified Manager pursuant to a Replacement Management Agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

5.2.13 Permitted Additional Mezzanine Indebtedness. Notwithstanding anything the contrary contained in this Agreement, but subject to the rights of Lender to convert a portion of the Loan to a mezzanine loan pursuant to Section 9.1.2 hereof, an Additional Mezzanine Borrower (as defined below) shall have the right to pledge its direct and/or indirect equity interests in Borrower or Mezzanine Borrower, as applicable (but not of any direct interest in the Property, or Borrower, if there is Subordinate Financing in the form of a mezzanine loan) to a Permitted Mezzanine Lender (as defined below) as security for a loan to such Additional Mezzanine Borrower (an "Additional Mezzanine Loan") provided that the following terms and conditions are satisfied:

- (a) no Event of Default shall then exist;
- (b) Lender shall have received at least thirty (30) and no more than sixty (60) days' prior written notice of the proposed Additional Mezzanine Loan;
- (c) the Completion of the Improvements shall have occurred and all of the conditions to the Final Advance shall have been satisfied;
- (d) the aggregate amounts of the outstanding principal amount of the Total Debt (calculated without regard to any scheduled amortization paid under the Building Loan or the Project Loan) and the maximum principal amount of the Additional Mezzanine Loan (as of the effective date of the Additional Mezzanine Loan) shall not exceed eighty-five percent (85%) of the fair market value of the Property as determined by an MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender acting reasonably and dated, or updated, to a date within 30 days of the effective date of the Additional Mezzanine Loan, made in compliance with FIRREA and reasonably satisfactory to Lenders in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error.

(e) the Aggregate Debt Service Coverage Ratio is at least 1.15 to 1.0;

(f) Borrower shall not be obligated to repay the Additional Mezzanine Loan nor incur any obligation or liability to the Permitted Mezzanine Lender or any other Person with respect to the Additional Mezzanine Loan, and the terms and conditions of the Additional Mezzanine Loan, the collateral pledged as security therefor, and the documents evidencing the Additional Mezzanine Loan (the "Additional Mezzanine Loan Documents"), shall be reasonably satisfactory to Lender;

(g) a new Single-Purpose Entity shall have been formed that will directly or indirectly own 100% of the Equity Interests in Borrower, or Mezzanine Borrower, as applicable (the "Additional Mezzanine Borrower"), the organizational documents of Borrower, Mezzanine Borrower, if any, such Additional Mezzanine Borrower, and their respective constituent owners shall be reasonably satisfactory to Lender, and Borrower, Mezzanine Borrower, if any and such Additional Mezzanine Borrower shall otherwise satisfy all applicable Rating Agency criteria for single-purpose entities, bankruptcy remoteness, and mezzanine borrowers;

(h) the Permitted Mezzanine Lender shall have executed and delivered to Lender a subordination, standstill and intercreditor agreement acceptable to Lender in its sole and absolute discretion, which shall provide among other things that the Permitted Mezzanine Lender shall not have the right to foreclose on its interest in Borrower or Mezzanine Borrower, as applicable, or otherwise exercise its rights under the Additional Mezzanine Loan Documents unless and until the Loan is paid in full and that the Additional Mezzanine Loan shall not be transferable except to a Qualified Transferee;

(i) Borrower and Guarantor shall have executed such additional Loan Documents and such amendments to and reaffirmations of the existing Loan Documents as Lender may require, including entering into a new cash management arrangement with Lender (or modifying any existing cash management requirement) to provide for, among other things, the payment of Lender-approved operating expenses and capital expenses prior to the payment of debt service on the Additional Mezzanine Loan;

(j) Lender shall have received (i) such opinions of counsel to Borrower as Lender may require, in form and content acceptable to Lender (including a new non-consolidation opinion if one was required to be delivered in connection with the Loan); and (ii) confirmation by each of the applicable Rating Agencies that the incurrence of the Additional Mezzanine Loan will not result in any qualification, withdrawal or downgrading of any existing ratings of securities created in any applicable Securitization; and

(k) _____ Borrower shall have paid or reimbursed Lender for all of its costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the foregoing.

Notwithstanding anything herein to the contrary, none of BSCMI, Lender or their respective Affiliates shall have any obligation to provide an Additional Mezzanine Loan or any other financing.

For purposes hereof, the following terms shall have the following respective meanings:

"Aggregate Debt Service Coverage Ratio" shall mean a ratio for the applicable period in which:

- (a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, adjusted for a vacancy rate equal to the greater of the actual vacancy rate, the market vacancy rate and an assumed vacancy rate equal to five percent (5%), without deduction for (i) 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, (B) Replacement Reserve Fund contributions equal to \$16,500.00 per annum; and
- (b) the denominator is the Total Debt Service for such period assuming a thirty (30) year amortization schedule (and calculated without regard to any scheduled amortization paid under the Building Loan or the Project Loan, or the Subordinate Financing, if applicable), plus all principal and interest payable for such period under the Additional Mezzanine Loan (assuming the Additional Mezzanine Loan had been fully advanced at the beginning of such period) (provided, however, with respect to the Additional Mezzanine Loan, such ratio shall be determined utilizing a debt service constant calculated with the interest rate payable with respect to the Additional Mezzanine Loan and an assumed amortization period of thirty (30) years).

"Permitted Mezzanine Lender" shall mean a Qualified Transferee.

"Qualified Transferee" means (i) BSCMI or an Affiliate of BSCMI, or (ii) one or more of the following:

- (A) _____ a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) _____ an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) _____ an institution substantially similar to any of the foregoing entities described in clause (ii)(A), (ii)(B) or (ii)(E) that satisfies the Eligibility Requirements;

(D) _____ any entity Controlled by, Controlling or under common Control with any of the entities described in clause (i) or clause (ii)(A) or (ii)(C) above or clause (ii)(E) below;

(E) _____ a Qualified Trustee in connection with (aa) a securitization of, or (bb) the creation of collateralized debt obligations (“CDO”) secured by, or (cc) a financing through an “owner trust” of, the Mezzanine Loan or any interest therein (any of the foregoing, a “Securitization Vehicle”), provided, that (1) one or more classes of securities issued by such Securitization Vehicle is initially rated at least investment grade by each of the Rating Agencies which assigned a rating to one or more classes of securities issued in connection with a Securitization (it being understood that with respect to any Rating Agency that assigned such a rating to the securities issued by such Securitization Vehicle, a Rating Agency Confirmation will not be required in connection with a transfer of the Additional Mezzanine Loan or any interest therein to such Securitization Vehicle, except that if one or more classes of securities issued in connection with a Securitization is rated by Moody’s, the transferee may not rely on this clause (1) with respect to Moody’s); (2) in the case of a Securitization Vehicle that is not a CDO, the special servicer of such Securitization Vehicle has the Required Special Servicer Rating at the time of Transfer and the related transaction documents for such Securitization Vehicle require that any successor have the Required Special Servicer Rating (such entity, an “Approved Servicer”) and such Approved Servicer is required to service and administer such Additional Mezzanine Loan or any interest therein in accordance with servicing arrangements for the assets held by the Securitization Vehicle which require that such Approved Servicer act in accordance with a servicing standard notwithstanding any contrary direction or instruction from any other Person; or (3) in the case of a Securitization Vehicle that is a CDO, the CDO Asset Manager and, if applicable, each Intervening Trust Vehicle that is not administered and managed by a CDO Asset Manager which is a Qualified Transferee, are each a Qualified Transferee under clauses (ii)(A), (B), (C), (D), (E) or (G) of this definition;

(E) _____ an investment fund, limited liability company, limited partnership or general partnership (a “Permitted Investment Fund”) where a Permitted Fund Manager acts as general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more of the following: the Mezzanine Lender, a Qualified Transferee, an institutional “accredited investor”, within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended, and/or a “qualified institutional buyer” or both within the meaning of Rule 144A promulgated under the Securities Exchange Act of 1934, as amended, provided such institutional “accredited investors” or “qualified institutional buyers” that are used to satisfy the 50% test set forth above in this clause (E) satisfy the financial tests in clause (i) of the definition of Eligibility Requirements; or

(G) any Person for which the Rating Agencies have issued a Rating Agency Confirmation with respect to such Transfer.

“Eligibility Requirements” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of \$650,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or loans similar in type as the Mezzanine Loan or operating commercial mortgage properties.

“CDO Asset Manager” with respect to any Securitization Vehicle (hereinafter defined) that is a CDO, shall mean the entity that is responsible for managing or administering the Additional Mezzanine Loan (or any interest therein) as an underlying asset of such Securitization Vehicle or, if applicable, as an asset of any Intervening Trust Vehicle (including, without limitation, the right to exercise any consent and control rights available to the holder of the Additional Mezzanine Loan).

“Intervening Trust Vehicle” shall mean with respect to any Securitization Vehicle that is a CDO, a trust vehicle or entity which holds the Additional Mezzanine Loan (or any interest therein) as collateral securing (in whole or in part) any obligation or security held by such Securitization Vehicle as collateral for the CDO.

“Permitted Fund Manager” means any Person that on the date of determination is not subject to a Proceeding and is either (i) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, or (ii) an entity that is a Qualified Transferee pursuant to clause (i) or clauses (ii)(A), (B), (C), (D) or (G) of the definition t hereof, in each case, which is investing through a fund with committed capital of at least \$250,000,000.

“Qualified Trustee” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two (2) rating categories of S&P and either Fitch or Moody’s (provided, however, if the Loan has been securitized, the rating requirement of any agency not a Rating Agency will be disregarded).

“**Required Special Servicer Rating**” means a special servicer that (i) has a rating of “CSS3” in the case of Fitch, (ii) is on the S&P’s select servicer list as a “U.S. Commercial Mortgage Special Servicer” in the case of S&P and (iii) in the case of Moody’s, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody’s within the twelve (12) month period prior to the date of determination and Moody’s has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities. The requirement of any agency not a Rating Agency shall be disregarded.

“**Rating Agency Confirmation**” means a written affirmation from each of the Rating Agencies that the credit rating of the Certificates assigned by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event. In the event that no Certificates are outstanding or the Loan is not part of a Securitization, any action that would otherwise require a Rating Agency Confirmation shall instead require the consent of Lender. All fees and expenses of the Rating Agencies incurred in connection with any Rating Agency Confirmation required pursuant to this Agreement as the result of a request or action of Borrower shall be paid by Borrower.

5.2.14 **Guarantor.** Notwithstanding anything to the contrary in the organizational documents of Guarantor, Guarantor 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 Guaranty and the Environmental Indemnity; (ii) compliance with all organizational and applicable Legal Requirements relating to dissolution and winding up of Guarantor, and (iii) replacement of the Guarantor with a replacement guarantor acceptable to Lender in its sole discretion and as to which Lender has received a Rating Agency Confirmation.

ARTICLE VI

INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

Section 6.1 Insurance.

6.1.1 **Insurance Policies.** Borrower, at its sole cost and expense, shall obtain and maintain, or cause to be maintained, the following insurance policies:

(a) At all times prior to Completion of the Improvements and at any time thereafter during which construction work is being performed at the Property:

(A) **Builder’s Risk “All Risk” insurance** in such amount as Lender shall require but in no event less than one hundred percent (100%) of the replacement cost value of the completed Project Improvements, but excluding foundations and any other improvements not subject to physical damage). Such policy shall be written on a Builder’s Risk Completed Value Form (100% non-reporting) or its equivalent and shall include, without limitation, coverage for loss by testing, collapse, theft, flood, and earth movement. Such insurance Policy shall also include coverage for:

(i) Loss suffered with respect to materials, equipment, heating and air conditioning machinery, machinery, and supplies, in each case owned by Borrower or required to be insured by Borrower, whether on-site, in transit, or stored offsite and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property in each case owned by Borrower or required to be insured by Borrower;

(ii) Soft costs that are recurring costs, which shall include, without limitation, delayed opening loss of income/revenue coverage for a period of recovery of not less than twelve (12) months commencing from the date the Project Improvements are as to be completed agreed to by Lender in its sole discretion, as well as costs to reproduce plans, specifications, blueprints and models in connection with any restoration following a casualty;

(iii) Demolition, debris removal and increased cost of construction, including, without limitation, increased costs arising out of changes in applicable laws and codes; and

(iv) Operation of building laws.

(B) Borrower shall cause the Borrower's Architect to obtain and maintain Architect's or Professional Liability insurance during the period commencing on the date of the Architect's Contract respectively, and expiring no earlier than five (5) years after the Completion of the Improvements. Such insurance shall be in an amount equal to at least \$1,000,000 per claim or as otherwise acceptable to Lender.

(C) Commercial General Liability insurance (vacant building) naming Lender as an additional insured with a minimum liability of \$10,000,000 including "Umbrella Liability," of like amount per occurrence and in the aggregate per location.

(D) Workers Compensation, Employer's Liability coverage and Disability insurance as required by law covering Borrower.

(E) Prior to or simultaneously with its entering into the General Contractor's Agreement, Borrower shall, or shall cause the General Contractor to, obtain and maintain Commercial General Liability coverage, including, without limitation, products and completed operations and containing no "X", "C", "U" exclusion if excavation and/or demolition is to be provided, and Automobile Liability insurance with no less than \$10,000,000 in limits per occurrence and in the aggregate per project through primary and umbrella liability coverages. Such insurance shall name Borrower as the insured and Lender as additional insured. Borrower shall also require that all Contractors cause all of their respective subcontractors to maintain similar coverage with limits of no less than \$1,000,000 per occurrence and shall include Borrower and Lender as additional insureds. All Persons engaged in work on the improvements at the Property shall maintain statutory Workers Compensation and Disability insurance in force for all workers on the job. The liability insurance to be maintained by Borrower and/or the General Contractor pursuant to this subsection (E) shall include coverage for products and completed operations and coverage for construction defects for a period of five (5) years after Completion of the Improvements.

(b) _____ At all times after Completion of the Improvements:

(i) _____ comprehensive all risk insurance ("Special Form") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for all such insurance coverage excluding windstorm and earthquake and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require and (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity;

(ii) _____ business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property (as reduced to reflect expenses not incurred during a period of Restoration) for a period of at least eighteen (18) months after the date of the Casualty; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross revenues from the Property for the succeeding eighteen (18) month period. Notwithstanding the provisions of Section 2.7.1 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance; and

(iii) _____ comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above.

(c) _____ At all times during the term of the Loan:

(i) _____ commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate and One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all written contracts and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(ii) _____ automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million Dollars and 00/100 Dollars (\$1,000,000.00);

(iii) _____ worker's compensation and employee's liability subject to the worker's compensation laws of the applicable state;

(iv) _____ umbrella and excess liability insurance in an amount not less than Fifty Million and 00/100 Dollars (\$50,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including, but not limited to, supplemental coverage for employer liability and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (ii) above;

(v) _____ Insurance covering the decrease or diminution in value of the Property resulting from the enforcement of any law, building code, zoning regulation or other Legal Requirement or act of any Governmental Authority to the extent that the Property cannot legally be restored to a condition that existed prior to the Casualty (which insurance shall be in a stipulated sum amount reasonably acceptable to Lender in its sole discretion);

(vi) _____ the insurance required under this Sections 6.1(a)(A) and 6.1(b)(i) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(A) and 6.1(b)(i) above at all times during the term of the Loan; and

(vii) _____ upon sixty (60) days written notice, such other reasonable insurance, including, but not limited to, sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(d) Intentionally Omitted.

(e) _____ All insurance provided for in this Section 6.1 shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy"), and, to the extent not specified above, shall be subject to the approval of Lender as to deductibles, loss payees and insureds. The Policies described in Section 6.1 hereof (other than those strictly limited to liability protection) shall designate Lender as loss payee. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies and within thirty (30) days after commencement of the new or renewal Policy evidence satisfactory to Lender of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Borrower to Lender.

(f) _____ Prior to the renewal or replacement of any Policy (the "Existing Policy"), any required insurance may be procured under a blanket insurance Policy covering the Property and other properties or assets of Borrower or its affiliates, provided that any such blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of this Article VI. Lender, in its reasonable discretion, shall determine whether such blanket Policies provide sufficient limits of insurance.

(g) _____ Unless otherwise specified, all Policies of insurance provided for or contemplated by this Article VI shall, in the case of property damage, builder's risk, boiler and machinery, flood and earthquake insurance, name Borrower as the insured and Lender (for the ratable benefit of Lenders and their successors and/or assigns) as the additional insured and shall contain a so-called New York standard non-contributing mortgagee clause or its equivalent in favor of Lender (including Lender as mortgagee and loss payee) providing that the loss thereunder shall be payable to Lender for the ratable benefit of Lenders and providing thirty (30) days' advance notice of cancellation to Lender.

(h) _____ All Property insurance also shall include a co-insurance waiver and Agreed Amount Endorsement. The amount of any deductible under any Policy must be reasonably acceptable to Lender. Without the Lender's prior written consent, Borrower shall not name any Person other than the Lender, as loss payee, as it pertains to the Property, nor shall Borrower carry separate or additional insurance coverage covering the improvements at the Property concurrent in form or contributing in the event of loss with that required by this Agreement or, provided that, if blanket policies are obtained, this sentence shall not apply to property covered by such blanket policies other than the improvements at the Property and such tenant improvements and betterments that Borrower is required to insure pursuant to the applicable Lease.

(i) Each Policy shall contain a provision whereby the insurer: (i) agrees that such Policy shall not be canceled or terminated, the coverage, deductible, and limits of such Policy shall not be modified, other provisions of such Policy shall not be modified if such Policy, after giving effect to such modification, would not satisfy the requirements of this Agreement, and such Policy shall not be so modified, canceled or fail to be renewed, without in each case, at least thirty (30) days prior written notice to Lender, (ii) waives any right to claim any Insurance Premiums and commissions against Lender or any Lender, provided that the Policy need not waive the requirement that the Insurance Premiums be paid in order for a claim to be paid to the insured and (iii) provides that Lender is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums. In the event any Policy (except for general public and other liability and Workers Compensation insurance) shall contain breach of warranty provisions, such Policy shall not be invalidated by and shall insure Lender for the benefit of Lenders regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such Policy by any named insured, (B) the occupancy or use of the Property for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of the Mortgage or any other Loan Document.

(j) Borrower shall pay the Insurance Premiums for the Policies as the same become due and payable. Borrower shall deliver to Lender certified copies of the Policies required to be maintained pursuant to this Article VI; provided, however, Lender shall not be deemed by reason of the custody of such Policies to have knowledge of the contents thereof. Borrower also shall deliver to Lender within ten (10) days after Lender's request, a statement setting forth the particulars as to all such Policies, indicating that all Insurance Premiums due thereon have been paid and that the same are in full force and effect. Not later than fifteen (15) days prior to the expiration date of each Policy, Borrower shall deliver to Lender a certificate of insurance evidencing renewal of coverage as required herein. Not later than thirty (30) days after the renewal or replacement of each of the Policies, Borrower shall deliver to Lender evidence of payment of Insurance Premiums for such renewal or replacement Policies satisfactory to the Lender and not later than sixty (60) days after the renewal or replacement of each of the Policies, Borrower shall deliver to Lender an original or certified copy (as required pursuant to this paragraph) of a renewal or replacement Policy or Policies.

(k) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is maintained in full force and effect, Lender shall have the right (but not the obligation), upon notice to Borrower, to take such action as Lender deems necessary to protect Lenders' interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate after three (3) Business Days notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Lender deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All Insurance Premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and until paid shall be secured by the Building Loan Mortgage and shall bear interest at the Default Rate.

(l) In the event of foreclosure of the Building Loan Mortgage and/or the Project Loan Mortgage or other transfer of title to the Property in extinguishment in whole or in part of the Total Debt, all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

6.1.2 *Insurance Company.* The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located and having a claims paying ability rating of "A/VII" or better by A.M. Best Company, Inc. and "A- or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the Securities (one of which shall be S&P if they are rating the Securities and one of which will be Moody's if they are rating the Securities), or if only one (1) Rating Agency is rating the Securities, then only by such Rating Agency.

Section 6.2 **Casualty and Condemnation.**

6.2.1 *Casualty.* The term "**Net Proceeds**" for purposes of this Agreement shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to **Section 6.1.1 (b)(1), (b)(iii), (c)(ii) and (c)(iv)** as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall give prompt notice of such Casualty to Lender and Borrower shall promptly commence and diligently prosecute to completion the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such Casualty with such alterations as may be reasonably approved by Lender (a "**Restoration**") and otherwise in accordance with this Agreement. Borrower shall pay all costs of such Restoration whether or not such costs are covered by the Net Proceeds. Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

6.2.2 *Condemnation.* Borrower shall give Lender prompt notice of any actual or threatened commencement of any proceeding for the Condemnation by any Governmental Authority of all or any part of the Property and shall deliver to Lender a copy of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any Condemnation, Borrower shall continue to pay the Total Debt at the time and in the manner provided for its payment in the Building Loan Note and the Project Loan Note and in this Agreement and the Project Loan Agreement. Lenders shall not be limited to the interest paid on the Award by any Governmental Authority but shall be entitled to receive out of the Award interest and additional interest (if any) at the rate or rates provided in this Agreement or in the Building Loan Note or in the Project Loan Agreement or in the Project Loan Note, as applicable and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. If the Property or any portion thereof is taken by any Governmental Authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property pursuant to this **Section 6.2** and otherwise comply with the provisions of hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Building Loan Note or the Project Loan Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Total Debt. Notwithstanding anything contained in this **Section 6.2** or this Agreement to the contrary, Lender may, in its sole discretion, elect to (y) apply the net proceeds of any Condemnation Proceeds (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Total Debt in such order and manner as Lender may elect, whether due or not, or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Agreement restricting the right of Lender to make such an election is waived by Borrower. If the Condemnation Proceeds are made available to Borrower for restoration or repair, the Condemnation Proceeds shall be disbursed upon satisfaction of and in accordance with the terms and conditions set forth in this **Section 6.2**.

(a) Minor Casualty or Condemnation. If a Casualty or Condemnation has occurred to the Property, Borrower's right, title and interest in and to all Proceeds are, except as otherwise herein provided, hereby assigned by Borrower to Lender and all Net Proceeds shall, except as otherwise herein provided, be paid to Lender. Borrower shall, in good faith and in a commercially reasonable manner, file and prosecute the adjustment, compromise or settlement of any claim for Proceeds and, subject to Borrower's right to receive the direct payment of any Net Proceeds as herein provided, will cause the same to be paid directly to Lender to be held and applied in accordance with the provisions of this Agreement. Except upon the occurrence and during the continuance of an Event of Default, Borrower may settle any insurance claim with respect to Net Proceeds which do not One Million and 00/100 Dollars (\$1,000,000.00) (the "**Restoration Threshold**"). Whether or not an Event of Default shall have occurred and be continuing, Lender shall have the right to approve, such approval not to be unreasonably withheld, any settlement which would in Lender's reasonable judgment result in Net Proceeds which exceed the Restoration Threshold and Borrower shall deliver or cause to be delivered to Lender all instruments reasonably requested by Lender to permit such approval. Borrower shall pay all reasonable out-of-pocket costs, fees and expenses incurred by Lender on behalf of Lenders (including all reasonable attorneys' fees and expenses, the reasonable fees of insurance experts and adjusters and reasonable costs incurred in any litigation or arbitration), and interest thereon at the Default Rate to the extent not paid within fifteen (15) Business Days after delivery of a request for reimbursement by Lender, accompanied by reasonable back-up documentation, in connection with the settlement of any claim for Proceeds and the seeking and obtaining of any payment on account thereof in accordance with the foregoing provisions. If any Proceeds are received by Borrower and may be retained by Borrower pursuant to this Section 6.2, such Proceeds shall, until the completion of the related Work, be held in trust for Lender for the ratable benefit of Lenders and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof, and to the extent such Proceeds exceed the Restoration Threshold, such Proceeds shall be forthwith paid directly to and held by Lender to be applied or disbursed in accordance with this Article VI. If an Event of Default shall have occurred and be continuing, or if Borrower fails to file any insurance claim for a period of fifteen (15) Business Days, or to prosecute same with commercially reasonable diligence following Borrower's receipt of written notice to do so from Lender, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim (including settlement thereof) with counsel satisfactory to Lender and to collect and to make receipt for any such payment, all at Borrower's expense (including payment of interest at the Default Rate for any amounts advanced by Lender pursuant to this sentence). Notwithstanding anything to the contrary set forth in this Agreement, but excluding all situations requiring prepayment of the Note, to the extent any Proceeds (either singly or when aggregated with all other then unapplied Proceeds with respect to the Property) do not exceed the Restoration Threshold, such Proceeds are to be paid directly to Borrower to be applied to restoration of the Property in accordance with the terms hereof. As soon as reasonably practicable after receipt of the Net Proceeds Borrower shall commence and satisfactorily complete with due diligence: (x) the Completion of the Improvements in accordance with the terms of this Agreement, if such Casualty or Condemnation occurs prior to the Completion of the Improvements; of (y) the Restoration in accordance with the terms of this Agreement, if such Casualty or Condemnation occurs after the Completion of the Improvements.

6.2.4 Major Casualty or Condemnation.

(a) If a Casualty or Condemnation has occurred to the Property, Borrower shall commence and satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement and the Project Loan Agreement. If the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration, or Completion of the Improvements, as applicable, is equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration, provided that each of the following conditions are met:

(A) If the Casualty or Condemnation occurs prior to the Completion of the Improvements:

(i) No Event of Default shall have occurred and be continuing;

(iii) Lender is reasonably satisfied that the Net Proceeds plus any Advances available under this Building Loan Agreement and Project Loan Agreement is sufficient to cause the Completion of the Improvements and pay all Project-Related Costs to be incurred in connection therewith;

(iv) Lender shall be reasonably satisfied that Completion of the Improvements will be achieved on or prior to the Required Completion Date as such date may be extended by Force Majeure (which may include the Casualty giving rise to the Net Proceeds).

(B) If the Casualty or Condemnation occurs following the Completion of the Improvements:

(i) No Event of Default shall have occurred and be continuing;

(ii) In the event the Net Proceeds are Insurance Proceeds, less than thirty-five percent (35%) of the total floor area of the Improvements at the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is the subject of the Condemnation;

(iii) Leases demising in the aggregate a percentage amount equal to or greater than the Rentable Space Percentage of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Tenant, as applicable under the respective Lease, will make all necessary repairs and restorations thereto at their sole cost and expense. The term "Rentable Space Percentage" shall mean (1) in the event the Net Proceeds are Insurance Proceeds, a percentage amount equal to ninety percent (90%) and (2) in the event the Net Proceeds are Condemnation Proceeds, a percentage amount equal to ninety percent (90%);

(iv) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be) and Borrower and shall diligently pursue the same to satisfactory completion;

(v) Lender shall be satisfied that any operating deficit, including all scheduled all payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be paid during the period required for Restoration from (A) the Net Proceeds, (B) the insurance coverage referred to in Section 6.1.1(b)(ii) hereof, if applicable, or (C) other funds of Borrower;

(vi) Lender shall be satisfied that the Restoration will be achieved, on or before the earliest to occur of (A) the date six (6) months prior to the Maturity Date, (B) such time as may be required under applicable Legal Requirements in order to repair and restore the Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable or (C) the expiration of the insurance coverage referred to above;

(vii) The Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(viii) The Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements; and

(ix) Such Casualty or Condemnation, as applicable, does not result in the permanent loss of access to the Property or the related Improvements

(x) the Debt Service Coverage Ratio for the Property, after giving effect to the Restoration, shall be equal to or greater than 1.20 to 1.0;

(xi) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be acceptable to Lender; and

(xii) the Net Proceeds together with any Cash or Cash Equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 6.2.4 shall constitute additional security for the Total Debt and the Other Obligations under the Loan documents.

(c) Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all requirements set forth in Section 6.2.4(a) have been satisfied, (B) all relevant conditions to the making of Advances of the Building Loan shall have been satisfied with respect to disbursements of Net Proceeds for Restoration as though such disbursements were of Loan Proceeds rather than Net Proceeds, it being understood however that disbursements of Net Proceeds shall not be deemed to be advances of the Loan, (C) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (D) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other Liens of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company issuing the Title Insurance Policy.

(d) All plans and specifications required in connection with the Restoration shall be subject to prior approval by Lender and by an independent architect selected by Lender (which shall be the Construction Consultant if the Casualty or Condemnation occurs prior to the Completion of the Improvements) (the "Casualty Consultant"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to approval by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with recovering, holding and advancing the Net Proceeds for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Casualty Consultant's reasonable fees and disbursements, shall be paid by Borrower.

(e) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "Casualty Retainage" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above, be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.2 and all applicable Legal Requirements and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of such contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the Title Company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the Lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(f) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(g) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.2.4 shall constitute additional security for the Debt.

(h) _____ The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this **Section 6.2.4**, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be deposited in the Cash Management Account to be disbursed in accordance with the Cash Management Agreement provided no Event of Default shall have occurred and shall be continuing under any of the Loan Documents.

(i) _____ All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to this **Article VI** may be retained and applied by Lender toward the payment of the Total Debt in accordance with **Section 2.4.2** whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its discretion.

Section 6.3 Application of Net Proceeds. Upon the occurrence and continuation of an Event of Default, Lender, at its option, may withdraw all the Net Proceeds or the undisbursed balance thereof and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender and may apply the such Net Proceeds and Net Proceeds Deficiency either to the payment of Restoration or to payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply such Net Proceeds and Net Proceeds Deficiency shall be in addition to all other rights and remedies provided to Lender under the Building Loan Documents.

ARTICLE VII.

RESERVE FUNDS

Section 7.1 Tax and Insurance Escrow Fund. Simultaneously with the Initial Advance of the Project Loan, Borrower shall deposit with Lender an amount (the "**Initial Tax and Insurance Escrow Deposit**") equal to the Taxes, Insurance Premiums and Other Charges that Lender estimates will be payable from and after the Closing Date through and including the date that the Second Tax and Insurance Escrow Deposit is payable, which shall be funded from the Project Loan Advance. At least thirty (30) day prior to the first anniversary of the date hereof, Borrower shall deposit with Lender an amount (the "**Second Tax and Insurance Escrow Deposit**") equal to the Taxes, Insurance Premiums and Other Charges that Lender estimates will be payable from and after the first anniversary of the date hereof through and including the last day of the Construction Term. Subject to the terms and conditions of the Project Loan Agreement concerning Advances, the Second Tax and Insurance Escrow Deposit shall be funded from an Advance of like amount under the Project Loan. Simultaneously with the Final Advance, 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 Construction Term (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**"). The Tax and Insurance Escrow Fund and the Monthly Debt Service Payment Amount, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to **Section 5.1.2** hereof and under the Mortgage. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to **Section 5.1.2** hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. Any amount remaining in the Tax and Insurance Escrow Fund after the Debt has been paid in full shall be returned to Borrower. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes, Other Charges and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments (or, if such determination is made during the Construction Term, Borrower shall deposit the full amount of such deficiency within 5 days of such notice) to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and Other Charges and/or thirty (30) days prior to expiration of the Policies, as the case may be. Notwithstanding the foregoing, Borrower's obligation to make monthly deposits with Lender for Insurance Premiums shall be suspended for so long as no Event of Default has occurred and is continuing and Borrower provides Lender with written evidence reasonably satisfactory to Lender that all insurance coverages required to be maintained by Borrower pursuant to the terms of this Agreement are being maintained in full force and effect through one or more blanket insurance policies (provided that any such blanket insurance policies provide the same level of coverage which would otherwise be provided by a stand-alone policy). Borrower shall provide evidence reasonably acceptable to Lender on an annual basis thirty (30) days prior to the expiration of the existing insurance that the insurance has been renewed and will provide notice of cancellation for non-payment. In the event Borrower fails to provide such evidence or an Event of Default occurs, however, Borrower will thereafter be required to make deposits with Lender for Insurance Premiums as provided herein.

Section 7.2 **Interest Reserve.**

7.2.1 Deposit of Interest Reserve Funds. Simultaneously with the Initial Advance of the Project Loan, Borrower shall deposit the sum of \$[] with Lender (the "**Initial Interest Reserve Deposit**"), which shall be funded from the Initial Advance of the Project Loan. In addition, pursuant to **Section 5.1.28(d)**, Borrower may be obligated to deposit an Additional Interest Reserve Deposit and in the event that Lender determines in its sole discretion that the Interest Reserve Funds on deposit in the Interest Reserve Account are insufficient, Borrower shall deposit with Lender an amount equal to the deficiency in the Interest Reserve Funds as determined by Lender (each an "**Interest Reserve Deposit**"), each such amount so deposited shall hereinafter be referred to as the "**Interest Reserve Fund**"). The account in which the Interest Reserve Fund are held shall hereinafter be referred to as Borrower's "**Interest Reserve Account**". In lieu of making the Interest Reserve Deposits with Lender, Borrower shall have the right to deliver to Lender an irrevocable Letter of Credit acceptable to Lender in the amount of the Interest Reserve Deposit.

7.2.2 Release of Interest Reserve Funds. Provided no Event of Default or monetary Default exists and no amounts remain available for Advance under the Interest Reserve Line Item of the Project Loan Budget, on each Payment Date, Lender shall apply the Interest Reserve Funds to payments of the Monthly Debt Service Payment due on such date.

7.2.3 Application of Interest Reserve Funds. Upon the occurrence of an Event of Default, Lender, at its option, may withdraw all the Interest Reserve Funds and if Lender does so, shall apply the Interest Reserve Funds either to the payment of interest due on the Loan or toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Interest Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

Section 7.3 **Replacements and Replacement Reserve.**

7.3.1 Replacement Reserve Fund. From and after Completion of the Improvements, Borrower shall pay to Lender on each Payment Date an amount equal to \$1,375.00 (the "**Replacement Reserve Monthly Deposit**") for replacements and repairs required to be made to the Property (collectively, the "**Replacements**"). Amounts so deposited shall hereinafter be referred to as Borrower's "**Replacement Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "**Replacement Reserve Account**". Lender may reassess its estimate of the amount necessary for the Replacement Reserve Fund from time to time, and may increase the monthly amounts required to be deposited into the Replacement Reserve Fund upon thirty (30) days notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain the proper maintenance and operation of the Property.

7.3.2 Disbursements from Replacement Reserve Account. (c) Lender shall make disbursements from the Replacement Reserve Account to pay Borrower only for the costs of the Replacements. Lender shall not be obligated to make disbursements from the Replacement Reserve Account to reimburse Borrower for the costs of routine maintenance to the Property, replacements of inventory or for costs which are a Tenant's obligation.

(b) Lender shall, upon written request from Borrower and satisfaction of the requirements set forth in this Section 7.3.2, disburse to Borrower amounts from the Replacement Reserve Account necessary to pay for the actual approved costs of Replacements or to reimburse Borrower therefor, upon completion of such Replacements (or, upon partial completion in the case of Replacements made pursuant to Section 7.3.2(e) hereof) as determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve Account if a Default or an Event of Default exists.< /div>

(c) Each request for disbursement from the Replacement Reserve Account shall be in a form specified or approved by Lender and shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request Borrower shall certify that all Replacements have been made in accordance with all applicable Legal Requirements of any Governmental Authority having jurisdiction over the Property. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided and, unless Lender has agreed to issue joint checks as described below in connection with a particular Replacement, each request shall include evidence satisfactory to Lender of payment of all such amounts. Except as provided in Section 7.3.2(e) hereof, each request for disbursement from the Replacement Reserve Account shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide Lender evidence of completion of the subject Replacement satisfactory to Lender in its reasonable judgment.

(d) Borrower shall pay all invoices in connection with the Replacements with respect to which a disbursement is requested prior to submitting such request for disbursement from the Replacement Reserve Account or, at the request of Borrower, Lender will issue joint checks, payable to Borrower and the contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with a Replacement. In the case of payments made by joint check, Lender may require a waiver of lien from each Person receiving payment prior to Lender's disbursement from the Replacement Reserve Account. In addition, as a condition to any disbursement, Lender may require Borrower to obtain lien waivers from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for completion of its work or delivery of its materials. Any lien waiver delivered hereunder shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current reimbursement request (or, in the event that payment to such contractor, supplier, subcontractor, mechanic or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).

(e) If (i) the cost of a Replacement exceeds Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), (ii) the contractor performing such Replacement requires periodic payments pursuant to terms of a written contract, and (iii) Lender has approved in writing in advance such periodic payments, a request for reimbursement from the Replacement Reserve Account may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of the work, (B) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, (C) all other conditions in this Agreement for disbursement have been satisfied, (D) funds remaining in the Replacement Reserve Account are, in Lender's judgment, sufficient to complete such Replacement and other Replacements when required, and (E) if required by Lender, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than Ten Thousand and 00/100 Dollars (\$10,000.00).

7.3.3 Performance of Replacements

(a) Borrower shall make Replacements when required in order to keep the Property in condition and repair consistent with other first class, self-storage facilities in the same market segment in the metropolitan area in which the Property is located, and to keep the Property or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Lender reserves the right, at its option, to approve all contracts or work orders over Twenty-five Thousand and 00/100 Dollars (\$25,000.00) with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender.

(c) In the event Lender determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner, after notice and a reasonable period to cure, Lender shall have the option to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve Fund toward the labor and materials necessary to complete such Replacement, upon reasonable prior notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder.

(d) In order to facilitate Lender's completion or making of such Replacements pursuant to Section 7.3.3(c) above, Borrower grants Lender the right to enter onto the Property and perform any and all work and labor necessary to complete or make such Replacements and/or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to use any funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary or desirable to complete such Replacements; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Replacements, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

- (e) Nothing in this Section 7.3.3 shall: (i) make Lender responsible for making or completing any Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Lender to proceed with any Replacements; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

- (f) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties making Replacements pursuant to this Section 7.3.3 to enter onto the Property during normal business hours (subject to the rights of tenants under their Leases) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Property, and to complete any Replacements made pursuant to this Section 7.3.3. Borrower shall cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 7.3.3(f) or the completion of Replacements pursuant to this Section 7.3.3.

- (g) Lender may require an inspection of the Property at Borrower's expense prior to making a monthly disbursement from the Replacement Reserve Account in order to verify completion of the Replacements for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and/or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amounts from the Replacement Reserve Account. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

- (h) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for those Liens existing on the date of this Agreement which have been approved in writing by Lender).

- (i) Before each disbursement from the Replacement Reserve Account, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Property since the date of recordation of the related Mortgage and that title to the Property is free and clear of all Liens (other than the lien of the related Mortgage and any other Liens previously approved in writing by Lender, if any).

(j) All Replacements shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(k) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Lender.

7.3.4 Failure to Make Replacements. (a) It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this Section 7.3 and such failure is not cured within thirty (30) days after notice from Lender. Upon the occurrence of such an Event of Default, Lender may use the Replacement Reserve Fund (or any portion thereof) for any purpose, including but not limited to completion of the Replacements as provided in Section 7.3.3, or for any other repair or replacement to the Property or toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Replacement Reserve Fund shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

(a) Nothing in this Agreement shall obligate Lender to apply all or any portion of the Replacement Reserve Fund on account of an Event of Default to payment of the Total Debt or in any specific order or priority.

7.3.5 Balance in the Replacement Reserve Account. The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

Section 7.4 Punch List and Deferred Maintenance Reserve.

7.4.1 Establishment of Deferred Maintenance Reserve. In the event that, following the Completion of the Improvements but prior to the Final Advance, Lender determines that any Punch List Items remain to be completed or if Lender determines that any condition (a "Deferred Maintenance Condition") exists at the Property which requires maintenance or correction, Borrower shall deposit with Lender an amount equal to 150% of Lender's good faith estimate of the cost to perform any Punch List Items plus 125% of Lender's good faith estimate of the cost of performing such Deferred Maintenance Condition (the "Punch List and Deferred Maintenance Reserve Deposit", such amounts so deposited shall hereinafter be referred to as the "Punch List and Deferred Maintenance Reserve Funds").

7.4.2 Performance of Punch List Items and Deferred Maintenance. Borrower shall correct the Punch List Items and Deferred Maintenance Conditions in a diligent, workmanlike manner and shall complete the same within a reasonable time period. Upon the request of Borrower from time to time (but not more often than once per calendar month), Lender shall cause disbursements to Borrower from the Punch List and Deferred Maintenance Reserve Funds to reimburse Borrower for reasonable costs and expenses incurred in order to correct Punch List Items and Deferred Maintenance Conditions, upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Punch List Items and Deferred Maintenance Conditions to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured, (c) Lender shall have received an Officers' Certificate (i) stating that all the Punch List Items and Deferred Maintenance Conditions to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete the Punch List Items and Deferred Maintenance Conditions, (ii) identifying each Person that supplied materials or labor in connection with the Punch List Items and Deferred Maintenance Conditions to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such Officers' Certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender's option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (e) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender may condition the making of a requested disbursement on (1) reasonable evidence establishing that Borrower has applied any amounts previously received by it in accordance with this Section 7.4 for the expenses to which specific draws made hereunder relate, (2) reasonably satisfactory site inspections, and (3) receipt of lien releases and waivers from any contractors, subcontractors and others with respect to such amounts. Lender shall not be required to make disbursements from the Required Repair Account with respect to the Property unless such requested disbursement is in an amount greater than Twenty-five Thousand and 00/100 Dollars (\$25,000.00) (or a lesser amount if the total amount in the Required Repair Account is less than Twenty-five Thousand and 00/100 Dollars (\$25,000.00), in which case only one disbursement of the amount remaining in the account shall be made) and such disbursement shall be made only upon satisfaction of each condition contained in this Section 7.4.2.

7.4.3 Release of Deferred Maintenance Funds. Upon substantial completion (as reasonably determined by Lender) of any Punch List Item or Deferred Maintenance Condition, and provided no Event of Default is then continuing, Lender shall, on the first following Payment Date, release to Borrower the remainder of the portion of the Punch List and Deferred Maintenance Reserve Funds held for such Punch List Item or Deferred Maintenance Condition.

Section 7.5 Intentionally Omitted.

Section 7.6 Excess Cash Flow

1.1.19 . Any Excess Cash Flow that, pursuant to the Cash Management Agreement, is required to be deposited to the Excess Cash Flow Reserve (such funds "Excess Cash Flow Funds") shall be deposited in an account (the "Excess Cash Flow Reserve Account") and held by Lender as additional security for the payment and performance by Borrower of its obligations hereunder and other the other Loan Documents.

Section 7.7 Operating Reserve.

7.7.1 Deposit of Operating Reserve Funds. In the event that, following the Completion of the Improvements, Lender determines that the Gross Income from Operations is not sufficient to pay the Operating Expenses of the Property and the Total Debt Service, Borrower shall deposit with Lender an amount equal Lender's good faith estimate of the shortfall in Gross Income from Operations until such time that Lender determines that the Property will achieve a Debt Service Coverage Ratio of 1.20 to 1.0 (the "Operating Reserve Deposit", such amounts so deposited shall hereinafter be referred to as the "Operating Reserve Funds"). The account in which the Interest Reserve Fund are held shall hereinafter be referred to as the "Operating Reserve Account".

7.7.2 Release of Operating Reserve Funds. Provide no Event of Default or monetary Default exists, in the event that the amounts on deposit in the Cash Management Account are not sufficient to make the payments required under **Section 3.4(a)** through **(g)**, of the Cash Management Agreement on each Payment Date, Lender shall apply the Operating Reserve Funds to payments of the such items.

7.7.3 Application of Operating Reserve Funds. Upon the occurrence of an Event of Default, Lender, at its option, may withdraw all the Operating Reserve Funds and if Lender does so, shall apply the Operating Reserve Funds toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Operating Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

7.7.4 Release of Operating Reserve Funds. Provided that no Event of Default or Monetary Default then exists if Lender determines that the Property has achieved a Debt Service Coverage Ratio of 1.20 to 1.0 for two consecutive Debt Service Coverage Ratio Determination Dates, Lender shall release to Borrower any amount remaining in the Operating Reserve Account.

Section 7.8 Reserve Funds, Generally. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Total Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds shall be held in an Eligible Account in Permitted Investments in accordance with the terms and provisions of the Cash Management Agreement. Interest earned on the Replacement 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 Cash Collateral Reserve Funds, the Punch List and Deferred Maintenance Reserve Funds, the Operating Reserve Funds, the Interest Reserve Funds and 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. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

- Section 7.9 **Letter of Credit Rights.** Any Letter of Credit delivered to Lender pursuant to this Agreement shall be held by Lender as additional security for the Loan. Lender shall have the right to draw upon any Letter of Credit immediately and without further notice;

- (a) upon the occurrence and during the continuance of an Event of Default;

- (b) if Borrower fails to deliver to Lender, no less than thirty (30) days prior to the expiration of any Letter of Credit (including any renewal or extension thereof), a renewal or extension of such Letter of Credit or a replacement Letter of Credit; or

- (c) if the institution issuing the Letter of Credit ceases to be an Approved Bank and Borrower fails to deliver to Lender a replacement Letter of Credit from an Approved Bank within thirty (30) days of the date that such institution ceased to be an Approved Bank.

- **ARTICLE VIII.**

- **DEFAULTS**

- Section 8.1 **Event of Default** (a) Each of the following events shall constitute an event of default hereunder (an "Event of Default"):

- (i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);

(ii) _____ if any of the Taxes (other than Taxes being contested pursuant to **Section 5.1.2** of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after Borrower receives notice of same;

(iii) _____ if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;

(iv) _____ if Borrower Transfers or otherwise encumbers any portion of the Property without Lender's prior written consent in violation of the provisions of this Agreement or the Mortgage;

(v) _____ if any material representation or warranty made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) _____ if Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;

(vii) _____ if a receiver, liquidator or trustee shall be appointed for Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mezzanine Borrower, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mezzanine Borrower, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) _____ if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) _____ if Borrower breaches any covenant contained in **Section 4.1.30**;

(x) _____ with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) _____ if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) _____ if Borrower fails to pay the Administration Fee, or any portion or installment thereof, within five (5) days of the date when due;

(xiii) _____ If Borrower fails to deposit with Lender the cash deposit or Letter of Credit required in accordance with Section 2.12.2 hereof;

(xiv) _____ if Borrower fails to materially comply with the Construction Schedule;

(xv) _____ if the Completion of the Improvements has not occurred on or prior to the Required Completion Date, subject to Force Majeure or if Lender or the Construction Consultant determines that Completion of the Improvements cannot occur on or prior to the Required Completion Date;

(xvi) _____ if any voucher or invoice is fraudulently submitted by Borrower or in connection with any Advance for services performed or for materials used in or furnished for the Property;

(xvii) _____ if there is any cessation at any time in construction of the Project Improvements for more than twenty (20) consecutive Business Days, other than as a result of Force Majeure;

(xviii) _____ if Borrower expressly confesses in writing to Lender its inability to continue or complete construction of the Project Improvements in accordance with this Agreement;

(xix) _____ if Lender, the Construction Consultant or their representatives are not permitted at all reasonable times upon not less than three (3) Business Days notice to enter upon the Property, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all the Plans and Specifications, or if Borrower shall fail to furnish to Lender or its authorized representative, when requested upon not less than five (5) Business Days notice, copies of the Plans and Specifications;

(xx) _____ if a material adverse change in Borrower's financial condition shall occur which would, in Lender's reasonable determination, materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any other document evidencing or securing the Loan beyond any applicable notice and grace periods expressly set forth in the Loan Documents;

(xxi) _____ if the conditions precedent to the Final Advance have not been satisfied on or prior to the Required Completion Date;

(xxii) _____ If the Guarantor fails to maintain the Required Liquidity and the Required Net Worth covenants specified in the Guaranty of Completion or if the Guarantor shall default under the Guaranty of Completion or the Guaranty of Recourse Carveouts;

(xxiii) _____ if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xxiv) _____ if Borrower shall continue to be in Default under any of the terms, covenants or conditions of **Section 9.1** hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of **Section 9.1** hereof, in either case for three (3) Business Days after notice to Borrower from Lender;

(xxv) _____ if an Event of Default (as defined in the Project Loan Agreement) shall have occurred;

(xxvi) _____ if there shall be default by Borrower or Guarantor under any of the other Loan Documents, beyond applicable cure periods, if any, contained in such documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such other default, event or condition is to accelerate the maturity of all or any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xxvii) _____ if Guarantor shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of **Section 5.2.15** hereof;

(xxviii) _____ if all of the Initial Advance Conditions, including, without limitation, the Unsatisfied Initial Advance Conditions, are not satisfied by the Required Initial Advance Date; or

(xxix) _____ if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xxviii) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

(b) _____ Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) to Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

ARTICLE IX.

SPECIAL PROVISIONS

Section 9.1 Sale of Notes and Securitization. Borrower acknowledges and agrees that Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "**Securities**"), secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a "**Securitization**"). At the request of Lender, and to the extent not already required to be provided by or on behalf of Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender or take other actions reasonably required by Lender, in each case in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

- (a) _____ provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender, prospective investors and/or the Rating Agencies;

- (b) _____ assist in preparing descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower and approved by Lender, Guarantor and their respective affiliates to obtain, collect, and deliver information requested or required by Lender, prospective investors and/or the Rating Agencies;

- (c) _____ deliver (i) an Additional Insolvency Opinion and an opinion with respect to, due execution and enforceability with respect to the Property, Borrower, Guarantor and their respective Affiliates and the Loan Documents, and such other legal opinions as Lender may request including, without limitation, a so called "10b-5" opinion, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

- (d) _____ if required by any prospective investor and/or any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect the Property, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

- (e) _____ make such representations and warranties as of the closing date of the Securitization with respect to the Property, Borrower, Guarantor and the Loan Documents as may be reasonably requested by Lender, prospective investors and/or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents;

- (f) _____ execute such amendments to the Loan Documents as may be requested by Lender, prospective investors and/or the Rating Agencies to effect the Securitization;

- (g) _____ if requested by Lender, review any information regarding the Property, Borrower, Guarantor, and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

- (h) _____ supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws.

9.1.2 Loan Components.

(a) Borrower covenants and agrees that in connection with any Securitization of the Loan, upon Lender's request, Borrower shall deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan (and such new notes or modified note shall initially have the same fully funded weighted average interest rate as the original note, but such new notes or modified note may subsequently change the weighted average spread and apply principal, interest rates and amortization of the Loan between the components in a manner specified by Lender in its sole discretion) and modify the Cash Management Agreement with respect to the newly created components such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that the same do not materially increase Borrower's obligations and/or liabilities under the Loan Documents or materially decrease Borrower's rights under the Loan Documents.

(b) Borrower covenants and agrees that Lender may hereafter convert any portion of the Loan to subordinate financing, including one or more tranches of mezzanine debt, preferred equity, subordinate debt or participation in such loan, subordinate to such loan (collectively, "Subordinate Financing"), provided, however, such Subordinate Financing and the Loan following the creation of the Subordinate Financing shall, in the aggregate, initially have the same fully funded weighted average interest rate as the fully funded interest rate of the Loan prior to the creation of such Subordinate Financing, but such Subordinate Financing may subsequently change the weighted average spread and Lender may apply principal, interest rates and amortization of the Loan and the Subordinate Financing in a manner specified by Lender in its sole discretion. If the Subordinate Financing takes the form of a mezzanine loan, a mezzanine borrower (the "Mezzanine Borrower") may be created which will own one hundred percent (100%) of the equity interests in the Borrower. One hundred percent (100%) of the ownership and economic interests in the Mezzanine Borrower may, at Lender's discretion, be required to be pledged as security for such tranches of Subordinate Financing, if any. A default with the related Loan shall be a default under the respective Subordinate Financing. Such Subordinate Financing shall be subject to an intercreditor agreement by and between the Lender and the subordinate lender(s).

9.1.3 Costs of Subordinate Financing. Borrower shall be responsible for all costs and expenses incurred by Lender in connection with any Subordinate Financing, (including reasonable attorneys' fees and disbursements) including without limitation (i) the preparation, negotiation, execution and delivery of any mezzanine loan documents ("Mezzanine Loan Documents") and the consummation of the transactions contemplated thereby and all the costs of furnishing all opinions by counsel for Borrower and Mezzanine Borrower; (ii) Mezzanine Borrower's and Lender's ongoing performance under and compliance with the Mezzanine Loan Documents, including confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Mezzanine Loan Document and any other documents or matters requested by Lender; (iv) filing and recording of any Mezzanine Loan Documents; (v) title insurance (including any applicable mezzanine endorsements or UCC endorsements or policies), surveys, inspections and appraisals; (vi) the creation, perfection or protection of Lender's Liens in the collateral securing the Mezzanine Loan Documents (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Construction Consultant surveys and engineering reports); and (vii) fees charged by Rating Agencies in connection with the creation of the Subordinate Financing, or any modification of the Loan or the Subordinate Financing.

Section 9.2 **Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) The Indemnifying Persons agree to provide, in connection with the Securitization, an indemnification agreement (A) certifying that (i) the Indemnifying Persons have carefully examined the Disclosure Documents, including without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Mortgages," "Description of the Mortgage Loans and Mortgaged Property," "The Manager," "The Borrower" and "Certain Legal Aspects of the Mortgage Loan," and (ii) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Manager and/or the Loan) (collectively with the Provided Information, the "Covered Disclosure Information") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) jointly and severally indemnifying Lender, BSCMI (whether or not it is the Lender), any Affiliate of BSCMI that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of BSCMI that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Indemnified Persons"), for any losses, claims, damages, liabilities, costs or expenses (including without limitation legal fees and expenses for enforcement of these obligations (collectively, the "Liabilities") to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred, in connection with investigating or defending the Liabilities. This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification and reimbursement obligations provided for in clauses (B) and (C) above shall be effective, valid and binding obligations of the Indemnifying Persons whether or not an indemnification agreement described in clause (A) above is provided.

(c) In connection with Exchange Act Filings, the Indemnifying Persons jointly and severally agree to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against any Indemnifying Person, notify such Indemnifying Person in writing of the claim or the commencement of that action; provided, however, that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this Section 9.2. If any such claim or action shall be brought against an Indemnified Person, and it shall notify any Indemnifying Person thereof, such Indemnifying Person shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Indemnifying Person to the Indemnified Person of its election to assume the defense of such claim or action, such Indemnifying Person shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both an Indemnifying Person, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to the Indemnifying Person, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which the Indemnifying Person is required hereunder to indemnify such Indemnified Person. No Indemnifying Person shall be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior written consent of BSCMI (which consent shall not be unreasonably withheld or delayed), no Indemnifying Person shall settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless the Indemnifying Person shall have given BSCMI reasonable prior written notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as an Indemnifying Person has complied with its obligations to defend and indemnify hereunder, such Indemnifying Person shall not be liable for any settlement made by any Indemnified Person without the consent of such Indemnifying Person (which consent shall not be unreasonably withheld or delayed).

(f) The Indemnifying Persons agree that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this Section 9.2), then the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of the Indemnifying Persons, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) the Indemnifying Persons agree that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees actually received by the Indemnified Persons in connection with the closing of the Loan.

(g) The Indemnifying Persons agree that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. The Indemnifying Persons further agree that the Indemnified Persons are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of the Indemnified Persons and the Indemnifying Persons under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

Section 9.3 Exculpation. Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgage or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgage and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (c) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of the Assignment of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Mortgage or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower or Guarantor in connection with the Loan;

(ii) the gross negligence or willful misconduct of Borrower;

(iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement or in the Mortgage concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(iv) the removal or disposal of any portion of the Property after an Event of Default;

(v) _____ the misapplication or conversion by Borrower of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property; (B) any Awards received in connection with a Condemnation of all or a portion of the Property; (C) any Rents following an Event of Default; or (D) any Rents paid more than one month in advance;

(vi) _____ failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Property;

(vii) _____ any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof; or

(viii) _____ the breach of any representation, warranty, covenant or indemnification provision in the Guaranty of Completion or Guaranty of Recourse Carveouts.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by the Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower (i) in the event of: (a) Borrower filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which Borrower colludes with, or otherwise assists such Person, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (c) Borrower filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) Borrower consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property; or (e) Borrower making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (ii) if the first full monthly payment of interest on the Note is not paid when due; (iii) if Borrower fails to maintain its status as a Single Purpose Entity, after the Guaranty Notice (as defined in the Guaranty of Recourse Carveouts) if Borrower fails to permit on-site inspections of the Property, fails to provide financial information, or fails to appoint a new property manager upon the request of Lender as permitted under this Agreement, each as required by, and in accordance with, the terms and provisions of this Agreement or the Mortgage; (iv) if Borrower fails to obtain Lender's prior written consent to any Indebtedness or voluntary Lien encumbering the Property; or (v) if Borrower fails to obtain Lender's prior written consent to any Transfer as required by this Agreement or the Mortgage.

Section 9.4 Intentionally Omitted.

Section 9.5 Servicer. At the option of Lender, the Loan may be serviced by a servicer/trustee (any such servicer/trustee, together with its agents, nominees or designees, are collectively referred to as "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a servicing agreement (the "Servicing Agreement") between Lender and Servicer. Borrower shall not be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement or the monthly servicing fee due to Servicer under the Servicing Agreement; provided, however, that Borrower shall be responsible for expenses incurred by Lender or Servicer as set forth in Section 10.13 hereof.

ARTICLE X.

MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 Lender's Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law.

(B) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

National Registered Agents, Inc.
875 Avenue of the Americas, Suite 501
New York, New York 10001

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

- Section 10.4 **Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

- Section 10.5 **Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

- Section 10.6 **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

- If to Lender: Bear Stearns Commercial Mortgage, Inc.
- 383 Madison Avenue
- New York, New York 10179
- Attention: J. Christopher Hoeffel
- Facsimile No.: (212) 272-7047
-
- with a copy to: Kelley Drye & Warren LLP
- 101 Park Avenue
- New York, New York 10178
- Attention: Paul A. Keenan, Esq.
- Facsimile No.: (212) 808-7897
-
-

-
- If to Borrower: Acadia Atlantic Avenue LLC
- c/o Acadia Realty Trust
- 1311 Mamaroneck Avenue, Suite 260
- White Plains, New York 10605
- Attention: Robert Masters, Esq., General Counsel
- Facsimile No.: (914) 288-2162
-
- If to MERS: MERS Commercial
- P.O. Box 2300
- Flint, Michigan 48501-2300
-

- A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

- Section 10.7 **Trial by Jury.**

- **BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.**

- Section 10.8 **Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

- Section 10.9 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

- Section 10.10 **Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11 **Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.12 **Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 **Expenses; Indemnity.** (1) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Account or Cash Management Account, as applicable.

(a) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (i i) the use or intended use of the proceeds of the Loan (collectively, the "Indemnified Liabilities"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(b) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 Schedules and Exhibits Incorporated. The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 **No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 **Publicity.** All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

Section 10.18 **Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 **Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 **Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

- Section 10.21 **Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders, in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this **Section 10.21** shall survive the expiration and termination of this Agreement and the payment of the Debt.

- Section 10.22 **Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated June 28, 2007 between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

- Section 10.23 **Joint and Several Liability.** If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

- Section 10.24 **Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

- (d) _____ the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property and/or construction of the Project Improvements).

- The rights described above in this **Section 10.24** may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

- Section 10.25 _____ **MERS.** Mortgage Electronic Registration Systems, Inc., a Delaware corporation ("MERS"), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Mortgage and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to "Mortgagee" shall include Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement 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

LENDER

BEAR STEARNS
COMMERCIAL MORTGAGE, INC., a New York corporation

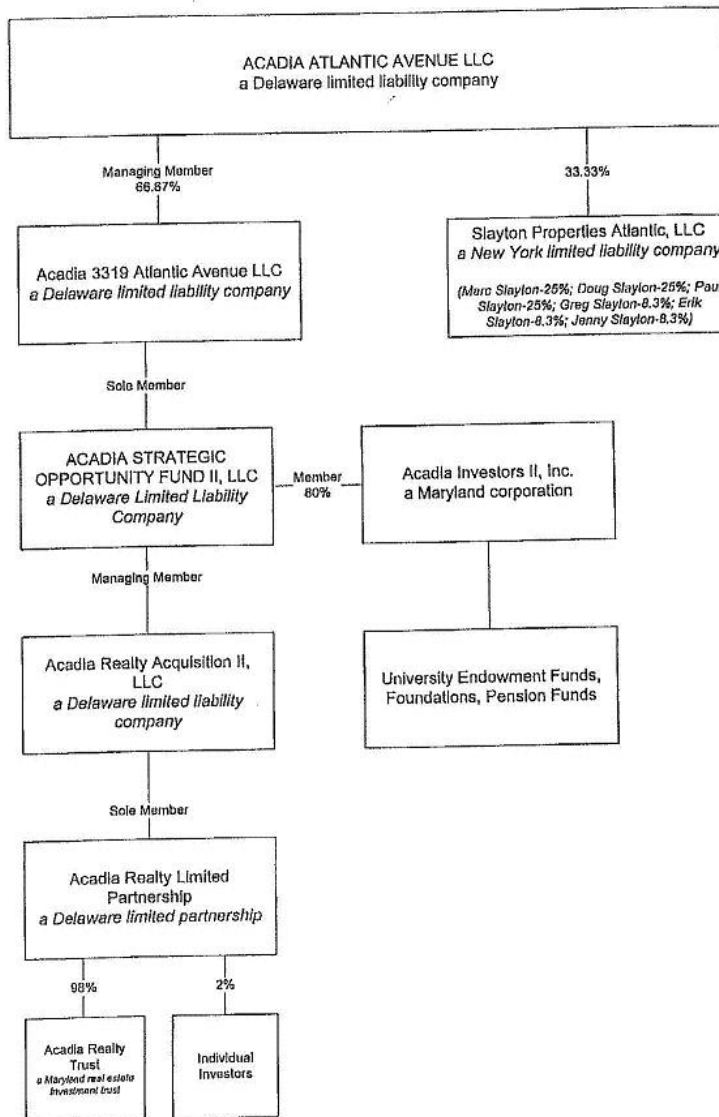
By: /s/ Joseph E. Geoghan
Name: Joseph E. Geoghan
Title: Authorized Signatory Managing Director

SCHEDULE I

ORGANIZATIONAL CHART OF BORROWER

(See Attached)

Schedule I



SCHEDULE II

DEVELOPMENT BUDGET

(See Attached)

-

BUILDING LOAN BUDGET

-
(See Attached)

-
Schedule II - Page 2

-	BUILDING LOAN	--	--	--
-	SITE COSTS	--	--	--
-	<u>Sitework</u>	--	1,177,800.12	33.32%
-	Demolition	--	502,000.00	0.00%
-	Asbestos Abatement	--	482,310.00	0.00%
-	<u>Sheeting & Shoring</u>	--	725,000.00	0.00%
-	<u>SUB-TOTAL SITE COSTS</u>	--	2,887,110.12	13.59%
-	HARD COSTS	--	--	--
-	Concrete	--	1,140,252.00	0.00%
-	Masonry	--	314,794.00	0.00%
-	Metals	--	1,958,716.00	0.00%
-	Wood & Plastic	--	139,908.00	0.00%
-	Thermal & Moisture Protection	--	279,817.00	0.00%
-	Doors & Windows	--	125,917.00	0.00%
-	Finishes	--	69,954.00	0.00%
-	Specialties	--	69,954.00	0.00%
-	Equipment	--	4,197.00	0.00%
-	Furnishings	--	1,399.00	0.00%
-	Specialty Construction	--	531,500.00	0.00%
-	Conveying Systems	--	300,803.00	0.00%
-	Mechanical, Plumbing	--	165,092.00	0.00%
-	Mechanical, Fire Protection	--	349,771.00	0.00%
-	Mechanical HVAC	--	300,803.00	0.00%
-	Electrical Systems	--	629,587.00	0.00%
-	Electrical Fire Alarms	--	53,165.00	0.00%
-	Electrical Security	--	83,945.00	0.00%
-	Overhead & Profit	--	289,396.00	3.73%
-	General Conditions	--	482,776.00	3.73%
-	<u>SUB-TOTAL HARD COSTS</u>	--	7,291,746.00	0.40%
-	SUBTOTAL HARD, SITE, AND PURCHASE PRICE	--	10,178,856.12	4.14%
-	Hard Cost Contingency	--	1,050,404.21	0.91%
-	TOTAL BUILDING LOAN COSTS	--	11,229,260.33	3.84%
-	TOTAL COSTS	--	16,150,000.00	39.38%

PROJECT LOAN BUDGET

(See Attached)

- Atlantic Avenue
Cost to Complete Summary

	<u>Remaining to</u>	<u>%</u>
	<u>Fund</u>	<u>Complete</u>
PROJECT LOAN	-	-
PURCHASE PRICE	-	-
Purchase Price	-	#DIV/0!
Broker's Fee	-	#DIV/0!
Cellular Tower Relocation Cost	455,000.00	0.00%
SUB-TOTAL PURCHASE PRICE & RELOCATION	455,000.00	1164.84%
Pre-Structural Survey	100,000.00	0.00%
Legal - Partnership/Loan	50,000.00	0.00%
Legal - Contract/Zoning	(45,961.00)	-393.73%
Office Start-Up	75,000.00	0.00%
Legal - Lender	55,000.00	0.00%
Environmental Studies	74,159.00	102.27%
Appraisal	10,000.00	0.00%
Lender Consultants	20,000.00	0.00%
Loan Fee	80,750.00	0.00%
Interest & Carry (Debt Service, RE Taxes & Ins)	3,275,000.00	0.00%
Architectual & Civil Engineering	21,723.00	935.77%
Building Permit & Bonds	4,016.00	1145.02%
Independent Testing & Bonds	24,965.00	80.25%
Utility Hook-Up	(66,703.00)	-114.99%
Consulting	-	#DIV/0!
Insurance	-	#DIV/0!
Mortgage Recording Tax	442,617.22	0.00%
Developer Fee	-	#DIV/0!
Construction Fee	107,176.00	0.00%
Soft Cost Contingency	237,997.45	0.00%
	4,920,739.67	120.51%

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SCHEDULE III

PLANS AND SPECIFICATIONS

(See Attached)

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Schedule III

4.2. CONSTRUCTION DOCUMENTATION

The Construction Documents provided for review consisted of Construction Drawing and Specifications. The following chart denotes the construction drawings and specifications received.

Description	Date	Sheet No.	Drawing Title
Cover	06/22/07	A-001	Consists of 1 sheet containing Index of Drawings, Vicinity Map, Engineers, Building Floor Tabulation, and Zoning Summary.
Civil	Varies	C1.0 thru C6.0; Site 1 thru Site 3	Consists of 9 drawings containing Demolition, Site Plans, Utilities Plans, Paving Plans, and Grading & Drainage Plans.
Architectural	06/22/07	A-030 thru A-504	Consists of 61 drawings containing Egress Plans, Floor Plans, Firestopping Schedule, Partition Schedule, Door and Hardware Schedule, Exterior Finish Schedule, Roof Plans, Elevations, Sections, Toilet Accessory Schedule, Interior Finish Schedule, Interior Elevations, Stair Sections, and Miscellaneous Details.
Structural	06/22/07	S-070 thru S-504	Consists of 12 drawings of Notes, Details, Foundation Plans, and Framing Plans.
Mechanical	06/22/07	M-001 thru M-400	Consists of 12 drawing containing Mechanical Plans, Notes, Details, Fan Schedule, Register Schedule, Diffuser Schedule, Furnace Schedule, and Condensing Unit Schedule.
Plumbing	06/22/07	P-001 thru P-400	Consists of 13 drawings containing Plumbing Plans, Plumbing Fixture Schedule, Notes, Details, and Riser Diagrams.
Electrical	06/22/07	E-001 thru E-400	Consists of 14 drawings containing General Notes, Panelboard Schedule, Power Riser Diagrams, Lighting/Power Plan, and Light Fixture Schedules.
Fire Alarm	06/22/07	FA-001 thru FA-400	Consists of 9 drawing containing Fire Alarm Riser Diagrams, Notes, and Fire Alarm Floor Plans.

4.3. SUPPORTING DOCUMENTATION

A copy of the Project Documentation Checklist used to request and collect documents for this review is included in Appendix A of this report and indicates those documents, which were received. EMG considers all documentation not received to be vital to the completion of our review, as we will not be able to offer an opinion on their adequacy for construction purposes.

Listed below are documents that may have been received, but were not specifically listed in the checklist.

- Certificate of Liability Insurance
- Availability of Utility Letters
- Summary of Preliminary Geotechnical Findings
- LIRR Conceptual Approval Letter
- Red Hook Construction Group Resume – AIA Form A305
- Resume of Key Stakeholders

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SCHEDULE IV

CONSTRUCTION SCHEDULE

(See Attached)

-

Schedule IV

ACADIA ATLANTIC AVE., LLC
ATLANTIC SELF STORAGE

629 Amboy Avenue
2nd Floor
Edison, New Jersey 08837
Phone # 732-661-9740
Fax #732-661-9741

MILESTONE SCHEDULES FOR ATLANTIC SELF STORAGE

Designline Construction Services, Inc.
Revision III - 10/11/07

• The Contractor shall carry on the work so as to complete all work under the Contract on or before the dates specified in Milestone Schedule.

• Contract time shall start from the date of the "Notice to Proceed."

• Final Completion of the work shall be not later than forty-five (45) consecutive calendar days from the date of Substantial Completion of the work.

• Contractor warrants that the Milestone Dates contained herein are achievable subject to minor revisions as Contractor may deem appropriate and consist with standard practices of the industry. In no case will revisions to the Baseline Contract Schedule be considered after thirty (30) days from Notice to Proceed. Schedule updates will be provided as required by the progress of the work.

•	- <u>Letter of Intent (LOI)</u>	<u>08/30/07</u>
•	- <u>Notice to Proceed (projected)</u>	<u>09/05/07</u>
•	- <u>Mobilize and start asbestos abatement</u>	<u>09/19/07</u>
•	- <u>Submit for utility disconnects and demo</u>	<u>11/1/07</u>
•	- <u>Start demolition</u>	<u>12/17/07</u>
•	- <u>Demolition completed</u>	<u>01/21/08</u>
•	- <u>Completion of foundation & SOG</u>	<u>05/14/08</u>
•	- <u>Completion of building (Walls Up & Roof On)</u>	<u>09/30/08</u>
•	- <u>Completion of Mechanical Systems (rough)</u>	<u>10/03/08</u>
•	- <u>Completion of Corridor Systems & Doors</u>	<u>11/04/08</u>

-
Continued:

- ● Completion of all Mechanical Finishes Including Fire Alarm & Security 11/18/08
- ● Completion of all Finish Trades 12/04/08
- ● Substantial Completion 12/18/08
- ● Final Completion 01/15/09

-
SIGNATURE: _____ DATE: _____

BY: _____

COMPANY: _____

-
-

SCHEDULE V

ATLANTIC AVENUE SELF STORAGE

RENT ROLL

<u>Tenant</u>	<u>Date of Lease</u>	<u>Term</u>	<u>Base Rent</u>
<u>Celluar Telephone Company</u>	<u>November 19, 2001;</u> <u>First Amendment dated</u> <u>May 22, 2002;</u> <u>Second Amendment</u> <u>dated August 20, 2004;</u> <u>Third Amendment dated</u> <u>February, 2007</u>	<u>Five years with</u> <u>five, five years</u> <u>extension options</u>	<u>\$400.00 per</u> <u>month for first</u> <u>year;</u> <u>increasing 3%</u> <u>per annum</u>

Schedule V

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

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 DEGREES 00' 00" WEST, A DISTANCE OF 211 FEET AND 6 INCHES LOCAL STANDARD, 211 FEET AND 8 ½ INCHES UNITED STATES STANDARD, THENCE;

2. ALONG A LINE RIGHT ANGLES TO SAID EUCLID AVENUE, NORTH 79 DEGREES 00' 00" EAST, A DISTANCE OF 100.00 FEET LOCAL STANDARD, 100 FEET 1 ¾ INCHES UNITED STATES STANDARD, THENCE;

3. ALONG THE LINE BEING PARALLEL TO SAID EUCLID AVENUE, NORTH 11 DEGREES, 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 DEGREES, 00' 00" EAST, A DISTANCE OF 52 FEET AND 11 ¼ 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 DEGREES 03' 56" EAST, A DISTANCE OF 515 FEET AND 1 ½ 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 DEGREES 13' 14" WEST, A DISTANCE OF 155 FEET AND 9 ¼ INCHES LOCAL STANDARD, 155 FEET AND 10 ¾ INCHES UNITED STATES STANDARD TO THE POINT AND PLACE OF BEGINNING.

TOGETHER WITH THE BENEFITS OF AN INGRESS AND EGRESS EASEMENT AGREEMENT RECORDED IN REEL 1974 PAGE 76.

Exhibit A

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EXHIBIT B

INTENTIONALLY OMITTED

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Exhibit B

EXHIBIT C

FORM OF DATE DOWN ENDORSEMENT

ENDORSEMENT

Attached to and forming a part of Policy No. _____

Issued By

COMMONWEALTH LAND TITLE INSURANCE COMPANY

herein called the Company.

The Company has continued its title examinations and tax searches under the above Policy from _____, 200__ to _____, 200__. There have been no changes to title and the tax search shows all items have been paid. The effective date of the above Policy set forth in Schedule A is changed to _____, 200__.

The Company acknowledges that the amount of this advance is \$ _____ and that, with this advance, the total amount advanced to date and insured by the above Policy is \$ _____.

This Endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any prior Endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior Endorsements, nor does it extend the effective date of the Policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: _____
Name: _____
Title: Authorized Signature

EXHIBIT D

FORM OF
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 in 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, between Borrower and Bear Stearns Commercial Mortgage, Inc., as lender (the "Building Loan Agreement").

3. The principal amount of the loan (the "Building Loan") under the Building Loan Agreement is \$11,229,260.33.

4. The consideration paid, or to be paid, by Borrower for the Building Loan described herein is \$80,750.00*.

5. All other expenses incurred or to be incurred in connection with the Building Loan for the Costs of the Improvements and to be advanced pursuant to the Building Loan Agreement during the construction of the Improvement are:

Table with 2 columns: Description and Amount. Rows include: (a) Interest on the Building Loan during construction, (b) Taxes, assessments, water rents and sewer rents, paid or to be paid for periods prior to or during construction, (c) Insurance during construction, (d) Commitment fee, if any, in addition to the consideration stated above which is allocable to the Building Loan, (e) Commitment fee for subsequent financing either (i) required by Lender, or (ii) to be borrowed within four months after completion of the improvements.

* to the extent applicable, sums attributable to these items will be paid from sources other than the building loan

-	(f)	- <u>Title examination, insurance premium and recording fees</u>	- -	-
-	-	- <u>which are allocable to the Building Loan</u>	- \$-	-0-*
-	-	-	- -	-
-	(g)	- <u>Survey</u>	- \$-	-0-*
-	-	-	- -	-
-	(h)	- <u>Engineer's and Architect's fees</u>	- \$-	-0-*
-	-	-	- -	-
-	(i)	- <u>Bond premiums</u>	- \$-	-0-*
-	-	-	- -	-
-	(j)	- <u>Legal fees of Lender's counsel which are allocable to the</u>	- -	-
-	-	- <u>Building Loan</u>	- \$-	-0-*
-	-	-	- -	-
-	(k)	- <u>Broker's commissions incurred with respect to obtaining the</u>	- -	-
-	-	- <u>Building Loan</u>	- \$-	-0-*
-	-	-	- -	-
-	(l)	- <u>Broker's commissions incurred with respect</u>	- -	-
-	-	- <u>obtaining subsequent financing either (i) required by Lender, or (ii) to be</u>	- -	-
-	-	- <u>borrowed within four months after the completion</u>	- -	-
-	-	- <u>of the improvements</u>	- \$-	-0-*
-	-	-	- -	-
-	(m)	- <u>Brokerage Commissions for leases of space (other than</u>	- -	-
-	-	- <u>residential space) in the improvements with terms in excess</u>	- -	-
-	-	- <u>of three (3) years</u>	- \$-	-0-*
-	-	-	- -	-
-	(n)	- <u>Ground rents accruing during construction</u>	- \$-	-0-*
-	-	-	- -	-
-	(o)	- <u>Mortgage recording tax allocable to Building loan</u>	- \$-	-0-*
-	-	-	- -	-
-	(p)	- <u>Appraisal</u>	- \$-	-0-*
-	-	-	- -	-
-	(q)	- <u>Sums paid to take by assignment prior existing mortgages</u>	- -	-
-	-	- <u>which are consolidated with building loan mortgages and also</u>	- -	-
-	-	- <u>the interest charges on such mortgages</u>	- \$-	-0-*
-	-	-	- -	-
-	(r)	- <u>Sums paid to discharge or reduce the indebtedness under</u>	- -	-
-	-	- <u>mortgages and accrued interest thereon and other prior</u>	- -	-
-	-	- <u>existing encumbrances</u>	- \$-	-0-*

* to the extent applicable, sums attributable to these items will be paid from sources other than the building loan

-	(s).	- Sums paid to discharge building loan mortgages whenever	- -	-
-	-	- recorded	- \$.	-0-*
-	(t).	- Contingency cost of the improvement, other than the	- - -	-
-	-	- "improvement", as defined in subdivision 4 of Section 2 of the	- - -	-
-	-	- Lien Law	- \$.	1,050,404.21
-	-	- TOTAL	- \$.	1,050,404.21

* to the extent applicable, sums attributable to these items will be paid from sources other than the building loan

6. In addition to the above items the following sums shall be disbursed to Borrower for the cost of the improvement incurred and paid for by Borrower subsequent to the commencement of construction of the improvement, but prior to the date of the initial advance of the Building Loan under the Building Loan Agreement:

\$-0-

7. The net sum available to Borrower for the Improvement is Ten Million One Hundred Seventy-Eight Thousand Eight Hundred Fifty Six and 12/100 Dollars (\$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.

8. 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.

[No Further Text on This Page]

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9. The facts stated above and any costs itemized on this statement are true, to the knowledge of the undersigned.

/s/ Robert Masters

Name: ROBERT MASTERS

SWORN TO BEFORE ME this
26th day of December, 2007.

/s/ Dawn M. Portney

Notary Public

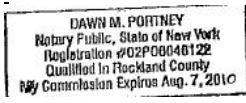


EXHIBIT E

AIA FORM G706

(CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS)

[See Attached Form]

Exhibit E

AIA Document G706™ - 1994

Contractor's Affidavit of Payment of Debts and Claims

PROJECT: *(Name and address)* ARCHITECT'S PROJECT NUMBER: _____ OWNER:
ARCHITECT:
CONTRACTOR:
SURETY:
OTHER:
TO OWNER: *(Name and address)* CONTRACT FOR: General Construction
CONTRACT DATED: _____

STATE OF: _____
COUNTY OF: _____

The undersigned hereby certifies that, except as listed below, payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or Owner's property might in any way be held responsible or encumbered.

EXCEPTIONS:

SUPPORTING DOCUMENTS ATTACHED HERETO:

- Consent of Surety to Final Payment. Whenever Surety is involved, Consent of Surety is required. AIA Document G707, Consent of Surety, may be used for this purpose.
Indicate Attachment Yes No

The following supporting documents should be attached hereto if required by the Owner:

- Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
- Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.
- Contractor's Affidavit of Release of Liens (AIA Document G706A).

CONTRACTOR: *(Name and address)*

BY: _____
(Signature of authorized representative)

(Printed name and title)

Subscribed and sworn to before me on this date:

Notary Public:
My Commission Expires: _____

EXHIBIT F

ARCHITECT'S CERTIFICATE

[See Attached Forms]

1. Form of Architect's Certification and Consent to be delivered prior to the Initial Advance.
2. Form of Architect's Completion Certificate to be delivered prior to the Final Advance.

ARCHITECT'S CERTIFICATION AND CONSENT

[Letterhead of Borrower's Architect]

December, 2007

Bear Stearns Commercial Mortgage, Inc. 383 Madison Avenue
New York, New York 10179

Re: Atlantic Avenue Self Storage,
3319 Atlantic Avenue, Brooklyn, New York

Ladies and Gentlemen:

The undersigned ("Architect") understands that Bear Stearns Commercial Mortgage, Inc., a New York corporation ("Lender") has made a loan (the "Loan") to Acadia Atlantic Avenue LLC, a Delaware limited liability company ("Borrower"), which Loan, among other things, will be used to finance construction and renovation by Borrower of the improvements (the "Improvements") on the land known as Atlantic Avenue Self-Storage, 3319 Atlantic Avenue, Brooklyn, New York (the "Land") and will be advanced pursuant to that certain Building Loan Agreement (the "Building Loan Agreement"), and that certain Project Loan Agreement, each entered into between Lender and Borrower and each dated as of December 26, 2007. Capitalized terms not defined herein shall have the meanings ascribed to them in the Building Loan Agreement.

Architect prepared certain Plans and Specifications in connection with the construction and renovation of the Improvements. In addition, Architect has been engaged to act as the architect for the Improvements and such engagement has been confirmed by that certain Professional Services Authorization between Borrower and Architect dated as of March 16 2007 (the "Contract").

In its professional opinion, the Architect states to Lender that (a) upon completion in accordance with the Plans and Specifications, the Improvements shall be available for occupancy in accordance with their contemplated uses, as identified to Architect by Borrower (that is, as a _____), and will comply with applicable building codes and other governmental rules, laws and regulations relating to their design and engineering, to the extent applicable and in effect as of the date hereof, and a permanent certificate of occupancy for the use of the Improvements for their intended purposes will be able to be issued in due course upon review and inspection of the Improvements by the appropriate departments having jurisdiction over the Improvements, (b) the Land is zoned for use of the Improvements for their intended purposes, and there are sufficient development rights appurtenant to the Land in order to construct the Improvements in accordance with the Plans and Specifications as of right, and (c) all building permits and other approvals listed below (collectively, the "Approvals") required for the construction of the Improvements in accordance with the Plans and Specifications have been obtained and paid for and are in full force and effect (or, with respect to approvals not obtained by the date of this Certificate, are capable of being obtained within time periods consistent with the projected completion dates of the Improvements). Copies of those Approvals that have been obtained as of the date hereof and applications for those Approvals that are pending as of the date hereof are enclosed.

	Issuing Agency	Date Issued
<u>Building Permit</u>		
<u>Certificate of Occupancy</u>		
<u>Special Permit</u>		

- To the best of its professional knowledge, Architect states to Lender that there are no pending amendments or modifications of any laws, ordinances, regulations or permits relating to the Improvements.

- To the best of its professional knowledge, Architect states to Lender that the Improvements shown on the Plans and Specifications will comply with applicable requirements of the applicable land use, zoning and building laws and ordinances which are in effect as of the date hereof.

- To the best of its professional knowledge, Architect further states to Lender that (a) there will be sufficient access and egress to and from the Land and the Improvements for their use for their intended purposes, and (b) all utilities (including, if applicable, electric, gas, telephone, water and sewer services) necessary to service the Improvements are available to be delivered by the appropriate utility companies directly to the Property.

- The Construction Schedule referenced in the Building Loan Agreement, a copy of which is enclosed, establishing a projected timetable for completion of the Improvements, appears realistic and, to the best of its professional experience, Architect believes that such schedule can be adhered to.

- Architect understands that as additional security for the Loan, Borrower has assigned their interests under the Contract and in and to the Plans and Specifications to Lender pursuant to that certain Assignment of Agreements, Permits and Contracts made by Borrower to Lender dated as of December 26, 2007, and Architect hereby consents to such assignment. Architect acknowledges that Lender shall not be obligated to perform or discharge, nor has Lender undertaken to perform or discharge, any of the obligations of Borrower under the Contract and that so long as no Event of Default exists under the Building Loan Agreement or the Project Loan Agreement or the Contract, Borrower shall have the right to enjoy and utilize the rights and privileges of the contracting party under the Contract.

- Architect agrees that from and alter the occurrence and during the continuance of an Event of Default (as defined in the Building Loan Agreement) by Borrower under any of the Loan Documents, Architect will, at Lender's request, continue performance on Lender's behalf under the Contract for all services rendered or to be rendered for the benefit of Lender, its nominee, wholly owned subsidiary or assign(s), provided that Lender shall pay Architect for all work and services rendered pursuant to the Contract, whether prior to or subsequent to such request, for which Architect has not otherwise received payment. Nevertheless, the time periods set forth in the Contract for the performance by owner of its obligations thereunder shall be deemed extended by the period of time necessary to allow Lender to obtain possession of the Property in the manner Lender decides pursuant to its remedies under the Loan Documents.

- Architect hereby further agrees that if, at any time, Lender or its designee shall become the owner of the Property or otherwise requires the use of the Plans and Specifications in connection with the Property, Lender shall have the right to use the Plans and Specifications, together with any and all modifications thereof (including any additions, enlargements or extensions thereof) without any additional cost or expense, provided the scope of the project has not been substantively altered (should substantial changes to the scope or nature of the project be required by Lender, compensation of Architect shall be adjusted by mutual consent), other than payment of any balance and other sums that may be due or owing to Architect by Borrower for the preparation of the Plans and Specifications pursuant and subject to the terms of the Contract.

- Architect's statements in this letter have been made to the best of Architect's knowledge and based upon Architect's performance of its service in accordance with the standards of care and skill of Architect's profession in the jurisdiction in which the Property is located for building projects of the scope and quality of the Improvements. This letter is being issued for the benefit of Lender, Lenders and their respective successors and assigns, in connection with the disbursements for the construction of the Improvements as contemplated by the Building Loan Agreement and the Project Loan Agreement and the other Loan Documents referenced therein, and any lender refinancing the Loan evidenced by the Loan Documents, and does not alter or increase the term, obligations or liabilities of the undersigned to Borrower or Lender and/or Lenders or their respective successors and assigns under the Contract. No other party may rely thereon.

The provisions set forth in this letter shall be binding upon Architect and Architect's successors and assigns and shall inure to the benefit of Lender and Lenders and their successors and assigns, but to no other party.

-
-
-
-
-
-
-
-
-

a. _____

By: _____
 Name: _____
 Title: _____

Exhibit 1

Plans and Specifications

-

ARCHITECT'S COMPLETION CERTIFICATE

[Letterhead of Borrower's Architect]

_____, 200

Bear Stearns Commercial Mortgage, Inc. 383 Madison Avenue
New York, New York 10179

Re: Atlantic Avenue Self-Storage,
3319 Atlantic Avenue, Brooklyn, New York

Ladies and Gentlemen:

The undersigned ("**Architect**") understands that Bear Stearns Commercial Mortgage, Inc., a New York corporation ("**Lender**") has made a loan (the "**Loan**") to Acadia Atlantic Avenue LLC, a Delaware limited liability company ("**Borrower**"), which Loan, among other things, was used to finance construction and renovation by Borrower of the improvements (the "**Improvements**") on the premises known as Atlantic Avenue Self-Storage, 3319 Atlantic Avenue, Brooklyn, New York (the "**Land**") and was advanced pursuant to that certain Building Loan Agreement (the "**Building Loan Agreement**") and that certain Project Loan Agreement, each entered into by Lender and Borrower and each dated as of December 26, 2007. Capitalized terms not defined herein shall have the meanings ascribed to them in the Building Loan Agreement.

Architect prepared certain Plans and Specifications in connection with the construction and renovation of the Improvements. In addition, Architect has been engaged to act as the architect for the Improvements and such engagement has been confirmed by that certain Professional Services Authorization between Borrower and Architect dated as of March 16 2007 (the "**Contract**").

Based on its on-site observation of the Improvements pursuant to the Contract, to the date of this Certificate, to its best professional knowledge, Architect states to Lender that (a) except as the same relates to Punch List Items (as hereinafter defined), the Improvements and their contemplated uses, as identified to Architect by Borrower (that is, as a) are in accordance with the Plans and Specifications and comply with applicable building codes and all other similar or necessary governmental rules, laws and regulations relating to their design and engineering, to the extent applicable and in effect as of the date hereof, and (b) a [permanent] [temporary] certificate of occupancy for the Property, and all building permits and other approvals (collectively, the "**Approvals**") required for the construction and renovation of the Improvements in accordance with the Plans and Specifications have been obtained and paid for and are in full force and effect.

-
- To the best of its professional knowledge, there is (and after the completion of the Punch List Items will be) sufficient access and egress to and from the Land and the Improvements for their use for their intended purposes.
-

- Architect hereby states to the best of its professional knowledge to Lender that subject only to the completion of the Punch List Items, the Improvements have been completed in accordance with the Plans and Specifications. The term "Punch List Items" shall mean the work set forth on Exhibit 1 attached hereto.
-

- This letter has been required in connection with the Lender's above referenced Loans made to Borrower. It is given for the benefit of Lender, its successors and assigns, and no other party may rely thereon.
-

- The statements contained in this letter are an expression of the undersigned's professional opinion, are made to the best of the undersigned's knowledge, information and belief, and are based on the undersigned's performance of services under the Contract in accordance with generally accepted standards of professional practice. Accordingly, such statements do not constitute a guaranty or warranty of any sort.
-

- Signed this _____ day of _____, 200__.

- By: _____

- Name: _____

- Title: _____
-

- By signing below, _____ hereby estimates, to the best of its professional knowledge, that the cost to complete the Punch List Items will not exceed \$ _____ in the aggregate and such work shall be limited to site work, interior finishes, mechanical adjustments, landscaping and decorative work. If the completion of the Punch List Items is diligently pursued, completion of all Punch List Items is expected within _____ (____) months after the date hereof.
-

- _____ **.(Construction Manager)**

- By: _____

- Name: _____

- Title: _____
-

Exhibit 1 to Architect's Completion Certificate

Punch List Items

-

Exhibit F - Page 9

EXHIBIT G

GENERAL CONTRACTOR'S CERTIFICATE

[Letterhead of General Contractor]

December _____, 2007

Bear Stearns Commercial Mortgage, Inc. 383 Madison Avenue
New York, New York 10179

Re: Property Address: 3319 Atlantic Avenue, Brooklyn, New York
Project Name: Atlantic Avenue Self-Storage
Change Order Amount: Two Percent (2%) of Contract Amount Aggregate Change Order Amount: \$250,000.00

Ladies and Gentlemen:

The undersigned general contractor, Designline Construction Services, Inc. ("GC"), understands that Bear Stearns Commercial Mortgage, Inc. ("Lender") has made a loan (the "**Loan**") to Acadia Atlantic Avenue LLC, a Delaware limited liability company ("**Borrower**"), which Loan, among other things, will be used to finance construction and renovation by Borrower of the improvements (the "**Improvements**") on the premises known at Atlantic Avenue Self-Storage, 3319 Atlantic Avenue, Brooklyn, New York and will be advanced pursuant to that certain Building Loan Agreement (the "**Building Loan Agreement**") and that certain Project Loan Agreement (the "**Project Loan Agreement**"), each entered into by Lender and Borrower and each dated as of December 26, 2007. GC has been engaged by Borrower to act as general contractor in connection with the construction and renovation of the Improvements as contemplated by those certain plans and specifications (the "**Plans and Specifications**") prepared by Butz Witbern, Ltd., as architect (the "**Architect**") and such engagement of GC has been confirmed by that certain Standard Form of Agreement between Owner and Contractor (Where the basis for payment is a STIPULATED SUM), dated as of October 18, 2007, (including the Conditions, if any, attached thereto, the "**Contract**"), a true and complete copy of which is attached hereto.

1. GC represents and warrants to Lender as follows:

(i) GC has reviewed and agreed to the Plans and Specifications for the Improvements, as defined in the Building Loan Agreement, and the Plans and Specifications have been approved by GC;

(ii) all building permits required for the construction of the Improvements in accordance with the Plans and Specifications have been obtained;

(iii) _____ there are no liens in connection with the Improvements in favor of GC or any contractor or subcontractor hired by GC or Borrower, who has performed work and/or supplied labor and/or materials, for the work in connection with the Improvements, for the work performed by GC or such contractor or subcontractor or for the labor and/or materials supplied by GC or such contractor or subcontractor except for such work or labor and/or materials for which payment thereof is requested; and

(iv) _____ GC has not sent or received any notice of default or any notice for the purpose of terminating the Contract, and there is no existing circumstance or event which, but for the lapse of time or otherwise, would constitute a default by GC or Borrower under the Contract.

In addition, GC hereby agrees with Lender as follows:

1. _____ GC shall not agree to any amendment, modification, release or discharge (in whole or in part) of the Contract, nor waive or claim any waiver in any respect of any provision thereof, without first obtaining the prior written consent of Lender, and no such amendment, modification, release, discharge or waiver, without such consent, shall be binding upon Lender.

2. _____ GC shall send to Lender copies of all notices of default sent by GC to Borrower or by Borrower to GC pursuant to the Contract and no such notice shall be effective for any purpose unless and until a copy thereof shall have been received by Lender.

3. _____ If Borrower shall default under the Contract, GC shall not exercise any remedies, including, but not limited to, any right to terminate the Contract.

4. _____ If Borrower defaults under the Loan Documents (as defined in the Building Loan Agreement), or if there is a foreclosure of any mortgage securing payment of the Loan, or if Borrower becomes insolvent, at the election and option of Lender by notice from Lender to GC, either (i) GC will complete its obligations under the Contract with respect to the construction of the Improvements as set forth in the Plans and Specifications for the benefit of Lender, its nominee, wholly owned subsidiary or assign(s), or (ii) the Contract shall terminate and at Lender's election GC shall immediately assign all of its rights under the subcontracts to Lender, in the event that Lender elects to have GC continue performance on Lender's behalf under the Contract, the time periods set forth in the Contract for performance by owner of its obligations thereunder shall be deemed extended by the period of time necessary to allow Lender to obtain possession of the Property in the manner Lender decides pursuant to its remedies under the Loan Documents.

5. _____ GC further agrees that it shall not perform work pursuant to any change order which will result in a change in the contract price in excess of the change order amount, nor pursuant to any such change order which, together with the aggregate of change orders theretofore executed between the Borrower and GC, excluding those theretofore specifically approved by Lender, will result in an increase or decrease in such price in excess of the aggregate change order amount, unless in either case GC shall have received Lender's specific written approval of such change order.

6. In the event any of the proceeds of the Loan are disbursed directly to GC, GC shall receive any such advances and shall hold the right to receive the same as a trust fund for the purpose of paying the costs of the Improvements as set forth in the Plans and Specifications and will apply the same first to such payment before using any part thereof for any other purpose.

7. GC hereby acknowledges and consents to that certain Assignment of Agreements, Permits and Contracts dated as of December 26, 2007, by Borrower to Lender, which assigns all of Borrower's rights under the Contract. In the event Lender, its nominee, wholly owned subsidiary, successors or assign(s) (the "Successor"), succeeds to the rights of Borrower under the Contract, then, at the request of the Successor, and upon the Successor's written agreement to accept GC's attornment, GC shall attorn and shall promptly execute and deliver any instalment the Successor may reasonably require to evidence such attornment. Upon such attornment, the Contract shall continue in full force and effect as if it were a direct agreement between the Successor and GC.

8. GC shall send all notices to Lender, as required by this letter, to the address of Lender set forth above by registered or certified mail, return receipt requested (or at such other address as Lender shall specify in writing from time to time).

9. The person executing this letter on behalf of GC hereby certifies that he or she has the authority to do so and that GC has full authority under all applicable state and local laws and regulations to perform all of its obligations under the Contract in accordance with the terms thereof.

10. The provisions set forth in this letter shall be binding upon GC and GC's successors and assigns and shall inure to the benefit of Lender and their successors and assigns.

Very truly yours,

DESIGNLINE CONSTRUCTION SERVICES, INC.

By: _____

Name: _____

Title: _____

EXHIBIT H

FORM OF PERFORMANCE LETTER

[Letterhead of Major Contractor]

_____, 200

Bear Stearns Commercial Mortgage, Inc. 383 Madison Avenue

New York, New York 10179

Re: Property Address: 3319 Atlantic Avenue, Brooklyn, New York
Project Name: Atlantic Avenue Self-Storage
Change Order Amount: Two Percent (2%) of Contract Amount

Ladies and Gentlemen:

The undersigned, a contractor ("**Contractor**") on the captioned project (the "**Project**"), understands that Bear Stearns Commercial Mortgage, Inc. ("**Lender**") has made a loan (the "**Loan**") to Acadia Atlantic Avenue LLC ("**Borrower**"), which Loan, among other things, will be used to finance construction and renovation by Borrower of the improvements (the "**improvements**") at the Project and will be advanced pursuant to that certain Building Loan Agreement (the "**Building Loan Agreement**") and that certain Project Loan Agreement (the "**Project Loan Agreement**"), each entered into by Lender and Borrower and each dated as of December 26, 2007. Attached hereto is a true and complete copy of our agreement with Borrower, dated as of, 200, to construct and/or renovate a portion of the

Improvements (including the Conditions attached thereto, the "**Contract**"),

I, _____ Contractor represents and warrants to Lender as follows:

(i) _____ to the best of Contractor's knowledge, there are no liens in connection with the Improvements in favor of Contractor or any subcontractor hired by Contractor who has performed work and/or supplied labor and/or materials, for the work performed by Contractor or such subcontractor or for the labor and/or materials supplied by Contractor or such subcontractor, except for such work or labor and/or materials for which payment thereof is requested; and

(ii) _____ Contractor has not sent or received any notice of default or any notice for the purpose of terminating the Contract, and to the best of Contractor's knowledge, there is no existing circumstance or event which, but for the lapse of time or otherwise, would constitute a default by Borrower under the Contract.

In addition, Contractor hereby agrees with Lender as follows:

1. Contractor shall not agree to any amendment, modification, release or discharge (in whole or in part) of the Contract, nor waive or claim any waiver in any respect of any provision thereof, without first obtaining the prior written consent of Lender, and no such amendment, modification, release, discharge or waiver, without such consent, shall be binding upon Lender.
2. Contractor shall send to Lender copies of all notices of default sent by Contractor to Borrower or by Borrower to Contractor pursuant to the Contract and no such notice shall be effective for any purpose unless and until a copy thereof shall have been received by Lender.
3. If Borrower shall default under the Contract, Contractor shall not exercise any remedies, including, but not limited to, any right to terminate the Contract, until and unless Contractor shall give notice of intention to do so to Lender, and Lender shall fail to either (i) remedy the default of Borrower within thirty (30) days after receipt of such notice or (ii) deliver within such thirty (30) day period to Contractor an undertaking to remedy such default at the cost and expense of Lender and thereafter diligently pursue such remedy.
4. If Borrower defaults under the Loan Documents (as defined in the Building Loan Agreement), or if there is a foreclosure of any mortgage securing payment of the Loan, or if Borrower becomes insolvent, at the election and option of Lender by notice from Lender to Contractor, either (i) Contractor will complete its obligations under the Contract with respect to the construction of the Improvements for the benefit of Lender, its nominee, wholly owned subsidiary or assign(s), **if the Contractor is not an Affiliate of Borrower, provided that, Lender shall pay Contractor for all work and services rendered, pursuant to the Contract whether prior to or subsequent to such election, for which Contractor has not otherwise received payment;** or (ii) the Contract shall terminate and at Lender's election Contractor shall immediately assign all of its rights under the subcontracts to Lender. In the event that Lender elects to have Contractor continue performance on Lender's behalf under the Contract, the time periods set forth in the Contract for performance by owner of its obligations thereunder shall be deemed extended by the period of time necessary to allow Lender to obtain possession of the Property in the manner Lender decides pursuant to its remedies under the Loan Documents.
5. Contractor further agrees that it shall not perform work pursuant to any change order that will result in a change in the contract price in excess of the change order amount, unless Contractor shall have received specific written approval of such change order from Lender or Lender's consulting engineer.
6. In the event any of the proceeds of the Loan are disbursed directly to Contractor, Contractor shall receive any such advances and shall hold the right to receive the same as a trust fund for the purpose of paying the costs of the Improvements as set forth in the Plans and Specifications and will apply the same first to such payment before using any part thereof for any other purpose.
7. Contractor hereby acknowledges and consents to that certain Assignment of Agreements, Permits and Contracts dated as of December 26, 2007, by Borrower to Lender, which assigns all of Borrower's rights under the Contract. In the event Lender, its nominee, its wholly owned subsidiary, successor(s) or assign(s) (the "Successor") succeeds to the rights of Borrower under the Contract, then, at the request of the Successor, and upon the Successor's written agreement to accept Contractor's attornment, Contractor shall attorn and shall promptly execute and deliver any instrument the Successor may reasonably require to evidence such attornment. Upon such attornment, the Contract shall continue in full force and effect as if it were a direct agreement between the Successor and Contractor.

8. Contractor shall send all notices to Lender, as required by this letter, to the address of Lender set forth above by registered or certified mail, return receipt requested (or at such other address as Lender shall specify in writing from time to time).

9. The person executing this letter on behalf of Contractor hereby certifies that he or she has the authority to do so and that Contractor has full authority under all state and local laws and regulations to perform all of its obligations under the Contract in accordance with the terms thereof.

10. The provisions set forth in this letter shall be binding upon Contractor and Contractor's successors and assigns and shall inure to the benefit of Lender and Lender's successors and assigns.

Very truly yours,

By: _____
Name:
Title:

EXHIBIT I
FORM OF ANTICIPATED COST REPORT

-
[Attached]

-
Exhibit I - Page 1

EXHIBIT J
FORM OF
LIEN WAIVER

THIS WAIVER OF LIEN dated as of _____, 200____, is made by _____, a having an office at _____ ("**Contractor**"), to and for the benefit of ACRS, INC, a New York corporation, having an office at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 ("**Construction Manager**"), 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 ("**Owner**"), and BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation ("**Lender**"), having an address at 383 Madison Avenue, New York, New York 10179, pursuant to that certain Trade Contract dated as of _____, 200____, between Contractor and [Construction Manager], [Owner], (as amended and supplemented from time to time, the "**Contract**"), [Words and phrases defined in that certain Standard Form of Agreement between Owner and Construction Manager where Construction Manager is NOT a Constructor dated as of [_____] , between Construction Manager and Owner, as amended and supplemented from time to time, shall have the same meanings in this instrument.] [Words and phrases defined in the Contract shall have the same meanings in this instrument.]

This waiver of lien is given in connection with the construction of the Project and the payment to Contractor of sums in the amount of \$ _____, requisitioned by Contractor pursuant to its Requisition No. _____ dated _____, 200____ (the "**Requisition**") for Work supplied, furnished, or performed for the Project to the date of the Requisition.

For the benefit of Construction Manager, Owner and Lender, Contractor does hereby certify and acknowledge that:

1. _____ Contractor has supplied [Construction Manager], [Owner] with a list of all subcontractors of Contractor supplying, furnishing, or performing Work or services, or furnishing materials or equipment, for the Project, and that such list is true and complete as of the date of the Requisition;
2. _____ Contractor has received all sums due and owing to Contractor, other than sums (if any) withheld by [Construction Manager], [Owner] pursuant to the Contract, for Work, materials and equipment performed, furnished, or supplied for the Project to the date of the Requisition immediately prior to the Requisition (the "**Prior Requisition Date**");
3. _____ In consideration of such payment, Contractor (for itself and its subcontractors and their respective successors and assigns) does hereby forever release and waive any and all *rights, claims and demands* which Contractor has, or may have, to file any lien or notice of lien against the Project or any property of Construction Manager or Owner, on account of, or deriving from, Work, materials and/or equipment supplied, furnished and/or performed for the Project to the Prior Requisition Date; and

Exhibit J

4. Contractor hereby agrees to indemnify and hold harmless Construction Manager, Owner and Lender from and against any and all rights, claims and demands of any of Contractor's subcontractors on account of, or deriving from, Work, materials and/or equipment supplied, furnished and/or performed by any of them for the Project to the Prior Requisition Date.

The following amounts are true and accurate as of the date hereof:

-	Original Contract Amount:	-	\$ _____
-	Change Order Amount:	-	\$ _____
-	Adjusted Contract Amount to Date:	-	\$ _____
-	Amount of Work Done to Date:	-	\$ _____
-	Retainage Amount Not Yet Due:	-	\$ _____
-	Net Amount Due to Date:	-	\$ _____
-	Total Payments Received to Date:	-	\$ _____

IN WITNESS WHEREOF, Contractor has caused this Waiver of Lien to be duly executed, and the seal of Contractor to be affixed, as of the date of the Requisition, by the undersigned officer of Contractor, who is duly authorized to do so.

By: _____
Name: _____
Title: _____

Subscribed and sworn to before
me this _____ day of _____, 200_____.

Notary Public

Exhibit J

EXHIBIT K

FORM OF INSOLVENCY OPINION - TO BE DELIVERED UPON COMPLETION

December _____, 2007

Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, NY 10179

Re: \$11,229,260.33 Building Loan and \$4,920,739.67 Project Loan (collectively the "Loan"), made as of December _____, 2007, by Bear Stearns Commercial Mortgage, Inc. (the "Lender") to Acadia Atlantic Avenue LLC, a Delaware limited liability company (the "Borrower").

Ladies and Gentlemen:

We have acted as special counsel to the Borrower in connection with the Loan. We understand that the Lender has made the final advances under that certain Building Loan Agreement and the certain Project Loan Agreement, each between the Lender and Borrower, and, in connection therewith, the Guaranty of Completion from Guarantor (as hereinafter defined) in favor of Lender has been discharged (collectively the "Final Advance"). The Borrower has requested that we deliver this opinion letter to you and we understand that the Lender will rely on this opinion in making the Final Advance.

The members of the Borrower are Acadia 3319 Atlantic Avenue, LLC, a Delaware limited liability company (the "Managing Member"), that owns 66.67% of the membership interests in the Borrower and Slayton Properties Atlantic LLC, a New York limited liability company ("Slayton") that owns 33.33% of the membership interests in the Borrower. The sole member of the Managing Member is Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company ("Acadia Strategic").

The Property (as hereinafter defined) will be managed by Post Management, LLC, a Delaware limited liability company (the "Property Manager", and together with Acadia Strategic, sometimes collectively referred to herein as the "Guarantor").

I. OPINION REQUESTED

In connection with the Final Advance, we have been requested and authorized by Borrower to render an opinion on whether, in the event that any one or more of the Managing Member, Acadia Strategic or Property Manager (each, a "**Relevant Entity**," and collectively, the "**Relevant Entities**") were to be a debtor or debtor acting as a debtor-in-possession in a case under 11 U.S.C. Section 101 et seq. (the "**Bankruptcy Code**"), under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and competently argued case, a United States Bankruptcy Court or other United States court exercising jurisdiction of such case under the Bankruptcy Code (a "**Bankruptcy Court**") would disregard the separate existence of the Borrower and order substantive consolidation under the Bankruptcy Code of the assets and liabilities of Borrower with the assets and liabilities of one or more of such Relevant Entities and treat such assets and liabilities as though Borrower and such Relevant Entity or Relevant Entities were one entity (a "**Substantive Consolidation**").

II. ASSUMPTIONS

Our opinion herein is expressly predicated on the assumption that a party in interest or Lender or other holder(s) of the Loan would, within any and all applicable time limitations set forth in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and any applicable local rules, (a) object to any written motion or other formal proceeding in Bankruptcy Court seeking a Substantive Consolidation, and (b) competently brief and argue such objection.

In rendering this opinion, we have reviewed the documents evidencing and relating to the Loan (as listed and identified on Schedule I hereto, the "**Loan Documents**"), and the Borrower's organizational documents (the "**Organizational Documents**"), as listed on Schedule I attached hereto, and certificates or good standing for Borrower. As to matters of fact, we have relied, with your acknowledgement and without any independent confirmation, investigation, or inquiry, upon the representations, warranties and covenants contained in the Loan Documents and the Organizational Documents of Borrower in all material respects insofar as they are material to the separateness of the Borrower. As to matters of fact, we also have reviewed, and with your acknowledgement and without any independent confirmation, investigation or inquiry, relied upon the representations made by Borrower and the certifications of the Relevant Entities, in the Certificate annexed hereto as Exhibit A and incorporated herein (the "Certificate") in all material respects insofar as they are material to the separateness of the Borrower. We have further assumed that such statements, representations and warranties are true and accurate in all respects material to Borrower's separateness, and that such covenants will, to the extent they regard the future, be kept, observed and otherwise performed in all respects material to Borrower's separateness, until the Loan is paid in full and the lien and security interests of the Building Loan Leasehold Mortgage, and the other Loan Documents are discharged. We have no actual knowledge of any facts indicating that any such statements, representations, or warranties are Use or misleading or that our reliance thereon would be unreasonable. Notwithstanding anything to the contrary in this Opinion or the Certificate, we have not assumed that the Borrower: (i) will remain solvent, be able to pay its debts as they become due, or be adequately capitalized, (ii) will not become a debtor under the Bankruptcy Code or otherwise subject to bankruptcy proceedings, or (iii) will make any payment or discharge any obligation to the extent that Borrower does not have access to available funds that enable it to do so.

Additionally, in rendering this opinion, we have assumed, to the extent material to Borrower's separateness, the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons, and the conforming to the originals of all documents submitted to us as copies and the authenticity of the originals thereto. We have assumed, to the extent material to Borrower's separateness, that all parties had the corporate, partnership or limited liability company power and authority, as the case may be, to enter into and perform all obligations under all such documents, and, as to such parties, we also have assumed, to the extent material to Borrower's separateness, the due authorization by all requisite corporate, partnership and limited liability company action, and the due execution and delivery, and validity, binding effect and enforceability of such documents, except as enforceability may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally, and (ii) general principles of equity (regardless of whether considered in a proceeding in equity or at law), (such limitations, collectively referred to as the "**Insolvency Exception**"), provided, however, that our recitation of the Insolvency Exception herein is not intended to and does not alter or provide a defense to our opinion set forth in this opinion.

We have also assumed for purposes of this opinion that the facts outlined below, all of which are reflected in written agreements and instruments executed in connection with the transactions described herein, upon which facts we rely, are now and will remain accurate in all material respects insofar as they are material to the separateness of Borrower.

1. The Borrower is a limited liability company organized on December 8, 2006 and validly existing under the laws of the State of Delaware.
 2. The sole member of the Borrower is the Managing Member.
 3. Borrower's Operating Agreement, dated as of December 8, 2006 ("**Borrower's LLC Agreement**") provides that Borrower's purposes shall be the acquisition, redevelopment, ownership, operation, management, leasing and financing of 3319 Atlantic Avenue, Brooklyn, New York (the "**Property**") and to perform such other activities as may be necessary, incidental or appropriate in connection therewith and to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.
 4. The Loan Documents include certain obligations for which Lender has recourse to Borrower under certain limited circumstances as set forth more particularly therein (the "**Recourse Obligations**").
 5. To the extent material to Borrower's separateness, Borrower will comply with its obligations under the Borrower's LLC Agreement and the Loan Documents which are material for the purposes of this opinion, including without limitation, the requirement that, until the Loan is paid in full, Borrower shall observe the separateness criteria, as contained therein.
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6. To the extent material to Borrower's separateness, the provisions of the Loan Documents which are material for purposes of this opinion, including without limitation the separateness warranties and covenants contained herein, will not be changed from and after the date hereof.

7. Lender has reasonably relied on, among other things, Borrower's separateness from each of the Relevant Entities in making the Final Advance.

8. Lender would suffer prejudice from, or be harmed by, a Substantive Consolidation.

9. Neither Borrower nor any Relevant Entity will engage in any type of fraudulent activity with respect to any matter that is material for purposes of this opinion.

10. Except as set forth in the Loan Documents, none of the Relevant Entities will hold its credit out as available to pay the debts of Borrower or pay the debts of Borrower or commingle its assets with those of the Borrower.

III. LEGAL BACKGROUND

Substantive Consolidation Generally

Substantive consolidation is an equitable doctrine that permits a bankruptcy court, in appropriate circumstances, to disregard the legal separateness of a debtor and a related but distinct legal entity, which may or may not itself be a debtor in bankruptcy, and to merge their respective assets and liabilities for bankruptcy purposes. Substantive consolidation typically results in the pooling of liabilities and assets of the entities to be consolidated, the satisfaction of liabilities from the resultant common fund of assets, and the elimination of all duplicate and inter-entity claims. E.g., *Union Sav. Batik v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 518 (2nd Cir. 1988) (citing 5 *Collier on Bankruptcy* § 1100.06, at 1100-32 n.1 (L. King ed. 15th ed. 1988)); *In re Ltd. Gaining of Ain, Inc.*, 228 B.R. 275, 286 (Bankr. N.D. Okla. 1998); *In re Standard Brands Paint Co.*, 154 B.R. 563, 569 (Bankr. C.D. Cal. 1993). Substantive consolidation being an equitable remedy, however, its exact consequences vary from case to case. E.g., *Moran v. Hong Kong & Shanghai Banking Corp. (In re Deltacoip, Inc.)*, 179 B.R. 773, 777 (Bankr. S.D.N.Y. 1995) (noting that court is afforded great deal of discretion in constructing consolidation order and retains the power to order less than complete consolidation) (citing cases); 2 *Collier on Bankruptcy* P.105.09[2], at 105-88 - 105-89 (15th ed. rev. 2002) (stating that substantive consolidation cases are factually specific and must be decided on a case-by-case basis).

Because the entities sought to be consolidated frequently will have different debt-to-asset ratios, substantive consolidation usually redistributes wealth among the entities' creditors. E.g., *Eastgroup Props. v. S. Motel Assn, Ltd.*, 935 F.2d 245, 248 (11th Cir. 1991) (quoting *Drabkin v. Midland-Ross Co. (In re Auto-Train Corp.)*, 810 F.2d 270, 276 (D.C. Cir. 1987)); *In re Ltd. Gaining*, 228 B.R. at 286-287. Thus, as courts have emphasized repeatedly, consolidation vitally affects parties' substantive rights and should be used only sparingly after careful scrutiny of the evidence. E.g., *FDIC v. Colonial Realty Corp.*, 966 F.2d 57, 61 (2nd Cir. 1992) (quoting *Chem. Bank N.Y. Trust Co. v. Kheel*, 369 F.2d 845, 847 (2nd Cir. 1966)); *In re Ltd. Gaining*, 228 B.R. at 287. Some court decisions, however, have noted a "modern" or "liberal" trend toward allowing substantive consolidation. E.g., *Eastgroup*, 935 F.2d at 248-49 & n.10 (citing cases); *In re Walnut Equip. Leasing to, Inc., No. 97-19699-DWS, 1999 WL 288651*, at *3 n.9 (Bankr. E.D. Pa. May 4, 1999); *In re Bonham*, 226 B.R. 56, 83 (Bankr. D. Alaska 1998), *zd 'd*, 229 F.3d 750 (9th Cir. 2000).

Substantive consolidation is analogous to the non-bankruptcy-law remedy of "piercing the corporate veil," which permits a plaintiff to disregard the corporate entity when necessary to prevent fraud or to enforce a paramount equity. In fact, early cases applied a test for substantive consolidation that was virtually identical to the test for piercing the corporate veil. *In re Standard Brands*, 154 B.R. at 567 (citing cases). Substantive consolidation was accomplished in early cases by finding that the entity with which consolidation was sought was the "alter-ego" or an "instrumentality" of the debtor which was used by the debtor to hinder, delay or otherwise defraud creditors. E.g., *Mantle Indus., Inc. v. Gerstel*, 232 F.2d 294, 297 (5th Cir. 1956) (citing *Fish v. East*, 114 F.2d 177, 191 (10th Cir. 1940)).

Although in early substantive consolidation cases courts looked to state corporate veil-piercing law for guidance, modern courts have increasingly looked to a growing body of federal common-law opinions decided under federal bankruptcy law. E.g., *Eastgroup: In re Augie/Restivo Baking Co. Ltd.*, *supra*; *In re Auto-Train*, *supra*; *In re Cont'g Vending Machine Corp.*, 517 F.2d 997 (2nd Cir. 1975); *In re Flora Mir Candy Corp.*, 432 F.2d 1060 (2nd Cir. 1970); *Kheel*, *supra*; *Soviero v. Franklin Nat'l Bank*, 328 F.2d 446 (2nd Cir. 1964); *Stone v. Eacho (In re Tip Top Tailors, Inc.)*, 127 F.2d 284 (4th Cir.), *cert. denied*, 317 U.S. 635 (1942). *But see In re Al/co Mining, Inc.*, 278 B.R. 586 (Bankr. M.D. Fla. 2002) (basing substantive consolidation on alter-ego theory); *In re Moran Pipe & Supply Co., Inc.*, 130 B.R. 588 (Bankr. F.D. Okla. 1991) (same). Consequently, federal courts rely almost uniformly on the federal common law instead of on state corporate law in deciding whether or not to substantively consolidate.

Substantive consolidation sounds in equity, and its general purpose is to ensure the equitable treatment of all creditors, not just a particular plaintiff. *Colonial Realty*, 966 F.2d at 61; *In re Augie/Restivo*, 860 F.2d at 518; *In re Cooper*, 147 B.R. 678, 684 (Bankr. D.N.J. 1992); (but see discussion *infra* at note 2). As a result, substantive consolidation does not require a finding of fraud or an intent to hinder or delay creditors, but a finding that consolidation would be more equitable to all parties under the circumstances. *In the Matter of Munford, Inc.*, 115 B.R. 390, 394 (Bankr. N.D. Ga. 1990); see *In re Tureaud*, 59 B.R. 973, 975-76 (N.D. Okla. 1986). While later cases have relaxed the requirement of fraud in favor of other factors warranting substantive consolidation, courts will still pierce the corporate veil to effect a substantive consolidation if fraud or similar activity is present. E.g., *Carte Blanche (Singapore) Pte., Ltd. v. Diners Club Int'l, Inc.*, 2 F.3d 24, 26 (2nd Cir. 1993) (noting that exceptions to corporate separateness are made "to prevent fraud or other wrong, or where a parent dominates and controls a subsidiary"); *In re Daily*, 107 B.R. 996 (Bankr. D. Haw. 1989), *rev'd on other grounds*, 940 F.2d 1306 (9th Cir. 1991); *In re Stop & Go of Am., Inc.*, 49 B.R. 743 (Bankr. D. Mass. 1985); *Walter E. Heller & Co. v. Langenkamp (In re Tureaud)*, 45 B.R. 658, 662-63 (Bankr. N.D. Okla. 1985), *aff'd*, 59 B.R. 973 (N.D. Okla. 1986). In sum, however, substantive consolidation is different from piercing the corporate veil. E.g., *Colonial Realty*, 966 F.2d at 61; *In re Bonham*, 226 B.R. at 76-77; *Helena Chem. Co. v. Circle Land & Cattle Corp. (In re Circle Land & Cattle Corp.)*, 213 B.R. 870, 874-875 (Bankr. D. Kan. 1997).

While the issue of substantive consolidation typically arises in the context of an affiliated group of corporations, one or more of which is in bankruptcy, the doctrine is equally applicable in cases involving non-corporate entities, such as partnerships and their individual partners. See, e.g., *Colonial Realty*, 966 F.2d at 60-61 (consolidating estates of general partnership and two of its general partners) (citing cases); *Eastgroup*, 935 F.2d at 252 (consolidating limited partnership with related management corporation); *In re Ltd. Gaming*, 228 B.R. at 287-88 (confirming liquidating plan which consolidated estates of limited partnership and its corporate partner); *In re Palumbo Family Ltd. P 'ship*, 182 B.R. 447, 471 (Bankr. E.D. Va. 1995) (consolidating estates of limited partnership and individual general partner); *Sender v. Buchanan (In re Hedged-Ines. Assocs., Inc.)*, 163 B.R. 841, 844, 849-50 (Bankr. D. Colo. 1994) (finding "no logical reason" why estate of corporate entity, the general partner of at least two of three related limited partnerships, could not be substantively consolidated with the consolidated partnership estates), *aff'd*, 84 F.3d 1286 (10th Cir. 1996); *Gill v. Sierra Pac. Constr., Inc. (In re Parkway Calabasas Ltd.)*, 89 B.R. 832, 534-35 (Bankr. C.D. Cal. 1988) (consolidating estates of four limited partnerships and one of their principals), *aff'd*, 94-9 F.2d 1058 (9th Cir. 1991).¹

Court's Authority To Grant Substantive Consolidation

The authority of a bankruptcy court to substantively consolidate two or more bankruptcy debtors is well-established. That authority stems both from Section 105 of the Bankruptcy Code, which expressly empowers bankruptcy courts to issue any order necessary or appropriate to carry out the provisions of the Bankruptcy Code, and more generally from the bankruptcy court's being a so-called "court of equity." *Colonial Realty*, 966 F.2d at 60 (citing *Pepper v. Litton*, 308 U.S. 295, 304 (1939)); *In re Bonham*, 226 B.R. at 75; *In re Standard Brands*, 154 B.R. at 567 (citing cases).

Most courts have held that bankruptcy courts also have the power under Section 105 of the Bankruptcy Code to consolidate a bankruptcy debtor with an entity not in bankruptcy. See, e.g., *In re Bonham*, 226 B.R. at 75. (In what appears to be a slight majority of the cases

¹A few reported opinions involve substantive consolidation in which at least one oldie legal entities was a statutory limited liability company See eg., *In re American Ilunicipalienl, Inc.*, 298 B.R. 152, 155 & ml, 156 (Bankr. M.D. Tenn. 2003) (substantive consolidation was appropriate tier a number of corporations and three limited liability companies involved in home health care scrvice s) *In re Erhrrn is Theatres Circuit, Inc.*, 281 H.R. 675, 677 & n.l, 078 (Bankr. C.D. Cal. 2002) (noting that bankruptcy estates of five California corporations and two Delaware limited liability companies, and their affiliates, were substantively consolidated in confirmed chapter 11 plan); *In rc Summit Financial Serices, Inc.*, 240 B. R. 105, 108 (Bankr. N.D. Ga. 1999) (three corporations and one limited liability company substantively consolidated in involuntary Chapter 7 of financial institutions). "Based on the developtoent of die vase law with respect to both corporations and partnersh ips, however, there does nut appear to be any reason why materially different standards or principles should apply to an analysis of these [substantive consolidation] issues as they relate to a limited liability company." *2 Collier on Bankruptcy P.105.09(1)(c)*, at 105-87 (15th ed. rev., Release 67, August 1998) (footnote unfitted). [he similarities between limited liability companies and limited partnerships suggest that the courts would view the substantive consolidation of limited partnerships by the same standards as the substantive consolidation of limited liability companies and corporations. Accordingly, the legal status of Borrower as a Delaware limited liability conipanydoes not change our substantive-consolidation analysis herein.

which have decided the issue, courts have held that the estate of a non-debtor can be consolidated into that of a debtor under the appropriate circumstances.²) *White v. Creditors Serv. Corp.* (In re Creditors Serv. Corp.), 195 B.R. 680, 689 (Bankr. S.D. Ohio 1996); *Simon v. New Ctr. Hosp.* (Matter of New Or. Hosp.), 187 B.R. 560, 566-67 (E.D. Mich. 1995); *Brucaglia v. Manzo* (In re United Stairs Corp.), 176 B.R. 359, 368 (Bankr. D.N.J. 1995); *In re Gucci*, 174 B.R. 401, 413 (Bankr. S.D.N.Y. 1994) (It is not a requirement that all the entities be debtors.); *Munford*, 115 B.R. at 396-97 (citing *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941)). But see *In re Circle Land & Cattle Corp.*, 213 Q.R. at 877 (reasoning that because bankruptcy court lacks subject-matter jurisdiction over non-debtor, it cannot consolidate debtor with non-debtor); *In re Colfor, Inc.*, No. 96-60306, 1997 WL 605100, at *2 (Bankr. N.D. Ohio Sept. 4, 1997); *In re Julien Co.*, 120 B.R. 930, 934 (Bankr. W.D. Team. 1990) (questioning bankruptcy court's power under Section 105 to consolidate a non-debtor); *In re Alpha & Omega Realty, Inc.*, 36 B.R. 416, 417 (Bankr. D. Idaho 1984) (concluding that non-debtor status of entity precluded consolidation). In this connection, some courts have argued that the consolidation of a debtor with a non-debtor essentially circumvents the requirements in Section 303 of the Bankruptcy Code for filing an involuntary bankruptcy petition against the non-debtor. See *In re Circle Land & Cattle Corp.*, 213 B.R. at 876-77; *Morse Operations, Inc. v. Robins Le-Coca, Inc.* (In re Lease-A-Fleet, Inc.), 141 B.R. 869, 875 (Bankr. E.D. Pa. 1992); *Goldman v. Haverstraw Assocs.* (In re R.H.N. Realty Corp.), 84 B.R. 356, 358 (Bankr. S.D.N.Y. 1988). Other courts, however, have rejected this argument. E.g., *In re Alico Mining, Inc.*, 278 B.R. at 588, 589 (rejecting involuntary-bankruptcy limitation, but requiring party seeking substantive consolidation of debtor with non-debtor to establish debtor nothing more than alter ego of non-debtor); *Matter of Munford*, 115 B.R. at 397-398.

Standards for Substantive Consolidation

The standards for substantive consolidation have evolved exclusively through case law, not by statute. Although Sections 302 and 1123(a)(5)(C) of the Bankruptcy Code refer to "consolidation," they do not articulate a legal standard for substantive consolidation.² Additionally, Rule 1015(b) of the Federal Rules of Bankruptcy Procedure expressly permits the "joint administration" of separate debtors' estates, but the Official Advisory Committee Note to Rule 1015(b) makes it clear that Rule 1015(b) has nothing to do with substantive consolidation. *In re Bonham*, 226 B.R. at 76.

In determining whether substantive consolidation is appropriate, courts have assayed a multitude of factors in lieu of applying a rigid, bright-line test. These factors are as follows:

(a) Common Ownership or Control.

Common ownership or control of the debtor and the entities sought to be consolidated increases the likelihood of consolidation, but will not by itself result in consolidation. E.g.,

²Though a provision for merger or consolidation of the debtor with one or more persons may be a permissible means for the mandatory adequate implementation of a chapter 11 plan, 11 U.S.C. § 1123(a)(5)(C), the mere inclusion of a substantive-consolidation provision in a chapter 11 plan does not automatically mean that such a provision will be or can be automatically confirmed over proper objection. See *In re Stolle & Webster, Inc.*, 286 B.R. 532, 542, 545 n.8, 546 (Bankr. D. Del. 2002) (reserving examination of facts of chapter 11 case bearing upon numerous substantive-consolidation factors and concomitant determination whether substantive consolidation warranted).

(b) Identical or Overlapping Officers or Directors.

When the debtor and the entities sought to be consolidated have identical or overlapping officers or directors, this increases the likelihood of consolidation, but is not controlling. See, e.g., *In re Ltd. Gaming*, 228 B.R. at 288; *In re Lease-A-Fleet*, 141 B.R. at 871, 877; *In re Thickhead Am. Corp.*, No. 91-978, 1992 Bankr. LEXIS 2506 (Bankr. D. Del. Aug. 13, 1992); *In re Drexel Burnham Lambert Group Inc.*, 138 B.R. 723, 766 (Bankr. S.D.N.Y. 1992).

(c) Consolidated Tax Returns or Financial Reporting.

When the debtor and its affiliates file consolidated tax returns, or report their assets and liabilities on a consolidated basis in financial statements or Securities and Exchange Commission documents, consolidation becomes more likely. See, e.g., *In re Richton Int'l. Corp.*, 12 B.R. 555 (Bankr. S.D.N.Y. 1981); *In re Food Fair, Inc.*, 10 B.R. 123 (Bankr. S.D.N.Y. 1981); *Sow-ern*, 328 F.2d 446; compare *Saccurato v. Shawmut Bank N.A. (In re Mars Stores, Inc.)*, 150 B.R. 869, 880 (Bankr. D. Mass. 1993) (consolidated financials in 10-Q weighed in favor of consolidation), with *In re Auto-Train*, 810 F.2d at 278 (S-1 registration statement supported creditor's claim of reliance on separate credit of entity sought to be consolidated).

The presentation of consolidated financial statements and tax returns to the public and creditors can factor significantly into a court's decision to consolidate. See *In re Murray Indus., Inc.*, 119 B.R. 820 (Bankr. M.D. Fla. 1990); *In re Richton Int'l. Corp.*, 12 B.R. at 557. Consolidated tax returns and financial statements can form a basis from which a court can decide that the practical impossibility of reconstructing a debtor's financial records makes substantive consolidation necessary. See *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723. Still, a court may not consolidate a debtor with its related entities if the existence of consolidated financial statements or tax returns does not raise a substantial difficulty or expense in separating the finances of the entities. *In re World Access, Inc.*, 301 B.R. 217 (Bankr. N.D. Ill. 2003); *In re Snider Bros., Inc.*, 18 B.R. 230, 239 (Bankr. D. Mass. 1982) (consolidation not warranted because debtor kept separate books and the allegation that it would take considerable time and expense to verify accounting entries was not sufficient). Moreover, entities not employing consolidated records may still be substantively consolidated when their affairs are greatly entangled in a functional sense. *In re Standard Brands Paint Co.*, 154 B.R. at 572-73.

(d) Inter-Affiliate Debts or Guarantees.

The presence of numerous inter-affiliate debts or guarantees among the affiliates sought to be consolidated typically weighs strongly in favor of consolidation, particularly if such debts or guarantees are very extensive so that untangling would be difficult or costly. See *In re GC Cos.*, 274 B.R. 663, 673 (Bankr. D. Del. 2002) (significant loans of parent guaranteed by subsidiaries reinforced necessity for substantive consolidation), *rev'd in part on other grounds*, 298 B.R. 226 (D. Del. 2003); *In re Standard Brands Paint Co.*, 154 B.R. at 572 (multiple interdebtor guarantees and interdebtor debts pointed towards substantive consolidation even though the debtors were not "entangled in a records sense"); *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. at 766 (numerous and well known intercompany guarantees a factor in allowing substantive consolidation of debtor and subsidiaries); *In re Food Fair*, 10 B.R. at 126 (extensive cross corporate guarantees factor in the interrelationship of the companies and in approving substantive consolidation); *In re Richton Int'l Co.*, 12 B.R. at 558 (same); *In re Vecco Constr. Indus., Inc.*, 4 B.R. 407, 411 (Bankr. E.D. Va. 1980) (existence of inter-company guarantee on major secured obligation added support to substantive consolidation).

However, courts have found that the presence of inter-affiliate guarantees and loans does not demand the imposition of substantive consolidation without the existence of other factors such as commingling of assets and one set of records. *In re World Access, Inc.*, 301 B.R. 217 (intercorporate guarantees were one of several factors that had relevance to the propriety of consolidation, but other, more important factors such as commingling of assets and poor record keeping, had not been established to justify consolidation); *In re Donut Queen, Ltd.*, 41 B.R. 706, 711-12 (Bankr. E.D.N.Y. 1984) (guarantees were not of such a character as to mandate consolidation because they related to one specific transaction and did not evidence a great commonality of business purpose); *In re Snider Bros., Inc.*, 18 B.R. at 239 (consolidation not warranted despite the frequency of intercorporate transactions, loans, direct sales and guarantees because debtor kept separate books and the allegation that it would take considerable time and expense to verify accounting entries was not sufficient).

(e) Undercapitalization.

When the affiliates sought to be consolidated are grossly undercapitalized for their business undertakings, the likelihood of consolidation increases. *See, e.g., In re 1438 Meridian Place, N. W., Inc.*, 15 B.R. 89, 96 (Bankr. D.D.C. 1981).

(i) Commingling of Assets or Business Functions.

The debtor's commingling of assets or business functions with its affiliates weighs in favor of consolidation, but generally is not dispositive unless the commingling is so extensive as to make the separation of the entities' assets impossible or not cost-effective. *See, e.g., Soviero v. Franklin Nat'l Bank*, 328 F.2d at 448. Consolidation may also be appropriate where the debtor and its affiliates are merely functionally integrated, if other factors favoring consolidation are present. *E.g., In re Standard Brands*, 154 B.R. at 572.

(g) Failure To Maintain Corporate and Other Formalities.

The failure of the debtor to maintain corporate formalities, particularly in dealings with its affiliates, weighs in favor of substantive consolidation; but without more, this will not warrant consolidation except in the most egregious cases. *See, e.g., In re Snider Bros.*, 18 B.R. at 234; *In re Buckhead Am. Corp.*, *supra*; *see also Soviero*, 368 F.2d at 448 (featuring flagrant disregard of corporate forms); *In re Tureaud*, 45 B.R. at 660-61 (featuring egregious disregard of corporate formalities).

(h) Fraudulent or Preferential Transfers.

When significant fraudulent or preferential transfers exist between the debtor and the entity sought to be consolidated, courts sometimes will grant consolidation to obviate the cost of avoiding or recovering such transfers. *See, e.g., In re Tureaud*, 59 B.R. at 977; *In re Standard Brands*, 154 B.R. at 571. Other courts, however, have held that the traditional statutory methods for avoiding and recovering such transfers expressly provided in the Bankruptcy Code are always preferable to the more radical remedy of substantive consolidation. *See, e.g., In re Lease-A-Fleet*, 141 B.R. at 875-76.

(i) **Fraudulent or Inequitable Use of an Affiliate.**

When the debtor uses an affiliate to hide or perpetrate fraud, to hinder creditors, or otherwise to advance an inequitable result, consolidation is likely. See, e.g., *Sampsell*, 313 U.S. at 216-17; *Manle Indus.*, 232 F.2d at 297; *In re Tureaud*, 45 B.R. at 663.

(j) **Economic Benefits of Consolidation.**

A factor frequently considered by courts is the potential profitability of consolidating the debtor and its related entities. See, e.g., *In re Vecco Constr. htdus., Inc.*, 4 B.R. at 410. Consolidation has been granted where it improved the debtor's chances for a successful financial reorganization. See, e.g., *In re Orfa Coip.*, 129 B.R. at 414-15 (citing *In re F.A. Potts & Co., Inc.*, 23 B.R. 569, 572 (Bankr. E.D. Pa. 1982)).

(k) **Degree of Difficulty in Segregating Assets and Liabilities.**

An extremely probative and sometimes decisive factor in consolidation decisions is the degree of difficulty in segregating the various entities' respective assets and liabilities. Consolidation probably will be granted if the entities' assets and liabilities are so entangled that their segregation is impossible or can only be achieved at great expense. See, e.g., *In re Augie/Restivo*, 860 F.2d at 519; *In re Drexel Burnham*, 138 B.R. at 766. But see *In re DRW Prop.*, 54 B.R. at 496-497 (refusing to grant consolidation even though it would cost over \$2 million to disentangle the various entities).

(l) **Reliance on Separate Credit of Entities To Be Consolidated.**

In honoring settled commercial expectations, courts frequently eschew consolidation where objecting creditors have reasonably relied on the separate credit of one of the entities sought to be consolidated. See, e.g., *In re Augie/Restivo*, 860 F.2d at 515; *In re Auto-Train*, 810 F.2d at 277-78. A creditor may be estopped from asserting such reliance, however, where the creditor knew or should have known of the close association of the debtor and the entities sought to be consolidated. *Eustgroup*, 935 F.2d at 249 n.11 (citing *In re Snider Bros.*, 18 B.R. at 235, 237, 233). Alternatively, if creditors have dealt with the debtor and its related entities as a single integrated entity, that fact weighs in favor of consolidation but is not controlling. Compare *In re Leslie Fay Cos., Inc.*, 207 B.R. 764, 780 (Bankr. S.D.N.Y. 1997) (granting consolidation), and *In re Munjbrd*, 115 B.R. at 395-96 (granting consolidation), with *In re Crown Mach. & Welding, Inc.*, 100 B.R. 25, 28 (Bankr. D. Mont. 1989) (refusing to consolidate even though creditors believed they were dealing with one entity).

(m) **Prejudice or Benefit to Creditors.**

Inequitable prejudice to creditors generally precludes consolidation. See, e.g., *In re Augie/Restivo*, 860 F.2d at 517-19 (refusing to consolidate where secured lender's unsecured deficiency claim would have been subordinated as a result). However, that some creditors will be adversely affected by consolidation is not controlling. *In re Murray Indus., Inc.*, 119 S.R. at 828. See *In re Owens Corning*, 419 F.3d 195 at 214 (3d Cir. 2005) (noting that "mere benefit to some creditors... falls far short" of justifying consolidation.) Thus, if consolidation would directly benefit certain creditors, it may be granted over the objections of other creditors. E.g., *Eastgroup*, 935 F.2d at 251 (permitting consolidation in part because it would increase the pro rata distribution to priority creditors).

(n) Individual or Non-Debtor Status of Entities To Be Consolidated.

A number of courts have expressed reluctance to consolidate a debtor with individuals or with entities that are not themselves bankruptcy debtors. Accordingly, in such cases a higher standard for consolidation may be imposed. See, e.g., *In re Lease-A-Fleet*, 141 B.R. at 874, 875-76 (noting that consolidation of a non-debtor "should be reserved for unusual circumstances"); *In re Julien Co.*, 120 B.R. at 935 (noting that the bankruptcy trustee's attempt to consolidate assets of individual contemplated a "broader and more invasive result").

Methodologies for Applying Substantive Consolidation Factors

As the overriding concern guiding the application of the above factors is the equitable treatment of creditors, the central inquiry in evaluating a motion for substantive consolidation is whether the economic prejudice resulting from continued recognition of the entities' separateness outweighs the economic prejudice that would be caused by the entities' consolidation. E.g., *Eastgroup*, 935 F.2d at 249 (quoting *In re Snider Bros.*, 18 B.R. at 234). Nevertheless, the federal courts have implemented different approaches for assaying the numerous factors discussed above. While our opinion is not limited to the application of any specific methodology, three basic methodologies have emerged. See generally *In re Bonham*, 226 B.R. at 81-83. They are as follows:

(a) First Methodology.

The first methodology relies on the factors listed above, or some subset thereof, as a means for measuring the equities, benefits, and detriments of consolidation. See, e.g., *In re Creditors Sere.*, 195 B.R. at 690 ("The factors merely provide the framework to assist the Court's inquiry whether harm will result in the absence of consolidation."); *In re Pecco Constr.*, 4 B.R. at 410. According to this view, no one factor is decisive, and not all of the factors favoring consolidation need be present in order for consolidation to be justified. E.g., *In re Orfa Corp.*, 129 B.R. at 415. In situations where some factors favoring consolidation are present to a significant degree, but other critical factors are absent or are in conflict, a court nonetheless may conclude that substantive consolidation is sufficiently beneficial to be appropriate. *Ibid.* Courts following this approach, however, generally place the burden on the proponent of consolidation of proving that the benefits from consolidation outweigh any resulting prejudice. E.g., *In re Crown Mach.*, 100 S.R. at 27 (citing *Matter of Steuiv*, 94 B.R. 553, 554 (Bankr. N.D. Ind. 1988)); *In re Snider Bros.*, 18 B.R. at 238.

(b) Second Methodology.

The United States Court of Appeals for the Second Circuit has articulated a similar, but not identical, methodology that has gained acceptance in a number of courts. This standard treats the relevant factors outlined above as mere variants of two critical criteria: (i) whether creditors dealt with the entities sought to be consolidated as a single economic unit and did not rely on their separate identity in extending credit, and (ii) whether the affairs of the entities sought to be consolidated are so entangled that consolidation will benefit all creditors because segregating the entities' respective affairs is impossible or so costly as to threaten the realization of any net assets for creditors. *In re Augie/Restivo*, 860 F.2d at 518-19; *see also Colonial Realty*, 966 F.2d at 61 (affirming the *Augie/Restivo* standard). If the proponent of consolidation establishes that either of these criteria is satisfied, consolidation may be granted. *In re Standard Brands*, 154 B.R. at 569. *See also In re Bonham*, 226 B.R. at 97. More recently, in *In re Owens Corning*, 419 F.3d 195 (3d Cir. 2005), the United States Court of Appeals for the Third Circuit articulated the following five principles in determining whether to order consolidation:

(1) Limiting the cross-creep of liability by respecting entity separateness is a 'fundamental ground [.]'. As a result, the general expectation of state law and of the Bankruptcy Code, and thus of commercial markets, is that courts respect entity separateness absent compelling circumstances calling equity (and even then only possibly substantive consolidation) into play.

(2) The harms substantive consolidation addresses are nearly always those caused by debtors (and entities they control) who disregard separateness. Harms caused by creditors typically are remedied by provisions found in the Bankruptcy Code (e.g., fraudulent transfers 548 and 544(b)(1), and equitable subordination, § 510(c)).

(3) Mere benefit to the administration of the case (for example, allowing a court to simplify a case by avoiding other issues or to make postpetition accounting more convenient) is hardly a harm calling substantive consolidation into play.

(4) Indeed, because substantive consolidation is extreme (it may affect profoundly creditors' rights and recoveries) and imprecise, this 'rough justice' remedy should be rare and, in any event, one of the last resort after considering and rejecting other remedies (for example, the possibility of more precise remedies conferred by the Bankruptcy Code).

(5) While substantive consolidation may be used defensively to remedy the identifiable harms caused by entangled affairs, it may not be used offensively (for example, having a primary purpose to disadvantage tactically a group of creditors in the plan or to alter creditor rights).

Id. at 211 (citations omitted).

(c) Third Methodology.

The third methodology has been adopted in the Eleventh Circuit, the District of Columbia Circuit and Third Circuit and may constitute the prevailing standard for substantive consolidation in many jurisdictions. This standard allows the proponent of consolidation to establish a prima facie case for consolidation by demonstrating (i) a substantial identity between the entities sought to be consolidated, and (ii) that consolidation is necessary to avoid some harm or to realize some benefit. The proponent of consolidation may rely upon the usual factors relied on in substantive consolidation cases, or some subset thereof, to prove either or both elements of the prima facie case. Upon establishing a prima facie case, the burden shifts to objecting creditors to prove that they reasonably relied on the separate credit of one of the entities sought to be consolidated in extending credit and that they would be prejudiced by consolidation. If a creditor proves reasonable reliance and prejudice, consolidation may be granted only if its benefits "heavily outweigh" its detriments. If such a creditor fails to prove either reasonable reliance or prejudice, however, consolidation may be granted regardless of whether the benefits of consolidation "heavily outweigh" its detriments. E.g., *In re New Ctr. Hosp.*, 187 B.R. at 569 ("Since reliance and prejudice have not been shown, the Court need not reach the issue of whether the benefits of consolidation 'heavily outweigh the harm.'). See also *Eastgroup*, 935 F.2d at 249; *In re Auto Train*, 810 F.2d at 276; *In re Ltd Gaming*, 228 B.R. at 287; *In re Standard Brands*, 154 B.R. at 568-69; *In re Lewellyn*, 26 B.R. 246, 251-252 (Bankr. S.D. Iowa 1982).

Because the disregard of separate corporate existences is not generally favored, there is a presumption against substantive consolidation, and the party seeking it has the burden of establishing the necessity for it. E.g., *In re Auto-Train*, 810 F.2d at 276. Courts have generally treated substantive consolidation as the exception rather than the rule because of the "possibility of unfair treatment of creditors who have dealt solely with the corporation having a surplus as opposed to those who have dealt with the related entities with deficiencies." *In re Con'l Vending Mach. Corp.*, 517 F.2d at 1001; see also *Kheel*, 369 F.2d at 847 (it should be the "rare case" where substantive consolidation is granted); *In re DRW Prop.*, 54 B.R. at 494 (courts should grant substantive consolidation sparingly because of the possibility of unfair treatment of some creditors). Thus, although "the term [consolidation] has a disarming innocent sound, ... [it] is no mere instrument of procedural convenience ... but a measure vitally affecting substantive rights- in equity. *In re Flora Mir Candy Corp.*, 432 F.2d at 1062. Furthermore, because the rules for substantive consolidation are not statutorily provided, courts must examine the facts and circumstances of each case to determine if such an order is warranted.

The factors weighed by the federal courts in determining whether substantive consolidation is appropriate fall within two general categories. First, courts have evaluated the internal relationships of the affiliated entities to determine whether "there is substantial identity between the entities to be consolidated." *Eastgroup*, 935 F.2d at 249. Second, courts have evaluated whether "consolidation is necessary to avoid some harm or to realize some benefit" with respect to the creditors of the entities to be consolidated. *Id.* This second factor relates to whether "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit." *In re Augie/Restivo*, 860 F.2d at 518.

Substantive Consolidation as Applied Substantial Identity.

In analyzing the pre-bankruptcy interrelationship between the parties with an eye toward their potential substantial identity, many federal courts have articulated an objective list of factors to be applied in substantive consolidation cases. For example, the court in *In re Vecco Construction* set forth seven factors for determining whether substantive consolidation is appropriate:

1. The commingling of assets and business functions.
2. The degree of difficulty in segregating and ascertaining individual assets and liabilities.
3. The existence of parent and intercorporate guarantees on loans.
4. The transfer of assets without observance of corporate formalities.
5. The presence or absence of consolidated financial statements.
6. The unity of interests and ownership between the various corporate entities.
7. The profitability of consolidation at a single physical location.

In re Vecco Constr., 4 B.R. at 410. *Accord In re Murray Indus., Inc.*, 119 B.R. at 830; *In re Mortgage Irrv. Co.*, 111 B.R. 604, 610 (Bankr. W.D. Tex. 1990). See also *Fish*, 114 F.2d at 191 (setting forth a list of ten substantially similar factors). It must be stressed, however, that the factors set forth in *In re Vecco Construction*, along with additional factors formulated in other cases, are merely "examples of information that may be useful to courts charged with deciding whether there is a substantial identity between the entities to be consolidated and whether consolidation is necessary to avoid some harm or to realize some benefit." *Eastgroup*, 935 F.2d at 250. Therefore, although a proponent of consolidation may want to frame his argument using the seven factors outlined in *In re Vecco Construction*, the existence or absence of any number of those factors is not necessarily determinative. *Eastgroup*, 935 F.2d at 249.

Benefit or harm to creditors.

In considering whether or not to impose substantive consolidation, courts have also weighed the potential harm or benefit to creditors. The United States Court of Appeals for the Second Circuit has stated that the "sole purpose of substantive consolidation is to ensure the equitable treatment of all creditors." *In re Augie/Restivo*, 860 F.2d at 518, and that the *Vecco Construction* factors are "merely variants on two critical factors: (i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; . . . or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors." *In re Augie/Restivo*, 860 F.2d at 518. Where creditors rely on the separate existence of corporate entities in extending credit, or would suffer more than minimal harm from disregarding such separate existence, the balance of equities weighs against substantive consolidation. *In re Donut Queen*, 41 B.R. at 710. The United States Court of Appeals for the Eleventh Circuit, like the Court of Appeals for the Second Circuit, has stressed creditor reliance and prejudice as the key factors in any consolidation analysis: if a party opposing substantive consolidation establishes that "(1) it has relied on the separate credit of one of the entities to be consolidated; and (2) it will be prejudiced by substantive consolidation," then substantive consolidation may be ordered only if the "demonstrated benefits of consolidation heavily outweigh the harm." *Eastgroup*, 935 F.2d at 249 (citing *In re Auto-Train*, 810 F.2d at 276). Courts have relied upon the existence of such prejudice as grounds for denying substantive consolidation. *In re Ai. Augie/Restivo*, 860 F.2d 515; *In re Auto-Train*, 810 F.2d at 277-78; *In re Flora Mir Candy*, 432 F.2d at 1062-63; *Anaconda Bldg. Materials Co. v. Newland*, 336 F.2d 625, 628 (9th Cir. 1964).³

Some courts have considered whether substantive consolidation increases the likelihood of the debtor's rehabilitation and reorganization. Factors considered include the potential savings in cost and time, the elimination of duplicate claims, and whether there is a question who among potentially consolidated parties is liable. *Cont'l Vending*, 517 F.2d at 1001.⁴ Eliminating the need to disentangle assets, however, does not, without more, justify consolidation. "[S]ubstantive consolidation should be used only after it has been determined that all creditors will benefit because untangling is either impossible or so costly as to consume the assets." *In re Augie/Restivo*, 860 F.2d at 519.

IV. ANALYSIS

Based on the representations, warranties, assumptions, and covenants relied upon for purposes of this opinion as specified in Section II above, the accuracy in all respects material to Borrower's separateness of such representations and warranties and the compliance in all respects material to Borrower's separateness, with such covenants we have assumed for purposes of this opinion, we believe it would be difficult for a creditor or other party in interest (a) to establish a prima facie case for Substantive Consolidation, (b) to prove that Borrower is so entangled with any Relevant Entity as to cause any difficulty in segregating their respective assets and liabilities, or (c) to establish that any of such parties has been organized or used for any illicit or illegal purpose, or for the purpose of working any injustice upon their creditors.

More specifically, none of the seven factors recited in *In re Vecco Construction*, 4 B.R. at 410, would militate in favor of substantial identity between the Borrower and any Relevant Entity.

Conversely, courts have also cited the absence of objecting parties as a factor favoring consolidation. *Standard Brands*, 154 B.R. at 571-572 (inferring lack of harm to creditors from lack of objection to consolidation); *In re Buckhead Am. Corp.*, No. 91-978, 1992 Bankr. LEXIS 2506 (order granting substantive consolidation of a special-purpose subsidiary with its parent after all objections from the subsidiary's creditors had been resolved through settlement); *In re Drexel Burnham Lambert*, 138 B.R. at 766 (citing lack of objections from creditors in approving a plan of reorganization premised on substantive consolidation); *In re Frontier Airlines, inc.*, 93 B.R. at 1016 (granting substantive consolidation where "complete financial separation of the entities would be difficult to accomplish" and Into party in interest" had objected). Accordingly, we express no opinion as to whether a bankruptcy court would order substantive consolidation should none of the parties to these transactions object to consolidation.

⁴ See also *In re Drexel Burnham Lambert*, 138 B.R. at 766 (approving a plan of reorganization premised on substantive consolidation where no creditors had objected and where establishing to whom actual liability, if any, should be allocated would be a "[H]erculean task consuming years of costly professional services, thereby draining significant amounts of value from the Debtors' estates").

given such representations, warranties, and covenants set forth above with respect to the Loan Documents, the Organizational Documents, and the Certificate. We note that Acadia Strategic has, pursuant to that certain Environmental Indemnity Agreement, agreed to indemnify Lender for any Losses (as defined therein) incurred by Lender as a result of certain environmental conditions with respect to the Property, as set forth therein (the "**Environmental Indemnity**"); and the Guarantor has, pursuant to that certain Guaranty Agreement, indemnified Lender for certain "bad boy" acts as set forth therein (the "**Non-Recourse Guaranty**"), and together with the Environmental Indemnity, and the Non-Recourse Guaranty, collectively referred to herein as the "**Guaranty**"), implicating Veeco's guaranty factor. However, this factor should not be significant with respect to the Environmental Indemnity and Non-Recourse Guaranty, given that the applicable Guarantor's obligations pursuant to said Environmental Indemnity and Non-Recourse Guaranty are limited in scope in the following manner: (a) the Environmental Indemnity extends only to liability of the Lender as a result of the presence of Hazardous Substances on the Property or the release of Hazardous Substances (each as defined therein); (b) the Non-Recourse Guaranty extends only to what we believe to be customary liability for such matters as fraud, intentional misrepresentation, misapplication or conversion of security deposits, insurance proceeds, condemnation awards and other "bad boy acts", as specifically set forth in the Non-Recourse Guaranty. Further, given Lender's reasonable reliance upon Borrower's identity as a legal entity separate from all Relevant Entities, Lender has relied upon Borrower's assets as separate from the Relevant Entities in making the Loan. Lender's reasonable reliance upon the Borrower's separateness from the Relevant Entities militates strongly against Substantive Consolidation. See *In re Cent. European Indus. Del. Co.*, 288 B.R. 572 (Bankr. N.D. Cal. 2003); see also *In re Owens Corning* 419 F.3d 195 (3d Cir. 2005).

Further, with respect to the Guaranty, we note that the presence or absence of potential liability of Guarantor pursuant to the Guaranty is one factor in evaluating whether a bankruptcy court would order substantive consolidation of the assets and liabilities of the Borrower with those of Guarantor or with those of any other Relevant Entity. The presence of this potential liability might be found to blur the separate identity of the subject entities and to indicate that in making the Loan the Lender relied on the combined assets of Borrower and its affiliated entities, but would not in itself, in our opinion, cause the Bankruptcy Court to consolidate.

We fully recognize that Substantive Consolidation can potentially benefit unsecured and undersecured creditors of a Relevant Entity by rendering such creditors' claims payable *pari passu* with those of Borrower's unsecured or undersecured creditors out of any net equity in the Property or other assets of Borrower. Such benefit is offset, however, by the inequitable prejudice such substantive consolidation would work upon Borrower's unsecured and undersecured creditors, if any, whose ability to recover upon Borrower's obligations would be diluted by the availability of the net equity in the Property or other assets of Borrower to unsecured and undersecured creditors of such Relevant Entity.

With respect to potential harm to the Lender or other holder of the Loan from a Substantive Consolidation, we acknowledge that bankruptcy courts have ordered substantive consolidation over the objection of a fully-secured creditor on the ground that such a creditor is not harmed by substantive consolidation. See *In re FA. Potts*, 23 B.R. at 573; see also *In re*

Mortgage Inv. Co., 111 B.R. 601, 610 (Bankr. W.D. Tex. 1990) (overruling secured creditor's objection to reorganization plan calling for substantive consolidation of affiliates where secured creditor was receiving "indubitable equivalent" of its secured claim). However, the facts of those bankruptcy cases, and the legal conclusions flowing from the facts of those cases, are materially distinguishable from the facts and legal principles that underlie the Loan. Contrary to the assumptions set forth in Section II above and the Certificate with respect to Borrowers' separateness, upon which we rely, the entities in *In re F.A. Potts* had always closely interrelated their financial affairs, had engaged in inter-entity loans, and had formed "essentially one operation." *In re F.A. Potts*, 23 B.R. at 573. The entities in *In re Mortgage Investment* had unitary ownership, had commingled assets and business functions, and had transferred assets among themselves without observing corporate formalities. *In re Mortgage Inv.*, 111 B.R. at 610. As we assume, to the extent set forth above, that Borrower will comply with the Loan Documents and Borrower's LLC Agreement regarding compliance by it with respect to the separateness of Borrower, and as the separateness covenants contained therein forbid the abovementioned conduct committed by the entities in *In re P.A. Potts* and in *In re Mortgage Investment*, Substantive Consolidation should not occur nor be countenanced under the holdings of *In re F.A. Potts* or *In re Mortgage Investment*.

Though Lender is secured, it would foreseeably be harmed by Substantive Consolidation of Borrower with a Relevant Entity. In such event, the various assets of Borrower would be pooled with the assets of the Relevant Entity to form a unitary bankruptcy estate from which allowed claims of creditors and allowed interests of equity security interest holders would receive distributions (if and to the extent the estate contains assets) in accordance with the distributional and priority schemes in the Bankruptcy Code. In such event, the Lender also would likely be enjoined from foreclosing upon its Security Instrument on the Property by the automatic stay provisions of Section 362 of the Bankruptcy Code, and would then have to meet the standard enunciated in Section 362(d) of the Bankruptcy Code, and thereby obtain relief from the automatic stay, in order to foreclose upon its Security Instrument on the Property.

There can be no assurance that the Loan will be deemed fully secured as of the date of Borrower's bankruptcy, if any, or a proceeding for Substantive Consolidation. If the Loan is undersecured, by definition no equity exists in the Lender's collateral of the Borrower for the Loan. This may eliminate the incentive for creditors to seek the substantive consolidation of Borrower with any Relevant Entity, as Borrower would have no assets that are not collateral for the Loan and that remain after satisfaction of the Lender's security interest to which unsecured creditors may look for satisfaction of their own claims.

The Loan is a non-recourse obligation of Borrower except to the extent of the Recourse Obligations specifically set forth in the Loan Documents, which we believe to be customary recourse carve-outs for loss suffered by Lender as a result of "bad acts". No Relevant Entity has any liability for repayment of the Loan, except pursuant to the Guaranty, as discussed above. Accordingly, all in all, it appears that Lender relied, among other things, primarily upon the creditworthiness of Borrower and the value of the Property in making the Loan. Moreover, we conclude that Lender would not have made the Loan on the same favorable terms if Borrower were not organized as a single purpose entity for the

express purpose of insulating its assets from liabilities external to the Property. Thus, it is clear that Substantive Consolidation, with its attendant imposition on Borrower of liabilities external to the Property, would frustrate one of the primary considerations of Lender in making the Loan.

Finally, it should be noted that if Borrower is not a debtor under the Bankruptcy Code at the time substantive consolidation is sought, a bankruptcy court likely would impose a significantly higher standard for its substantive consolidation. The cases in which courts have permitted the substantive consolidation of a non-debtor have been characterized either by fraud, *see, e.g., Sainpsell*, 313 U.S. 215, or by an egregious disregard for corporate formalities, extensive commingling of assets, and a complete failure to maintain separate books and records, rendering the segregation of the entities' respective assets and liabilities virtually impossible. *See, e.g.,* *Soviero*, 328 F.2d 446; *Tureaud*, 45 B.R. 658. Inasmuch as the assumptions above, with respect to the separateness covenants of Borrower, forbid such activities, it is even more unlikely that a bankruptcy court would order Substantive Consolidation when Borrower is not itself a debtor under the Bankruptcy Code. *See In re Lease-A-Fleet*, 141 B.R. at 877 (noting that common ownership, overlapping as opposed to identical directorships, common use of space, and the existence of a "substantial yet informal" debtor-creditor relationship as opposed to an intermingling of assets are "patently insufficient" to establish the degree of entanglement necessary to render substantive consolidation of a non-debtor an appropriate remedy). Our opinion, however, is not affected by whether the Borrower is itself a debtor under the Bankruptcy Code.

V. OPINION

Based on the foregoing and subject to the qualifications and assumptions set forth in this opinion, it is our opinion that in the event that any one or more of the Relevant Entities were to be a debtor or a debtor acting as a debtor-in-possession in a case under the Bankruptcy Code, under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and competently argued case, a United States Bankruptcy Court or other United States court exercising jurisdiction of such case under the Bankruptcy Code would not, in the proper exercise of its equitable discretion, disregard the separate existence of the Borrower so as to order substantive consolidation of the assets and liabilities of Borrower with the assets and liabilities of such Relevant Entity or Relevant Entities and treat such assets and liabilities as though Borrower and such Relevant Entities were one entity, regardless of whether Borrower was also a debtor under the Bankruptcy Code.

VI. QUALIFICATIONS

We note that a bankruptcy court, as a court of equity, has the express power to issue any order or process necessary to carry out the purposes and provisions of the Bankruptcy Code. Substantive consolidation analysis requires an extremely fact-intensive inquiry, and so substantive consolidation cases are largely *srri generis*. Accordingly, it is difficult to ascertain a consistent factual pattern upon which legal precedent of general applicability may be based. The foregoing opinion, therefore, necessarily is based upon a reasoned analysis of cases decided by courts under the laws of various jurisdictions, which cases would not necessarily

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be controlling in all jurisdictions.

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The opinion expressed herein does not constitute an empirical prediction as to the actual result or holding in any particular litigation, but is, rather, our considered legal judgment as to the proper application of legal and equitable principles applicable in bankruptcy cases to the facts set forth herein and relied upon for purposes of this opinion. We note that legal opinions on bankruptcy law matters unavoidably have inherent limitations that generally do not exist in respect of other legal issues on which opinions to third parties typically are given. These inherent limitations exist primarily because of the pervasive equity powers of bankruptcy courts, the overriding goal of reorganization to which other legal rights and policies may be subjugated, the potential relevance to the exercise of judicial discretion of future-arising facts and circumstances, and the nature of the bankruptcy process. These limitations should be taken into account in analyzing the bankruptcy-related risks associated with the Loan.

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We do not purport to express an opinion on any laws other than the laws of the United States of America under the Bankruptcy Code (including reported decisions thereunder) in effect as of the date this opinion is given. This opinion is given only on the date hereof, and we assume no obligation to inform you of changes in the facts or law bearing on this opinion even if such changes are brought to our attention.

-
The opinion expressed herein is given only for the benefit of, and may be relied upon by, Lender, its successors and assigns (including, without limitation, any assignee of Lender's interest in the Loan and any participant of Lender's interest in the Loan), Lender's counsel in connection with the Loan, any servicer of the Loan, any purchaser of the Loan or any portion thereof in any securitization, any rating agency which rates any securities in connection with the Loan, the issuer of securities in a securitization of the Loan, and any trustee, servicer or special servicer appointed in connection with a securitization of the Loan, solely in connection with the transactions contemplated by the Loan Documents, and may not be relied upon by any other party or for any other purpose without our prior written consent.

-
Very truly yours,
-
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SCHEDULE I

A) Documents relating to the Loan:

- A. Building Loan Agreement Between Borrower and Lender;
 - B. Project Loan Agreement Between Borrower and Lender;
 - C. Building Loan Promissory Note from Borrower in favor of Lender;
 - D. Project Loan Promissory Note in favor of Lender;
 - E. Building Loan Mortgage and Security Agreement from Borrower in favor of Mortgage Electronic Registration Systems, Inc.;
 - F. Project Loan Mortgage and Security Agreement from Borrower in favor of Mortgage Electronic Registration Systems, inc. (Documents (E) and (G) collectively referred to as the "Mortgages");
 - G. Building Loan Assignment of Leases and Rents from Borrower in favor of Mortgage Electronic Registration Systems, Inc.;
 - H. Project Loan Assignment of Leases and Rents from Borrower in favor of Mortgage Electronic Registration Systems, Inc. (Documents (H) and (I) collectively referred to as the "Assignments");
 - I. Administration Fee Letter from Borrower to Lender;
 - J. Cash Management Agreement among Borrower, Lender, Agent and Manager;
 - K. Assignment of Management Agreement and Subordination of Management Fees from Borrower in favor of Lender;
 - L. Assignment of Agreements, Permits and Contracts from Borrower to Lender;
 - M. Guaranty of Completion from Acadia Strategic in favor of Lender;
 - N. Guaranty of Recourse Carve Outs from Guarantor in favor of Lender;
 - O. Environmental indemnity Agreement from Borrower and Acadia Strategic to Lender; and
 - P. Deposit Account Control Agreement between Borrower, Lender and Bank of America, N.A.
-

B) Organizational Documents.

- (1) Certificate of Formation of Borrower, dated as of December 8, 2006, as amended on January 25, 2007.
- (2) Operating Agreement of Borrower, dated as of December 8, 2006.

- _____

EXHIBIT A
CERTIFICATE

With respect to the non-consolidation opinion dated December , 2007 (the "Opinion") to be delivered by Wachtel & Masys, LLP ("W&M") in connection with the \$11,229,260.33 Building Loan and \$4,920,739.67 Project Loan (collectively, the "Loan") from Bear Stearns Commercial Mortgage, Inc. (the "Lender") to Acadia Atlantic Avenue, LLC, a Delaware limited liability company, the undersigned hereby certifies that, after due inquiry and review of the Opinion,

The undersigned hereby certify that, after due inquiry and review of the Opinion:

1. The undersigned has personal knowledge of the matters set forth herein.
2. The undersigned acknowledges that (i) Wachtel & Masys, LLP will rely on the representations contained in this Certificate in rendering the Opinion, (ii) the Lender and its successors and assigns will rely on the Opinion in granting the Loan to Borrower, and (iii) the representations contained in this Certificate may also be relied on by nationally recognized statistical rating organizations in connection with such rating organizations' rating of the Note and others as set forth in the Opinion Letter.
3. The facts and assumptions contained in the Opinion are true and correct in all material respects with respect to the undersigned, as of the date hereof.
4. The undersigned has no reason to believe that any statement or fact expressed in the Opinion Letter is untrue, inaccurate or incomplete in any material respect.
5. The individual signing below has been duly authorized by the undersigned entity to execute this Certificate on its behalf.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date of the Opinion.

ACADIA ATLANTIC AVENUE, LLC

-
-
-
By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

ACADIA 3319 ATLANTIC AVENUE, LLC

-
By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

ACADIA STRATEGIC OPPORTUNITY FUND II, LLC

-
By: Acadia Realty Acquisition II, LLC,
its managing member

-
By: Acadia Realty Limited Partnership,
its sole member

-
By: Acadia Realty Trust,
its general partner

-
By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

POST MANAGEMENT, LLC

-
By: _____
Name:
Title:

EXHIBIT L

BORROWER'S REQUISITION

(Building Loan)

[Letterhead of Borrower]

_____, 200

Bear Stearns Commercial Mortgage, Inc. 383 Madison Avenue
New York, New York 10179

Re: Atlantic Avenue Self-Storage, 3319 Atlantic Avenue, Brooklyn, New York

Ladies and Gentlemen:

In accordance with that certain [Building Loan Agreement (the "**Building Loan Agreement**")], [Project Loan Agreement (the "**Project Loan Agreement**")]
dated as of December 26, 2007, between Bear Stearns Commercial Mortgage, Inc. ("**Lender**") and Acadia Atlantic Avenue LLC ("**Borrower**"), this letter will serve as the
Borrower's Requisition requesting an Advance in the amount of \$ under the [Building Loan Agreement], [Project Loan Agreement]. All capitalized terms used herein and not
defined herein have the same meaning as in the Building Loan Agreement.

Please wire the requested Advance on _____, 200____, as follows:

Amount: Bank:
ABA#:

Account:
Account Number:

The support for the above Advance is provided in the attached draw schedules. Please advise the undersigned as soon as the Advance has been credited.

Borrower hereby acknowledges that it has no outstanding defenses, claims, counterclaims or offsets against Lender under the Loan Documents.

Borrower represents and warrants to Lender as of the date hereof as follows:

- (i) All amounts shown on all previous Borrower's Requisitions have been paid in full and all amounts requested herein have been paid or will be paid in full
from the proceeds of the disbursement requested hereby.
- (ii) All work on the Property to the date of this Requisition has been performed in accordance with the Plans and Specifications, and there have been no
changes to the Plans and Specifications except as approved by Lender or as authorized by the Building Loan Agreement.

Exhibit L

- (iii) All labor, materials, and/or services shown on each draw schedule, for which funds have been or are requested, are incorporated into the Property at this date, or in the case of Stored Materials, have been stored in accordance with, and otherwise satisfy the requirements of, the Building Loan Agreement.
- (iv) None of the amounts for which payment is requested in this Requisition have been included in any prior Borrower's Requisition.
- (v) All required Governmental Approvals of the Plans and Specifications by any Governmental Authority have been obtained.
- (vi) There have been obtained all required Governmental Approvals by all Governmental Authorities required to complete the work described in the Plans and Specifications which work is now in progress or was previously completed.
- (vii) To the best knowledge of Borrower, all work on the Property, which has been completed or which is in progress as of this date, does not violate any applicable Legal Requirement.
- (viii) There is no Default or Event of Default under the Building Loan Agreement.
- (ix) The representations and warranties reaffirmed by this Draw Request pursuant to Section 2J L3 of the Building Loan Agreement are true and correct in all material respects on and as of the date of this Borrower's Requisition and will be true and correct in all material respects on and as of the date of such disbursement.
- (x) The Improvements have not been injured or damaged by fire, explosion, accident, flood or other casualty.
- (xi) There has been, since the date of the Building Loan Agreement, no change in the respective properties, business prospects, profits or conditions (financial or otherwise) of Borrower or any Guarantor, except changes occurring in the ordinary course of business, none of which individually or in the aggregate have been materially adverse.

Very truly yours,

By:

Name:

Title:

Exhibit L

-
-
EXHIBIT M

-
-
AIA DOCUMENT NO. 6702

-
-
(FORM OF APPLICATION AND CERTIFICATE FOR PAYMENT)

-
-
[See Attached Form]

-
-
Exhibit L

AIA Document G702[®] - 1992

Application and Certificate for Payment

TO OWNER CONTRACTOR: PROJECT: _____ APPLICATION NO: 901
 PERIOD TO: _____ DISTRIBUTION TO:
 OWNER: ARCHITECT:
 SUBCONTRACT FOR: General Construction
 ARCHITECT:
 SUBCONTRACT DATE: _____ CONTRACTOR:
 PROJECT NOS. / / FIELD:
 FROM SUBCONTRACTOR: VIA ARCHITECT: Not Applicable OTHER:

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Applicable to state for payment, as shown below, in connection with the Subcontract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL SUBCONTRACT SUM \$ 0.00
2. Net change by Change Orders \$ 0.00
3. SUBCONTRACT SUM TO DATE (Line 1 + 2) \$ 0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 0.00

5. RETAINAGE:
 - a. 0 % of Completed Work (Column D - E on G703) \$ 0.00
 - b. 0 % of Stored Materials (Column F on G703) \$ 0.00

- Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 0.00
6. TOTAL EARNED LESS RETAINAGE \$ 0.00
(Line 4 Less Line 5 Total)
 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 0.00
(Line 6 from prior Certificates)
 8. CURRENT PAYMENT DUE \$ 0.00
 9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ 0.00
(Line 7 less Line 8)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
TOTALS	\$ 0.00	\$ 0.00
NET CHANGES by Change Order	\$	\$ 0.00

The undersigned Contractor-Subcontractor certifies that to the best of its knowledge and belief the work covered by this Certificate has been completed in accordance with the Contract Documents. Payment for the work covered by this Certificate has been received from the Owner-Contractor, and that current payment shown herein is now due.

By: _____ Date: _____
 SUBCONTRACTOR

County of: _____ State of: _____
 Subscribed and sworn to before me this _____ day of _____

Notary Public:
 My Commission expires: _____

ARCHITECTS-CERTIFICATE FOR PAYMENT NOT APPLICABLE
 In accordance with the Contract Documents, based on an on-site observation and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work now progressed or indicated on the certificate complies with the Contract Documents and the Contractor is entitled to payment for the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$ _____
 I have explained to the Contractor the effect of this certificate and the Contractor has agreed to conform with the certificate.

By: _____ Date: _____
 ARCHITECT

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under the Contract.

AIA Document G702™ - 1992

Application and Certificate for Payment

TO OWNER:	PROJECT:	APPLICATION NO.: 092	Distribution to:
FROM CONTRACTOR:	VIA ARCHITECT:	PERIOD TO:	<input type="checkbox"/> OWNER
		CONTRACT FOR: General Construction	<input type="checkbox"/> ARCHITECT
		CONTRACT DATE:	<input type="checkbox"/> CONTRACTOR
		PROJECT NOS:	<input type="checkbox"/> FIELD
			<input type="checkbox"/> OTHER

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment as shown below, in connection with the Contract Commission Sheet, AIA Document G703, is attached.

- 1. ORIGINAL CONTRACT SUM \$ 0.00
- 2. Net change by Change Orders \$ 0.00
- 3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 0.00
- 4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 0.00

- 5. RETAINAGE:
 - a. % of Completed Work (Column D - E on G703) \$ 0.00
 - b. % of Stored Material (Column F on G703) \$ 0.00

Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 0.00

- 6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5, Total) \$ 0.00

- 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ 0.00

- 8. CURRENT PAYMENT DUE (Line 6 minus Line 7) \$ 0.00
- 9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 6 less Line 8) \$ 0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
TOTALS	\$ 0.00	\$ 0.00
NET CHANGES by Change Order	\$ 0.00	\$ 0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is due. 08.

By: _____ Date: _____
 CONTRACTOR:
 County of: _____ State of: _____
 Subscribed and sworn to before me this _____ day of _____

Notary Public:
 My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the Architect's Certificate to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 0.00

(Insert explanation if amount certified differs from the amount applied. Insert all figures on this Application and on the Commission Sheet that are changed to conform with the amount certified.)

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

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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 quarterly report on Form 10-Q 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 - -
- Kenneth F. Bernstein -
- President and Chief Executive Officer - -
- November 8, 2010 - -

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 quarterly report on Form 10-Q 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
Michael Nelsen
Senior Vice President and
Chief Financial Officer
November 8, 2010

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 Quarterly Report of Acadia Realty Trust (the "Company") on Form 10-Q for the quarter ended September 30, 2010, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), J. 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
- Kenneth F. Bernstein
- President and Chief Executive Officer
- November 8, 2010
- -

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 Quarterly Report of Acadia Realty Trust (the "Company") on Form 10-Q for the quarter ended September 30, 2010, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), J. 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
Michael Nelsen
Senior Vice President and
Chief Financial Officer
November 8, 2010

