

**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, 2009

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)

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

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

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 6, 2009 there were 39,770,652 common shares of beneficial interest, par value \$.001 per share, outstanding.

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## FORM 10-Q

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## Item 1. Financial Statements.

## ACADIA REALTY TRUST AND SUBSIDIARIES

## CONSOLIDATED BALANCE SHEETS

(dollars in thousands)	September 30, 2009 (unaudited)	December 31, 2008 as adjusted
<b>ASSETS</b>		
Operating real estate		
Land	\$ 215,697	\$ 192,496
Buildings and improvements	774,193	648,112
Construction in progress	24,729	16,618
	<u>1,014,619</u>	<u>857,226</u>
Less: accumulated depreciation	185,475	165,067
Net operating real estate	829,144	692,159
Real estate under development	177,887	234,769
Cash and cash equivalents	117,831	86,691
Cash in escrow	8,897	6,794
Investments in and advances to unconsolidated affiliates	52,727	54,978
Rents receivable, net	15,814	12,648
Notes receivable and preferred equity investment, net	120,001	125,587
Deferred charges, net of amortization	28,791	21,899
Acquired lease intangibles, net of amortization	23,449	19,476
Prepaid expenses and other assets, net of amortization	21,671	31,692
Assets of discontinued operations	1,155	4,690
Total assets	<u>\$ 1,397,367</u>	<u>\$ 1,291,383</u>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Mortgage notes payable	\$ 759,549	\$ 653,543
Convertible notes payable, net of unamortized discount of \$2,354 and \$6,597, respectively	47,661	100,403
Acquired lease and other intangibles, net of amortization	7,218	6,506
Accounts payable and accrued expenses	18,364	22,179
Dividends and distributions payable	7,362	25,514
Distributions in excess of income from, and investments in, unconsolidated affiliates	20,666	20,633
Other liabilities	18,653	18,896
Liabilities of discontinued operations	202	1,481
Total liabilities	<u>879,675</u>	<u>849,155</u>
<b>Equity</b>		
Common shares	40	32
Additional paid-in capital	299,419	218,527
Accumulated other comprehensive loss	(3,418)	(4,508)
Retained earnings	16,921	13,671
Total Common Shareholders equity	<u>312,962</u>	<u>227,722</u>
Noncontrolling interests in subsidiaries	204,730	214,506
Total equity	<u>517,692</u>	<u>442,228</u>
Total liabilities and equity	<u>\$ 1,397,367</u>	<u>\$ 1,291,383</u>

See accompanying notes

**CONSOLIDATED STATEMENTS OF INCOME**  
**FOR THE THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2009 AND 2008**

(unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2009	2008	2009	2008
<b>Revenues</b>				
Minimum rents	\$ 25,877	\$ 18,751	\$ 70,922	\$ 58,075
Percentage rents	64	116	392	353
Expense reimbursements	4,868	4,172	15,252	12,088
Lease termination income	2,500	(523)	2,726	23,977
Other property income	362	393	1,550	791
Management fee income	316	496	1,517	2,902
Interest income	5,069	4,684	15,240	9,380
Other	-	-	1,700	-
Total revenues	<u>39,056</u>	<u>28,089</u>	<u>109,299</u>	<u>107,566</u>
<b>Operating Expenses</b>				
Property operating	6,419	5,290	20,965	15,718
Real estate taxes	4,552	3,244	12,305	9,080
General and administrative	5,226	6,822	16,575	19,132
Depreciation and amortization	10,377	7,986	27,412	21,262
Abandonment of project costs	53	-	2,484	-
Reserve for notes receivable	-	-	1,734	-
Total operating expenses	<u>26,627</u>	<u>23,342</u>	<u>81,475</u>	<u>65,192</u>
Operating income	12,429	4,747	27,824	42,374
Equity in (losses) earnings of unconsolidated affiliates	(3,848)	6,664	(7,106)	24,368
Interest and other finance expense	(8,329)	(8,189)	(23,782)	(22,163)
Gain on debt extinguishment	11	-	7,057	-
Gain on sale of land	-	-	-	763
Income from continuing operations before income taxes	263	3,222	3,993	45,342
Income tax benefit (expense)	273	(191)	(1,349)	(2,391)
Income from continuing operations	<u>536</u>	<u>3,031</u>	<u>2,644</u>	<u>42,951</u>
<b>Discontinued Operations</b>				
Operating income from discontinued operations	32	181	225	1,234
Gain on sale of property	-	-	5,637	7,182
Income from discontinued operations	<u>32</u>	<u>181</u>	<u>5,862</u>	<u>8,416</u>
Net income	<u>568</u>	<u>3,212</u>	<u>8,506</u>	<u>51,367</u>
Loss (income) attributable to noncontrolling interests in subsidiaries:				
Continuing operations	6,740	1,386	21,101	(20,660)
Discontinued operations	(1)	(132)	(4,866)	(605)
Net loss (income) attributable to noncontrolling interests in subsidiaries	<u>6,739</u>	<u>1,254</u>	<u>16,235</u>	<u>(21,265)</u>
Net income attributable to Common Shareholders	<u>\$ 7,307</u>	<u>\$ 4,466</u>	<u>\$ 24,741</u>	<u>\$ 30,102</u>
Income from continuing operations attributable to Common Shareholders				
Income from continuing operations attributable to Common Shareholders	\$ 7,276	\$ 4,417	\$ 23,745	\$ 22,291
Income from discontinued operations attributable to Common Shareholders	31	49	996	7,811
Net Income attributable to Common Shareholders	<u>\$ 7,307</u>	<u>\$ 4,466</u>	<u>\$ 24,741</u>	<u>\$ 30,102</u>
<b>Basic Earnings per Share</b>				
Income from continuing operations	\$ 0.18	\$ 0.13	\$ 0.63	\$ 0.66
Income from discontinued operations	-	-	0.03	0.23
Basic earnings per share	<u>\$ 0.18</u>	<u>\$ 0.13</u>	<u>\$ 0.66</u>	<u>\$ 0.89</u>
<b>Diluted Earnings per Share</b>				
Income from continuing operations	\$ 0.18	\$ 0.13	\$ 0.63	\$ 0.65
Income from discontinued operations	-	-	0.03	0.23
Diluted earnings per share	<u>\$ 0.18</u>	<u>\$ 0.13</u>	<u>\$ 0.66</u>	<u>\$ 0.88</u>

See accompanying notes

**CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009 AND 2008**

(unaudited)

(dollars in thousands)

	<b>September 30, 2009</b>	<b>September 30, 2008</b> as adjusted
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 8,506	\$ 51,367
<b>Adjustments to reconcile net income to net cash provided by operating activities</b>		
Depreciation and amortization	27,437	22,446
Gain on sale property	(5,637)	(7,945)
Gain on debt extinguishment	(7,057)	-
Amortization of lease intangibles	4,772	3,447
Amortization of mortgage note premium	(27)	(773)
Amortization of discount on convertible debt	1,031	1,580
Non-cash accretion of notes receivable	(3,914)	(1,132)
Share compensation expense	3,045	2,581
Equity in losses (earnings) of unconsolidated affiliates	7,106	(24,368)
Distributions of operating income from unconsolidated affiliates	461	11,753
Abandonment of project costs	2,484	-
Reserve for notes receivable	1,734	-
Provision for bad debt	2,496	652
<b>Changes in assets and liabilities</b>		
Cash in escrows	(2,103)	(24,595)
Rents receivable	(5,818)	216
Prepaid expenses and other assets, net	8,507	(19,768)
Accounts payable and accrued expenses	(4,971)	4,711
Other liabilities	1,062	5,261
Net cash provided by operating activities	<u>39,114</u>	<u>25,433</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Investment in real estate	(112,913)	(222,040)
Deferred acquisition and leasing costs	(11,654)	(3,975)
Investments in and advances to unconsolidated affiliates	(5,137)	(7,065)
Return of capital from unconsolidated affiliates	1,798	3,921
Repayments of notes receivable	8,831	19,474
Advances on notes receivable	(756)	(49,310)
Preferred equity investment	-	(40,000)
Proceeds from sale of property	9,481	23,627
Net cash used in investing activities	<u>(110,350)</u>	<u>(275,368)</u>

**CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009 AND 2008**

(unaudited)

(dollars in thousands)

	<b>September 30, 2009</b>	<b>September 30, 2008</b>
		as adjusted
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Principal payments on mortgage notes	(150,357)	(65,217)
Proceeds received on mortgage notes	255,065	252,817
Purchase of convertible notes	(46,736)	-
Increase in deferred financing and other costs	(480)	(2,284)
Capital contributions from noncontrolling interests in partially-owned affiliates	7,200	46,014
Distributions to noncontrolling interests in partially-owned affiliates	(915)	(13,708)
Dividends paid to Common Shareholders	(22,993)	(27,841)
Distributions to noncontrolling interests in Operating Partnership	(1,035)	(635)
Distributions on preferred Operating Partnership Units to noncontrolling interests	(29)	(21)
Proceeds from issuance of Common Shares, net of issuance costs	65,222	-
Repurchase and cancellation of Common Shares	(2,715)	(2,102)
Common Shares issued under Employee Share Purchase Plan	80	204
Exercise of options to purchase Common Shares	69	841
	<b>102,376</b>	<b>188,068</b>
Net cash provided by financing activities		
Increase (decrease) in cash and cash equivalents	31,140	(61,867)
Cash and cash equivalents, beginning of period	86,691	123,343
	<b>\$ 117,831</b>	<b>\$ 61,476</b>
Cash and cash equivalents, end of period		
<b>Supplemental disclosure of cash flow information</b>		
Cash paid during the period for interest, including capitalized interest of \$3,005 and \$3,246, respectively	\$ 24,597	\$ 23,131
Cash paid for income taxes	\$ 496	\$ 2,704
<b>Supplemental disclosure of non-cash investing and financing activities</b>		
Acquisition of real estate through assumption of debt	\$ -	\$ 39,967
Dividends paid through the issuance of Common Shares	\$ 16,192	\$ -

See accompanying notes

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**1. THE COMPANY**

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, 2009, the Trust controlled 98% 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 who contributed their interests in certain properties or entities to the Operating Partnership in exchange for common or preferred units of limited partnership interest ("Common or Preferred OP Units"). Limited partners holding Common OP Units are generally entitled to exchange their units on a one-for-one basis for common shares of beneficial interest of the Trust ("Common Shares"). This structure is commonly referred to as an umbrella partnership REIT or "UPREIT."

During 2001, the Company formed a partnership, Acadia Strategic Opportunity Fund I, LP ("Fund I"), and in 2004 formed a limited liability company, Acadia Mervyn Investors I, LLC ("Mervyns I"), with four institutional investors. The Operating Partnership committed a total of \$20.0 million to Fund I and Mervyns I, and the four institutional shareholders committed \$70.0 million, for the purpose of acquiring real estate investments. As of September 30, 2009, Fund I was fully invested.

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

During 2004, the Company, along with the investors from Fund I as well as two additional institutional investors, formed Acadia Strategic Opportunity Fund II, LLC ("Fund II"), and Acadia Mervyn Investors II, LLC ("Mervyns II") with \$300.0 million, in the aggregate, of committed discretionary capital available to acquire or develop real estate investments. The Operating Partnership's share of committed capital is \$60.0 million. The Operating Partnership is the managing member with a 20% interest in both Fund II and Mervyns II. The terms and structure of Fund II and Mervyns II are substantially the same as Fund I and Mervyns I, including the Promote structure, with the exception that the Preferred Return is 8%. As of September 30, 2009, the Operating Partnership had contributed \$32.6 million to Fund II and \$7.6 million to Mervyns II.

During 2007, the Company formed Acadia Strategic Opportunity Fund III LLC ("Fund III") with 14 institutional investors, including all of the investors from Fund I and a majority of the investors from Fund II with \$503 million of committed discretionary capital available to acquire or develop real estate investments. The Operating Partnership's share of the committed capital is \$100.0 million and it is the managing member with a 19.9% interest in Fund III. The terms and structure of Fund III are substantially the same as the previous Funds, including the Promote structure, with the exception that the Preferred Return is 6%. As of September 30, 2009, the Operating Partnership had contributed \$19.2 million to Fund III.

Fund I, Fund II, and Fund III are collectively referred to herein as the "Opportunity Funds."

**2. BASIS OF PRESENTATION**

The consolidated financial statements include the consolidated accounts of the Company and its controlling investments in partnerships and limited liability companies in which the Company is presumed to have control in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 810 "Consolidation" (formerly Emerging Issues Task Force Issue ("EITF") No. 04-05) ("ASC Topic 810"). 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 instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. Investments in entities for which the Company has the ability to exercise significant influence over, but does not have financial or operating control, are accounted for using the equity method of accounting. Accordingly, the Company's share of the net earnings (or loss) of these entities are included in consolidated net income under the caption, Equity in Earnings of Unconsolidated Affiliates. 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.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**2. BASIS OF PRESENTATION, (continued)**

Although the Company accounts for its investment in Albertson's, which it has made through the Retailer Controlled Property Venture ("RCP Venture") (Note 7), using the equity method of accounting, the Company adopted the policy of not recording its equity in earnings or losses of the unconsolidated affiliate until the Company receives the audited financial statements of Albertson's to support the equity earnings or losses in accordance with ASC Topic 323 "Investments – Equity Method and Joint Ventures" (formerly Accounting Principles Board ("APB") Opinion No. 18 "Equity Method of Accounting for Investments in Common Stock."

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. Operating results for the nine months ended September 30, 2009 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2009. For further information, refer to the consolidated financial statements and accompanying footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2008.

The Company has evaluated subsequent events from September 30, 2009 through the time of filing this Form 10-Q with the SEC on November 6, 2009. Material subsequent events that have occurred since September 30, 2009 are discussed in Note 17 to the Consolidated Financial Statements.

In June 2009, the Financial FASB issued ASC Topic 105 "Generally Accepted Accounting Principles" (formerly Statement of Financial Accounting Standards ("SFAS") No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles") ("ASC Topic 105"). ASC Topic 105 identifies the sources of accounting principles and the framework for selecting the principles used in the preparation of financial statements that are presented in conformity with GAAP. It establishes the FASB Accounting Standards Codification ("ASC") as the single source of authoritative accounting principles recognized by the FASB in the preparation of financial statements in conformity with GAAP. The ASC does not create new accounting and reporting guidance rather it reorganizes GAAP pronouncements into approximately 90 topics within a consistent structure. All guidance contained in the ASC carries an equal level of authority. Relevant portions of authoritative content, issued by the Securities and Exchange Commission ("SEC"), for SEC registrants, have been included in the ASC. ASC Topic 105 was effective for financial statements issued for interim and annual periods ending after September 15, 2009. The Company adopted ASC Topic 105 on September 30, 2009.

Effective January 1, 2009, the Company adopted the following FASB pronouncements, which required it to retrospectively restate and reclassify previously disclosed consolidated financial statements. As such, certain prior period amounts have been restated or reclassified in the accompanying unaudited consolidated financial statements to conform to the adoption of these FASB pronouncements.

The Company adopted ASC Topic 810 (formerly SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements,). ASC Topic 810, among other things, provides guidance and establishes amended accounting and reporting standards for noncontrolling interests in a consolidated subsidiary and the deconsolidation of a subsidiary. Under ASC Topic 810, the Company now reports noncontrolling interests in subsidiaries as a separate component of equity in the consolidated financial statements and shows both net income attributable to the noncontrolling interests and net income attributable to the controlling interests on the face of the Consolidated Statements of Income.

The Company adopted ASC Topic 470-20 "Debt with Conversion and Other Options" (formerly FASB Staff Position No. APB 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion Including Partial Cash Settlement"), ("ASC Topic 470-20"). ASC Topic 470-20 requires the proceeds from the issuance of convertible debt be allocated between a debt component and an equity component. The debt component is measured based on the fair value of similar debt without an equity conversion feature, and the equity component is determined as the residual of the fair value of the debt deducted from the original proceeds received. The resulting discount on the debt component is amortized over the period the convertible debt is expected to be outstanding, which is December 11, 2006 to December 20, 2011, as additional non-cash interest expense. The equity component recorded as additional paid-in capital was \$11.3 million, which represented the difference between the proceeds from the issuance of the convertible notes payable and the fair value of the liability at the time of issuance. The additional non-cash interest expense recognized in the Consolidated Statements of Income was \$0.2 million and \$0.5 million for the quarters ended September 30, 2009 and 2008, respectively and \$1.0 million and \$1.6 million for the nine months ended September 30, 2009 and 2008, respectively. Accumulated amortization related to the convertible notes payable was \$0.7 million and \$1.1 million as of September 30, 2009 and December 31, 2008, respectively, after giving effect to repurchases.

The following table shows the effect of the retroactive restatement and reclassification of (i) the consolidated balance sheet accounts for the year ended December 31, 2008 and (ii) the consolidated statement of income for the three and nine months ended September 30, 2008 and consolidated statement of cash flow accounts for the nine months ended September 30, 2008:



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 2. BASIS OF PRESENTATION, (continued)

(dollars in thousands, except per share amounts)

	December 31, 2008		
<b>Affected Consolidated Balance Sheet accounts</b>	<b>Before Adjustment</b>	<b>As Adjusted</b>	<b>Effect of Change</b>
Deferred charges, net of amortization	\$ 22,072	\$ 21,899	\$ (173)
Convertible notes payable	\$ 107,000	\$ 100,403	\$ (6,597)
Minority interests	\$ 214,506	\$ -	\$ (214,506)
Additional paid-in capital	\$ 212,007	\$ 218,527	\$ 6,520
Retained earnings	\$ 13,767	\$ 13,671	\$ (96)
Noncontrolling interests in subsidiaries	\$ -	\$ 214,506	\$ 214,506

	Three months ended September 30, 2008		
<b>Affected Consolidated Income Statement Accounts</b>	<b>Before Adjustment</b>	<b>As Adjusted</b>	<b>Effect of Change</b>
Depreciation and amortization	\$ 8,001	\$ 7,986	\$ 15
Interest expense	\$ 7,653	\$ 8,189	\$ (536)
Net income attributable to Common Shareholders	\$ 4,987	\$ 4,466	\$ (521)
Basic earnings per share	\$ 0.15	\$ 0.13	\$ (0.02)
Diluted earnings per share	\$ 0.15	\$ 0.13	\$ (0.02)

	Nine months ended September 30, 2008		
	<b>Before Adjustment</b>	<b>As Adjusted</b>	<b>Effect of Change</b>
Depreciation and amortization	\$ 21,303	\$ 21,262	\$ 41
Interest expense	\$ 20,583	\$ 22,163	\$ (1,580)
Net income attributable to Common Shareholders	\$ 31,641	\$ 30,102	\$ (1,539)
Basic earnings per share	\$ 0.97	\$ 0.89	\$ (0.08)
Diluted earnings per share	\$ 0.96	\$ 0.88	\$ (0.08)

	Nine months ended September 30, 2008		
<b>Affected Consolidated Statement of Cash Flow Accounts</b>	<b>Before Adjustment</b>	<b>As Adjusted</b>	<b>Effect of Change</b>
Depreciation and amortization	\$ 22,487	\$ 22,446	\$ (41)
Amortization of discount on convertible debt	\$ -	\$ 1,580	\$ 1,580

During December of 2007, the FASB issued ASC Topic 805 "Business Combinations" (formerly SFAS No. 141R, "Business Combinations") ("ASC Topic 805"). ASC Topic 805 establishes principles and requirements for how an acquirer entity recognizes and measures in its financial statements the identifiable assets acquired (including intangibles), the liabilities assumed and any noncontrolling interest in the acquired entity. Effective January 1, 2009, the Company adopted ASC Topic 805 and it did not have a material impact to the Company's financial position or results of operations.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**2. BASIS OF PRESENTATION, (continued)**

During March of 2008, the FASB issued ASC Topic 815 "Derivatives and Hedging" (formerly SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities – an amendment of SFAS No. 133") ("ASC Topic 815"). ASC Topic 815 amends SFAS No. 133 to provide additional information about how derivative and hedging activities affect an entity's financial position, financial performance, and cash flows. It requires enhanced disclosures about an entity's derivatives and hedging activities. ASC Topic 815 was effective for financial statements issued for fiscal years beginning after November 15, 2008. The adoption of ASC Topic 815 did not have an impact on the Company's financial condition or results of operations.

During June of 2008, the FASB ratified ASC Topic 815 (formerly EITF Issue 07-5, "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock"). Paragraph 11(a) of SFAS 133 specifies that a contract that would otherwise meet the definition of a derivative but is both (a) indexed to the Company's own stock and (b) classified in stockholders' equity in the statement of financial position would not be considered a derivative financial instrument. ASC Topic 815 provides a new two-step model to be applied in determining whether a financial instrument or an embedded feature is indexed to an issuer's own stock and thus able to qualify for the SFAS 133 paragraph 11(a) scope exception. ASC Topic 815 became effective on January 1, 2009. The adoption of ASC Topic 815 did not have an impact on the Company's financial position and results of operations.

During October of 2008, the FASB issued ASC Topic 820 "Fair Value Measurements and Disclosures" (formerly FSP FAS 157-3, "Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active") ("ASC Topic 820"). ASC Topic 820 provides guidance in determining the fair value of a financial asset when there is not an active market for that financial asset. The adoption of ASC Topic 820 did not have an impact on the Company's financial position and results of operations.

In April 2009, the FASB issued ASC Topic 825 "Financial Instruments" (formerly FSP SFAS 107-1 and APB 28-1, "Interim Disclosures About Fair Value of Financial Instruments") ("ASC Topic 825"). ASC Topic 825 amends SFAS No. 107, "Disclosures about Fair Values of Financial Instruments" and Accounting Principles Board Opinion No. 28, "Interim Financial Reporting," to require disclosures about fair value of financial instruments in interim financial statements. ASC Topic 825 is effective for interim periods ending after June 15, 2009. The Company adopted ASC Topic 825 and has provided the disclosures in Note 12 to the Consolidated Financial Statements. The adoption did not have an impact on the Company's financial position and results of operations.

In May 2009, the FASB issued ASC Topic 855 "Subsequent Events" (formerly SFAS No. 165 "Subsequent Events") ("ASC Topic 855"). ASC Topic 855 establishes general standards of accounting and disclosure for events that occur after the balance sheet date but before the financial statements are issued and was effective for interim or annual periods ending after June 15, 2009. The Company adopted ASC Topic 855 and has provided the new disclosures as required. The adoption did not have an impact on the Company's financial position and results of operations.

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)," ("SFAS No. 167") which changes the approach to determining the primary beneficiary of a variable interest entity and requires companies to more frequently assess whether they must consolidate a variable interest entity. SFAS No. 167 is effective on the first annual reporting period that begins after November 15, 2009. The FASB has not incorporated SFAS 167 into the ASC. The Company is currently assessing the potential impact of SFAS No. 167 on its financial position and results of operations.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 3. EARNINGS PER COMMON SHARE

Basic earnings per share was determined by dividing the applicable net income attributable to Common Shareholders for the period by the weighted average number of Common Shares outstanding during each period consistent with ASC Topic 260, "Earnings per Share." Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue Common Shares were exercised or converted into Common Shares or resulted in the issuance of Common Shares that then shared in the earnings of the Company.

The following table sets forth the computation of basic and diluted earnings per share from continuing operations for the periods indicated.

	Three months ended September 30,		Nine months ended September 30,	
	2009	2008	2009	2008
<b>Numerator:</b>				
Income from continuing operations attributable to Common Shareholders	\$ 7,276	\$ 4,417	\$ 23,745	\$ 22,291
Effect of dilutive securities:				
Preferred OP Unit distributions	5	6	15	16
Numerator for diluted earnings per Common Share	<u>\$ 7,281</u>	<u>\$ 4,423</u>	<u>\$ 23,760</u>	<u>\$ 22,307</u>
<b>Denominator:</b>				
Weighted average shares for basic earnings per share	39,686	33,845	37,415	33,800
Effect of dilutive securities:				
Employee share options	257	521	189	512
Convertible Preferred OP Units	25	-	25	25
Dilutive potential Common Shares	<u>282</u>	<u>521</u>	<u>214</u>	<u>537</u>
Denominator for diluted earnings per share	<u>39,968</u>	<u>34,366</u>	<u>37,629</u>	<u>34,337</u>
Basic earnings per Common Share from continuing operations attributable to Common Shareholders	<u>\$ 0.18</u>	<u>\$ 0.13</u>	<u>\$ 0.63</u>	<u>\$ 0.66</u>
Diluted earnings per Common Share from continuing operations attributable to Common Shareholders	<u>\$ 0.18</u>	<u>\$ 0.13</u>	<u>\$ 0.63</u>	<u>\$ 0.65</u>

The weighted average shares used in the computation of basic earnings per share include unvested restricted Common Shares ("Restricted Shares") and restricted OP units ("LTIP Units") (Note 15) that are entitled to receive dividend equivalent payments. The effect of the conversion of Common OP Units is not reflected in the above table, as they are exchangeable for Common Shares on a one-for-one basis. The income allocable to such units is allocated on this same basis and reflected as noncontrolling 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 to Common Shares (Note 11) is not reflected in the table as such conversion would be anti-dilutive. The effect of the assumed conversion of 25,067 Series A Preferred OP Units to Common Shares would be dilutive for the three months ended September 30, 2009 and for the nine months ended September 30, 2009 and 2008, respectively, and accordingly, they are included in the table.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 4. COMPREHENSIVE INCOME

The following table sets forth comprehensive income for the three and nine months ended September 30, 2009 and 2008:

(dollars in thousands)	Three months ended September 30,		Nine months ended September 30,	
	2009	2008	2009	2008
Net income attributable to Common Shareholders	\$ 7,307	\$ 4,466	\$ 24,741	\$ 30,102
Other comprehensive (loss) income	(191)	(36)	1,090	(8)
Comprehensive income attributable to Common Shareholders	\$ 7,116	\$ 4,430	\$ 25,831	\$ 30,094

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

The following table sets forth the change in accumulated other comprehensive income for the nine months ended September 30, 2009:

## Accumulated other comprehensive loss

(dollars in thousands)	
Balance at December 31, 2008	\$ (4,508)
Unrealized income on valuation of derivative instruments and amortization of derivative instrument	1,090
Balance at September 30, 2009	\$ (3,418)

## 5. SHAREHOLDERS' EQUITY AND NONCONTROLLING INTERESTS IN SUBSIDIARIES

The following table summarizes the change in the shareholders' equity and noncontrolling interest since December 31, 2008:

(dollars in thousands)	Common Shareholders' Equity	Noncontrolling interests	Total
Balance at December 31, 2008 (as adjusted, Note 2)	\$ 227,722	\$ 214,506	\$ 442,228
Dividends and distributions declared of \$0.57 per Common Share and Common OP Unit	(21,492)	(607)	(22,099)
Net income (loss) for the period January 1 through September 30, 2009	24,741	(16,235)	8,506
Distributions paid	-	(915)	(915)
Other comprehensive income – Unrealized gain on valuation of derivative instruments	1,090	114	1,204
Conversion options on Convertible Notes purchased (Note 11)	(840)	-	(840)
Common Shares issued under Employee Share Purchase Plan	80	-	80
Issuance of Common Shares to Trustees	604	-	604
Issuance of Common Shares through special dividend	16,192	-	16,192
Employee Restricted Share awards	2,289	-	2,289
Employee Restricted Shares cancelled	(2,715)	-	(2,715)
Employee LTIP Unit awards	-	667	667
Issuance of 5,750,000 Common Shares, net of issuance costs	65,222	-	65,222
Employee Exercise of Options	69	-	69
Noncontrolling interest contributions	-	7,200	7,200
Balance at September 30, 2009	\$ 312,962	\$ 204,730	\$ 517,692

Noncontrolling interests includes interests in the Operating Partnership which represent (i) the limited partners' 642,272 Common OP Units at September 30, 2009 and December 31, 2008, (ii) 188 Series A Preferred OP Units at September 30, 2009 and December 31, 2008, with a stated value of \$1,000 per unit, which are entitled to a preferred quarterly distribution of the greater of (a) \$22.50 (9% annually) per Series A Preferred OP Unit or (b) the quarterly distribution attributable to a Series A Preferred OP Unit if such unit were converted into a Common OP Unit. Noncontrolling interests also include outside interests in partially owned affiliates and third-party interests in Fund I, II and III, and Mervyns I and II and three other entities.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 5. SHAREHOLDERS' EQUITY AND NONCONTROLLING INTERESTS IN SUBSIDIARIES, (continued)

For the nine months ended September 30, 2009, 107,331 employee Restricted Shares were cancelled to pay the employees' income taxes due on the value of the portion of the Restricted Shares that vested during the period. During the three and nine months ended September 30, 2009, the Company recognized accrued Common Share and Common OP Unit-based compensation totaling 0.8 million and \$2.9 million, respectively.

## 6. ACQUISITION AND DISPOSITION OF PROPERTIES AND DISCONTINUED OPERATIONS

## Acquisition of Properties

On January 29, 2009, the Company purchased Cortlandt Towne Center for \$78.0 million.

## Discontinued Operations

In accordance with ASC 205-20 "Presentation of Financial Statements, Discontinued Operations", which requires discontinued operations presentation for disposals of a "component" of an entity, for all periods presented, the Company reclassified its consolidated statements of income to reflect income and expenses for properties that were sold or became held for sale prior to September 30, 2009, as discontinued operations and reclassified its consolidated balance sheets to reflect assets and liabilities related to such properties as assets and liabilities related to discontinued operations.

The combined assets and liabilities of properties held for sale for the periods ended September 30, 2009 and December 31, 2008 and the combined results of operations for these properties for the three and nine months ended September 30, 2009 and September 30, 2008 are reported separately as discontinued operations. Discontinued operations include Blackman Plaza located in Wilkes-Barre, Pennsylvania and six Kroger supermarket locations. The Kroger locations were sold in February of 2009. Blackman Plaza was under contract for sale as of September 30, 2009. In addition, 2008 discontinued operations included a residential complex located in North Carolina. The Company sold this complex in April 2008.

The combined assets and liabilities and results of operations of the properties classified as discontinued operations are summarized as follows:

(dollars in thousands)	September 30, 2009	December 31, 2008
<b>ASSETS</b>		
Net real estate	\$ 958	\$ 4,635
Accounts Receivable and Prepaid Expenses	197	55
Total assets of discontinued operations	<u>\$ 1,155</u>	<u>\$ 4,690</u>
<b>LIABILITIES</b>		
Accounts payable and accrued expenses	\$ 2	\$ 1,382
Other liabilities	200	99
Total liabilities of discontinued operations	<u>\$ 202</u>	<u>\$ 1,481</u>

STATEMENTS OF OPERATIONS (dollars in thousands)	Three months ended September 30,		Nine months ended September 30,	
	2009	2008	2009	2008
Total revenues	\$ 120	\$ 651	\$ 494	\$ 3,388
Total expenses	88	470	269	2,154
Operating income	32	181	225	1,234
Gain on sale of property	-	-	5,637	7,182
Income from discontinued operations	32	181	5,862	8,416
Income from discontinued operations attributable to noncontrolling interests in subsidiaries	\$ (1)	\$ (132)	\$ (4,866)	\$ (605)
Income from discontinued operations attributable to Common Shareholders	<u>\$ 31</u>	<u>\$ 49</u>	<u>\$ 996</u>	<u>\$ 7,811</u>

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS

## A. Investments In and Advances to Unconsolidated Affiliates

## Retailer Controlled Property Venture (“RCP Venture”)

During January of 2004, the Company commenced the RCP Venture with Klaff Realty, LP (“Klaff”) and Lubert-Adler Management, Inc., through a limited liability company (“KLA”), for the purpose of making investments in surplus or underutilized properties owned by retailers. As of September 30, 2009, the Company had invested \$60.5 million through the RCP Venture on a non-recourse basis. Cash flow from any investment in which the RCP Venture participants elect to invest, is to be distributed to the participants until they have received a 10% cumulative return and a full return of all contributions. Thereafter, remaining cash flow is to be distributed 20% to Klaff and 80% to the partners (including Klaff).

The table below summarizes the Company’s invested capital and distributions received from its RCP Venture investments.

*Mervyns Department Stores*

During September of 2004, the RCP Venture invested in a consortium to acquire the Mervyns Department Store chain (“Mervyns”) consisting of 262 stores (“REALCO”) and its retail operation (“OPCO”) from Target Corporation. The gross acquisition price of \$1.2 billion was financed with \$800 million of debt and \$400 million of equity. The Company, through Mervyns I and Mervyns II, contributed \$23.2 million of equity and received an approximate 5.2% interest in REALCO and an approximate 2.5% interest in OPCO (which the Company sold in 2007). Subsequent to the initial acquisition, the Company, through Mervyns I and Mervyns II, made additional investments of \$4.3 million. To date, REALCO has disposed of a significant portion of the portfolio.

During the nine months ended September 30, 2009, REALCO recorded an impairment charge on its investment in certain Mervyns Department Store locations and leasehold interests. Mervyns I and II share of this impairment aggregated \$3.1 million and the Operating Partnership’s share amounted to \$0.6 million, net of taxes.

Through September 30, 2009, the Company, through Mervyns I and Mervyns II, made additional investments in locations that are separate from the original investment (“Add-On Investments”) in Mervyns totaling \$3.4 million. The Company accounts for these Add-On Investments using the cost method due to the minor ownership interest and the inability to exert influence over KLA’s operating and financial policies.

*Albertson’s*

During June of 2006, the RCP Venture made its second investment as part of an investment consortium, acquiring Albertson’s and Cub Foods, of which the Mervyns II share was \$20.7 million. Through September 30, 2009, Mervyns II has received distributions from this investment totaling \$63.8 million.

During 2007, the Company, through Mervyns II, made Add-On Investments totaling \$2.4 million and received distributions totaling \$0.5 million. The Company accounts for these Add-On Investments using the cost method due to the minor ownership interest and the inability to exert influence over KLA’s operating and financial policies.

*Other RCP Venture Investments*

During 2006, the Company, through Fund II, made investments of \$1.1 million in Shopko, a regional multi-department retailer, and \$0.7 million in Marsh, a regional supermarket chain. During 2007, Fund II received a \$1.1 million cash distribution from the Shopko investment representing 100% of its invested capital. The Company, through Fund II, made investments of \$2.0 million in additional investments in Marsh and Fund II received distributions of \$1.0 million from Marsh during 2008. During 2009, Fund II received additional distributions of \$1.6 million from Marsh.

During July of 2007, the RCP Venture acquired a portfolio of 87 retail properties from Rex Stores Corporation, which the Company invested in through Mervyns II. Mervyns II’s share of this investment was \$2.7 million.

The Company accounts for these other investments using the cost method due to its minor ownership interest and the inability to exert influence over KLA’s operating and financial policies.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS (continued)

## A. Investments In and Advances to Unconsolidated Affiliates (continued)

The following table summarizes the Company's RCP Venture investments from inception through September 30, 2009:

(dollars in thousands)

Investor	Investment	Year Acquired	Invested Capital and Advances	Distributions	Operating Partnership's Share	
					Invested Capital and Advances	Distributions
Mervyns I and Mervyns II	Mervyns	2004	\$ 27,503	\$ 45,966	\$ 4,901	\$ 11,251
Mervyns I and Mervyns II	Mervyns Add-On					
	Investments	2005/2008	3,445	1,703	283	283
Mervyns II	Albertson's	2006	20,717	63,833	4,239	11,847
Mervyns II	Albertson's Add-On					
	Investments	2006/2007	2,409	466	386	93
Fund II	Shopko	2006	1,100	1,100	220	220
Fund II	Marsh	2006	2,667	2,639	533	528
Mervyns II	Rex Stores	2007	2,701	-	535	-
Total			<u>\$ 60,542</u>	<u>\$ 115,707</u>	<u>\$ 11,097</u>	<u>\$ 24,222</u>

**Brandywine Portfolio**

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

**Crossroads**

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

**Other Investments***Fund I Investments*

Fund I owns a 50% interest in the Sterling Heights Shopping Center which is accounted for using 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.

*Fund II Investments*

Fund II's approximately 25% investment in CityPoint is accounted for using the equity method. The Company has determined that CityPoint is a variable interest entity, and the Company is not the primary beneficiary. The Company's maximum exposure is the carrying value of its investment of \$37.1 million. During May 2009, the Company and Target Corporation ("Target"), as the retail anchor tenant, mutually agreed to terminate a purchase and sale agreement for certain contemplated space.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS, (continued)

## A. Investments In and Advances to Unconsolidated Affiliates (continued)

## Summary of Investments in Unconsolidated Affiliates

The following tables summarize the Company's investments in unconsolidated affiliates as of September 30, 2009 and December 31, 2008. CityPoint is not reflected in the below Statements of Operations as there are no current operations at this redevelopment project.

(dollars in thousands)	September 30, 2009					
	RCP Venture	CityPoint	Brandywine Portfolio	Crossroads	Other Investments	Total
<i>Balance Sheets</i>						
Assets:						
Rental property, net	\$ -	\$ -	\$ 127,498	\$ 5,087	\$ 10,728	\$ 143,313
Real estate under development	-	165,206	-	-	-	165,206
Investment in unconsolidated affiliates	222,975	-	-	-	-	222,975
Other assets	-	3,981	9,975	5,151	2,021	21,128
<b>Total assets</b>	<b>\$ 222,975</b>	<b>\$ 169,187</b>	<b>\$ 137,473</b>	<b>\$ 10,238</b>	<b>\$ 12,749</b>	<b>\$ 552,622</b>
Liabilities and partners' equity						
Mortgage note payable	\$ -	\$ 25,990	\$ 166,200	\$ 62,522	\$ 4,961	\$ 259,673
Other liabilities	-	1,600	7,506	1,729	1,174	12,009
Partners' equity (deficit)	222,975	141,597	(36,233)	(54,013)	6,614	280,940
<b>Total liabilities and partners' equity</b>	<b>\$ 222,975</b>	<b>\$ 169,187</b>	<b>\$ 137,473</b>	<b>\$ 10,238</b>	<b>\$ 12,749</b>	<b>\$ 552,622</b>
Company's investment in and advances to unconsolidated affiliates	\$ 14,095	\$ 37,099	\$ -	\$ -	\$ 1,533	\$ 52,727
Share of distributions in excess of share of income and investment in unconsolidated affiliates	\$ -	\$ -	\$ (8,372)	\$ (12,294)	\$ -	\$ (20,666)

(dollars in thousands)	December 31, 2008					
	RCP Venture	CityPoint	Brandywine Portfolio	Crossroads	Other Investments	Total
<i>Balance Sheets</i>						
Assets:						
Rental property, net	\$ -	\$ -	\$ 129,679	\$ 5,143	\$ 11,481	\$ 146,303
Real estate under development	-	159,922	-	-	-	159,922
Investment in unconsolidated affiliates	295,168	-	-	-	-	295,168
Other assets	-	3,983	8,769	5,283	2,770	20,805
<b>Total assets</b>	<b>\$ 295,168</b>	<b>\$ 163,905</b>	<b>\$ 138,448</b>	<b>\$ 10,426</b>	<b>\$ 14,251</b>	<b>\$ 622,198</b>
Liabilities and partners' equity						
Mortgage note payable	\$ -	\$ 34,000	\$ 166,200	\$ 63,176	\$ 5,173	\$ 268,549
Other liabilities	-	2,307	7,895	2,072	1,083	13,357
Partners equity (deficit)	295,168	127,598	(35,647)	(54,822)	7,995	340,292
<b>Total liabilities and partners' equity</b>	<b>\$ 295,168</b>	<b>\$ 163,905</b>	<b>\$ 138,448</b>	<b>\$ 10,426</b>	<b>\$ 14,251</b>	<b>\$ 622,198</b>
Company's investment in and advances to unconsolidated affiliates	\$ 18,066	\$ 33,445	\$ -	\$ -	\$ 3,467	\$ 54,978
Share of distributions in excess of share of income and investment in unconsolidated affiliates	\$ -	\$ -	\$ (8,236)	\$ (12,397)	\$ -	\$ (20,633)



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS, (continued)

## A. Investments In and Advances to Unconsolidated Affiliates (continued)

## Summary of Investments in Unconsolidated Affiliates (continued)

(dollars in thousands)	Three Months Ended September 30, 2009				
	<u>RCP Venture</u>	<u>Brandywine Portfolio</u>	<u>Crossroads</u>	<u>Other Investments</u>	<u>Total</u>
<i>Statements of Operations</i>					
Total revenue	\$ -	\$ 4,886	\$ 1,903	\$ 341	\$ 7,130
Operating and other expenses	-	1,238	568	213	2,019
Interest expense	-	2,547	869	64	3,480
Equity in losses of affiliates	(2,263)	-	-	-	(2,263)
Depreciation and amortization	-	848	145	739	1,732
Loss on sale of property, net	-	-	-	-	-
Net (loss) income	<u>\$ (2,263)</u>	<u>\$ 253</u>	<u>\$ 321</u>	<u>\$ (675)</u>	<u>\$ (2,364)</u>
Company's share of net (loss) income	\$ (214)	\$ 93	\$ 156	\$ (131)	\$ (96)
Impairment reserve	-	-	-	(3,655)	(3,655)
Amortization of excess investment	-	-	(97)	-	(97)
Company's share of net (loss) income	<u>\$ (214)</u>	<u>\$ 93</u>	<u>\$ 59</u>	<u>\$ (3,786)</u>	<u>\$ (3,848)</u>

(dollars in thousands)	Three Months Ended September 30, 2008				
	<u>RCP Venture</u>	<u>Brandywine Portfolio</u>	<u>Crossroads</u>	<u>Other Investments</u>	<u>Total</u>
<i>Statements of Operations</i>					
Total revenue	\$ -	\$ 4,937	\$ 2,046	\$ 480	\$ 7,463
Operating and other expenses	-	1,513	767	290	2,570
Interest expense	-	2,547	871	84	3,502
Equity in earnings of affiliates	40,091	-	-	-	40,091
Depreciation and amortization	-	955	116	388	1,459
Gain on sale of property, net	-	-	-	-	-
Net income (loss)	<u>\$ 40,091</u>	<u>\$ (78)</u>	<u>\$ 292</u>	<u>\$ (282)</u>	<u>\$ 40,023</u>
Company's share of net income (loss)	\$ 6,772	\$ (17)	\$ 142	\$ (136)	\$ 6,761
Amortization of excess investment	-	-	(97)	-	(97)
Company's share of net income (loss)	<u>\$ 6,772</u>	<u>\$ (17)</u>	<u>\$ 45</u>	<u>\$ (136)</u>	<u>\$ 6,664</u>

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS, (continued)

## A. Investments In and Advances to Unconsolidated Affiliates (continued)

## Summary of Investments in Unconsolidated Affiliates (continued)

	Nine Months Ended September 30, 2009				
	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
(dollars in thousands)					
<i>Statements of Operations</i>					
Total revenue	\$ -	\$ 14,597	\$ 6,229	\$ 1,249	\$ 22,075
Operating and other expenses	-	4,105	1,974	804	6,883
Interest expense	-	7,584	2,568	180	10,332
Equity in losses of affiliates	(36,527)	-	-	-	(36,527)
Depreciation and amortization	-	2,542	428	994	3,964
Loss on sale of property, net	-	-	-	(390)	(390)
Net (loss) income	\$ (36,527)	\$ 366	\$ 1,259	\$ (1,119)	\$ (36,021)
Company's share of net (loss) income	\$ (3,791)	\$ 206	\$ 614	\$ (189)	\$ (3,160)
Impairment reserve	-	-	-	(3,655)	(3,655)
Amortization of excess investment	-	-	(291)	-	(291)
Company's share of net (loss) income	\$ (3,791)	\$ 206	\$ 323	\$ (3,844)	\$ (7,106)

	Nine Months Ended September 30, 2008				
	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
(dollars in thousands)					
<i>Statements of Operations</i>					
Total revenue	\$ -	\$ 14,822	\$ 5,992	\$ 2,298	\$ 23,112
Operating and other expenses	-	4,336	2,418	1,631	8,385
Interest expense	-	7,584	2,602	439	10,625
Equity in earnings of affiliates	189,678	-	-	-	189,678
Depreciation and amortization	-	2,937	522	756	4,215
Gain on sale of property, net	-	-	-	6,838	6,838
Net income	\$ 189,678	\$ (35)	\$ 450	\$ 6,310	\$ 196,403
Company's share of net income (loss)	\$ 21,147	\$ (8)	\$ 219	\$ 3,301	\$ 24,659
Amortization of excess investment	-	-	(291)	-	(291)
Company's share of net income (loss)	\$ 21,147	\$ (8)	\$ (72)	\$ 3,301	\$ 24,368

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 8. NOTES RECEIVABLE AND PREFERRED EQUITY INVESTMENT

At September 30, 2009, the Company's preferred equity investment and notes receivable aggregated \$120.0 million, and were collateralized by the underlying properties, the borrower's ownership interest in the entities that own the properties and/or by the borrower's personal guarantee. Interest rates on these investments range from 9.75% to in excess of 20% with maturities through January 2017. Notes receivable and preferred equity investments as of September 30, 2009 are as follows:

Description	Effective interest Rate	Final maturity date	Periodic payment terms	Prior liens	Current balance	Extension options (years)
(dollars in thousands)						
<b>Borrower</b>						
Mezzanine Loans:						
72nd Street	19.70%	7/18/2011	(1)	\$ 185,000(4)	\$ 39,639	1 year
Georgetown A	10.25%	11/12/2010	(3)	8,576	8,000	2 x 1 year
Georgetown B	13.50%	6/27/2010	(2)	115,237	40,000	2 x 1 year
Notes individually	10% to	On demand to				
less than 3%	22.33%	1/1/2017			15,399	-
Total Mezzanine Loans					<u>103,038</u>	
First Mortgages:						
Fairchild	12.75%	9/11/2010	(3)	-	10,000	-
Levitz	11.60%	7/17/2010	(3)	-	6,963	-
Total First Mortgages					<u>16,963</u>	
Total					<u>\$ 120,001</u>	

Notes:

- (1) Principal and interest, including a \$7.5 million exit fee, are due upon maturity.
- (2) Payable upon maturity. In accordance with ASC Topic 480, the preferred equity investment is treated as a debt instrument.
- (3) Interest only payable monthly, principal due on maturity.
- (4) The balance represents the maximum amount to be drawn under a construction loan.

## 9. DERIVATIVE FINANCIAL INSTRUMENTS

The following table summarizes the notional values and fair values of the Company's derivative financial instruments as of September 30, 2009. The notional value does not represent exposure to credit, interest rate or market risks.

Hedge Type	Notional Value	Rate	Maturity	Fair Value
(dollars in thousands)				
Interest rate swaps				
LIBOR Swap	\$ 4,409	4.71%	01/01/10	\$ (51)
LIBOR Swap	10,794	4.90%	10/01/11	(759)
LIBOR Swap	8,075	5.14%	03/01/12	(676)
LIBOR Swap	9,800	4.47%	10/29/10	(404)
LIBOR Swap	15,000	3.79%	11/30/12	(871)
LIBOR Swap	15,000	3.41%	11/30/12	(703)
LIBOR Swap	10,000	2.65%	11/30/12	(244)
LIBOR Swap	10,450	0.90%	07/19/10	(39)
Interest rate swaps	<u>\$ 83,528</u>			<u>(3,747)</u>
Interest rate LIBOR Cap	\$ 30,000	6.0%	04/01/10	-
Net Derivative instrument liability (1)				<u>\$ (3,747)</u>

(1) The fair value of the derivative instruments is included in Other Liabilities in the Consolidated Balance Sheets.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 10. MORTGAGE LOANS

The Company completed the following transactions related to mortgage loans during the nine months ended September 30, 2009:

- i) borrowed \$20.3 million on three existing construction loans,
- ii) paid off \$4.8 million of self-amortizing debt,
- iii) closed on a \$19.0 million loan that bears interest at a floating rate of LIBOR plus 150 basis points and matures on January 15, 2010. The proceeds of the loan were used to repay a maturing loan of \$19.0 million,
- iv) extended a credit facility, with a balance of \$53.7 million, to March 1, 2010 and adjusted the interest rate spread over LIBOR from 100 basis points to 250 basis points,
- v) extended a \$11.4 million note that was to mature on May 18, 2009 to July 18, 2009. On July 18, 2009, this note was paid down by \$0.9 million and extended to July 19, 2010 at an interest rate of LIBOR plus 325 basis points with a one year extension option,
- vi) closed on a \$4.8 million loan that bears interest at a fixed rate of 6.35% and matures on July 1, 2014,
- vii) paid off \$1.1 million of principal on an outstanding loan,
- viii) closed on a \$45.0 million note that bears interest at a floating rate of LIBOR plus 400 basis points and matures on July 29, 2012 with two one-year extension options. The loan provides for a future advance of up to \$2.0 million to finance tenant improvements and leasing commissions incurred in leasing at the property; and
- ix) paid off the outstanding balance of \$33.7 million on a loan that had matured.

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

(dollars in thousands) Borrower	Total amount of credit facility	Amount borrowed as of December 31, 2008	2009 net borrowings (repayments) during the nine months ended September 30, 2009	Amount borrowed as of September 30, 2009	Letters of credit outstanding as of September 30, 2009	Amount available under credit facilities as of September 30, 2009
Acadia Realty, LP	\$ 64,498	\$ 48,900	\$ (18,900)	\$ 30,000	\$ 4,007	\$ 30,491
Acadia Realty, LP	30,000	-	2,000	2,000	-	28,000
Fund II	70,000	34,681	21,500	56,181	600	13,219
Fund III	221,000	62,250	72,200	134,450	500	86,050
Total	<u>\$ 385,498</u>	<u>\$ 145,831</u>	<u>\$ 76,800</u>	<u>\$ 222,631</u>	<u>\$ 5,107</u>	<u>\$ 157,760</u>

In June 2009, the servicer of two of the Company's loans alleged that non-monetary defaults had occurred on construction loans for \$31.7 million and \$11.5 million collateralized by the Pelham Manor Shopping Center and Atlantic Avenue, respectively. The servicer contends that the Company did not substantially complete the improvements in accordance with the required completion dates as defined in the loan agreements and, accordingly, did not meet the requirements for the final draws. The Company does not believe the loans are in default and will vigorously defend its position and is currently in discussions with the servicer to resolve these issues. The Company believes that the ultimate resolution of this matter will not have a material adverse effect on the Company's financial condition or results of operations.

## 11. 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 15<sup>th</sup> and December 15<sup>th</sup> of each year. The Convertible Notes are unsecured unsubordinated obligations and rank equally with all other unsecured and unsubordinated indebtedness. During the nine months ended September 30, 2009, the Company purchased \$53.8 million in principal amount of its Convertible Notes for \$46.7 million resulting in a \$7.1 million gain.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 12. FAIR VALUE MEASUREMENTS

ASC Topic 820 "Fair Value Measurements and Disclosures" defines fair value as the price that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants.

ASC Topic 820's valuation techniques are based on observable or unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. These two types of inputs have created the following fair value hierarchy:

- Level 1- Quoted prices for identical instruments in active markets
- Level 2- Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which significant value drivers are observable
- Level 3- Valuations derived from valuation techniques in which significant value drivers are unobservable

The following describes the valuation methodologies the Company uses to measure financial assets and liabilities at fair value:

Derivative Instruments — The Company's derivative financial liabilities primarily represent interest rate swaps and a cap and are valued using primarily Level 2 inputs. The fair value of these instruments is based upon the estimated amounts the Company would sell an asset or pay to transfer a liability in an orderly transaction between market participants at the reporting date and is determined using interest rate market pricing models. With the adoption of ASC Topic 820, the Company has amended the techniques used in measuring the fair value of its derivative positions. This amendment includes the impact of credit valuation adjustments on derivatives measured at fair value. The implementation of this amendment did not have a material impact on the Company's consolidated financial position or results of operations.

The following table presents the Company's liabilities measured at fair value based on level of inputs at September 30, 2009:

(dollars in thousands)	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<u>Liabilities</u>			
Derivatives	\$ -	\$ 3,747	\$ -
Total liabilities measured at fair value	<u>\$ -</u>	<u>\$ 3,747</u>	<u>\$ -</u>

**Financial Instruments**

Certain of the Company's assets and liabilities are considered financial instruments. Fair value estimates, methods and assumptions are set forth below.

Cash and Cash Equivalents, Restricted Cash, Cash in Escrow, Rents Receivable, Prepaid Expenses, Other Assets, Accounts Payable and Accrued Expenses, Dividends and Distributions Payable, Due to Related Parties and Other Liabilities—The carrying amount of these assets and liabilities approximates fair value as of September 30, 2009 and December 31, 2008 due to the short-term nature of such accounts.

Notes Receivable and Preferred Equity Investments — As of September 30, 2009 and December 31, 2008, the Company has determined the estimated fair values of its preferred equity investments and notes receivable were \$120.1 million and \$122.3 million, respectively, by discounting future cash receipts utilizing a discount rate equivalent to the rate at which similar notes receivable would be originated at the reporting date.

Derivative Instruments — The fair value of these instruments is based upon the estimated amounts the Company would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants at the reporting date and is determined using interest rate market pricing models.

Mortgage Notes Payable and Notes Payable — As of September 30, 2009 and December 31, 2008, the Company has determined the estimated fair values of its mortgage notes payable, including those relating to discontinued operations, were \$781.6 million and \$731.8 million, respectively, by discounting future cash payments utilizing a discount rate equivalent to the rate at which similar mortgage notes payable would be originated at the reporting date.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 13. RELATED PARTY TRANSACTIONS

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 \$0.04 million and \$0.2 million for the three months ended September 30, 2009 and 2008, respectively, and \$0.3 million and \$0.7 million for the nine months ended September 30, 2009 and 2008, respectively.

Lee Wielansky, the Lead Trustee of the Company, was paid a consulting fee of \$25,000 for the three months ended September 30, 2009 and 2008 and \$75,000 for the nine months ended September 30, 2009 and 2008.

## 14. SEGMENT REPORTING

The Company has five reportable segments: Core Portfolio, Opportunity Funds, Self-Storage Portfolio, Notes Receivable and Other. "Notes Receivable" consists of the Company's notes receivable and preferred equity investment and related interest income. "Other" consists primarily of management fees and interest income. The accounting policies of the segments are the same as those described in the summary of significant accounting policies. The Company evaluates property performance primarily based on net operating income before depreciation, amortization and certain nonrecurring items. Investments in the Core Portfolio are typically held long-term. Given the contemplated finite life of the Opportunity Funds, these investments are typically held for shorter terms. Fees earned by the Company as the general partner/member of the Opportunity Funds are eliminated in the Company's consolidated financial statements. The following table sets forth certain segment information for the Company, reclassified for discontinued operations, as of and for the three and nine months ended September 30, 2009 and 2008 (does not include unconsolidated affiliates):

## 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	\$ 19,392	\$ 11,707	\$ 2,572	\$ 4,772	\$ 4,842	\$ (4,229)	\$ 39,056
Property operating expenses and real estate taxes	4,641	4,040	2,591	-	-	(301)	10,971
Abandonment of project costs	-	53	-	-	-	-	53
Other expenses	5,875	2,483	15	-	-	(3,147)	5,226
Income (loss) before depreciation and amortization	\$ 8,876	\$ 5,131	\$ (34)	\$ 4,772	\$ 4,842	\$ (781)	\$ 22,806
Depreciation and amortization	\$ 4,975	\$ 4,509	\$ 1,110	\$ -	\$ -	\$ (217)	\$ 10,377
Interest 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
Expenditures for real estate and improvements	\$ 1,079	\$ 5,786	\$ 1,475	\$ -	\$ -	\$ (3,231)	\$ 5,109

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

Net property income before depreciation and amortization	\$ 22,806
Gain on debt extinguishment	11
Depreciation and amortization	(10,377)
Equity in losses of unconsolidated affiliates	(3,848)
Interest expense	(8,329)
Income tax benefit	273
Income from discontinued operations	32
Net income	568
Net loss attributable to noncontrolling interests in subsidiaries	6,739
Net income attributable to Common Shareholders	\$ 7,307

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 14. SEGMENT REPORTING (continued)

## Nine Months Ended September 30, 2009

(dollars in thousands)	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable	Other	Amounts Eliminated in Consolidation	Total
Revenues	\$ 53,864	\$ 31,985	\$ 6,696	\$ 14,460	\$ 18,702	\$ (16,408)	\$ 109,299
Property operating expenses and real estate taxes	15,576	11,167	7,316	-	-	(789)	33,270
Reserve for notes receivable	-	-	-	1,734	-	-	1,734
Abandonment of project costs	-	2,484	-	-	-	-	2,484
Other expenses	18,315	10,054	83	-	-	(11,877)	16,575
Income (loss) before depreciation and amortization	\$ 19,973	\$ 8,280	\$ (703)	\$ 12,726	\$ 18,702	\$ (3,742)	\$ 55,236
Depreciation and amortization	\$ 13,191	\$ 12,202	\$ 3,257	\$ -	\$ -	\$ (1,238)	\$ 27,412
Interest expense	\$ 14,387	\$ 5,364	\$ 4,031	\$ -	\$ -	\$ -	\$ 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
Expenditures for real estate and improvements	\$ 1,957	\$ 105,019	\$ 10,506	\$ -	\$ -	\$ (4,569)	\$ 112,913

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

Net property income before depreciation and amortization	\$ 55,236
Gain on debt extinguishment	7,057
Depreciation and amortization	(27,412)
Equity in losses of unconsolidated affiliates	(7,106)
Interest expense	(23,782)
Income tax expense	(1,349)
Income from discontinued operations	5,862
Net income	8,506
Net loss attributable to noncontrolling interests in subsidiaries	16,235
Net income attributable to Common Shareholders	\$ 24,741

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 14. SEGMENT REPORTING (continued)

## Three Months Ended September 30, 2008

(dollars in thousands)	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable	Other	Amounts Eliminated in Consolidation	Total
Revenues	\$ 15,570	\$ 5,692	\$ 1,022	\$ 3,522	\$ 6,217	\$ (3,934)	\$ 28,089
Property operating expenses and real estate taxes	4,360	2,121	2,141	-	-	(88)	8,534
Other expenses	6,614	3,794	-	-	-	(3,586)	6,822
Income (loss) before depreciation and amortization	\$ 4,596	\$ (223)	\$ (1,119)	\$ 3,522	\$ 6,217	\$ (260)	\$ 12,733
Depreciation and amortization	\$ 4,348	\$ 2,689	\$ 949	\$ -	\$ -	\$ -	\$ 7,986
Interest expense	\$ 4,977	\$ 1,975	\$ 1,241	\$ -	\$ -	\$ (4)	\$ 8,189
Real estate at cost	\$ 473,453	\$ 422,281	\$ 192,378	\$ -	\$ -	\$ (7,497)	\$ 1,080,615
Total assets	\$ 573,056	\$ 482,572	\$ 196,632	\$ 127,498	\$ -	\$ (88,046)	\$ 1,291,712
Expenditures for real estate and improvements	\$ 552	\$ 31,074	\$ 1,735	\$ -	\$ -	\$ (254)	\$ 33,107

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

Net property income before depreciation and amortization	\$ 12,733
Depreciation and amortization	(7,986)
Equity in earnings of unconsolidated affiliates	6,664
Interest expense	(8,189)
Income tax expense	(191)
Income from discontinued operations	181
Net income	3,212
Net loss attributable to noncontrolling interests in subsidiaries	1,254
Net income attributable to Common Shareholders	\$ 4,466



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 14. SEGMENT REPORTING (continued)

Nine Months Ended September 30, 2008

(dollars in thousands)	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable	Other	Amounts Eliminated in Consolidation	Total
Revenues	\$ 48,530	\$ 41,154	\$ 4,961	\$ 6,289	\$ 25,642	\$ (19,010)	\$ 107,566
Property operating expenses and real estate taxes	14,422	6,529	4,110	-	-	(263)	24,798
Other expenses	19,934	13,568	68	-	-	(14,438)	19,132
Net income before depreciation and amortization	\$ 14,174	\$ 21,057	\$ 783	\$ 6,289	\$ 25,642	\$ (4,309)	\$ 63,636
Depreciation and amortization	\$ 12,561	\$ 6,717	\$ 1,984	\$ --	\$ --	\$ --	\$ 21,262
Interest expense	\$ 14,539	\$ 5,194	\$ 2,434	\$ --	\$ --	\$ (4)	\$ 22,163
Real estate at cost	\$ 473,453	\$ 422,281	\$ 192,378	\$ --	\$ --	\$ (7,497)	\$ 1,080,615
Total assets	\$ 573,056	\$ 482,572	\$ 196,632	\$ 127,498	\$ --	\$ (88,046)	\$ 1,291,712
Expenditures for real estate and improvements	\$ 10,805	\$ 33,881	\$ 181,618	\$ --	\$ --	\$ (4,264)	\$ 222,040

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

Net property income before depreciation and amortization	\$ 63,636
Depreciation and amortization	(21,262)
Equity in earnings of unconsolidated partnerships	24,368
Interest expense	(22,163)
Income tax expense	(2,391)
Income from discontinued operations	8,416
Gain on sale of land	763
Net income	51,367
Net (income) attributable to noncontrolling interests in subsidiaries	(21,265)
Net income attributable to Common Shareholders	\$ 30,102

## 15. LONG-TERM INCENTIVE COMPENSATION

On March 5, 2009, the Company issued 8,612 Restricted Shares and 200,574 LTIP Units to officers of the Company. Vesting with respect to these awards is recognized ratably over the next five annual anniversaries of the issuance date. The vesting on 39% of these awards is also generally subject to achieving certain total shareholder returns on the Company's Common Shares or certain Company performance measures.

Also on March 5, 2009 and March 10, 2009, the Company issued a total of 36,347 Restricted Shares and 8,221 LTIP Units to employees of the Company, other than the Company's officers. Vesting with respect to these awards is recognized ratably over the next five annual anniversaries of the issuance date. The vesting on 1,196 Restricted Shares and 6,258 LTIP Units vest 25% subject to achieving certain total shareholder returns on the Company's Common Shares or certain Company performance measures.

The total value of the above Restricted Shares and LTIP Units issued was \$2.6 million. Compensation expense of \$0.1 million and \$0.4 million has been recognized in the accompanying financial statements related to these Restricted Shares and LTIP Units for the three and nine months ended September 30, 2009, respectively. Total long-term incentive compensation expense, including the expense related to the above-mentioned plans, were \$0.8 million and \$0.9 million for the three months ended September 30, 2009 and 2008, respectively, and \$2.9 million and \$2.7 million for the nine months ended September 30, 2009 and 2008, respectively.

On May 13, 2009, the Company issued 6,522 unrestricted Common Shares to Trustees of the Company in connection with Trustee fees. In addition, on May 28, 2009, the Company issued an additional 1,299 unrestricted Common Shares to the Lead Trustee of the Company in connection with the Lead Trustee fee. The Company also issued 12,000 Restricted Shares to Trustees, which vest over three years with 33% vesting on each of the next three anniversaries of 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, 2009 related to these unrestricted Common Shares and Restricted Shares.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**15. LONG-TERM INCENTIVE COMPENSATION, continued**

In 2009, the Company adopted the Long Term Investment Alignment Program (the "Program") pursuant to which the Company may award units for up to 25% of its Fund III Promote to senior executives when and if such Promote is ultimately realized. As of September 30, 2009, the Company has awarded units representing 60% of the Program, which were determined to have no value at issuance. In accordance with ASC Topic 718 "Compensation- Stock Compensation" (formerly SFAS No. 123R, "Share-Based Payments") compensation relating to these awards will be recorded based on the change in the estimated fair value at each reporting period.

**16. DIVIDENDS AND DISTRIBUTIONS PAYABLE**

On August 4, 2009, the Board of Trustees of the Company approved and declared a cash dividend for the quarter ended September 30, 2009 of \$0.18 per Common Share and Common OP Unit. The dividend was paid on October 15, 2009 to shareholders of record as of September 30, 2009.

**17. SUBSEQUENT EVENTS**

The Company has performed an evaluation of subsequent events through November 6, 2009, which is the date the financial statements were issued.

During October 2009, the Company paid off a mortgage loan with an outstanding balance of \$19.0 million.

## 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, 2009 and 2008 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, 2008 and include, among others, the following: general economic and business conditions, including the current global financial recession, 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; 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, 2009, we operated 78 properties, which we own or have an ownership interest in, within our Core Portfolio or within our three Opportunity Funds. Our Core Portfolio consists of those properties either 100% owned by, or partially owned through joint venture interests by the Operating Partnership, or subsidiaries thereof, not including those properties owned through our Opportunity Funds. These 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 33 properties comprising approximately 5.0 million square feet. Fund I has 21 properties comprising approximately 1.0 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 design phase. The Fund II portfolio will approximate 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 traditional investments in operating rental real estate but investments in operating businesses, the Operating Partnership invests in these through a taxable REIT subsidiary ("TRS").

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

- Own and operate a Core Portfolio of community and neighborhood shopping centers and main street retail located in markets with strong demographics and generate internal growth within the Core Portfolio through aggressive redevelopment, re-anchoring and or leasing activities
- Maintain a strong and flexible balance sheet through conservative financial practices while ensuring access to sufficient capital to fund future growth
- Generate external growth through an opportunistic yet disciplined acquisition program. The emphasis is on targeting 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 types 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

### BUSINESS OUTLOOK

The U.S. economy is currently in a recession, which has resulted in a significant decline in retail sales due to reduced consumer spending. Many financial and economic analysts are predicting that this business recession will extend through the balance of 2009 and perhaps beyond. Although the occupancy and net operating income within our portfolio has not been materially adversely affected through September 30, 2009, should retailers continue to experience deteriorating sales performance, the likelihood of additional tenant bankruptcy filings may increase, which would negatively impact our results of operations. In addition to the impact on retailers, the economic recession has had an unprecedented impact on the U.S. credit markets. Traditional sources of financing, such as the commercial-mortgage backed security market, have become severely curtailed, if not eliminated. If these conditions continue, our ability to finance new acquisitions or refinance existing debts as they mature will be adversely affected. Accordingly, our ability to generate external growth in income, as well as maintain existing operating income, could be limited.

See "Item 1A. Risk Factors," in our Form 10-K for the year ended December 31, 2008 (our "2008 Form 10-K") including the discussions under the headings "The current global financial crisis may cause us to lose tenants and may impair our ability to borrow money to purchase properties, refinance existing debt or obtain the necessary financing to complete our current redevelopment" and "The bankruptcy of, or a downturn in the business of, any of our major tenants or a significant number of our smaller tenants may adversely affect our cash flows and property values".

## 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 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 2008 Form 10-K.

## RESULTS OF OPERATIONS

### Comparison of the three months ended September 30, 2009 ("2009") to the three months ended September 30, 2008 ("2008")

Revenues  (dollars in millions)	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
Minimum rents	\$ 13.8	\$ 9.9	\$ 2.2	\$ -	\$ 12.2	\$ 5.8	\$ 0.8	\$ -
Percentage rents	0.1	-	-	-	0.1	-	-	-
Expense reimbursements	3.1	1.8	-	-	3.2	1.0	-	-
Lease termination income	2.5	-	-	-	-	(0.5)	-	-
Other property income	-	-	0.4	-	0.1	(0.6)	0.3	0.6
Management fee income (1)	-	-	-	0.3	-	-	-	0.5
Interest income	-	-	-	5.1	-	-	-	4.7
Other income	-	-	-	-	-	-	-	-
<b>Total revenues</b>	<b>\$ 19.5</b>	<b>\$ 11.7</b>	<b>\$ 2.6</b>	<b>\$ 5.4</b>	<b>\$ 15.6</b>	<b>\$ 5.7</b>	<b>\$ 1.1</b>	<b>\$ 5.8</b>

#### Note:

(1) Includes fees earned by the Company as general partner/managing member of the Opportunity Funds that are eliminated in consolidation. The Operating Partnership's share of these fees are recognized as a reduction in noncontrolling interests. The net balance reflected herein represents third party fees which are not eliminated in consolidation. Reference is made to Note 14 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 increase in minimum rents in the Core Portfolio is primarily attributable to the write-off of a lease intangible liability in connection with a terminated lease. The increase in minimum rents in the Opportunity Funds primarily relates to additional rents following the acquisition of Cortlandt Towne Center ("2009 Fund Acquisition") of \$2.0 million and additional leases at Fordham Place and the Pelham Manor commencing in 2009 ("Fordham and Pelham"). The increase in minimum rents in the Storage Portfolio related to the full amortization of acquired lease intangible costs during 2009.

Expense reimbursements in the Opportunity Funds increased for both real estate taxes and common area maintenance as a result of the 2009 Fund Acquisition as well as Fordham and Pelham. These increases were offset primarily by the billing of \$0.6 million in 2008 of previous year's overtime labor charges at 161<sup>st</sup> Street.

Lease termination income in the Core Portfolio for 2009 relates to a termination fee received from Acme at Absecon Marketplace. Lease termination income in the Opportunity Funds for 2008 relates to costs associated with the termination fee earned during the second quarter 2008 from Home Depot at Canarsie Plaza.

*Operating Expenses*

	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Property operating	\$ 2.2	\$ 2.5	\$ 2.0	\$ (0.3)	\$ 2.1	\$ 1.6	\$ 1.7	\$ (0.1)
Real estate taxes	2.5	1.5	0.6	-	2.2	0.5	0.5	-
General and administrative	5.9	2.5	-	(3.2)	6.6	3.8	-	(3.6)
Depreciation and amortization	5.0	4.5	1.1	(0.2)	4.3	2.7	1.0	-
Abandonment of project costs	-	0.1	-	-	-	-	-	-
<b>Total operating expenses</b>	<b>\$ 15.6</b>	<b>\$ 11.1</b>	<b>\$ 3.7</b>	<b>\$ (3.7)</b>	<b>\$ 15.2</b>	<b>\$ 8.6</b>	<b>\$ 3.2</b>	<b>\$ (3.7)</b>

The increase in property operating expenses 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 Opportunity Funds was the result of the 2009 Fund Acquisition as well as Fordham and Pelham.

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

Depreciation and amortization expense in the Core Portfolio increased primarily as a result of increased depreciation related to the write-off of the net book value of costs related to the termination of Acme's lease at Absecon, and Ledgewood Mall being reclassified as a continuing operation in 2009 as opposed to being held for sale, or discontinued operation in 2008. Depreciation and amortization expense increased in the Opportunity Funds due to the 2009 Fund Acquisition as well as Fordham and Pelham.

## Other

	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Equity in (losses) earnings of unconsolidated affiliates	\$ -	\$ (3.8)	\$ -	\$ -	\$ -	\$ 6.7	\$ -	\$ -
Interest expense	(4.5)	(2.0)	(1.8)	-	(5.0)	(2.0)	(1.2)	-
Income tax provision	0.3	-	-	-	(0.2)	-	-	-
Income from discontinued operations	-	-	-	-	-	-	-	0.2
Loss (income) attributable to noncontrolling interests in subsidiaries:- Continuing operations	(0.1)	6.4	-	0.4	(0.1)	1.3	-	0.2
- Discontinued operations	-	-	-	-	-	-	-	(0.1)

Equity in (losses) earnings of unconsolidated affiliates in the Opportunity Funds decreased primarily as a result of our pro rata share of distributions in excess of basis from our Albertson's investment of \$7.6 million in 2008 and a \$3.7 million impairment charge related to a Fund I unconsolidated investment in 2009.

Interest expense in the Core Portfolio decreased \$0.5 million in 2009 as a result of a decrease of \$0.7 million due to lower average outstanding borrowings in 2009 and lower interest expense related to the purchase of the Company's convertible debt. These decreases were offset by a \$0.7 million write-off of the unamortized premium related to the repayment of a mortgage note payable during 2008 and a \$0.3 million increase resulting from higher average interest rates in 2009. Interest expense in the Opportunity Funds remained unchanged on a net basis from 2008 to 2009 as a result of an increase of \$1.0 million due to higher average outstanding borrowings in 2009 offset by a \$0.7 million decrease related to lower average interest rates in 2009 and \$0.3 million of higher capitalized interest in 2009. Interest expense in the Storage Portfolio increased \$0.6 million in 2009 as a result of an increase of \$0.4 million due to higher average interest rates in 2009 and an increase of \$0.2 million attributable to higher average outstanding borrowings in 2009.

Loss (income) attributable to noncontrolling interests in subsidiaries- Continuing operations for the Opportunity Funds primarily represents the noncontrolling interests' share of all Opportunity Fund activity and ranges from a 77.8% interest in Fund I to an 80.1% interest in Fund III. The variance between 2009 and 2008 represents the noncontrolling interests' share of all the Opportunity Funds variances discussed above.

Comparison of the nine months ended September 30, 2009 ("2009") to the nine months ended September 30, 2008 ("2008")

Revenues	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Minimum rents	\$ 38.7	\$ 26.5	\$ 5.8	\$ -	\$ 37.4	\$ 16.2	\$ 4.5	\$ -
Percentage rents	0.4	-	-	-	0.4	-	-	-
Expense reimbursements	10.3	5.0	-	-	10.6	1.5	-	-
Lease termination income	2.7	-	-	-	-	24.0	-	-
Other property income	0.1	0.5	0.9	-	0.2	(0.6)	0.6	0.6
Management fee income (1)	-	-	-	1.5	-	-	-	2.9
Interest income	-	-	-	15.2	-	-	-	9.4
Other income	1.7	-	-	-	-	-	-	-
Total revenues	<u>\$ 53.9</u>	<u>\$ 32.0</u>	<u>\$ 6.7</u>	<u>\$ 16.7</u>	<u>\$ 48.6</u>	<u>\$ 41.1</u>	<u>\$ 5.1</u>	<u>\$ 12.9</u>

Note:

(1) Includes fees earned by the Company as general partner/managing member of the Opportunity Funds that are eliminated in consolidation. The Operating Partnership's share of these fees are recognized as a reduction in noncontrolling interests. The net balance reflected herein represents third party fees which are not eliminated in consolidation. Reference is made to Note 14 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 increase in minimum rents in the Core Portfolio is primarily attributable to a write-off of a lease intangible liability as previously discussed. The increase in minimum rents in the Opportunity Funds primarily relates to additional rents following the 2009 Fund Acquisition of \$5.4 million and Fordham and Pelham of \$4.8 million. The increase in minimum rents in the Storage Portfolio related to the items as previously discussed in the three months.

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

Lease termination income in the Core Portfolio for 2009 relates to a termination fee earned from Acme at Absecon Marketplace. Lease termination income in the Opportunity Funds for 2008 relates to a termination fee earned from Home Depot at Canarsie Plaza.

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

The increase in interest income was the result of higher interest earning assets in 2009 as previously discussed.

Other income of \$1.7 million in the Core Portfolio was the result of a sales contract deposit forfeited during 2009.

**Operating Expenses**

(dollars in millions)	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
Property operating	\$ 8.6	\$ 7.4	\$ 5.8	\$ (0.8)	\$ 7.7	\$ 5.1	\$ 3.2	\$ (0.3)
Real estate taxes	7.0	3.8	1.5	-	6.7	1.5	0.9	-
General and administrative	18.3	10.1	0.1	(11.9)	19.9	13.5	0.1	(14.4)
Depreciation and amortization	13.2	12.2	3.2	(1.2)	12.6	6.7	2.0	-
Abandonment of project costs	-	2.5	-	-	-	-	-	-
Reserve for notes receivable	-	-	-	1.7	-	-	-	-
<b>Total operating expenses</b>	<b>\$ 47.1</b>	<b>\$ 36.0</b>	<b>\$ 10.6</b>	<b>\$ (12.2)</b>	<b>\$ 46.9</b>	<b>\$ 26.8</b>	<b>\$ 6.2</b>	<b>\$ (14.7)</b>

The increase in property operating expenses in the Core Portfolio was primarily attributable to additional tenant receivable reserves in 2009. The increase in property operating expenses in the Opportunity Funds was primarily the result of the 2009 Fund Acquisition as well as Fordham and Pelham. The increase in property operating expenses in the Storage Portfolio relates to the February 2008 acquisition of the Storage Post Portfolio ("2008 Storage Acquisition") as well as the Company's election in 2008 to report the Storage Portfolio activity one month in arrears to enhance the accuracy and timeliness of reporting. Accordingly, the nine months ended September 30, 2008 reflects eight months of storage activity while the nine months ended September 30, 2009 reflects nine months of storage activity.

The increase in real estate taxes in the Opportunity Funds was attributable to the 2009 Fund Acquisition. The increase in real estate taxes in the Storage Portfolio relates to the 2008 Storage Acquisition as well as the Company's election in 2008 to report the Storage Portfolio activity one month in arrears.

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

Depreciation expense in the Core Portfolio increased \$1.2 million as a result of Ledgewood Mall being reclassified as a continuing operation in 2009 as opposed to being held for sale, or discontinued operation in 2008. Amortization expense in the Core Portfolio decreased \$0.6 million primarily as a result of lower amortization expense in 2009 associated with the Klaff management contracts offset by increased amortization related to the write-off of lease intangible costs in connection with a terminated lease. Depreciation expense increased \$3.6 million and amortization expense increased \$1.9 million in the Opportunity Funds primarily due to the 2009 Fund Acquisition as well as Fordham and Pelham. Depreciation expense and amortization expense increased \$1.2 million in the Storage Portfolio primarily as a result of the 2008 Storage Acquisition as well as the Company's election in 2008 to report the Storage Portfolio activity one month in arrears as previously discussed. Depreciation and amortization expense decreased \$1.2 million in Other as a result of depreciation associated with the elimination of capitalizable costs within the consolidated group.

The \$2.5 million abandonment of project costs in 2009 is attributable to the Company's determination that it most likely will not participate in a specific future development project.

The reserve for notes receivable of \$1.7 million relates to the establishment of a reserve for a notes receivable in 2009 due to the loss of an anchor tenant at the underlying property.



## Other

(dollars in millions)	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
Equity in (losses) earnings of unconsolidated affiliates	\$ 0.4	\$ (7.5)	\$ -	\$ -	\$ -	\$ 24.4	\$ -	\$ -
Interest expense	(14.4)	(5.4)	(4.0)	-	(14.5)	(5.2)	(2.4)	-
Gain on debt extinguishment	7.1	-	-	-	-	-	-	-
Gain on sale of land	-	-	-	-	0.8	-	-	-
Income tax provision	(1.3)	-	-	-	(2.4)	-	-	-
Income from discontinued operations	-	-	-	5.9	-	-	-	8.4
Loss (income) attributable to noncontrolling interests in subsidiaries:- Continuing operations	(0.4)	19.4	-	2.0	0.1	(23.7)	-	2.9
- Discontinued operations	-	-	-	(4.9)	-	-	-	(0.6)

Equity in (losses) earnings of unconsolidated affiliates in the Opportunity Funds decreased primarily as a result of our pro rata share of gains from the sale of Mervyns locations in 2008 of \$17.0 million, a decrease in distributions in excess of basis from our Albertson's investment of \$7.6 million in 2009, a \$3.7 million impairment charge related to a Fund I unconsolidated investment in 2009 and our pro rata share of gain from the sale of the Haygood Shopping Center of \$3.4 million in 2008.

Interest expense in the Core Portfolio decreased \$0.1 million in 2009. This was primarily the result of lower interest expense related to the purchase of the Company's convertible notes payable offset by a \$0.7 million write-off of the unamortized premium related to the repayment of a mortgage note payable during 2008. Interest expense in the Opportunity Funds increased \$0.2 million in 2009. This was the result of an increase of \$3.1 million due to higher average outstanding borrowings in 2009 and \$0.5 million of lower capitalized interest in 2009. These increases were offset by a \$3.4 million decrease related to lower average interest rates in 2009. Interest expense in the Storage Portfolio increased \$1.6 million in 2009. This was attributable to an increase of \$1.2 million due to higher average outstanding borrowings in 2009 as well as an increase of \$0.7 million due to higher interest rates in 2009. These increases were offset by a \$0.3 million increase in capitalized interest in 2009.

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

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

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

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

Loss (income) attributable to noncontrolling interests in subsidiaries- Continuing operations for the Opportunity Funds primarily represents the noncontrolling interests' share of all Opportunity Fund activity and ranges from a 77.8% interest in Fund I to an 80.1% interest in Fund III. The variance between 2009 and 2008 represents the noncontrolling interests' share of all the Opportunity Funds variances discussed above. Loss (income) attributable to noncontrolling interests in subsidiaries- Continuing operations in Other relates to the noncontrolling interests' share of capitalized construction, leasing and legal fees.

Loss (income) attributable to noncontrolling interests in subsidiaries- Discontinued operations for the Opportunity Funds primarily represents the noncontrolling interests' share of activity related to properties sold in 2008 and 2009.

## 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 measures of liquidity.

The reconciliation of net income to FFO for the three and nine months ended September 30, 2009 and 2008 is as follows:

(dollars in millions)	Three months ended September 30,		Nine months ended September 30,	
	2009	2008	2009	2008
Net income attributable to Common Shareholders	\$ 7.3	\$ 4.5	\$ 24.7	\$ 30.1
Depreciation of real estate and amortization of leasing costs (net of noncontrolling interests' share)				
Consolidated affiliates	5.4	4.0	14.2	10.5
Unconsolidated affiliates	0.5	0.4	1.2	1.3
Gain on sale (net of noncontrolling interests' share)				
Consolidated affiliates	-	-	(0.9)	(7.1)
Unconsolidated affiliates	-	-	-	(0.5)
Income attributable to noncontrolling interest in Operating Partnership (1)	0.2	0.1	0.4	0.5
Funds from operations	<u>\$ 13.4</u>	<u>\$ 9.0</u>	<u>\$ 39.6</u>	<u>\$ 34.8</u>
Cash flows provided by (used in):				
Operating activities			\$ 39.1	\$ 25.4
Investing activities			\$ (110.4)	\$ (275.4)
Financing activities			\$ 102.4	\$ 188.1

Notes:

(1) Does not include distributions paid to Series A and B Preferred OP Unit holders.

## 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, 2009, we paid dividends and distributions on our Common Shares and Common OP Units totaling \$7.4 million and \$21.8 million, respectively. In addition, in December of 2008, our Board of Trustees approved a special dividend of approximately \$0.55 per share, or \$18.0 million in the aggregate, which was associated with taxable gains arising from property dispositions in 2008, and was paid on January 30, 2009, to shareholders of record on December 31, 2008. Ninety percent of the special dividend was paid through the issuance of 1.3 million Common Shares and 10%, or \$1.8 million, was paid in cash.

### Investments

#### Fund I and Mervyns I

Reference is made to Notes 1 and 7 to the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for an overview of Fund I and Mervyns I. Fund I and Mervyns I have returned all invested capital and accumulated preferred return thus triggering our Promote in all future Fund I earnings and distributions. Fund I currently owns, or has ownership interest in, 21 assets comprising approximately 1.0 million square feet as follows:

<u>Shopping Center</u>	<u>Location</u>	<u>Year acquired</u>	<u>GLA</u>
<b><u>New York Region</u></b>			
<i>New York</i>			
Tarrytown Shopping Center	Tarrytown	2004	35,291
<b><u>Mid-Atlantic Region</u></b>			
<i>Ohio</i>			
Granville Centre	Columbus	2002	134,997
<i>Michigan</i>			
Sterling Heights Shopping Center (1)	Detroit	2004	154,835
<b><u>Various Regions</u></b>			
Kroger/Safeway Portfolio	Various	2003	709,400
Total			<u>1,034,523</u>

#### Notes:

(1) During the three months ended September 30, 2009, Fund I recorded an impairment reserve of \$3.7 million related to this investment.

In addition, we, along with our Fund I investors have invested in Mervyns as discussed in Note 7 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q.

#### Fund II and Mervyns II

Reference is made to Notes 1 and 7 to the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for an overview of Fund II and Mervyns II. To date, Fund II's primary investment focus has been in the New York Urban/Infill Redevelopment Initiative and the Retailer Controlled Property Venture.

#### Retailer Controlled Property Venture

Reference is made to Note 7 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for a discussion of RCP investments made to date.

#### 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. P/A has agreed to invest 10% of required capital up to a maximum of \$2.2 million and Fund II, the managing member, has agreed to invest the balance to acquire assets in which Acadia P/A agrees to invest. Operating cash flow is generally to be distributed pro-rata to Fund II and P/A until each has received a 10% cumulative return and then 60% to Fund II and 40% to P/A. Distributions of net refinancing and net sales proceeds, as defined, follow the distribution of operating cash flow except that unpaid original capital is returned before the 60%/40% split between Fund II and P/A. Upon the liquidation of the last property investment of Acadia P/A, to the extent that Fund II has not received an 18% internal rate of return ("IRR") on all of its capital contributions, P/A is obligated to return a portion of its previous distributions, as defined, until Fund II has received an 18% IRR.

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	\$ 15.2	\$ -	Completed	125,000
216 <sup>th</sup> Street	Manhattan	2005	27.7	-	Completed	60,000
Fordham Place	Bronx	2004	120.9	9.1	Substantially completed	276,000
Pelham Manor Shopping Center (1)	Westchester	2004	60.9	4.1	Substantially completed	320,000
161 <sup>st</sup> Street	Bronx	2005	54.1	10.9	To be determined (4)	230,000
Atlantic Avenue (3)	Brooklyn	2007	20.3	2.7	Completed	110,000
Canarsie Plaza	Brooklyn	2007	23.8	53.2	1 <sup>st</sup> half 2011	265,000
Sherman Plaza	Manhattan	2005	33.7	- (2)	(2)	-(2)
CityPoint (1)	Brooklyn	2007	43.5	- (2)	(2)	-(2)
<b>Total</b>			<b>\$ 400.1</b>	<b>\$ 80.0</b>		<b>1,386,000</b>

Notes:

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

**Acadia Strategic Opportunity Fund III, LLC (“Fund III”)**

Reference is made to Note 1 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for an overview of Fund III. As of September 30, 2009, \$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	Square feet upon completion
Sheepshead Bay	Brooklyn, NY	2007	\$ 22.7	\$ - (1)	-
125 Main Street	Westport, CT	2007	17.4	5.6 (2)	30,000
<b>Total</b>			<b>\$ 40.1</b>	<b>\$ 5.6</b>	<b>30,000</b>

Notes:

- (1) To be determined
- (2) Completion 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 existing institutional investors for approximately \$174.0 million. The properties are located throughout New York and New Jersey. The portfolio continues to be operated by Storage Post, which is a 5% equity partner. During January 2009, Fund III purchased Cortlandt Towne Center for \$78.0 million. The property is a 640,000 square foot shopping center located in Westchester County, NY, a trade area with high barriers to entry for regional and national retailers.

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

Reference is made to Note 8 to the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for an overview of our preferred equity investment and notes receivable. At September 30, 2009, our preferred equity investment and notes receivable aggregated \$120.0 million with accrued interest thereon of \$8.9 million, and were collateralized by a security interest in the underlying properties, the borrower's ownership interest in the entities that own the properties and/or by the borrower's personal guarantee. Effective interest rates on our preferred equity investment, mezzanine loan investments and notes receivable ranged from 9.75% to in excess of 20% with maturities through January 2017. During the nine months ended September 30, 2009, we established a reserve of \$1.7 million for a mezzanine loan receivable due to the loss of an anchor tenant at the underlying property.

### **Purchase of Convertible Notes**

Purchase of our Convertible Notes is another use of our liquidity. During the nine months ended September 30, 2009, we purchased \$53.8 million in principal amount of our outstanding Convertible Notes for \$46.7 million.

### **Share Repurchase**

We have an existing share repurchase program that authorizes management, at its discretion, to repurchase up to \$20.0 million of our outstanding Common Shares. The program may be discontinued or extended at any time and there is no assurance that we will purchase the full amount authorized. Under this program we have repurchased 2.1 million Common Shares, none of which were repurchased after December 2001. As of September 30, 2009, management may repurchase up to approximately \$7.5 million of our outstanding Common Shares under this program.

### **SOURCES OF LIQUIDITY**

We intend on using Fund III, as well as new funds that we may establish in the future, as the primary vehicles for our future acquisitions, including investments in the RCP Venture and New York Urban/Infill Redevelopment initiative. Additional sources of capital for funding property acquisitions, redevelopment, expansion and re-tenanting and RCP Venture investments, are expected to be obtained primarily from (i) the issuance of public equity or debt instruments, (ii) cash on hand and cash flow from operating activities, (iii) additional debt financings, (iv) noncontrolling interests' unfunded capital commitments of \$79.2 million and \$325.2 million for Funds II and III, respectively, and (v) future sales of existing properties.

As of September 30, 2009, we had approximately \$157.8 million of additional capacity under existing debt facilities and cash and cash equivalents on hand of \$117.8 million.

### **Shelf Registration Statement 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 million of these securities.

### **Asset Sales**

Asset sales are an additional source of liquidity for us. On February 2, 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 Repayment**

During the three months ended September 30, 2009, we received \$7.8 million in loan repayments on two first mortgage notes.

## **Financing and Debt**

At September 30, 2009, mortgage and convertible notes payable aggregated \$807.1 million, net of unamortized premium of \$0.1 million and unamortized discount of \$2.4 million, and were collateralized by 30 properties and related tenant leases. Interest rates on our outstanding mortgage indebtedness and convertible notes payable ranged from 0.80% to 7.18% with maturities that ranged from October 2009 to November 2032. Taking into consideration \$83.5 million of notional principal under variable to fixed-rate swap agreements currently in effect, \$444.0 million of the portfolio, or 55.0%, was fixed at a 5.46% weighted average interest rate and \$363.1 million, or 45.0% was floating at a 2.33% weighted average interest rate. There is \$91.3 million of debt maturing in 2009 at weighted average interest rates of 2.17%. Of this amount, \$0.4 million represents scheduled annual amortization. The loans relating to \$86.1 million of the 2009 maturities provide for extension options, which we believe we will be able to exercise. If we are unable to extend these loans and refinance the balance of \$4.8 million, we believe we will be able to repay this debt with existing liquidity, including unfunded capital commitments from the Opportunity Fund investors. As it relates to maturities after 2009, 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. Given the current lack of liquidity in the credit markets and the current economic down turn, which may cause us to lose tenants or not secure new tenants for existing centers or projects under development, refinancing this debt will be very difficult. See the "Item 1A. Risk Factors," including the discussions under the headings "The current global financial crisis may cause us to lose tenants and may impair our ability to borrow money to purchase properties, refinance existing debt or obtain the necessary financing to complete our current redevelopment" in our 2008 Form 10-K.

We completed the following transactions related to mortgage loans during the nine months ended September 30, 2009 and subsequent thereto:

- i) borrowed \$20.3 million on three existing construction loans,
- ii) paid off \$4.8 million of self-amortizing debt,
- iii) closed on a \$19.0 million loan that bears interest at a floating rate of LIBOR plus 150 basis points and matures on January 15, 2010. The proceeds of the loan were used to repay a maturing loan of \$19.0 million,
- iv) extended a credit facility, with a balance of \$53.7 million, to March 1, 2010 and adjusted the interest rate spread over LIBOR from 100 basis points to 250 basis points,
- v) extended an \$11.4 million note that was to mature on May 18, 2009 to July 18, 2009. On July 18, 2009, this note was paid down by \$0.9 million and extended to July 19, 2010 at an interest rate of LIBOR plus 325 basis points with a one year extension option,
- vi) closed on a \$4.8 million loan that bears interest at a fixed rate of 6.35% and matures on July 1, 2014,
- vii) paid off \$1.1 million of principal on an outstanding loan,
- viii) closed on a \$45.0 million note that bears interest at a floating rate of LIBOR plus 400 basis points and matures on July 29, 2012 with two one-year extension options. The loan provides for a future advance of up to \$2.0 million to finance tenant improvements and leasing commissions incurred in leasing at the property,
- ix) paid off the outstanding balance of \$33.7 million on a loan that had matured; and
- x) subsequent to September 30, 2009, paid off a mortgage loan with an outstanding balance of \$19.0 million.

In June 2009, the servicer of two of the Company's loans alleged that non-monetary defaults had occurred for two construction loans for \$31.7 million and \$11.5 million collateralized by the Pelham Manor Shopping Center and Atlantic Avenue, respectively. The servicer contends that the Company did not substantially complete the improvements in accordance with the required completion dates as defined in the loan agreements and, accordingly, did not meet the requirements for the final draws. The Company does not believe the loans are in default and will vigorously defend its position and is currently in discussions with the servicer to resolve these issues. The Company believes that the ultimate resolution of this matter will not have a material adverse effect on the Company's financial condition or results of operations.

The following table summarizes our mortgage indebtedness as of September 30, 2009 and December 31, 2008:

(dollars in millions)

Lender/Originator	September 30, 2009	December 31, 2008	Interest Rate at September 30, 2009	Maturity	Properties Encumbered	Payment Terms
<b>Mortgage notes payable – variable-rate</b>						
Bank of America, N.A.	\$ 9.5	\$ 9.6	1.65% (LIBOR +1.40%)	6/29/2012	(1)	(32)
RBS Greenwich Capital	30.0	30.0	1.65% (LIBOR +1.40%)	4/1/2010	(2)	(33)
PNC Bank, National Association	10.4	11.4	3.50% (LIBOR +3.25%)	7/18/2010	(4)	(40)
Bank of America, N.A.	14.2	15.5	1.55% (LIBOR +1.30%)	12/1/2011	(6)	(32)
Anglo Irish Bank Corporation	9.8	9.8	1.90% (LIBOR +1.65%)	10/30/2010	(10)	(33)
Eurohypo AG	86.1	80.5	2.00% (LIBOR +1.75%)	10/4/2009	(5)	(40)
Bank of China	-	19.0	2.10% (LIBOR +1.85%)	-	(21)	(33)
Bank of America	19.0	-	1.75% (LIBOR +1.50%)	1/15/2010	(21)	(33)
Bank of America, N.A.	45.0	-	4.25% (LIBOR +4.00%)	7/29/2012	(31)	(32)
Sub-total mortgage notes payable	<u>224.0</u>	<u>175.8</u>				
<b>Secured credit facilities:</b>						
Bank of America, N.A.	30.0	48.9	1.50% (LIBOR +1.25%)	12/1/2010	(7)	(34)
Bank of America, N.A./Bank of New York	56.2	34.7	2.75% (LIBOR +2.50%)	3/1/2010	(8)	(33)
Bank of America, N.A.	134.4	62.2	0.80% (Commercial Paper +0.50%)	10/9/2011	(9)	(33)
J.P. Morgan Chase	2.0	-	1.50% (LIBOR +1.25%)	3/29/2010	(29)	(33)
Sub-total secured credit facilities	<u>222.6</u>	<u>145.8</u>				
Interest rate swaps (43)	<u>(83.5)</u>	<u>(73.4)</u>				
Total variable-rate debt	<u>363.1</u>	<u>248.2</u>				
<b>Mortgage notes payable – fixed-rate</b>						
RBS Greenwich Capital	14.4	14.6	5.64%	9/6/2014	(13)	(32)
RBS Greenwich Capital	17.6	17.6	4.98%	9/6/2015	(14)	(35)
RBS Greenwich Capital	12.4	12.5	5.12%	11/6/2015	(15)	(32)
Bear Stearns Commercial	34.6	34.6	5.53%	1/1/2016	(16)	(36)
Bear Stearns Commercial	20.5	20.5	5.44%	3/1/2016	(17)	(33)
J.P. Morgan Chase	8.2	8.3	6.40%	11/1/2032	(18)	(32)
Column Financial, Inc.	9.5	9.7	5.45%	6/11/2013	(19)	(32)
Merrill Lynch Mortgage Lending, Inc.	23.5	23.5	6.06%	10/1/2016	(20)	(37)
Cortlandt Deposit Corp	-	1.2	6.62%	-	(22)	(39)
Cortlandt Deposit Corp	-	2.3	6.51%	-	(23)	(39)
Bank of America N.A.	25.5	25.5	5.80%	10/1/2017	(3)	(33)
Bear Stearns Commercial	26.3	26.2	5.88%	8/1/2017	(11)	(38)
Wachovia	26.0	26.0	5.42%	2/11/2017	(12)	(33)
Bear Stearns Commercial	31.7	25.3	7.18%	1/1/2020	(27)	(41)
GEMSA Loan Services, L.P.	4.9	4.9	5.37%	12/1/2009	(24)	(32)
Wachovia	-	34.3	5.86%	6/11/2009	(25)	(32)
GEMSA Loan Services, L.P.	41.5	41.5	5.30%	3/16/2011	(26)	(33)
Bear Stearns Commercial	11.5	3.3	7.14%	1/1/2020	(28)	(42)
American United Life Insurance Company	4.8	-	6.35%	7/1/2014	(30)	(32)
Interest rate swaps (43)	<u>83.5</u>	<u>73.4</u>	5.21%	(44)		
Total fixed-rate debt	<u>396.4</u>	<u>405.2</u>				
Total fixed and variable debt	<u>759.5</u>	<u>653.4</u>				
Unamortized premium	<u>0.1</u>	<u>0.1</u>				
Total	<u>\$ 759.6</u>	<u>\$ 653.5</u>				

- Notes:
- (1) Village Commons Shopping Center
  - (2) 161<sup>st</sup> Street
  - (3) 216<sup>th</sup> Street
  - (4) Liberty Avenue
  - (5) Fordham Place
  - (6) Branch Shopping Center
  - (7) Line of credit secured by the following properties:  
Marketplace of Absecon  
Bloomfield Town Square  
Hobson West Plaza  
Town Line Plaza  
Methuen Shopping Center  
Abington Towne Center
  - (8) Acadia Strategic Opportunity Fund II, LLC line of credit secured by unfunded investor capital commitments
  - (9) Acadia Strategic Opportunity Fund III, LLC line of credit secured by unfunded investor capital commitments
  - (10) Tarrytown Center
  - (11) Merrillville Plaza
  - (12) 239 Greenwich Avenue
  - (13) New Loudon Center
  - (14) Crescent Plaza
  - (15) Pacesetter Park Shopping Center
  - (16) Elmwood Park Shopping Center
  - (17) Gateway Shopping Center
  - (18) Boonton Shopping Center
  - (19) Chestnut Hill
  - (20) Walnut Hill
  - (21) Sherman Avenue
  - (22) Kroger Portfolio
  - (23) Safeway Portfolio
  - (24) Acadia Suffern
  - (25) Acadia Storage Company, LLC.
  - (26) Acadia Storage Post Portfolio CO, LLC
  - (27) Pelham Manor
  - (28) Atlantic Avenue
  - (29) Line of credit secured by the Ledgewood Mall
  - (30) Clark-Diversey
  - (31) Cortlandt Towne Center
  - (32) Monthly principal and interest.
  - (33) Interest only monthly.
  - (34) Annual principal and monthly interest.
  - (35) Interest only monthly until 9/10; monthly principal and interest thereafter.
  - (36) Interest only monthly until 1/10; monthly principal and interest thereafter.
  - (37) Interest only monthly until 10/11; monthly principal and interest thereafter.
  - (38) Interest only monthly until 7/12 monthly principal and interest thereafter.
  - (39) Annual principal and semi-annual interest payments.
  - (40) Interest only upon draw down on construction loan.
  - (41) Interest only upon drawdown on construction loan until 2/1/13 monthly principal and interest thereafter
  - (42) Interest only upon drawdown on construction loan until 2/1/15 monthly principal and interest thereafter
  - (43) Maturing between 1/1/10 and 11/30/12.
  - (44) Represents the amount of the Company's variable-rate debt that has been fixed through certain cash flow hedge transactions (Note 9).



## CONTRACTUAL OBLIGATIONS AND OTHER COMMITMENTS

At September 30, 2009, maturities on our mortgage notes ranged from October 2009 to November 2032. In addition, we have non-cancelable ground leases at seven 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, 2009:

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	\$ 809.5	\$ 180.5	\$ 367.3	\$ 31.8	\$ 229.9
Interest obligations on debt	143.7	28.0	43.8	30.4	41.5
Operating lease obligations	119.3	1.3	10.3	10.6	97.1
Construction commitments <sup>1</sup>	18.3	18.3	-	-	-
Total	<u>\$ 1,090.8</u>	<u>\$ 228.1</u>	<u>\$ 421.4</u>	<u>\$ 72.8</u>	<u>\$ 368.5</u>

Notes:

<sup>1</sup> In conjunction with the redevelopment of our Core Portfolio and Opportunity Fund properties, we have entered into construction commitments with general contractors. We intend to fund these requirements with existing liquidity.

## OFF BALANCE SHEET ARRANGEMENTS

We have investments in the following joint ventures for the purpose of investing in operating properties. We account for these investments using the equity method of accounting as we have 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 7 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:

Investment	Pro rata share of mortgage debt	Interest rate at September 30, 2009	Maturity date
Crossroads	\$ 30.6	5.37%	December 2014
Brandywine	36.9	5.99%	July 2016
CityPoint	6.0	2.75%	February 2010
Sterling Heights	3.1	2.10%	August 2010
Total	<u>\$ 76.6</u>		

In addition, at September 30, 2009, we are contingently liable under four separate letters of credit aggregating \$5.1 million issued in connection with certain leases and investments.

## HISTORICAL CASH FLOW

The following table compares the historical cash flow for the nine months ended September 30, 2009 ("2009") with the cash flow for the nine months ended September 30, 2008 ("2008")

(dollars in millions)	Nine months ended September 30,		
	2009	2008	Change
Net cash provided by operating activities	\$ 39.1	\$ 25.4	\$ 13.7
Net cash used in investing activities	(110.4)	(275.4)	165.0
Net cash provided by financing activities	102.4	188.1	(85.7)
Total	<u>\$ 31.1</u>	<u>\$ (61.9)</u>	<u>\$ 93.0</u>

A discussion of the significant changes in cash flow for 2009 versus 2008 is as follows:

The \$13.7 million increase in net cash provided by operating activities was attributable to the following: (i) a \$28.3 million increase in other assets primarily related to additional cash used for the purchase of short term financial instruments in 2008 and the subsequent redemption of these financial instruments in 2009 and (ii) a \$22.5 million increase in cash escrows attributable to the funding of our tax deferred exchange transactions in 2008. These 2009 increases were offset by the following: (i) lease termination income of \$24.0 million from Home Depot at Canarsie Plaza in 2008 and (ii) an \$11.3 million decrease in distributions (primarily Albertson's) of operating income from unconsolidated affiliates in 2009.

A decrease of \$165.0 million of net cash used in investing activities resulted from the following: (i) a decrease of \$101.4 million in expenditures for real estate, development and tenant installations in 2009 and (ii) a decrease of \$48.6 million in advances of notes receivable in 2009, and (iii) a \$40.0 million preferred equity investment in 2008. These decreases in cash used were offset by (i) an additional \$14.1 million in proceeds from the sale of properties in 2008 and (ii) a decrease of \$10.6 million in collections of notes receivable in 2009.

The \$85.7 million decrease in net cash provided by financing activities was attributable to the following decreases in cash for 2009: (i) \$85.1 million of additional cash used for repayment of debt in 2009, (ii) an additional \$46.7 million of cash used for the purchase of convertible notes in 2009, and (iii) a decrease of \$38.8 million in capital contributions from noncontrolling interests in 2009. These 2009 cash decreases were offset by the following: (i) \$65.2 million of additional cash from the issuance of Common Shares, net of costs, in 2009 (ii) an additional \$12.8 million of distributions to noncontrolling interests in 2008.

## 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, 2009, we had total mortgage debt and convertible notes payable of \$807.1 million, net of unamortized premium of \$0.1 million and unamortized discount of \$2.4 million, of which \$444.0 million or 55.0% was fixed-rate, inclusive of interest rate swaps, and \$363.1 million, or 45.0% was variable-rate based upon LIBOR or commercial paper rates plus certain spreads. As of September 30, 2009, we were a party to eight interest rate swap transactions and one interest rate cap transaction to hedge our exposure to changes in interest rates with respect to \$83.5 million and \$30.0 million of LIBOR-based variable-rate debt, respectively.

Of our total consolidated outstanding debt, \$91.3 million and \$159.6 million will become due in 2009 and 2010, 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 \$2.5 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 \$0.8 million.

Interest expense on our consolidated variable-rate debt, net of variable to fixed-rate swap agreements currently in effect, as of September 30, 2009 would increase by \$3.6 million annually if LIBOR increased by 100 basis points. After giving effect to noncontrolling interests, the Company's share of this increase would be \$0.7 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 have not been any changes in the Company’s internal control over financial reporting during the fiscal quarter to which this report relates that have materially affected, or are 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 2008 Form 10-K.

**Item 1A. Risk Factors.**

The most significant risk factors applicable to the Company are described in Item 1A of our 2008 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. Submission of Matters to a Vote of Security Holders.**

None

**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 6, 2009

/s/ Kenneth F. Bernstein  
Kenneth F. Bernstein  
President and Chief Executive Officer  
(Principal Executive Officer)

November 6, 2009

/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)
10.17	Mortgage, Assignment of Leases and Rents and Security Agreement from Acadia Cortlandt LLC to Bank of America, N.A. dated July 29, 2009 [Initial Advance], Note made by Acadia Cortlandt LLC in favor of Bank of America, N.A. dated July 29, 2009 [Initial Advance], Mortgage, Assignment of Leases and Rents and Security Agreement from Acadia Cortlandt LLC to Bank of America, N.A. dated July 29, 2009 [Future Advance] and Note made by Acadia Cortlandt LLC in favor of Bank of America, N.A. dated July 29, 2009 [Future Advance] (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

SECTION: 24.10  
BLOCK: 1  
LOTS: 1, 1.2, 2 and 3  
Premises: Cortlandt Towne Center Shopping Center, Town of Cortlandt

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Date: As of July 29, 2009

MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS AND SECURITY AGREEMENT  
("this Mortgage")

FROM

ACADIA CORTLANDT LLC,  
a limited liability company organized and existing under the laws of Delaware  
("Mortgagor")

Address and Chief  
Executive Office of Mortgagor:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605

TO

BANK OF AMERICA, N.A.,  
a national banking association,  
as Administrative Agent  
("Mortgagee")

Address of Mortgagee:

One Bryant Park, 35th Floor  
New York, New York 10036

Mortgage Amount: \$45,000,000

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This instrument prepared by, and after recording please return to:  
Schiff Hardin LLP  
900 Third Avenue, 23rd Floor  
New York, New York 10022  
Attention: Paul G. Mackey, Esq.

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THE AMOUNT OF THIS MORTGAGE IS \$45,000,000.

MORTGAGE, ASSIGNMENT OF  
LEASES AND RENTS, AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Mortgage") is made as of the 29th day of July, 2009, by ACADIA CORTLANDT LLC, a Delaware limited liability company, ("Mortgagor"), in favor of and for the benefit of BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for itself and other lenders pursuant to the Loan Agreement defined below (together with its successors and assigns, "Mortgagee").

ARTICLE 1

Definitions; Granting Clauses; Secured Indebtedness

Section 1.1. Principal Secured. This Mortgage secures the aggregate principal amount of up to \$45,000,000 plus such additional amounts as Mortgagee may from time to time advance subsequent to a default by Mortgagor pursuant to the terms and conditions of this Mortgage, with respect to an obligation secured by a lien or encumbrance prior to the lien of this Mortgage or for the protection of the lien of this Mortgage, together with interest thereon. In the event that all or any part of the Premises is located in the State of New York, then, notwithstanding the language in the Granting Clause and Section 2.2 or anything else contained herein to the contrary, the maximum amount secured hereby at execution or which under any contingency may become secured hereby at any time hereafter is the Mortgage Amount and all interest, additional interest and late payment and prepayment charges in respect thereof, plus all amounts expended by Mortgagee following a default hereunder in respect of insurance premiums and real estate taxes, and all legal costs or expenses of collection of the debt secured hereby or of the defense or prosecution of the rights and lien created hereby.

Section 1.2. Definitions.

(a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

"Additional Interest": Additional Interest as defined in the Loan Agreement.

"Loan Agreement": Loan Agreement dated of even date herewith between Mortgagor and Mortgagee, as it may be from time to time amended, restated, modified, extended or supplemented.

"Mortgagor": Acadia Cortlandt LLC, a Delaware limited liability company, whose address is c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and its permitted successors and assigns.

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Capitalized terms used herein which are not otherwise defined but which are defined in the Loan Agreement shall have the meaning ascribed to them in the Loan Agreement.

Section 1.3. Granting Clause. In consideration of the provisions of this Mortgage and of the sum of \$10.00 cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, Mortgagor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN, MORTGAGE, HYPOTHECATE, PLEDGE, DEPOSIT and SET OVER to Mortgagee, with all estate, right, title and interest of Mortgagor in and to the Property (as hereinafter defined), whether now owned or held or hereafter acquired by Mortgagor, to have and hold the Property unto Mortgagee, its successors and assigns forever; and to hold the Property unto Mortgagee in fee simple forever; provided that Mortgagor may retain possession of the Property until the occurrence of an Event of Default; (a) the real property described in Exhibit A which is attached hereto and incorporated herein by reference (the "Land") together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the "Improvements"); and (ii) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase or lease the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); (c) all (i) plans and specifications for the Improvements; (ii) Mortgagor's rights, but not liability for any breach by Mortgagor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), Swap Transactions (as hereinafter defined), contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories



(including but not limited to Mortgagor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (hereinafter defined) for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan or any Swap Transaction, all rights to the payment of money from Mortgagee under any Swap Transaction, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Transaction; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest; and (d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; (iii) all commercial tort claims Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Mortgagor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the lease creating the leasehold estate; TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Mortgagee, its successors and assigns, in trust, in fee simple forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Mortgagor under the Note and Loan Documents (as hereinafter defined) and all other indebtedness and matters defined as "Secured Indebtedness" in Section 1.5 of this Mortgage; PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee (as hereinafter defined) the principal sum, including all additional advances and all other sums payable by Mortgagor to Mortgagee under the terms of the Loan Documents and shall perform or cause to be performed all the other terms, conditions, agreements and provisions contained in the Loan Documents, all without fraud or delay or deduction or abatement of anything or for any reason, then this Mortgage and the estate hereby granted shall cease, terminate and become void.

Section 1.4. Security Interest. Mortgagor hereby grants to Mortgagee a security interest in all of the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "Collateral") to secure the obligations of Mortgagor under the Note and Loan Documents and all other indebtedness and matters defined as Secured Indebtedness in Section 1.5 of this Mortgage. In addition to its rights hereunder or otherwise, Mortgagee shall have all of the rights of a secured party under the New York Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law.

Section 1.5. Secured Indebtedness, Note, Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively the "Secured Indebtedness"): (a) the Promissory Note and all other promissory notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part (such promissory note or promissory notes, whether one or more, as from time to time renewed, extended, supplemented, increased or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "Note", and Mortgagee, or the subsequent Mortgagee at the time in question of the Note or any of the Secured Indebtedness, as hereinafter defined, such Mortgagee continuing to be defined herein as "Mortgagee"); and (b) all interest, Additional Interest, indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Mortgagor to Mortgagee now or hereafter incurred or arising pursuant to or permitted by the provisions of the Note, this Mortgage, the Loan Agreement or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the loan evidenced by the Note, including but not limited to any loan or credit agreement, letter of credit or reimbursement agreement, tri-party financing agreement, Master Agreement relating to any Swap Transactions or other agreement between Mortgagor and Mortgagee, or among Mortgagor, Mortgagee and any other party or parties, pertaining to the repayment or use of the proceeds of the loan evidenced by the Note (the Note, the Mortgage, the Loan Agreement, any Master Agreement relating to any Swap Transactions and any such documents as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the "Loan Documents"). "Swap Transaction" means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement (the "Master Agreement") published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Mortgagee (or its affiliates) and Mortgagor (or its affiliates), together with any related schedules, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.

Representations, Warranties and Covenants

Section 2.1. Mortgagor represents, warrants, and covenants as follows:

(a) Payment and Performance. Mortgagor will make due and punctual payment of the Secured Indebtedness. Mortgagor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Mortgage and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this Mortgage.

(b) Title and Permitted Encumbrances. Mortgagor has, in Mortgagor's own right, and Mortgagor covenants to maintain, lawful, good and marketable title to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any, set forth under the heading "Permitted Encumbrances" in Exhibit B hereto, which are Permitted Encumbrances only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of Mortgagee (the matters described in the foregoing clauses (i), (ii), (iii) and (iv) being herein called the "Permitted Encumbrances"). Mortgagor, and Mortgagor's successors and assigns, will warrant generally and forever defend title to the Property, subject as aforesaid, to Mortgagee and his successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Mortgagor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Mortgagee. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Mortgagee of any existing or future violation or other breach thereof by Mortgagor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Mortgagor if Mortgagor is an individual. If any right or interest of Mortgagee in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Mortgagee and Mortgagee, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Mortgagee, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee or Mortgagee (as the case may be), and the party (Mortgagee or Mortgagee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions. Mortgagor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all real estate taxes assessed against the Property or any part thereof, and shall deliver promptly to Mortgagee such evidence of the payment thereof as Mortgagee may require.

(d) Insurance. Mortgagor shall obtain and maintain at Mortgagor's sole expense: (1) mortgagee title insurance issued to Mortgagee covering the Premises as required by Mortgagee, without exception for mechanics' liens; (2) property insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against any and all acts of terrorism and such other insurable hazards as Mortgagee may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Mortgagor and Mortgagee from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non-reporting) form during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises; (3) if and to the extent any portion of the Improvements is, under the Flood Disaster Protection Act of 1973 ("FDPA"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by Mortgagee, but in no event less than the amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; (4) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of Mortgagor as named insured and Mortgagee as additional insured; (5) statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of Mortgagor and any contractor; (6) if there is a general contractor, during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in clause (4) above, for the benefit of the general contractor as named insured and Mortgagor and Mortgagee as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of the general contractor any contractor; and (7) such other insurance on the Property and endorsements as may from time to time be required by Mortgagee (including but not limited

to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance, wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to Mortgagee, and shall require not less than ten (10) days' prior written notice to Mortgagee of any cancellation for nonpayment of premiums, and not less than thirty (30) days' prior written notice to Mortgagee of any other cancellation or any change of coverage. All insurance companies must be licensed to do business in the state in which the Property is located and must have an A.M. Best Company financial and performance ratings of A-:IX or better. All insurance policies maintained, or caused to be maintained, by Mortgagor with respect to the Property, except for general liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Mortgagor or Mortgagee and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Mortgage or any other Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any Debtor Relief Law, or if in Mortgagee's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Mortgagor shall, in each instance promptly upon its discovery thereof or upon the request of Mortgagee therefor, and at Mortgagor's expense, promptly obtain and deliver to Mortgagee a like policy (or, if and to the extent permitted by Mortgagee, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this Mortgage or such other Loan Document, as the case may be. Without limiting the discretion of Mortgagee with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Mortgagee as mortgagee with loss proceeds payable to Mortgagee notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named or additional insured; (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Mortgagee under the Loan Documents; or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. The originals of each initial insurance policy (or to the extent permitted by Mortgagee, a copy of the original policy and such evidence of insurance acceptable to Mortgagee) shall be delivered to Mortgagee at the time of execution of this Mortgage, with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to Mortgagee, with all premiums fully paid current, at least ten (10) days before the termination of the policy it renews or replaces. Mortgagor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Mortgagee evidence satisfactory to Mortgagee of the timely payment thereof. If any loss occurs at any time when Mortgagor has failed to perform Mortgagor's covenants and agreements in this paragraph with respect to any insurance payable because of loss sustained to any part of the Property whether or not such insurance is required by Mortgagee, Mortgagee shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Mortgagor, to the same extent as if it had been made payable to Mortgagee. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Secured Indebtedness, all of Mortgagor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in

the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Mortgagee shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property where the loss is estimated by Mortgagee to be \$1,000,000 or more, regardless of whether or not such insurance policies are required by Mortgagee, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be a part of the Secured Indebtedness and shall be due and payable to Mortgagee on demand. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Mortgagor. Any such proceeds received by Mortgagee shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration, either partly or entirely, of the Property so damaged, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(e) Application of Insurance Proceeds. Notwithstanding anything to the contrary set forth in the preceding Section 2.1(d), if the Property is damaged or destroyed and Mortgagee determines that all of the conditions specified hereinafter in this Section have been satisfied, then Mortgagee shall apply the proceeds of insurance (i) first to reimbursing itself for all costs incurred by it in the collection of such proceeds and (ii) second to reimbursing Mortgagor for such actual costs as shall have been incurred by Mortgagor in restoring the Property and shall be approved by Mortgagee. Insurance proceeds shall be applied to such restoration solely if (A) Mortgagee determines that: (i) the Property is capable of being suitably restored in accordance with applicable Legal Requirements to the value, condition, character and general utility existing prior to such damage or destruction, and, in any event, to a Loan to Value Ratio of not greater than 70%, provided that this clause (i) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (ii) sufficient funds are unconditionally available (from proceeds of insurance and/or from funds of Mortgagor) to enable Mortgagor promptly to commence, and thereafter diligently to prosecute to completion, such restoration, provided that this clause (ii) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (iii) Mortgagor is not in default or in breach of any obligations under any Loan Document, no uncured Default exists under any Loan Document and no facts or circumstances exist that would constitute a Default with the passage of time or the giving of notice or both; and (iv) neither the validity, enforceability nor priority of the lien of this Mortgage shall be adversely affected; (B) Mortgagor has entered into a written agreement, satisfactory in form and substance to Mortgagee, containing such conditions to disbursements as are employed at the time by Mortgagee for construction loans; (C) Mortgagor has delivered to Mortgagee such security as Mortgagee might have reasonably required to assure completion of restoration in accordance with the standards specified above; and (D) Mortgagor has complied with such further reasonable requirements as Mortgagee might have specified.

(f) Reserve for Insurance, Taxes and Assessments. Upon request of Mortgagee, to secure the payment and performance of the Secured Indebtedness, but not in lieu of such payment and performance, Mortgagor will deposit with Mortgagee a sum equal to real estate taxes, assessments and charges (which charges for the purposes of this paragraph shall include without limitation any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Mortgagee and prorated to the end of the calendar month following the month during which Mortgagee's request is made, and thereafter will deposit with Mortgagee, on each date when an installment of principal and/or interest is due on the Note, sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay at least fifteen (15) days prior to the due date thereof, the next maturing real estate taxes, assessments and charges and premiums for such policies of insurance. Mortgagee shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Mortgagee for future use, applied to any Secured Indebtedness or refunded to Mortgagor, at Mortgagee's option, and any deficiency in such funds so deposited shall be made up by Mortgagor upon demand of Mortgagee. All such funds so deposited shall bear no interest, may be commingled with the general funds of Mortgagee and shall be applied by Mortgagee toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Mortgagee by Mortgagor (which statements shall be presented by Mortgagor to Mortgagee a reasonable time before the applicable amount is due); provided, however, that, if a Default shall have occurred hereunder, such funds may at Mortgagee's option be applied to the payment of the Secured Indebtedness in the order determined by Mortgagee in its sole discretion, and that Mortgagee may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Mortgagor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Mortgagor's interest in and rights to such funds held by Mortgagee under this paragraph but subject to the rights of Mortgagee hereunder.

(g) Condemnation. Mortgagor shall notify Mortgagee immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Mortgagor shall, at Mortgagor's expense, diligently prosecute any such proceedings. Mortgagee shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Mortgagee shall be entitled to receive all sums which may be awarded or become payable to Mortgagor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for injury or damage to the Property. Mortgagor shall, promptly upon request of Mortgagee, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Mortgagee to collect and receipt for any such sums. All such sums are hereby assigned to Mortgagee, and shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration of the Property so affected, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Mortgagor. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All costs and expenses (including but not limited to attorneys' fees) incurred by Mortgagee in connection with any condemnation shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(h) Compliance with Legal Requirements. The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Legal Requirements (hereinafter defined). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Mortgagor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Mortgage to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. No improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Mortgagor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property.

If Mortgagor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Mortgagor will promptly furnish a copy of such notice or claim to Mortgagee. Mortgagor has received no notice and has no knowledge of any such noncompliance. As used in this Mortgage: (i) the term "Legal Requirement" means any Law (hereinafter defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(i) Maintenance, Repair and Restoration. Mortgagor will keep the Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Mortgagor will not, without the prior written consent of Mortgagee, (i) remove from the Property any fixtures or personal property covered by this Mortgage except such as is replaced by Mortgagor by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest (except that created by this Mortgage), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Mortgagor shall give prompt notice thereof to Mortgagee and Mortgagor shall promptly, at Mortgagor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.



(j) No Other Liens. Mortgagor will not, without the prior written consent of Mortgagee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Mortgagee, Mortgagor will cause the same to be promptly discharged and released. Mortgagor will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Mortgagee. If Mortgagee consents to the voluntary grant by Mortgagor of any mortgage, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Mortgage and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Mortgagee; (3) Rents (hereinafter defined), if collected by or for the Mortgagee of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Mortgagee may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Mortgagee with or immediately after the occurrence of any such default or commencement; and (5) neither the Mortgagee of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Mortgagor's rights hereunder without the prior written consent of Mortgagee.

(k) Operation of Property. Mortgagor will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Mortgagor will keep the Property occupied so as not to impair the insurance carried thereon. Mortgagor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Mortgagor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Mortgagor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Mortgagee. Mortgagor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened. Mortgagor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Mortgagee, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Mortgagor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid.

(l) Financial Matters. Mortgagor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law (hereinafter defined) is pending (or, to Mortgagor's knowledge, threatened) by or against Mortgagor, or any affiliate of Mortgagor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Mortgagor to Mortgagee in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Mortgagor or, to Mortgagor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Mortgagor" shall also include any person liable directly or indirectly for the Secured Indebtedness or any part thereof and any joint venturer or general partner of Mortgagor.

(m) Status of Mortgagor; Suits and Claims; Loan Documents. If Mortgagor is a corporation, partnership, limited liability company, or other legal entity, Mortgagor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Mortgagor has been duly authorized, executed and delivered by Mortgagor, and the obligations thereunder and the performance thereof by Mortgagor in accordance with their terms are and will continue to be within Mortgagor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement or any other document or agreement to which Mortgagor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Mortgagor, or any other person liable, directly or indirectly, for any of the Secured Indebtedness, except as expressly contemplated by the Loan Documents.

There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Mortgagor's knowledge, threatened) against Mortgagor or against any other person liable directly or indirectly for the Secured Indebtedness or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Mortgagor's title to the Property) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Mortgagor's knowledge, threatened) against Mortgagor, or against any other person liable directly or indirectly for the Secured Indebtedness, except as has been disclosed in writing to Mortgagee in connection with the loan evidenced by the Note. The Loan Documents constitute legal, valid and binding obligations of Mortgagor enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws (hereinafter defined) and except as the availability of certain remedies may be limited by general principles of equity. Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Mortgagor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The loan evidenced by the Note is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Mortgagor further warrants that the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan. Mortgagor's exact legal name is correctly set forth at the end of this Mortgage. If Mortgagor is not an individual, Mortgagor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Mortgage. If Mortgagor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the introductory paragraph of this Mortgage. Mortgagor will not cause or permit any change to be made in its name, identity (including its trade name or names), or corporate or partnership structure, unless Mortgagor shall have notified Mortgagee in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Mortgagee for the purpose of further perfecting or protecting the lien and security interest of Mortgagee in the Property. In addition, Mortgagor shall not change its corporate or partnership structure without first obtaining the prior written consent of Mortgagee. Mortgagor's principal place of business and chief executive office, and the place where Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Mortgagor) been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of Mortgagor set forth at the end of this Mortgage. If Mortgagor is an individual, Mortgagor's principal residence has for the preceding four months been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of the principal residence of Mortgagor set forth at the end of this Mortgage. Mortgagor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage. Mortgagor shall promptly notify Mortgagee (i) of any change of its organizational identification number, or (ii) if Mortgagor does not now have an organization identification number and later obtains one, of such organizational identification number.

(n) Certain Environmental Matters. Mortgagor shall comply with the terms and covenants of that certain Environmental Indemnity Agreement dated of even date herewith (the "Environmental Agreement").

(o) Further Assurances. Mortgagor will, promptly on request of Mortgagee, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further mortgages of trust, security agreements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Mortgagee to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Mortgagee to enable Mortgagee to comply with the requirements or requests of any agency having jurisdiction over Mortgagee or any examiners of such agencies with respect to the indebtedness secured hereby, Mortgagor or the Property. Mortgagor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Mortgagee (which Mortgagee hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(p) Fees and Expenses. Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Mortgagee and/or Mortgagee on demand to the extent paid by Mortgagee and/or Mortgagee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, reasonable attorneys' fees, reasonable architect fees, reasonable engineer fees, reasonable construction consultant fees, reasonable environmental inspection fees, survey fees, and all other reasonable costs and expenses of every character incurred by Mortgagor or Mortgagee and/or Mortgagee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all amendments and supplements to this Mortgage, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Mortgagor as owner of the Property; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Mortgagor, hereunder or under any other Loan Document.

(q) Indemnification.

(i) Mortgagor will indemnify and hold harmless Mortgagee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (p), the term "Mortgagee" shall include and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Mortgagee. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this paragraph (p) by Mortgagor to Mortgagee shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Mortgagee (including without limitation any rights of contribution or indemnification) against Mortgagor or any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Mortgagee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date (hereinafter defined), any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Mortgagor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein, any claim under or with respect to any Lease (hereinafter defined) or arising under the Environmental Agreement. The term "Release Date" as used herein means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Mortgage has been released, or (ii) the date on which the lien of this Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Mortgagor and Mortgagor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (p) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness, the termination of any and all Swap Transactions, the discharge and release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(r) Records and Financial Reports. Mortgagor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Property and the operation thereof, and will permit all such books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics to be inspected and copied, and the Property to be inspected and photographed, by Mortgagee and its representatives during normal business hours and at any other reasonable times. Without limitation of other or additional requirements in any of the other Loan Documents, Mortgagor will furnish to Mortgagee the financial statements required under the Loan Agreement. Mortgagor will furnish to Mortgagee at Mortgagor's expense all evidence which Mortgagee may from time to time reasonably request as to compliance with all provisions of the Loan Documents. Any inspection or audit of the Property or the books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics of Mortgagor, or the procuring of documents and financial and other information, by or on behalf of Mortgagee shall be for Mortgagee's protection only, and shall not constitute any assumption of responsibility to Mortgagor or anyone else with regard to the condition, construction, maintenance or operation of the Property nor Mortgagee's approval of any certification given to Mortgagee nor relieve Mortgagor of any of Mortgagor's obligations. Mortgagee may from time to time assign or grant participations in the Secured Indebtedness and Mortgagor consents to the delivery by Mortgagee to any acquirer or prospective acquirer of any interest or participation in or with respect to all or part of the Secured Indebtedness such information as Mortgagee now or hereafter has relating to the Property, Mortgagor, any party obligated for payment of any part of the Secured Indebtedness, any tenant or guarantor under any lease affecting any part of the Property and any agent or guarantor under any management agreement affecting any part of the Property.

(s) Taxes on Note or Mortgage. Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Mortgagor is prohibited by law) which may be required to be paid with respect to the Note, this Mortgage or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Mortgagee, the Note, the Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the Secured Indebtedness or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Secured Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

(t) Statement Concerning Note or Mortgage. Mortgagor shall at any time and from time to time furnish within seven (7) days of request by Mortgagee a written statement in such form as may be required by Mortgagee stating that (i) the Note, this Mortgage and the other Loan Documents are valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms; (ii) the unpaid principal balance of the Note; (iii) the date to which interest on the Note is paid; (iv) the Note, this Mortgage and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other Loan Document. If any of the foregoing statements are untrue, Mortgagor shall, alternatively, specify the reasons therefor. Mortgagee shall at any time and from time to time furnish within seven (7) days of request by Mortgagor a written statement stating (i) the unpaid principal balance of the Note and (ii) the date to which interest on the Note is paid.

(u) Trust Fund; Lien Laws. Mortgagor will receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the "cost of improvement", as such quoted term is defined in the New York Lien Law) and will apply the same first to the payment of such costs before using any part of the total of the same for any other purpose and, will comply with Section 13 of the New York Lien Law. Mortgagor will indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, reasonable attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagor of any applicable lien law including, without limitation, any section of Article 3-A of the New York Lien Law.

Section 2.2. Performance by Mortgagee on Mortgagor's Behalf. Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which under any Loan Document Mortgagor is required to perform or take, or to pay any money which under any Loan Document Mortgagor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the Secured Indebtedness has been accelerated, Mortgagee, in Mortgagor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Mortgagee, with interest thereon at the Past Due Rate set forth in the Note, and any money so paid by Mortgagee shall be a demand obligation owing by Mortgagor to Mortgagee (which obligation Mortgagor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Mortgagee and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Mortgagee shall waive or cure any default or waive any right, remedy or recourse of Mortgagee. Any such payment may be made by Mortgagee in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Mortgagor to Mortgagee pursuant to this Mortgage shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Note for interest on past due principal owed on the Note but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Mortgagee on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Mortgagee hereunder and the time when paid shall be fully established by the certificate of Mortgagee or any of Mortgagee's officers or agents.

Section 2.3. Absence of Obligations of Mortgagee with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Mortgagor's rights, title and interests therein but not Mortgagor's obligations, duties or liabilities pertaining thereto, (ii) Mortgagee neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Mortgagee may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Mortgagee's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Mortgagee shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Mortgagee elects otherwise by written notification.

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, required by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. For purposes of such filings, Mortgagor agrees to furnish any information requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Mortgage. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Mortgagor's authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorney-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.



Assignment of Rents and Leases

Section 3.1. Assignment. Mortgagor hereby assigns to Mortgagee all Rents (hereinafter defined) and all of Mortgagor's rights in and under all Leases (hereinafter defined). So long as no Default (hereinafter defined) has occurred, Mortgagor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of a Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Mortgagee, and to otherwise deal with all Leases as permitted by this Mortgage. Each month, provided no Default has occurred, Mortgagor may retain such Rents as were collected that month and held in trust for Mortgagee; provided, however, that all Rents collected by Mortgagor shall be applied solely to the ordinary and necessary expenses of owning and operating the Property or paid to Mortgagee. Upon the revocation of such license, all Rents shall be paid directly to Mortgagee and not through the Mortgagor, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payments to Mortgagee shall constitute payments to Mortgagor under the Leases, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to do all things, after a Default, which Mortgagor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Mortgagee, all in such manner as may be determined by Mortgagee, or at the option of Mortgagee, holding the same as security for the payment of the Secured Indebtedness, (ii) leasing, in the name of Mortgagor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Default, unless other Defaults also then exist, shall entitle Mortgagor to recover its aforesaid license to do any such things which Mortgagor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Mortgagee to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Mortgagee for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this Mortgage. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Mortgagor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by damage to any part of the Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents. Mortgagor covenants, represents and warrants that: (a) Mortgagor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) neither Mortgagor nor any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Mortgagor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Mortgagor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (h) Mortgagor will not without the prior written consent of Mortgagee, enter into any Lease after the date hereof except in accordance with the terms of Exhibit I to the Loan Agreement, or waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant (except in accordance with the terms of Exhibit I to the Loan Agreement), reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with the terms of Exhibit I to the Loan Agreement or in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease (except with respect to leases of 5,000 square feet of rentable space or less), or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise (except with respect to leases of 5,000 square feet of rentable space or less); (i) Mortgagor will not, without the prior written consent of Mortgagee, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more unless promptly after the cancellation or surrender a new Lease of such premises is made with a new tenant having a credit standing that is satisfactory to Mortgagee, in Mortgagee's judgment, on terms not materially less favorable to lessor than the terms of the terminated or cancelled Lease; (j) Mortgagor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (k) Mortgagor shall give prompt notice to Mortgagee, as soon as Mortgagor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Mortgagor shall defend, at Mortgagor's expense, any proceeding pertaining to any Lease, including, if Mortgagee so requests, any such proceeding to which Mortgagee is a party; (l) Mortgagor shall as often as requested by Mortgagee, within ten (10) days of each request, deliver to Mortgagee a complete rent roll of the Property in such detail as Mortgagee may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Mortgagor, and deliver to such of the tenants and others obligated under the Leases specified by Mortgagee written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Mortgagee; (m) promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee executed originals of all Leases and copies of all records in its possession or control relating thereto; (n) there shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Mortgagee; and (o) Mortgagee may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lien Mortgagee; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

Section 3.3. Estoppel Certificates. All Leases executed after the date hereof shall require the tenant to execute and deliver to Mortgagee an estoppel certificate in form and substance acceptable to Mortgagee not more than thirty (30) days after notice from the Mortgagee.

Section 3.4. No Liability of Mortgagee. Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate Mortgagee to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Property, or for Mortgagee's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Mortgagee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the same), shall render Mortgagee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Mortgagee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Mortgagee under this Article 3 shall be cumulative of all other rights of Mortgagee under the Loan Documents or otherwise.

Reference is hereby made to Section 291-f of the Real Property Law of the State of New York for the purpose of obtaining for Mortgagee the benefits of said Section in connection herewith.

Default

Section 4.1. Events of Default. The occurrence of any one of the following shall be a default under this Mortgage ("default" or "Default"):

(a) Failure to Pay Indebtedness. Any of the Secured Indebtedness or any indebtedness evidenced by the other "Notes" (as defined in the Loan Agreement) is not paid when due, regardless of how such amount may have become due and such default shall have continued for a period of ten (10) days.

(b) Nonperformance of Covenants. Any covenant, agreement or condition herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept and such failure shall have continued for a period of thirty (30) days after notice thereof shall have been given to Mortgagor by Mortgagee (or such other cure period as may be specified elsewhere in this Mortgage or the other Loan Documents with respect to specific provisions), provided, however, if such default is not susceptible of being cured within such thirty (30) day period and Mortgagor has commenced such cure within such thirty (30) day period and is diligently pursuing such cure to Mortgagee's satisfaction, such thirty (30) day cure period shall be extended, but in no event shall such cure period exceed sixty (60) days, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein.

(c) Default under other Loan Documents. The occurrence of a Default under any other Loan Document, including an Early Termination Event as defined in any Master Agreement relating to any Swap Transaction.

(d) Representations. Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Mortgagee in connection with the Secured Indebtedness is false, misleading or erroneous in any material respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(e) Bankruptcy or Insolvency. The owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness (or any general partner or joint venturer of such owner or other person):

(i) (A) Executes an assignment for the benefit of creditors, or takes any action in furtherance thereof; or (B) admits in writing its inability to pay, or fails to pay, its debts generally as they become due; or (C) as a debtor, files a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, Title 11 of the United States Code as now or hereafter in effect or any other federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors (Title 11 of the United States Code and such other laws being herein called "Debtor Relief Laws"), or takes any action in furtherance thereof; or (D) seeks the appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property; or

(ii) Suffers the filing of a petition, case, proceeding or other action against it as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property, and (A) admits, acquiesces in or fails to contest diligently the material allegations thereof, or (B) the petition, case, proceeding or other action results in entry of any order for relief or order granting relief sought against it, or (C) in a proceeding under Debtor Relief Laws, the case is converted from one chapter to another, or (D) fails to have the petition, case, proceeding or other action permanently dismissed or discharged on or before the earlier of trial thereon or ninety (90) days next following the date of its filing; or

(iii) Conceals, removes, or permits to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or makes any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffers or permits, while insolvent, any creditor to obtain a lien (other than as described in subparagraph (iv) below) upon any of its property through legal proceedings which are not vacated and such lien discharged prior to enforcement thereof and in any event within sixty (60) days from the date thereof; or

(iv) Fails to have discharged within a period of thirty (30) days any attachment, sequestration, or similar writ levied upon any of its property; or

(v) Fails to pay immediately any final money judgment against it.

(f) Transfer of the Property. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Mortgagor, having a value equal to or greater than the replaced items when new; and (ii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Mortgage or of any other Loan Document. Mortgagee may, in its sole discretion, waive a default under this paragraph, but it shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which Mortgagee may require: the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Mortgagee in its sole judgment and grantee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Mortgagee may require, a principal paydown on the Note, an increase in the rate of interest payable under the Note, a transfer fee, a modification of the term of the Note, and any other modification of the Loan Documents which Mortgagee may require. : NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL AND ANY AND ALL SWAP TRANSACTIONS ARE SUBJECT TO TERMINATION, OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

(g) Transfer of Assets. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the other assets of Mortgagor, excluding the Property, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers in the ordinary course of Mortgagor's business; and (ii) sales or transfers for which Mortgagor receives consideration substantially equivalent to the fair market value of the transferred asset.

(h) Transfer of Ownership of Mortgagor. Any of the following:

(i) the sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Mortgagor (if Mortgagor is not a natural person but is a corporation, partnership, limited liability company, trust or other legal entity), without the prior written consent of Mortgagee (including, without limitation, if Mortgagor is a partnership or joint venture, the withdrawal from or admission into it of any general partner or joint venturer); or

(ii) if Mortgagor or Guarantor (or a general partner, member or co-venturer of either of them) is a partnership, joint venture, limited liability company, trust or closely-held corporation, any sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of any class of the issued and outstanding capital stock of such closely-held corporation or of the beneficial interest of such partnership, venture, limited liability company or trust, or a change of any general partner, joint venturer, member or beneficiary, as the case may be, or, in the event Mortgagor or Guarantor (or a general partner, co-venturer, member or beneficiary, as the case may be, of either of them) is a publicly-held corporation, the sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of the stock-holdings of any of the five (5) individuals or entities that own the greatest number of shares of each class of issued and outstanding stock, or effectuates or permits a reduction in the aggregate direct and indirect ownership interests of Guarantor in Mortgagor below 50.1%, or effectuates or causes Acadia Realty Trust to fail to control the management of Guarantor and Mortgagor.

(i) Grant of Easement, Etc. Without the prior written consent of Mortgagee, Mortgagor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(j) Abandonment. The owner of the Property abandons any of the Property.

(k) Default Under Other Lien. A default or event of default occurs under any lien, security interest or assignment covering the Property or any part thereof (whether or not Mortgagee has consented, and without hereby implying Mortgagee's consent, to any such lien, security interest or assignment not created hereunder), or the Mortgagee of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) Destruction. The Property is so demolished, destroyed or damaged that, in the reasonable opinion of Mortgagee, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time and in any event, prior to the final maturity date of the Note.

(m) Condemnation. (i) Any governmental authority shall require, or commence any proceeding for, the demolition of any building or structure comprising a part of the Premises, or (ii) there is commenced any proceeding to condemn or otherwise take pursuant to the power of eminent domain, or a contract for sale or a conveyance in lieu of such a taking is executed which provides for the transfer of, a material portion of the Premises, including but not limited to the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement.

(n) Liquidation, Etc. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of New York and/or the state of incorporation or organization, if different (or in the case of an individual, the death or legal incapacity) of the Mortgagor, any owner of the Property or any person obligated to pay any part of the Secured Indebtedness.

(o) Material, Adverse Change. In Mortgagee's reasonable opinion, the prospect of payment of all or any part of the Secured Indebtedness has been impaired because of a material, adverse change in the financial condition, results of operations, business or properties of the Mortgagor, any owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness, or of any general partner or joint venturer thereof (if such owner or other person is a partnership or joint venture).

(p) Enforceability; Priority. Any Loan Document shall for any reason without Mortgagee's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by any party thereto other than Mortgagee; or the liens, mortgages or security interests of Mortgagee in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Mortgagor or any person obligated to pay any part of the Secured Indebtedness.

(q) Other Indebtedness. A default or event of default occurs under any document executed and delivered in connection with any other indebtedness (to Mortgagee or any other person or entity) of Mortgagor, the owner of the Property, any person obligated to pay any part of the Secured Indebtedness, or any person or entity which guarantees such other indebtedness.

Section 4.2. Notice and Cure. If any provision of this Mortgage or any other Loan Document provides for Mortgagee to give to Mortgagor any notice regarding a default or incipient default, then if Mortgagee shall fail to give such notice to Mortgagor as provided, the sole and exclusive remedy of Mortgagor for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Note and the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such default in the manner and during the period of time permitted by such agreement, if any, and Mortgagor shall have no right to damages or any other type of relief not herein specifically set out against Mortgagee, all of which damages or other relief are hereby waived by Mortgagor. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

Remedies

Section 5.1. Certain Remedies. If a Default shall occur, Mortgagee may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration. Mortgagee may at any time and from time to time declare any or all of the Secured Indebtedness immediately due and payable and may terminate any and all Swap Transactions. Upon any such declaration, such Secured Indebtedness shall thereupon be immediately due and payable, and such Swap Transactions shall immediately terminate, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Mortgagor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (A), (C) or (D) of subparagraph (i) of paragraph (d) of Section 4.1, hereof, all of the Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Mortgagor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Mortgagee under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Mortgagee may: (1) collect and/or sue for the Rents in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the Secured Indebtedness in such manner and order as Mortgagee may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.



(c) Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(i) Mortgagee may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession to Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents.

(iii) Mortgagee may from time to time: (A) continue and complete construction of, hold, store, use, operate, manage and control the Property and conduct the business thereof; (B) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional personal property; (C) insure or keep the Property insured; (D) exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; and (E) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.

(d) Uniform Commercial Code. Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code as adopted by the State of New York as in effect from time to time, (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law) or other applicable law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Property or other place where the collateral may be located without legal process, and to take possession of such personal property without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State of New York. Upon demand by Mortgagee, Mortgagor shall make such personal property available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may proceed under the Uniform Commercial Code as to all or any part of such personal property, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of such personal property. Mortgagee may choose to dispose of some or all of the property, in any combination consisting of both personal property and Property, in one or more public or private sales to be held in accordance with the Law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Mortgagor agrees that such a sale of such personal property together with Property constitutes a commercially reasonable sale of such personal property.

(e) Lawsuits. Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction. Mortgagor hereby assents to the passage of a decree for the sale of the Property by any equity court having jurisdiction.

(f) Foreclosure. Mortgagee may:

(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law (including, without limitation, in accordance with Article 14 of the New York Real Property Actions and Proceedings Law, regarding which Mortgagor hereby consents and agrees that notices thereunder (including notices of sale) may be given to Mortgagor in any of the manners specified for the giving of notices set forth in Section 6.13, and all estate, right, title and interest, claim and demand thereof, at one (1) or more sales as an entity or in parcels or parts, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(2) institute proceedings for the complete or partial foreclosure hereof; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, the Loan Agreement or herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

Any sale made hereunder may be as an entirety or in such parcels as Mortgagee may request. To the extent permitted by applicable law, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. If the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Secured Indebtedness, this Mortgage and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made and the rights of Mortgagee to foreclose hereunder shall also apply to any future sales. A sale may cover not only the Property but also personal property and other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or the sale may be of any part of the Property separately from the remainder of the Property. After each sale, the Mortgagee shall make to the purchaser or purchasers at such sale good and sufficient conveyances, conveying the property so sold to the purchaser or purchasers in fee simple, subject to the Permitted Encumbrances (and to such leases and other matters, if any), and shall receive the proceeds of said sale or sales and apply the same as herein provided. In the event any sale hereunder is not completed or is defective in the opinion of Mortgagee, such sale shall not exhaust the rights hereunder and Mortgagee shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds or other conveyances given by the Mortgagee as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Mortgagee's having declared all of said indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee shall be taken as prima facie evidence of the truth of the facts so stated and recited.

(g) Receiver. Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State of New York. To the extent permitted by law, the right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate under the Note, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Mortgage to the Mortgagee, and the Mortgagee shall have the right to offset the unpaid Secured Indebtedness against any such cash or deposits in such order as Mortgagee may elect.

(h) Termination of Commitment to Lend. Mortgagee may terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement to or for the benefit of Mortgagor.

(i) Other Rights and Remedies. Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. Application of Proceeds. Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article 5 and any other proceeds received by Mortgagee from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Secured Indebtedness, in such manner and order as Mortgagee may elect.

Section 5.3. Remedies Cumulative and Concurrent. No right, power or remedy of Mortgagee as provided in the Note, this Mortgage, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, or any endorser, co-maker, surety or guarantor of the Secured Indebtedness, or the Property or any part thereof, or any one or more of them, at the sole discretion of Mortgagee. The failure of Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

Section 5.4. Waiver, Delay or Omission. No waiver of any Default hereunder shall extend to or affect any subsequent or any other Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Default or to constitute acquiescence therein.

Section 5.5. Credit of Mortgagee. To the maximum extent permitted by the laws of the State of New York, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Secured Indebtedness in such order as Mortgagee may elect.

Section 5.6. Sale. Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor and all persons, except tenants pursuant to Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others.

Section 5.7. Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting the Mortgagor, any endorser, co-maker, surety, or guarantor of the Secured Indebtedness, or any of their respective properties, the Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Secured Indebtedness at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

Section 5.8. Waiver of Redemption, Notice, Marshalling, Etc. Mortgagor hereby waives and releases, for itself and anyone claiming through, by, or under it, to the maximum extent permitted by the laws of the State of New York:

- (i) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment,
- (ii) unless specifically required herein, all notices of default, or Mortgagee's actual exercise of any option or remedy under the Loan Documents, or otherwise, and
- (iii) any right to have the Property marshaled.

Section 5.9. Discontinuance of Proceedings. If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgagor and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

Section 5.10. Mortgagee's Actions. Mortgagee may, at any time without notice to any person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, any endorser, co-maker, surety or guarantor of the Secured Indebtedness, nor any other person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Secured Indebtedness shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew, extend or modify the terms of the Note, this Mortgage and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Secured Indebtedness; (c) apply payments by any Obligor to the reduction of the unpaid Secured Indebtedness in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Secured Indebtedness without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage upon the Property which is not released or substituted, or the validity and priority of any security interest of the Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Mortgage or the lien of any other security interest in any other collateral now or hereafter held as security for the Secured Indebtedness; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee will join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any obligor or any other party as Mortgagee may see fit.

Section 5.11. Other Remedies. Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws.

## ARTICLE 6

### Miscellaneous

Section 6.1. Scope of Mortgage. This Mortgage is a Mortgage of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the New York Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Mortgage shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor and the Mortgagee are set forth in the preamble of this Mortgage and the address of Mortgagee from which information concerning the security interests hereunder may be obtained is the address of Mortgagee set forth at the end of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Mortgagee may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Mortgagee directly.

Section 6.4. Waiver by Mortgagee. Mortgagee may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing; (b) consent to Mortgagor's doing any act which hereunder Mortgagor is prohibited from doing, or to Mortgagor's failing to do any act which hereunder Mortgagor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Mortgage, without the joinder of Mortgagee; or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Mortgagee or Mortgagee hereunder except to the extent specifically agreed to by Mortgagee in such writing.

Section 6.5. No Impairment of Security. The lien, security interest and other security rights of Mortgagee hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Mortgagee including, but not limited to, any renewal, extension or modification which Mortgagee may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Mortgagee shall not release or impair the lien, security interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any junior lien Mortgagee in the Property (without implying hereby Mortgagee's consent to any junior lien).

Section 6.6. Acts Not Constituting Waiver by Mortgagee. Mortgagee may waive any default without waiving any other prior or subsequent default. Mortgagee may remedy any default without waiving the default remedied. Neither failure by Mortgagee to exercise, nor delay by Mortgagee in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Mortgagor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Secured Indebtedness in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Secured Indebtedness given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Mortgagee and any subsequent owner of the Property, with or without notice to such Mortgagor, and no such modifications shall impair the obligations of such Mortgagor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Mortgagee's consent to any transfer of the Property.

Section 6.8. Place of Payment. All Secured Indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place designated in the Note (or if no such designation is made, at the address of Mortgagee indicated at the end of this Mortgage).

Section 6.9. Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or Mortgagee of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Mortgagee is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loan evidenced by the Note or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's lien is waived; and Mortgagee shall have, and is hereby granted, a vendor's lien on the Property as cumulative additional security for the secured indebtedness. Mortgagee may foreclose under this Mortgage or under the vendor's lien without waiving the other or may foreclose under both.

Section 6.10. Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 6.11. Nature of Loan; Compliance with Usury Laws. The loan evidenced by the Note is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Mortgagor and Mortgagee and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Mortgagee and Mortgagor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Mortgagee shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Mortgagor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of New York or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.



Section 6.12. Releases.

(a) Release of Mortgage. If all of the Secured Indebtedness is paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all Swap Transactions and all other obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Mortgagee in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Mortgagee or Mortgagee shall survive discharge of the Secured Indebtedness, the termination of any and all Swap Transactions and any foreclosure, release or termination of this Mortgage.

(b) Partial Releases; No Release in Default. Partial releases of the lien of this Mortgage shall be made in accordance with the terms and provisions of Exhibit C attached hereto and by this reference made a part hereof, or in accordance with such other terms and conditions as may subsequently be agreed to by Mortgagee. If no such Exhibit C is attached hereto, then there are no terms and provisions for partial releases, to which Mortgagee and Mortgagor have agreed at this time. In any event, no partial release shall be sought, requested or required if any Default has occurred which has not been cured.

(c) Effect of Partial Release. Mortgagee may, regardless of consideration, cause the release of any part of the Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Property.

(d) Release Fee. If permitted by applicable law Mortgagor shall pay to Mortgagee, at the time of each partial or complete release of the lien of this Mortgage, a release fee in the amount of \$25.00 if the release instrument is delivered to Mortgagee for execution or \$50.00, if Mortgagee is required to prepare the release instrument. In addition, Mortgagor shall pay to Mortgagee a fee in the amount of \$25.00 for each other document or instrument which Mortgagor requires the Mortgagee to execute.

Section 6.13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.14. Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.15. Gender; Titles; Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.16. Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Mortgagee to furnish Mortgagee with evidence of such compliance.

Section 6.17. Mortgagee's Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Mortgagee is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Mortgagee's judgment, and (b) no approval or consent of Mortgagee shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Mortgagee.

Section 6.18. Mortgagor. Unless the context clearly indicates otherwise, as used in this Mortgage, "Mortgagor" means the Mortgagors named in Section 1.1 hereof or any of them. The obligations of Mortgagor hereunder shall be joint and several. If any Mortgagor, or any signatory who signs on behalf of any Mortgagor, is a corporation, partnership or other legal entity, Mortgagor and any such signatory, and the person or persons signing for it, represent and warrant to Mortgagee that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives. If Mortgagor is an individual, no power of attorney granted by Mortgagor herein shall terminate on Mortgagor's disability.

Section 6.19. Execution; Recording. This Mortgage has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as or Mortgagee shall reasonably request and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

Section 6.20. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the heirs, devisees, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee and shall constitute covenants running with the Land. All references in this Mortgage to Mortgagor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagor.

Section 6.21. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.22. No Partnership, Etc. The relationship between Mortgagee and Mortgagor is solely that of mortgagee and mortgagor. Mortgagee has no fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Mortgagee or in any way make Mortgagee a co-principal with Mortgagor with reference to the Property. All agreed contractual duties between or among Mortgagee and Mortgagor and are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.23. Intentionally Omitted.

Section 6.24. Applicable Law. THIS MORTGAGE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 6.25. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.26. Forum. Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State of New York and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located, over any Dispute. Mortgagor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the State of New York may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address for notice set forth in this Mortgage, or at a subsequent address of which Mortgagee received actual notice from Mortgagor in accordance with the notice section of this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by Law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction.

Section 6.27. WAIVER OF JURY TRIAL. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY DISPUTE AS SET FORTH IN THIS MORTGAGE, TO THE EXTENT ANY DISPUTE IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, MORTGAGOR AND MORTGAGEE WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGEE, AND MORTGAGOR AND MORTGAGEE HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 6.28. Cross-Default. The Loan shall be cross-defaulted with all other loans which Mortgagor shall have from Lenders during the term of the Loan, whether existing as of the date of this Agreement subsequently made. A default under any of the above-described loans shall constitute a Default under the Loan. A Default under the Loan shall constitute a Default under the above-described other loans. To the extent not prohibited by applicable law, if Mortgagee, at its option, avails itself of this cross-default provision, Mortgagee shall have the option to pursue its remedies in any combinations and against any or all of Mortgagee's security for the aforesaid loans, whether successively, concurrently or otherwise.

Section 6.29. Substitute Mortgages. Mortgagor and Mortgagee shall, upon their mutual agreement to do so, execute such documents as may be necessary in order to effectuate the modification hereof, including the execution of substitute mortgages, so as to create two (2) or more liens on the Mortgaged Property in such amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the Mortgage Amount; in such event, Mortgagor covenants and agrees to pay the reasonable fees and expenses of Mortgagee and its counsel in connection with any such modification.

Section 6.30. Satisfaction or Assignment of Mortgage. Upon payment in full of all sums, and the performance of all obligations, secured hereby in accordance with the terms and conditions of this Mortgage and the other Loan documents, Mortgagee shall deliver a satisfaction or release of this Mortgage or, at Mortgagor's option to be exercised in writing, an assignment hereof, in either case in proper form of recording. As a condition to any such satisfaction or assignment, Mortgagor covenants and agrees to pay Mortgagee's reasonable fees and expenses (including attorneys' fees and expenses) in connection therewith. Upon any such satisfaction or assignment, Mortgagee shall, automatically and without the need for any other further documentation, be absolutely and unconditionally released from any and all claims or liabilities in connection with the Loan. In addition, Mortgagor hereby indemnifies and agrees to hold Mortgagee harmless from and against any and all claims and liabilities arising out of the satisfaction or assignment hereof, such indemnification to survive any such satisfaction or assignment.

Section 6.31. New York Provisions. (a) Mortgagor hereby makes the following statement: "This Mortgage does not cover real property principally improved or to be improved by one (1) or more structures containing in the aggregate not more than six (6) residential dwelling, each having its own separate cooking facilities." and (b) the covenants and conditions contained herein, other than those included in the New York Statutory Short Form of Mortgage, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of Section 254 of the Real Property Law of the State of New York.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as an instrument under seal as of the date first written on page 1 hereof.

ACADIA CORTLANDT LLC, a Delaware limited liability company

By

\_\_\_\_\_  
Robert Masters  
Senior Vice President

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

On the 29th day of July 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(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_

EXHIBIT A

Land

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN THE TOWN OF CORTLANDT, COUNTY OF WESTCHESTER AND STATE OF NEW YORK THAT IS A PORTION OF THOSE LANDS DESIGNATED PARCEL 1, PARCEL 2A AND PARCEL 2B ON THAT CERTAIN "RESUBDIVISION PLAT OF FILED MAP NO. 17837 SECTION 1 MID-WESTCHESTER INDUSTRIAL PARK, INC.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 15, 1984 AS MAP NO. 21741 THAT IS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 (AKA 5 MILE TURNPIKE AND/OR EAST MAIN STREET AND/OR STATE HIGHWAY 1309) WHERE IT IS MET BY THE LINE DIVIDING THE LANDS HEREIN DESCRIBED ON THE NORTHEAST FROM LANDS DESIGNATED LOT NO. 21 ON THAT CERTAIN "MAP NO. 1 GULL MANOR.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON MARCH 25, 1954 AS MAP NO. 8930, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,045.23 (Y)  
E 625,146.49 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE FROM THE SAID POINT OF BEGINNING NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 NORTH 31° 31' 51" EAST 202.41 FEET AND TO A POINT AT THE SOUTHWESTERLY LINE OF LOT NO. 4 SHOWN ON THAT CERTAIN MAP ENTITLED "SECTION NO. 1 MID-WESTCHESTER INDUSTRIAL PARK" WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 16, 1972 AS MAP NO. 17837;

THENCE ALONG THE SOUTHWESTERLY, SOUTHEASTERLY AND NORTHEASTERLY LINES OF LOT NO. 4 SHOWN ON FILED MAP NO. 17837 THE FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 400.00 FEET;  
NORTH 35° 15' 51" EAST 200.00 FEET;  
NORTH 54° 41' 49" WEST 201.75 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF MOBIL CENTERS, INC;

THENCE ALONG THE SAID MOBIL CENTERS, INC. LANDS:

NORTH 35° 15' 51" EAST 150.02 FEET AND;  
NORTH 54° 41' 49" WEST 174.98 FEET TO A POINT;

THENCE STILL ALONG THE SAID LANDS OF MOBIL CENTERS, INC. WESTERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 90° 02' 20", THE RADIUS OF WHICH 25.00 FEET FOR 39.29 FEET TO ANOTHER POINT ON THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

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THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 35° 15' 51" EAST 103.05 FEET AND;  
NORTH 34° 16' 11" EAST 16.52 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF W.W. GEIS, JR.;

THENCE ALONG AND AROUND THE SAID W.W. GEIS, JR. LANDS THE FOLLOWING, FIRST TURNING ABOUT AND SOUTHERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 88° 58' 00", THE RADIUS OF WHICH IS 25.00 FEET FOR 38.82 FEET AND THEN FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 187.41 FEET;  
SOUTH 87° 58' 31" EAST 50.19 FEET;  
NORTH 34° 14' 31" EAST 293.26 FEET AND;  
NORTH 55° 45' 29" WEST 248.82 FEET TO STILL ANOTHER POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 38° 26' 11" EAST 91.89 FEET AND;

NORTH 36° 40' 11" EAST 175.50 FEET TO A POINT AT THE LINE LAND NOW OR FORMERLY OF HOME DEPOT U.S.A., INC. LANDS, THE FOLLOWING FIRST

SOUTH 53° 24' 23" EAST 28.04 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 44° 59' 45", THE RADIUS OF WHICH IS 100.00 FEET FOR 78.53 FEET,

THEN SOUTH 08° 24' 38" EAST 170.39 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 42° 53' 52", THE RADIUS OF WHICH IS 330.00 FEET FOR 245.35 FEET, AND THEN THE FOLLOWING COURSES:

SOUTH 34° 11' 14" WEST 7.14 FEET;  
SOUTH 42° 10' 35" EAST 571.35 FEET;  
NORTH 81° 40' 00" EAST 752.50 FEET;  
NORTH 42° 10' 35" WEST 546.00 FEET;  
SOUTH 47° 49' 25" WEST 12.00 FEET;  
NORTH 42° 10' 35" WEST 334.49 FEET;  
NORTH 47° 49' 25" EAST 64.36 FEET;  
NORTH 42° 10' 35" WEST 551.64 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 43° 07' 31" EAST 240.77 FEET;  
NORTH 46° 43' 08" EAST 200.86 FEET;  
NORTH 47° 51' 46" EAST 169.07 FEET;  
NORTH 54° 16' 42" EAST 77.64 FEET;  
NORTH 43° 47' 18" EAST 103.43 FEET;  
NORTH 06° 57' 25" EAST 7.49 FEET;  
NORTH 44° 52' 56" EAST 141.98 FEET;  
NORTH 56° 38' 06" EAST 194.10 FEET;  
NORTH 47° 40' 06" EAST 31.98 FEET TO A POINT AT THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO. 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP NO. 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,107.32 (Y)  
E 626,930.25 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE STILL ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 47° 40' 06" EAST 15.49 FEET;  
NORTH 57° 07' 47" EAST 41.34 FEET;  
NORTH 46° 37' 24" EAST 65.92 FEET;  
NORTH 60° 47' 16" EAST 135.27 FEET;  
NORTH 58° 29' 38" EAST 200.48 FEET;  
NORTH 76° 26' 07" EAST 65.57 FEET;  
NORTH 53° 06' 18" EAST 114.53 FEET;  
NORTH 59° 20' 46" EAST 157.01 FEET;  
NORTH 67° 37' 05" EAST 102.26 FEET;  
NORTH 39° 31' 22" EAST 47.05 FEET;  
NORTH 62° 09' 00" EAST 123.28 FEET;  
NORTH 59° 26' 00" EAST 57.40 FEET;  
NORTH 58° 13' 00" EAST 81.60 FEET;  
NORTH 61° 59' 00" EAST 41.60 FEET;  
NORTH 38° 58' 00" EAST 17.42 FEET;  
NORTH 61° 26' 39" EAST 147.75 FEET;  
NORTH 57° 24' 50" EAST 100.18 FEET;  
NORTH 63° 24' 40" EAST 64.74 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF BERKO, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,912.07 (Y)  
E 628,275.78 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE SOUTHERLY ALONG THE SAID BERKO LANDS AND CONTINUING ALONG LANDS NOW OR FORMERLY OF FELDMAN, NOW OR FORMERLY OF BERTINO, AND LANDS NOW OR FORMERLY OF MOHEGAN REALTY CO., THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

SOUTH 8° 21' 49" EAST 184.14 FEET;  
SOUTH 7° 23' 59" EAST 204.45 FEET;  
SOUTH 8° 27' 49" EAST 457.05 FEET;  
SOUTH 7° 57' 49" EAST 226.72 FEET;  
SOUTH 8° 03' 49" EAST 841.87 FEET TO LANDS NOW OR FORMERLY OF BOGIN, WHICH POINT OCCUPIES COORDINATE POSITION

N 477,016.99 (Y)  
E 628,545.67 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE ALONG SAID LANDS ON A COURSE OF SOUTH 84° 45' 51" WEST FOR A DISTANCE OF 565.62 FEET TO A POINT THAT IS A CORNER THEREOF, WHICH POINT IS AT THE SOUTHEASTERLY END OF THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,965.38 (Y)  
E 627,982.41 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE CONTINUING ALONG LANDS NOW OR FORMERLY OF BOGIN AND DEANIN ON A COURSE OF SOUTH 8° 44' 49" EAST FOR A DISTANCE OF 775.84 FEET TO LANDS NOW OR FORMERLY OF MCKEEL;

THENCE ALONG THE SAID MCKEEL LANDS AND IN PART ALONG THE ORIGINAL CENTER LINE OF A BROOK AS THE SAID CENTER LINE APPEARS ON THAT CERTAIN MAP ENTITLED "SURVEY... MIDWESTCHESTER INDUSTRIAL PARK INC...", WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON JANUARY 24, 1969 ON MAP NO. 16581 THE FOLLOWING COURSES AND DISTANCES:

SOUTH 83° 29' 51" WEST 1204.04 FEET;  
SOUTH 64° 31' 01" WEST 35.43 FEET;  
SOUTH 87° 29' 41" WEST 100.66 FEET;  
SOUTH 79° 30' 01" WEST 100.04 FEET;  
SOUTH 80° 21' 21" WEST 99.99 FEET;  
SOUTH 82° 37' 11" WEST 219.69 FEET;  
SOUTH 81° 10' 01" WEST 102.96 FEET;  
SOUTH 74° 14' 51" WEST 99.92 FEET;  
SOUTH 75° 42' 31" WEST 81.58 FEET;  
SOUTH 73° 18' 21" WEST 101.89 FEET;  
SOUTH 87° 12' 21" WEST 100.12 FEET;  
SOUTH 89° 38' 51" WEST 100.44 FEET;  
SOUTH 84° 23' 51" WEST 107.95 FEET;

SOUTH 81° 42' 51" WEST 119.29 FEET;  
SOUTH 58° 38' 31" WEST 47.83 FEET;  
SOUTH 48° 18' 59" WEST 109.79 FEET AND;  
NORTH 68° 22' 19" WEST 32.81 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF SHELBY-COLERIDGE HOLDING CORP;

THENCE ALONG THE SAID SHELBY-COLERIDGE HOLDING CORP. LANDS AND ALONG THE NORTHEASTERLY LINES OF LOT NO. 19 AND LOT 21 AS SHOWN ON THE AFOREMENTIONED "MAP NO. 1 GULL MANOR..." FILED MAP NO. 8930, THE FOLLOWING COURSES:

NORTH 68° 14' 09" WEST 17.28 FEET;  
SOUTH 89° 44' 51" WEST 61.00 FEET;  
NORTH 46° 00' 09" WEST 54.45 FEET;  
NORTH 61° 11' 09" WEST 72.08 FEET;  
NORTH 55° 43' 09" WEST 93.25 FEET TO THE AFOREMENTIONED SOUTHEASTERLY LINE OF U.S. ROUTE 6 AND THE POINT OR PLACE OF BEGINNING.

TOGETHER WITH THE BENEFITS AND SUBJECT TO THE BURDENS OF THE GRANT OF SANITARY SEWER EASEMENT MADE BY AND BETWEEN HARDEE'S AND MID-WESTCHESTER INDUSTRIAL PARK, INC. RECORDED IN LIBER 7137 PAGE 92.

TOGETHER WITH THE BENEFITS OF THE EASEMENT RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 7099 OF DEEDS AT PAGE 228 AND REPEATED IN LIBER 7143 OF DEEDS AT PAGE 449 AND LIBER 7235 OF DEEDS AT PAGE 88.

TOGETHER WITH THE BENEFITS OF THE DECLARATION AND GRANT OF RECIPROCAL EASEMENTS MADE BY CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11673 OF DEEDS AT PAGE 78.

TOGETHER WITH THE BENEFITS OF THE RECIPROCAL EASEMENT AND OPERATION AGREEMENT MADE BY BETWEEN CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND HOME DEPOT U.S.A. INC. AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11618 OF DEEDS AT PAGE 1.

EXHIBIT B

Permitted Encumbrances

Those exceptions set forth in Schedule B of that certain title insurance policy issued by First American Title Insurance Company of New York under their title no. 3008-272268 insuring the lien of this Mortgage.

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EXHIBIT C

Partial Release

NONE

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NOTE

\$45,000,000

July 29, 2009

FOR VALUE RECEIVED, ACADIA CORTLANDT LLC, a Delaware limited liability company ("Borrower", whether one or more) hereby promises to pay to the order of Bank of America, N.A. ("Lender") under that certain Loan Agreement (defined below) among Borrower and Bank of America N.A., a national banking association and administrative agent (together with any and all of its successors and assigns, "Administrative Agent") for the benefit of Lenders from time to time a party to that certain Loan Agreement (the "Loan Agreement") of even date herewith, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent's Office as defined in the Loan Agreement, the principal sum of Forty-Five Million Dollars (\$45,000,000) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Initial Advance Notes referred to in Loan Agreement and is entitled to the benefits thereof. The entire principal balance of this Note then unpaid shall be due and payable at the times as set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate as set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and if applicable a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$45,000,000 (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Mortgage") dated as of July 29, 2009 from Borrower to Administrative Agent covering certain property in the Town of Cortlandt, Westchester County, New York described therein (the "Property"). This Note, the Mortgage, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), are, as the same have been or may be amended, restated, modified or supplemented from time to time, herein sometimes called individually a "Loan Document" and together the "Loan Documents".

3. Defaults.

(a) It shall be a default ("Default") under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full when due, regardless of how such amount may have become due; (ii) any covenant, agreement, condition, representation or warranty herein or in any other Loan Documents is not fully and timely performed, observed or kept; or (iii) there shall occur any default or event of default under the Mortgage or any other Loan Document. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

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(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lenders hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Mortgage and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in the first paragraph of Page 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.



6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

7. No Usury. It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and all Lenders at all times to comply with applicable state Law or applicable United States federal Law (to the extent that it permits a Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state Law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal Law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Administrative Agent's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable Law, then it is Administrative Agent's and each Lender's express intent that all excess amounts theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of this Note and all other indebtedness and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lenders for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has duly executed this Note under seal as of the date first above written.

ACADIA CORTLANDT LLC, a Delaware limited liability company

By \_\_\_\_\_  
Robert Masters  
Senior Vice President

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SECTION: 24.10  
BLOCK: 1  
LOTS: 1, 1.2, 2 and 3  
Premises: Cortland Towne Center Shopping Center, Town of Cortlandt

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Date: As of July 29, 2009

MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS AND SECURITY AGREEMENT  
("this Mortgage")

FROM

ACADIA CORTLANDT LLC,  
a limited liability company organized and existing under the laws of Delaware  
("Mortgagor")

Address and Chief  
Executive Office of Mortgagor:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605

TO

BANK OF AMERICA, N.A.,  
a national banking association,  
as Administrative Agent  
("Mortgagee")

Address of Mortgagee:

One Bryant Park, 35th Floor  
New York, New York 10036

Mortgage Amount: \$2,000,000

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This instrument prepared by, and after recording please return to:  
Schiff Hardin LLP  
900 Third Avenue, 23rd Floor  
New York, New York 10022  
Attention: Paul G. Mackey, Esq.

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THE AMOUNT OF THIS MORTGAGE IS \$2,000,000.

MORTGAGE, ASSIGNMENT OF  
LEASES AND RENTS, AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Mortgage") is made as of the 29th day of July, 2009, by ACADIA CORTLANDT LLC, a Delaware limited liability company, ("Mortgagor"), in favor of and for the benefit of BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for itself and other lenders pursuant to the Loan Agreement defined below (together with its successors and assigns, "Mortgagee").

ARTICLE 1

Definitions; Granting Clauses; Secured Indebtedness

Section 1.1. Principal Secured. This Mortgage secures the aggregate principal amount of up to \$2,000,000 plus such additional amounts as Mortgagee may from time to time advance subsequent to a default by Mortgagor pursuant to the terms and conditions of this Mortgage, with respect to an obligation secured by a lien or encumbrance prior to the lien of this Mortgage or for the protection of the lien of this Mortgage, together with interest thereon. In the event that all or any part of the Premises is located in the State of New York, then, notwithstanding the language in the Granting Clause and Section 2.2 or anything else contained herein to the contrary, the maximum amount secured hereby at execution or which under any contingency may become secured hereby at any time hereafter is the Mortgage Amount and all interest, additional interest and late payment and prepayment charges in respect thereof, plus all amounts expended by Mortgagee following a default hereunder in respect of insurance premiums and real estate taxes, and all legal costs or expenses of collection of the debt secured hereby or of the defense or prosecution of the rights and lien created hereby.

Section 1.2. Definitions.

(a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

"Additional Interest": Additional Interest as defined in the Loan Agreement.

"Loan Agreement": Loan Agreement dated of even date herewith between Mortgagor and Mortgagee, as it may be from time to time amended, restated, modified, extended or supplemented.

"Mortgagor": Acadia Cortlandt LLC, a Delaware limited liability company, whose address is c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and its permitted successors and assigns.

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"Promissory Note": Collectively, the Future Advance Notes, as defined in the Loan Agreement.

Capitalized terms used herein which are not otherwise defined but which are defined in the Loan Agreement shall have the meaning ascribed to them in the Loan Agreement.

Section 1.3. Granting Clause. In consideration of the provisions of this Mortgage and of the sum of \$10.00 cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, Mortgagor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN, MORTGAGE, HYPOTHECATE, PLEDGE, DEPOSIT and SET OVER to Mortgagee, with all estate, right, title and interest of Mortgagor in and to the Property (as hereinafter defined), whether now owned or held or hereafter acquired by Mortgagor, to have and hold the Property unto Mortgagee, its successors and assigns forever; and to hold the Property unto Mortgagee in fee simple forever; provided that Mortgagor may retain possession of the Property until the occurrence of an Event of Default; (a) the real property described in Exhibit A which is attached hereto and incorporated herein by reference (the "Land") together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the "Improvements"); and (ii) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase or lease the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); (c) all (i) plans and specifications for the Improvements; (ii) Mortgagor's rights, but not liability for any breach by Mortgagor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), Swap Transactions (as hereinafter defined), contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Mortgagor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (hereinafter defined) for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan or any Swap Transaction, all rights to the payment of money from Mortgagee under any Swap Transaction, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Transaction;

(iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest; and (d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; (iii) all commercial tort claims Mortgagor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Mortgagor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the lease creating the leasehold estate; TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Mortgagee, its successors and assigns, in trust, in fee simple forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Mortgagor under the Note and Loan Documents (as hereinafter defined) and all other indebtedness and matters defined as "Secured Indebtedness" in Section 1.5 of this Mortgage; PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee (as hereinafter defined) the principal sum, including all additional advances and all other sums payable by Mortgagor to Mortgagee under the terms of the Loan Documents and shall perform or cause to be performed all the other terms, conditions, agreements and provisions contained in the Loan Documents, all without fraud or delay or deduction or abatement of anything or for any reason, then this Mortgage and the estate hereby granted shall cease, terminate and become void.

Section 1.4. Security Interest. Mortgagor hereby grants to Mortgagee a security interest in all of the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "Collateral") to secure the obligations of Mortgagor under the Note and Loan Documents and all other indebtedness and matters defined as Secured Indebtedness in Section 1.5 of this Mortgage. In addition to its rights hereunder or otherwise, Mortgagee shall have all of the rights of a secured party under the New York Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law.

Section 1.5. Secured Indebtedness, Note, Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively the "Secured Indebtedness"): (a) the Promissory Note and all other promissory notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part (such promissory note or promissory notes, whether one or more, as from time to time renewed, extended, supplemented, increased or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "Note", and Mortgagee, or the subsequent Mortgagee at the time in question of the Note or any of the Secured Indebtedness, as hereinafter defined, such Mortgagee continuing to be defined herein as "Mortgagee"); and (b) all interest, Additional Interest, indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Mortgagor to Mortgagee now or hereafter incurred or arising pursuant to or permitted by the provisions of the Note, this Mortgage, the Loan Agreement or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the loan evidenced by the Note, including but not limited to any loan or credit agreement, letter of credit or reimbursement agreement, tri-party financing agreement, Master Agreement relating to any Swap Transactions or other agreement between Mortgagor and Mortgagee, or among Mortgagor, Mortgagee and any other party or parties, pertaining to the repayment or use of the proceeds of the loan evidenced by the Note (the Note, the Mortgage, the Loan Agreement, any Master Agreement relating to any Swap Transactions and any such documents as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the "Loan Documents"). "Swap Transaction" means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement (the "Master Agreement") published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Mortgagee (or its affiliates) and Mortgagor (or its affiliates), together with any related schedules, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.



Representations, Warranties and Covenants

Section 2.1. Mortgagor represents, warrants, and covenants as follows:

(a) Payment and Performance. Mortgagor will make due and punctual payment of the Secured Indebtedness. Mortgagor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Mortgage and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this Mortgage.

(b) Title and Permitted Encumbrances. Mortgagor has, in Mortgagor's own right, and Mortgagor covenants to maintain, lawful, good and marketable title to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any, set forth under the heading "Permitted Encumbrances" in Exhibit B hereto, which are Permitted Encumbrances only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of Mortgagee (the matters described in the foregoing clauses (i), (ii), (iii) and (iv) being herein called the "Permitted Encumbrances"). Mortgagor, and Mortgagor's successors and assigns, will warrant generally and forever defend title to the Property, subject as aforesaid, to Mortgagee and his successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Mortgagor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Mortgagee. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Mortgagee of any existing or future violation or other breach thereof by Mortgagor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Mortgagor if Mortgagor is an individual. If any right or interest of Mortgagee in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Mortgagee and Mortgagee, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Mortgagee, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee or Mortgagee (as the case may be), and the party (Mortgagee or Mortgagee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions. Mortgagor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all real estate taxes assessed against the Property or any part thereof, and shall deliver promptly to Mortgagee such evidence of the payment thereof as Mortgagee may require.

(d) Insurance. Mortgagor shall obtain and maintain at Mortgagor's sole expense: (1) mortgagee title insurance issued to Mortgagee covering the Premises as required by Mortgagee, without exception for mechanics' liens; (2) property insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against any and all acts of terrorism and such other insurable hazards as Mortgagee may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Mortgagor and Mortgagee from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non-reporting) form during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises; (3) if and to the extent any portion of the Improvements is, under the Flood Disaster Protection Act of 1973 ("FDPA"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by Mortgagee, but in no event less than the amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; (4) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of Mortgagor as named insured and Mortgagee as additional insured; (5) statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of Mortgagor and any contractor; (6) if there is a general contractor, during and with respect to any construction (other than construction of customary tenant improvements in existing buildings) on the Premises, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in clause (4) above, for the benefit of the general contractor as named insured and Mortgagor and Mortgagee as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Mortgagee), covering all employees of the general contractor any contractor; and (7) such other insurance on the Property and endorsements as may from time to time be required by Mortgagee (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance, wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements.

All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to Mortgagee, and shall require not less than ten (10) days' prior written notice to Mortgagee of any cancellation for nonpayment of premiums, and not less than thirty (30) days' prior written notice to Mortgagee of any other cancellation or any change of coverage. All insurance companies must be licensed to do business in the state in which the Property is located and must have an A.M. Best Company financial and performance ratings of A-IX or better. All insurance policies maintained, or caused to be maintained, by Mortgagor with respect to the Property, except for general liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Mortgagor or Mortgagee and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Mortgage or any other Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any Debtor Relief Law, or if in Mortgagee's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Mortgagor shall, in each instance promptly upon its discovery thereof or upon the request of Mortgagee therefor, and at Mortgagor's expense, promptly obtain and deliver to Mortgagee a like policy (or, if and to the extent permitted by Mortgagee, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this Mortgage or such other Loan Document, as the case may be. Without limiting the discretion of Mortgagee with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Mortgagee as mortgagee with loss proceeds payable to Mortgagee notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named or additional insured; (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Mortgagee under the Loan Documents; or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. The originals of each initial insurance policy (or to the extent permitted by Mortgagee, a copy of the original policy and such evidence of insurance acceptable to Mortgagee) shall be delivered to Mortgagee at the time of execution of this Mortgage, with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to Mortgagee, with all premiums fully paid current, at least ten (10) days before the termination of the policy it renews or replaces. Mortgagor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Mortgagee evidence satisfactory to Mortgagee of the timely payment thereof. If any loss occurs at any time when Mortgagor has failed to perform Mortgagor's covenants and agreements in this paragraph with respect to any insurance payable because of loss sustained to any part of the Property whether or not such insurance is required by Mortgagee, Mortgagee shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Mortgagor, to the same extent as if it had been made payable to Mortgagee. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Secured Indebtedness, all of Mortgagor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Mortgagee shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property where the loss is estimated by Mortgagee to be \$1,000,000 or more, regardless of whether or not such insurance policies are required by Mortgagee, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be a part of the Secured Indebtedness and shall be due and payable to Mortgagee on demand. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Mortgagor. Any such proceeds received by Mortgagee shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration, either partly or entirely, of the Property so damaged, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(e) Application of Insurance Proceeds. Notwithstanding anything to the contrary set forth in the preceding Section 2.1(d), if the Property is damaged or destroyed and Mortgagee determines that all of the conditions specified hereinafter in this Section have been satisfied, then Mortgagee shall apply the proceeds of insurance (i) first to reimbursing itself for all costs incurred by it in the collection of such proceeds and (ii) second to reimbursing Mortgagor for such actual costs as shall have been incurred by Mortgagor in restoring the Property and shall be approved by Mortgagee. Insurance proceeds shall be applied to such restoration solely if (A) Mortgagee determines that: (i) the Property is capable of being suitably restored in accordance with applicable Legal Requirements to the value, condition, character and general utility existing prior to such damage or destruction, and, in any event, to a Loan to Value Ratio of not greater than 70%, provided that this clause (i) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (ii) sufficient funds are unconditionally available (from proceeds of insurance and/or from funds of Mortgagor) to enable Mortgagor promptly to commence, and thereafter diligently to prosecute to completion, such restoration, provided that this clause (ii) shall not apply to insurance proceeds relating to a casualty for which the gross insurance proceeds do not exceed \$1,000,000; (iii) Mortgagor is not in default or in breach of any obligations under any Loan Document, no uncured Default exists under any Loan Document and no facts or circumstances exist that would constitute an Default with the passage of time or the giving of notice or both; and (iv) neither the validity, enforceability nor priority of the lien of this Mortgage shall be adversely affected; (B) Mortgagor has entered into a written agreement, satisfactory in form and substance to Mortgagee, containing such conditions to disbursements as are employed at the time by Mortgagee for construction loans; (C) Mortgagor has delivered to Mortgagee such security as Mortgagee might have reasonably required to assure completion of restoration in accordance with the standards specified above; and (D) Mortgagor has complied with such further reasonable requirements as Mortgagee might have specified.

(f) Reserve for Insurance, Taxes and Assessments. Upon request of Mortgagee, to secure the payment and performance of the Secured Indebtedness, but not in lieu of such payment and performance, Mortgagor will deposit with Mortgagee a sum equal to real estate taxes, assessments and charges (which charges for the purposes of this paragraph shall include without limitation any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Mortgagee and prorated to the end of the calendar month following the month during which Mortgagee's request is made, and thereafter will deposit with Mortgagee, on each date when an installment of principal and/or interest is due on the Note, sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay at least fifteen (15) days prior to the due date thereof, the next maturing real estate taxes, assessments and charges and premiums for such policies of insurance. Mortgagee shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Mortgagee for future use, applied to any Secured Indebtedness or refunded to Mortgagor, at Mortgagee's option, and any deficiency in such funds so deposited shall be made up by Mortgagor upon demand of Mortgagee. All such funds so deposited shall bear no interest, may be commingled with the general funds of Mortgagee and shall be applied by Mortgagee toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Mortgagee by Mortgagor (which statements shall be presented by Mortgagor to Mortgagee a reasonable time before the applicable amount is due); provided, however, that, if a Default shall have occurred hereunder, such funds may at Mortgagee's option be applied to the payment of the Secured Indebtedness in the order determined by Mortgagee in its sole discretion, and that Mortgagee may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Mortgagor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Mortgagor's interest in and rights to such funds held by Mortgagee under this paragraph but subject to the rights of Mortgagee hereunder.

(g) Condemnation. Mortgagor shall notify Mortgagee immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Mortgagor shall, at Mortgagor's expense, diligently prosecute any such proceedings. Mortgagee shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Mortgagee shall be entitled to receive all sums which may be awarded or become payable to Mortgagor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for injury or damage to the Property. Mortgagee shall, promptly upon request of Mortgagee, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Mortgagee to collect and receipt for any such sums. All such sums are hereby assigned to Mortgagee, and shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, at Mortgagee's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Mortgagee) to repair or restoration of the Property so affected, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Mortgagee, in its sole discretion, may elect, whether or not due. In any event the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Mortgagor. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All costs and expenses (including but not limited to attorneys' fees) incurred by Mortgagee in connection with any condemnation shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(h) Compliance with Legal Requirements. The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Legal Requirements (hereinafter defined). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Mortgagor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Mortgage to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. No improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Mortgagor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property.

If Mortgagor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Mortgagor will promptly furnish a copy of such notice or claim to Mortgagee. Mortgagor has received no notice and has no knowledge of any such noncompliance. As used in this Mortgage: (i) the term "Legal Requirement" means any Law (hereinafter defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(i) Maintenance, Repair and Restoration. Mortgagor will keep the Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Mortgagor will not, without the prior written consent of Mortgagee, (i) remove from the Property any fixtures or personal property covered by this Mortgage except such as is replaced by Mortgagor by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest (except that created by this Mortgage), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Mortgagor shall give prompt notice thereof to Mortgagee and Mortgagor shall promptly, at Mortgagor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(j) No Other Liens. Mortgagor will not, without the prior written consent of Mortgagee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Mortgagee, Mortgagor will cause the same to be promptly discharged and released. Mortgagor will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Mortgagee. If Mortgagee consents to the voluntary grant by Mortgagor of any mortgage, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Mortgage and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Mortgagee; (3) Rents (hereinafter defined), if collected by or for the Mortgagee of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Mortgagee may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Mortgagee with or immediately after the occurrence of any such default or commencement; and (5) neither the Mortgagee of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Mortgagor's rights hereunder without the prior written consent of Mortgagee.

(k) Operation of Property. Mortgagor will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Mortgagor will keep the Property occupied so as not to impair the insurance carried thereon. Mortgagor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Mortgagor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Mortgagor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Mortgagee. Mortgagor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened. Mortgagor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Mortgagee, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Mortgagor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid.

(l) Financial Matters. Mortgagor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law (hereinafter defined) is pending (or, to Mortgagor's knowledge, threatened) by or against Mortgagor, or any affiliate of Mortgagor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Mortgagor to Mortgagee in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Mortgagor or, to Mortgagor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Mortgagor" shall also include any person liable directly or indirectly for the Secured Indebtedness or any part thereof and any joint venturer or general partner of Mortgagor.

(m) Status of Mortgagor; Suits and Claims; Loan Documents. If Mortgagor is a corporation, partnership, limited liability company, or other legal entity, Mortgagor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Mortgagor has been duly authorized, executed and delivered by Mortgagor, and the obligations thereunder and the performance thereof by Mortgagor in accordance with their terms are and will continue to be within Mortgagor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement or any other document or agreement to which Mortgagor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Mortgagor, or any other person liable, directly or indirectly, for any of the Secured Indebtedness, except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Mortgagor's knowledge, threatened) against Mortgagor or against any other person liable directly or indirectly for the Secured Indebtedness or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Mortgagor's title to the Property) or the validity, enforceability or priority of any of the Loan Documents.



There is no judicial or administrative action, suit or proceeding pending (or, to Mortgagor's knowledge, threatened) against Mortgagor, or against any other person liable directly or indirectly for the Secured Indebtedness, except as has been disclosed in writing to Mortgagee in connection with the loan evidenced by the Note. The Loan Documents constitute legal, valid and binding obligations of Mortgagor enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws (hereinafter defined) and except as the availability of certain remedies may be limited by general principles of equity. Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Mortgagor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The loan evidenced by the Note is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Mortgagor further warrants that the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan. Mortgagor's exact legal name is correctly set forth at the end of this Mortgage. If Mortgagor is not an individual, Mortgagor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Mortgage. If Mortgagor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the introductory paragraph of this Mortgage. Mortgagor will not cause or permit any change to be made in its name, identity (including its trade name or names), or corporate or partnership structure, unless Mortgagor shall have notified Mortgagee in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Mortgagee for the purpose of further perfecting or protecting the lien and security interest of Mortgagee in the Property. In addition, Mortgagor shall not change its corporate or partnership structure without first obtaining the prior written consent of Mortgagee. Mortgagor's principal place of business and chief executive office, and the place where Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Mortgagor) been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of Mortgagor set forth at the end of this Mortgage. If Mortgagor is an individual, Mortgagor's principal residence has for the preceding four months been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of the principal residence of Mortgagor set forth at the end of this Mortgage. Mortgagor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage. Mortgagor shall promptly notify Mortgagee (i) of any change of its organizational identification number, or (ii) if Mortgagor does not now have an organization identification number and later obtains one, of such organizational identification number.

(n) Certain Environmental Matters. Mortgagor shall comply with the terms and covenants of that certain Environmental Indemnity Agreement dated of even date herewith (the "Environmental Agreement").

(o) Further Assurances. Mortgagor will, promptly on request of Mortgagee, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further mortgages of trust, security agreements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Mortgagee to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Mortgagee to enable Mortgagee to comply with the requirements or requests of any agency having jurisdiction over Mortgagee or any examiners of such agencies with respect to the indebtedness secured hereby, Mortgagor or the Property. Mortgagor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.

(p) Fees and Expenses. Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Mortgagee and/or Mortgagee on demand to the extent paid by Mortgagee and/or Mortgagee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, reasonable attorneys' fees, reasonable architect fees, reasonable engineer fees, reasonable construction consultant fees, reasonable environmental inspection fees, survey fees, and all other reasonable costs and expenses of every character incurred by Mortgagor or Mortgagee and/or Mortgagee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all amendments and supplements to this Mortgage, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Mortgagor as owner of the Property; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Mortgagor, hereunder or under any other Loan Document.

(q) Indemnification.

(i) Mortgagor will indemnify and hold harmless Mortgagee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (p), the term "Mortgagee" shall include and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Mortgagee. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this paragraph (p) by Mortgagor to Mortgagee shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Mortgagee (including without limitation any rights of contribution or indemnification) against Mortgagor or any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Mortgagee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date (hereinafter defined), any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Mortgagor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein, any claim under or with respect to any Lease (hereinafter defined) or arising under the Environmental Agreement. The term "Release Date" as used herein means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Mortgage has been released, or (ii) the date on which the lien of this Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Mortgagor and Mortgagor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (p) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness, the termination of any and all Swap Transactions, the discharge and release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(r) Records and Financial Reports. Mortgagor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Property and the operation thereof, and will permit all such books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics to be inspected and copied, and the Property to be inspected and photographed, by Mortgagee and its representatives during normal business hours and at any other reasonable times. Without limitation of other or additional requirements in any of the other Loan Documents, Mortgagor will furnish to Mortgagee the financial statements required under the Loan Agreement. Mortgagor will furnish to Mortgagee at Mortgagor's expense all evidence which Mortgagee may from time to time reasonably request as to compliance with all provisions of the Loan Documents. Any inspection or audit of the Property or the books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics of Mortgagor, or the procuring of documents and financial and other information, by or on behalf of Mortgagee shall be for Mortgagee's protection only, and shall not constitute any assumption of responsibility to Mortgagor or anyone else with regard to the condition, construction, maintenance or operation of the Property nor Mortgagee's approval of any certification given to Mortgagee nor relieve Mortgagor of any of Mortgagor's obligations. Mortgagee may from time to time assign or grant participations in the Secured Indebtedness and Mortgagor consents to the delivery by Mortgagee to any acquirer or prospective acquirer of any interest or participation in or with respect to all or part of the Secured Indebtedness such information as Mortgagee now or hereafter has relating to the Property, Mortgagor, any party obligated for payment of any part of the Secured Indebtedness, any tenant or guarantor under any lease affecting any part of the Property and any agent or guarantor under any management agreement affecting any part of the Property.

(s) Taxes on Note or Mortgage. Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Mortgagor is prohibited by law) which may be required to be paid with respect to the Note, this Mortgage or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Mortgagee, the Note, the Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the Secured Indebtedness or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Secured Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

(t) Statement Concerning Note or Mortgage. Mortgagor shall at any time and from time to time furnish within seven (7) days of request by Mortgagee a written statement in such form as may be required by Mortgagee stating that (i) the Note, this Mortgage and the other Loan Documents are valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms; (ii) the unpaid principal balance of the Note; (iii) the date to which interest on the Note is paid; (iv) the Note, this Mortgage and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other Loan Document. If any of the foregoing statements are untrue, Mortgagor shall, alternatively, specify the reasons therefor. Mortgagee shall at any time and from time to time furnish within seven (7) days of request by Mortgagor a written statement stating (i) the unpaid principal balance of the Note and (ii) the date to which interest on the Note is paid.

(u) Trust Fund; Lien Laws. Mortgagor will receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the "cost of improvement", as such quoted term is defined in the New York Lien Law) and will apply the same first to the payment of such costs before using any part of the total of the same for any other purpose and, will comply with Section 13 of the New York Lien Law. Mortgagor will indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, reasonable attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagor of any applicable lien law including, without limitation, any section of Article 3-A of the New York Lien Law.

Section 2.2. Performance by Mortgagee on Mortgagor's Behalf. Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which under any Loan Document Mortgagor is required to perform or take, or to pay any money which under any Loan Document Mortgagor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the Secured Indebtedness has been accelerated, Mortgagee, in Mortgagor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Mortgagee, with interest thereon at the Past Due Rate set forth in the Note, and any money so paid by Mortgagee shall be a demand obligation owing by Mortgagor to Mortgagee (which obligation Mortgagor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Mortgagee and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Mortgagee shall waive or cure any default or waive any right, remedy or recourse of Mortgagee. Any such payment may be made by Mortgagee in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Mortgagor to Mortgagee pursuant to this Mortgage shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Note for interest on past due principal owed on the Note but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Mortgagee on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Mortgagee hereunder and the time when paid shall be fully established by the certificate of Mortgagee or any of Mortgagee's officers or agents.

Section 2.3. Absence of Obligations of Mortgagee with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Mortgagor's rights, title and interests therein but not Mortgagor's obligations, duties or liabilities pertaining thereto, (ii) Mortgagee neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Mortgagee may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Mortgagee's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Mortgagee shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Mortgagee elects otherwise by written notification.

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, required by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. For purposes of such filings, Mortgagor agrees to furnish any information requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Mortgage. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Mortgagor's authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorney-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

### ARTICLE 3

#### Assignment of Rents and Leases

Section 3.1. Assignment. Mortgagor hereby assigns to Mortgagee all Rents (hereinafter defined) and all of Mortgagor's rights in and under all Leases (hereinafter defined).

So long as no Default (hereinafter defined) has occurred, Mortgagor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of a Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Mortgagee, and to otherwise deal with all Leases as permitted by this Mortgage. Each month, provided no Default has occurred, Mortgagor may retain such Rents as were collected that month and held in trust for Mortgagee; provided, however, that all Rents collected by Mortgagor shall be applied solely to the ordinary and necessary expenses of owning and operating the Property or paid to Mortgagee. Upon the revocation of such license, all Rents shall be paid directly to Mortgagee and not through the Mortgagor, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payments to Mortgagee shall constitute payments to Mortgagor under the Leases, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to do all things, after a Default, which Mortgagor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Mortgagee, all in such manner as may be determined by Mortgagee, or at the option of Mortgagee, holding the same as security for the payment of the Secured Indebtedness, (ii) leasing, in the name of Mortgagor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Default, unless other Defaults also then exist, shall entitle Mortgagor to recover its aforesaid license to do any such things which Mortgagor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Mortgagee to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Mortgagee for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this Mortgage. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Mortgagor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by damage to any part of the Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents. Mortgagor covenants, represents and warrants that: (a) Mortgagor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) neither Mortgagor nor any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Mortgagor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Mortgagor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (h) Mortgagor will not without the prior written consent of Mortgagee, enter into any Lease after the date hereof except in accordance with the terms of Exhibit I to the Loan Agreement, or waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant (except in accordance with the terms of Exhibit I to the Loan Agreement), reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with the terms of Exhibit I to the Loan Agreement or in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease (except with respect to leases of 5,000 square feet of rentable space or less), or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise (except with respect to leases of 5,000 square feet of rentable space or less); (i) Mortgagor will not, without the prior written consent of Mortgagee, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more unless promptly after the cancellation or surrender a new Lease of such premises is made with a new tenant having a credit standing that is satisfactory to Mortgagee, in Mortgagee's judgment, on terms not materially less favorable to lessor than the terms of the terminated or cancelled Lease; (j) Mortgagor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (k) Mortgagor shall give prompt notice to Mortgagee, as soon as Mortgagor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Mortgagor shall defend, at Mortgagor's expense, any proceeding pertaining to any Lease, including, if Mortgagee so requests, any such proceeding to which Mortgagee is a party; (l) Mortgagor shall as often as requested by Mortgagee, within ten (10) days of each request, deliver to Mortgagee a complete rent roll of the Property in such detail as Mortgagee may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Mortgagor, and deliver to such of the tenants and others obligated under the Leases specified by Mortgagee written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Mortgagee; (m) promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee executed originals of all Leases and copies of all records in its possession or control relating thereto; (n) there shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Mortgagee; and (o) Mortgagee may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lien Mortgagee; and nothing herein shall be construed as subordinating this Mortgage to any Lease.



Section 3.3. Estoppel Certificates. All Leases executed after the date hereof shall require the tenant to execute and deliver to Mortgagee an estoppel certificate in form and substance acceptable to Mortgagee not more than thirty (30) days after notice from the Mortgagee.

Section 3.4. No Liability of Mortgagee. Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate Mortgagee to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Property, or for Mortgagee's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Mortgagee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the same), shall render Mortgagee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Mortgagee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Mortgagee under this Article 3 shall be cumulative of all other rights of Mortgagee under the Loan Documents or otherwise.

Reference is hereby made to Section 291-f of the Real Property Law of the State of New York for the purpose of obtaining for Mortgagee the benefits of said Section in connection herewith.

#### ARTICLE 4

##### Default

Section 4.1. Events of Default. The occurrence of any one of the following shall be a default under this Mortgage ("default" or "Default"):

(a) Failure to Pay Indebtedness. Any of the Secured Indebtedness or any indebtedness evidenced by the other "Notes" (as defined in the Loan Agreement) is not paid when due, regardless of how such amount may have become due and such default shall have continued for a period of ten (10) days.

(b) Nonperformance of Covenants. Any covenant, agreement or condition herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept and such failure shall have continued for a period of thirty (30) days after notice thereof shall have been given to Mortgagor by Mortgagee (or such other cure period as may be specified elsewhere in this Mortgage or the other Loan Documents with respect to specific provisions), provided, however, if such default is not susceptible of being cured within such thirty (30) day period and Mortgagor has commenced such cure within such thirty (30) day period and is diligently pursuing such cure to Mortgagee's satisfaction, such thirty (30) day cure period shall be extended, but in no event shall such cure period exceed sixty (60) days, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein.

(c) Default under other Loan Documents. The occurrence of a Default under any other Loan Document, including an Early Termination Event as defined in any Master Agreement relating to any Swap Transaction.

(d) Representations. Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Mortgagee in connection with the Secured Indebtedness is false, misleading or erroneous in any material respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(e) Bankruptcy or Insolvency. The owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness (or any general partner or joint venturer of such owner or other person):

(i) (A) Executes an assignment for the benefit of creditors, or takes any action in furtherance thereof; or (B) admits in writing its inability to pay, or fails to pay, its debts generally as they become due; or (C) as a debtor, files a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, Title 11 of the United States Code as now or hereafter in effect or any other federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors (Title 11 of the United States Code and such other laws being herein called "Debtor Relief Laws"), or takes any action in furtherance thereof; or (D) seeks the appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property; or

(ii) Suffers the filing of a petition, case, proceeding or other action against it as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property, and (A) admits, acquiesces in or fails to contest diligently the material allegations thereof, or (B) the petition, case, proceeding or other action results in entry of any order for relief or order granting relief sought against it, or (C) in a proceeding under Debtor Relief Laws, the case is converted from one chapter to another, or (D) fails to have the petition, case, proceeding or other action permanently dismissed or discharged on or before the earlier of trial thereon or ninety (90) days next following the date of its filing; or

(iii) Conceals, removes, or permits to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or makes any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffers or permits, while insolvent, any creditor to obtain a lien (other than as described in subparagraph (iv) below) upon any of its property through legal proceedings which are not vacated and such lien discharged prior to enforcement thereof and in any event within sixty (60) days from the date thereof; or

(iv) Fails to have discharged within a period of thirty (30) days any attachment, sequestration, or similar writ levied upon any of its property; or

(v) Fails to pay immediately any final money judgment against it.

(f) Transfer of the Property. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Mortgagor, having a value equal to or greater than the replaced items when new; and (ii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Mortgage or of any other Loan Document. Mortgagee may, in its sole discretion, waive a default under this paragraph, but it shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which Mortgagee may require: the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Mortgagee in its sole judgment and grantee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Mortgagee may require, a principal paydown on the Note, an increase in the rate of interest payable under the Note, a transfer fee, a modification of the term of the Note, and any other modification of the Loan Documents which Mortgagee may require. : NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL AND ANY AND ALL SWAP TRANSACTIONS ARE SUBJECT TO TERMINATION, OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

(g) Transfer of Assets. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the other assets of Mortgagor, excluding the Property, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers in the ordinary course of Mortgagor's business; and (ii) sales or transfers for which Mortgagor receives consideration substantially equivalent to the fair market value of the transferred asset.

(h) Transfer of Ownership of Mortgagor. Any of the following:

(i) the sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Mortgagor (if Mortgagor is not a natural person but is a corporation, partnership, limited liability company, trust or other legal entity), without the prior written consent of Mortgagee (including, without limitation, if Mortgagor is a partnership or joint venture, the withdrawal from or admission into it of any general partner or joint venturer); or

(ii) if Mortgagor or Guarantor (or a general partner, member or co-venturer of either of them) is a partnership, joint venture, limited liability company, trust or closely-held corporation, any sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of any class of the issued and outstanding capital stock of such closely-held corporation or of the beneficial interest of such partnership, venture, limited liability company or trust, or a change of any general partner, joint venturer, member or beneficiary, as the case may be, or, in the event Mortgagor or Guarantor (or a general partner, co-venturer, member or beneficiary, as the case may be, of either of them) is a publicly-held corporation, the sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of the stock-holdings of any of the five (5) individuals or entities that own the greatest number of shares of each class of issued and outstanding stock, or effectuates or permits a reduction in the aggregate direct and indirect ownership interests of Guarantor in Mortgagor below 50.1%, or effectuates or causes Acadia Realty Trust to fail to control the management of Guarantor and Mortgagor.

(i) Grant of Easement, Etc. Without the prior written consent of Mortgagee, Mortgagor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(j) Abandonment. The owner of the Property abandons any of the Property.

(k) Default Under Other Lien. A default or event of default occurs under any lien, security interest or assignment covering the Property or any part thereof (whether or not Mortgagee has consented, and without hereby implying Mortgagee's consent, to any such lien, security interest or assignment not created hereunder), or the Mortgagee of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) Destruction. The Property is so demolished, destroyed or damaged that, in the reasonable opinion of Mortgagee, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time and in any event, prior to the final maturity date of the Note.

(m) Condemnation. (i) Any governmental authority shall require, or commence any proceeding for, the demolition of any building or structure comprising a part of the Premises, or (ii) there is commenced any proceeding to condemn or otherwise take pursuant to the power of eminent domain, or a contract for sale or a conveyance in lieu of such a taking is executed which provides for the transfer of, a material portion of the Premises, including but not limited to the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement.

(n) Liquidation, Etc. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of New York and/or the state of incorporation or organization, if different (or in the case of an individual, the death or legal incapacity) of the Mortgagor, any owner of the Property or any person obligated to pay any part of the Secured Indebtedness.

(o) Material, Adverse Change. In Mortgagee's reasonable opinion, the prospect of payment of all or any part of the Secured Indebtedness has been impaired because of a material, adverse change in the financial condition, results of operations, business or properties of the Mortgagor, any owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness, or of any general partner or joint venturer thereof (if such owner or other person is a partnership or joint venture).

(p) Enforceability; Priority. Any Loan Document shall for any reason without Mortgagee's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by any party thereto other than Mortgagee; or the liens, mortgages or security interests of Mortgagee in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Mortgagor or any person obligated to pay any part of the Secured Indebtedness.

(q) Other Indebtedness. A default or event of default occurs under any document executed and delivered in connection with any other indebtedness (to Mortgagee or any other person or entity) of Mortgagor, the owner of the Property, any person obligated to pay any part of the Secured Indebtedness, or any person or entity which guarantees such other indebtedness.

Section 4.2. Notice and Cure. If any provision of this Mortgage or any other Loan Document provides for Mortgagee to give to Mortgagor any notice regarding a default or incipient default, then if Mortgagee shall fail to give such notice to Mortgagor as provided, the sole and exclusive remedy of Mortgagor for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Note and the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such default in the manner and during the period of time permitted by such agreement, if any, and Mortgagor shall have no right to damages or any other type of relief not herein specifically set out against Mortgagee, all of which damages or other relief are hereby waived by Mortgagor. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

## ARTICLE 5

### Remedies

Section 5.1. Certain Remedies. If a Default shall occur, Mortgagee may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration. Mortgagee may at any time and from time to time declare any or all of the Secured Indebtedness immediately due and payable and may terminate any and all Swap Transactions. Upon any such declaration, such Secured Indebtedness shall thereupon be immediately due and payable, and such Swap Transactions shall immediately terminate, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Mortgagor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (A), (C) or (D) of subparagraph (i) of paragraph (d) of Section 4.1, hereof, all of the Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Mortgagor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Mortgagee under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Mortgagee may: (1) collect and/or sue for the Rents in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the Secured Indebtedness in such manner and order as Mortgagee may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.

(c) Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(i) Mortgagee may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession to Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents.

(iii) Mortgagee may from time to time: (A) continue and complete construction of, hold, store, use, operate, manage and control the Property and conduct the business thereof; (B) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional personal property; (C) insure or keep the Property insured; (D) exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; and (E) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.

(d) Uniform Commercial Code. Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code as adopted by the State of New York as in effect from time to time, (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law) or other applicable law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Property or other place where the collateral may be located without legal process, and to take possession of such personal property without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State of New York. Upon demand by Mortgagee, Mortgagor shall make such personal property available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may proceed under the Uniform Commercial Code as to all or any part of such personal property, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of such personal property. Mortgagee may choose to dispose of some or all of the property, in any combination consisting of both personal property and Property, in one or more public or private sales to be held in accordance with the Law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Mortgagor agrees that such a sale of such personal property together with Property constitutes a commercially reasonable sale of such personal property.

(e) Lawsuits. Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction. Mortgagor hereby assents to the passage of a decree for the sale of the Property by any equity court having jurisdiction.

(f) Foreclosure. Mortgagee may:

(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law (including, without limitation, in accordance with Article 14 of the New York Real Property Actions and Proceedings Law, regarding which Mortgagor hereby consents and agrees that notices thereunder (including notices of sale) may be given to Mortgagor in any of the manners specified for the giving of notices set forth in Section 6.13, and all estate, right, title and interest, claim and demand thereof, at one (1) or more sales as an entity or in parcels or parts, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(2) institute proceedings for the complete or partial foreclosure hereof; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, the Loan Agreement or herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

Any sale made hereunder may be as an entirety or in such parcels as Mortgagee may request. To the extent permitted by applicable law, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. If the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Secured Indebtedness, this Mortgage and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made and the rights of Mortgagee to foreclose hereunder shall also apply to any future sales. A sale may cover not only the Property but also personal property and other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or the sale may be of any part of the Property separately from the remainder of the Property. After each sale, the Mortgagee shall make to the purchaser or purchasers at such sale good and sufficient conveyances, conveying the property so sold to the purchaser or purchasers in fee simple, subject to the Permitted Encumbrances (and to such leases and other matters, if any), and shall receive the proceeds of said sale or sales and apply the same as herein provided. In the event any sale hereunder is not completed or is defective in the opinion of Mortgagee, such sale shall not exhaust the rights hereunder and Mortgagee shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds or other conveyances given by the Mortgagee as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Mortgagee's having declared all of said indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee shall be taken as prima facie evidence of the truth of the facts so stated and recited.



(g) Receiver. Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State of New York. To the extent permitted by law, the right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate under the Note, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Mortgage to the Mortgagee, and the Mortgagee shall have the right to offset the unpaid Secured Indebtedness against any such cash or deposits in such order as Mortgagee may elect.

(h) Termination of Commitment to Lend. Mortgagee may terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement to or for the benefit of Mortgagor.

(i) Other Rights and Remedies. Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. Application of Proceeds. Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article 5 and any other proceeds received by Mortgagee from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Secured Indebtedness, in such manner and order as Mortgagee may elect.

Section 5.3. Remedies Cumulative and Concurrent. No right, power or remedy of Mortgagee as provided in the Note, this Mortgage, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, or any endorser, co-maker, surety or guarantor of the Secured Indebtedness, or the Property or any part thereof, or any one or more of them, at the sole discretion of Mortgagee. The failure of Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

Section 5.4. Waiver, Delay or Omission. No waiver of any Default hereunder shall extend to or affect any subsequent or any other Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Default or to constitute acquiescence therein.

Section 5.5. Credit of Mortgagee. To the maximum extent permitted by the laws of the State of New York, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Secured Indebtedness in such order as Mortgagee may elect.

Section 5.6. Sale. Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor and all persons, except tenants pursuant to Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others.

Section 5.7. Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting the Mortgagor, any endorser, co-maker, surety, or guarantor of the Secured Indebtedness, or any of their respective properties, the Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Secured Indebtedness at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

Section 5.8. Waiver of Redemption, Notice, Marshalling, Etc. Mortgagor hereby waives and releases, for itself and anyone claiming through, by, or under it, to the maximum extent permitted by the laws of the State of New York:

(i) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment,

(ii) unless specifically required herein, all notices of default, or Mortgagee's actual exercise of any option or remedy under the Loan Documents, or otherwise, and

(iii) any right to have the Property marshaled.

Section 5.9. Discontinuance of Proceedings. If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgagor and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

Section 5.10. Mortgagee's Actions. Mortgagee may, at any time without notice to any person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, any endorser, co-maker, surety or guarantor of the Secured Indebtedness, nor any other person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Secured Indebtedness shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew, extend or modify the terms of the Note, this Mortgage and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Secured Indebtedness; (c) apply payments by any Obligor to the reduction of the unpaid Secured Indebtedness in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Secured Indebtedness without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage upon the Property which is not released or substituted, or the validity and priority of any security interest of the Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Mortgage or the lien of any other security interest in any other collateral now or hereafter held as security for the Secured Indebtedness; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee will join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any obligor or any other party as Mortgagee may see fit.

Section 5.11. Other Remedies. Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws.

## ARTICLE 6

### Miscellaneous

Section 6.1. Scope of Mortgage. This Mortgage is a Mortgage of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the New York Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Mortgage shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor and the Mortgagee are set forth in the preamble of this Mortgage and the address of Mortgagee from which information concerning the security interests hereunder may be obtained is the address of Mortgagee set forth at the end of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Mortgagee may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Mortgagee directly.

Section 6.4. Waiver by Mortgagee. Mortgagee may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing; (b) consent to Mortgagor's doing any act which hereunder Mortgagor is prohibited from doing, or to Mortgagor's failing to do any act which hereunder Mortgagor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Mortgage, without the joinder of Mortgagee; or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Mortgagee or Mortgagee hereunder except to the extent specifically agreed to by Mortgagee in such writing.

Section 6.5. No Impairment of Security. The lien, security interest and other security rights of Mortgagee hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Mortgagee including, but not limited to, any renewal, extension or modification which Mortgagee may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Mortgagee shall not release or impair the lien, security interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any junior lien Mortgagee in the Property (without implying hereby Mortgagee's consent to any junior lien).

Section 6.6. Acts Not Constituting Waiver by Mortgagee. Mortgagee may waive any default without waiving any other prior or subsequent default. Mortgagee may remedy any default without waiving the default remedied. Neither failure by Mortgagee to exercise, nor delay by Mortgagee in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Mortgagor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Secured Indebtedness in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Secured Indebtedness given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Mortgagee and any subsequent owner of the Property, with or without notice to such Mortgagor, and no such modifications shall impair the obligations of such Mortgagor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Mortgagee's consent to any transfer of the Property.

Section 6.8. Place of Payment. All Secured Indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place designated in the Note (or if no such designation is made, at the address of Mortgagee indicated at the end of this Mortgage).

Section 6.9. Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or Mortgagee of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Mortgagee is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loan evidenced by the Note or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's lien is waived; and Mortgagee shall have, and is hereby granted, a vendor's lien on the Property as cumulative additional security for the secured indebtedness. Mortgagee may foreclose under this Mortgage or under the vendor's lien without waiving the other or may foreclose under both.

Section 6.10. Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 6.11. Nature of Loan; Compliance with Usury Laws. The loan evidenced by the Note is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Mortgagor and Mortgagee and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Mortgagee and Mortgagor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Mortgagee shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Mortgagor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of New York or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12. Releases.

(a) Release of Mortgage. If all of the Secured Indebtedness is paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all Swap Transactions and all other obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Mortgagee in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Mortgagee or Mortgagee shall survive discharge of the Secured Indebtedness, the termination of any and all Swap Transactions and any foreclosure, release or termination of this Mortgage.

(b) Partial Releases; No Release in Default. Partial releases of the lien of this Mortgage shall be made in accordance with the terms and provisions of Exhibit C attached hereto and by this reference made a part hereof, or in accordance with such other terms and conditions as may subsequently be agreed to by Mortgagee. If no such Exhibit C is attached hereto, then there are no terms and provisions for partial releases, to which Mortgagee and Mortgagor have agreed at this time. In any event, no partial release shall be sought, requested or required if any Default has occurred which has not been cured.

(c) Effect of Partial Release. Mortgagee may, regardless of consideration, cause the release of any part of the Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Property.

(d) Release Fee. If permitted by applicable law Mortgagor shall pay to Mortgagee, at the time of each partial or complete release of the lien of this Mortgage, a release fee in the amount of \$25.00 if the release instrument is delivered to Mortgagee for execution or \$50.00, if Mortgagee is required to prepare the release instrument. In addition, Mortgagor shall pay to Mortgagee a fee in the amount of \$25.00 for each other document or instrument which Mortgagor requires the Mortgagee to execute.

Section 6.13. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that, service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.14. Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.15. Gender; Titles; Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.16. Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Mortgagee to furnish Mortgagee with evidence of such compliance.

Section 6.17. Mortgagee's Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Mortgagee is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Mortgagee's judgment, and (b) no approval or consent of Mortgagee shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Mortgagee.

Section 6.18. Mortgagor. Unless the context clearly indicates otherwise, as used in this Mortgage, "Mortgagor" means the Mortgagors named in Section 1.1 hereof or any of them. The obligations of Mortgagor hereunder shall be joint and several. If any Mortgagor, or any signatory who signs on behalf of any Mortgagor, is a corporation, partnership or other legal entity, Mortgagor and any such signatory, and the person or persons signing for it, represent and warrant to Mortgagee that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives. If Mortgagor is an individual, no power of attorney granted by Mortgagor herein shall terminate on Mortgagor's disability.



Section 6.19. Execution; Recording. This Mortgage has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as or Mortgagee shall reasonably request and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

Section 6.20. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the heirs, devisees, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee and shall constitute covenants running with the Land. All references in this Mortgage to Mortgagor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagor.

Section 6.21. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.22. No Partnership, Etc. The relationship between Mortgagee and Mortgagor is solely that of mortgagee and mortgagor. Mortgagee has no fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Mortgagee or in any way make Mortgagee a co-principal with Mortgagor with reference to the Property. All agreed contractual duties between or among Mortgagee and Mortgagor and are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.23. Priority of Lien. This Mortgage shall be, and shall at all times remain, subject and subordinate to the Mortgage, Assignment of Leases and Rents and Security Agreement from Mortgagor to Mortgagee in the amount of \$45,000,000 dated as of the date hereof, as the same may be modified, amended and/or restated from time to time and the lien imposed by such mortgage.

Section 6.24. Applicable Law. THIS MORTGAGE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 6.25. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.26. Forum. Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State of New York and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located, over any Dispute. Mortgagor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the State of New York may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address for notice set forth in this Mortgage, or at a subsequent address of which Mortgagee received actual notice from Mortgagor in accordance with the notice section of this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by Law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction.

**Section 6.27. WAIVER OF JURY TRIAL. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY DISPUTE AS SET FORTH IN THIS MORTGAGE, TO THE EXTENT ANY DISPUTE IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, MORTGAGOR AND MORTGAGEE WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGEE, AND MORTGAGOR AND MORTGAGEE HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

Section 6.28. Cross-Default. The Loan shall be cross-defaulted with all other loans which Mortgagor shall have from Lenders during the term of the Loan, whether existing as of the date of this Agreement subsequently made. A default under any of the above-described loans shall constitute a Default under the Loan. A Default under the Loan shall constitute a Default under the above-described other loans. To the extent not prohibited by applicable law, if Mortgagee, at its option, avails itself of this cross-default provision, Mortgagee shall have the option to pursue its remedies in any combinations and against any or all of Mortgagee's security for the aforesaid loans, whether successively, concurrently or otherwise.

Section 6.29. Substitute Mortgages. Mortgagor and Mortgagee shall, upon their mutual agreement to do so, execute such documents as may be necessary in order to effectuate the modification hereof, including the execution of substitute mortgages, so as to create two (2) or more liens on the Mortgaged Property in such amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the Mortgage Amount; in such event, Mortgagor covenants and agrees to pay the reasonable fees and expenses of Mortgagee and its counsel in connection with any such modification.

Section 6.30. Satisfaction or Assignment of Mortgage. Upon payment in full of all sums, and the performance of all obligations, secured hereby in accordance with the terms and conditions of this Mortgage and the other Loan documents, Mortgagee shall deliver a satisfaction or release of this Mortgage or, at Mortgagor's option to be exercised in writing, an assignment hereof, in either case in proper form of recording. As a condition to any such satisfaction or assignment, Mortgagor covenants and agrees to pay Mortgagee's reasonable fees and expenses (including attorneys' fees and expenses) in connection therewith. Upon any such satisfaction or assignment, Mortgagee shall, automatically and without the need for any other further documentation, be absolutely and unconditionally released from any and all claims or liabilities in connection with the Loan. In addition, Mortgagor hereby indemnifies and agrees to hold Mortgagee harmless from and against any and all claims and liabilities arising out of the satisfaction or assignment hereof, such indemnification to survive any such satisfaction or assignment.

Section 6.31. New York Provisions. (a) Mortgagor hereby makes the following statement: "This Mortgage does not cover real property principally improved or to be improved by one (1) or more structures containing in the aggregate not more than six (6) residential dwelling, each having its own separate cooking facilities." and (b) the covenants and conditions contained herein, other than those included in the New York Statutory Short Form of Mortgage, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of Section 254 of the Real Property Law of the State of New York.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as an instrument under seal as of the date first written on page 1 hereof.

ACADIA CORTLANDT LLC, a Delaware limited liability company

By

\_\_\_\_\_  
Robert Masters  
Senior Vice President

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

On the 29th day of July 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(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT A

Land

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN THE TOWN OF CORTLANDT, COUNTY OF WESTCHESTER AND STATE OF NEW YORK THAT IS A PORTION OF THOSE LANDS DESIGNATED PARCEL 1, PARCEL 2A AND PARCEL 2B ON THAT CERTAIN "RESUBDIVISION PLAT OF FILED MAP NO. 17837 SECTION 1 MID-WESTCHESTER INDUSTRIAL PARK, INC.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 15, 1984 AS MAP NO. 21741 THAT IS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 (AKA 5 MILE TURNPIKE AND/OR EAST MAIN STREET AND/OR STATE HIGHWAY 1309) WHERE IT IS MET BY THE LINE DIVIDING THE LANDS HEREIN DESCRIBED ON THE NORTHEAST FROM LANDS DESIGNATED LOT NO. 21 ON THAT CERTAIN "MAP NO. 1 GULL MANOR.," WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON MARCH 25, 1954 AS MAP NO. 8930, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,045.23 (Y)  
E 625,146.49 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE FROM THE SAID POINT OF BEGINNING NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 NORTH 31° 31' 51" EAST 202.41 FEET AND TO A POINT AT THE SOUTHWESTERLY LINE OF LOT NO. 4 SHOWN ON THAT CERTAIN MAP ENTITLED "SECTION NO. 1 MID-WESTCHESTER INDUSTRIAL PARK" WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON OCTOBER 16, 1972 AS MAP NO. 17837;

THENCE ALONG THE SOUTHWESTERLY, SOUTHEASTERLY AND NORTHEASTERLY LINES OF LOT NO. 4 SHOWN ON FILED MAP NO. 17837 THE FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 400.00 FEET;  
NORTH 35° 15' 51" EAST 200.00 FEET;  
NORTH 54° 41' 49" WEST 201.75 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF MOBIL CENTERS, INC;

THENCE ALONG THE SAID MOBIL CENTERS, INC. LANDS:

NORTH 35° 15' 51" EAST 150.02 FEET AND;  
NORTH 54° 41' 49" WEST 174.98 FEET TO A POINT;

THENCE STILL ALONG THE SAID LANDS OF MOBIL CENTERS, INC. WESTERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 90° 02' 20", THE RADIUS OF WHICH 25.00 FEET FOR 39.29 FEET TO ANOTHER POINT ON THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

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THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 35° 15' 51" EAST 103.05 FEET AND;  
NORTH 34° 16' 11" EAST 16.52 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF W.W. GEIS, JR.;

THENCE ALONG AND AROUND THE SAID W.W. GEIS, JR. LANDS THE FOLLOWING, FIRST TURNING ABOUT AND SOUTHERLY ON A TANGENT CURVE TO THE LEFT, THE CENTRAL ANGLE OF WHICH IS 88° 58' 00", THE RADIUS OF WHICH IS 25.00 FEET FOR 38.82 FEET AND THEN FOLLOWING COURSES:

SOUTH 54° 41' 49" EAST 187.41 FEET;  
SOUTH 87° 58' 31" EAST 50.19 FEET;  
NORTH 34° 14' 31" EAST 293.26 FEET AND;  
NORTH 55° 45' 29" WEST 248.82 FEET TO STILL ANOTHER POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ONCE AGAIN ALONG THE SAID SOUTHEASTERLY LINE OF U.S. ROUTE 6;

NORTH 38° 26' 11" EAST 91.89 FEET AND;

NORTH 36° 40' 11" EAST 175.50 FEET TO A POINT AT THE LINE LAND NOW OR FORMERLY OF HOME DEPOT U.S.A., INC. LANDS, THE FOLLOWING FIRST

SOUTH 53° 24' 23" EAST 28.04 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 44° 59' 45", THE RADIUS OF WHICH IS 100.00 FEET FOR 78.53 FEET,

THEN SOUTH 08° 24' 38" EAST 170.39 FEET

THEN ON A TANGENT CURVE TO THE RIGHT, THE CENTRAL ANGLE OF WHICH IS 42° 53' 52", THE RADIUS OF WHICH IS 330.00 FEET FOR 245.35 FEET, AND THEN THE FOLLOWING COURSES:

SOUTH 34° 11' 14" WEST 7.14 FEET;  
SOUTH 42° 10' 35" EAST 571.35 FEET;  
NORTH 81° 40' 00" EAST 752.50 FEET;  
NORTH 42° 10' 35" WEST 546.00 FEET;  
SOUTH 47° 49' 25" WEST 12.00 FEET;  
NORTH 42° 10' 35" WEST 334.49 FEET;  
NORTH 47° 49' 25" EAST 64.36 FEET;



NORTH 42° 10' 35" WEST 551.64 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF U.S. ROUTE 6;

THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 43° 07' 31" EAST 240.77 FEET;  
NORTH 46° 43' 08" EAST 200.86 FEET;  
NORTH 47° 51' 46" EAST 169.07 FEET;  
NORTH 54° 16' 42" EAST 77.64 FEET;  
NORTH 43° 47' 18" EAST 103.43 FEET;  
NORTH 06° 57' 25" EAST 7.49 FEET;  
NORTH 44° 52' 56" EAST 141.98 FEET;  
NORTH 56° 38' 06" EAST 194.10 FEET;  
NORTH 47° 40' 06" EAST 31.98 FEET TO A POINT AT THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO. 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP NO. 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,107.32 (Y)  
E 626,930.25 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE STILL ALONG THE SOUTHEASTERLY LINE OF U.S. ROUTE 6 THE FOLLOWING COURSES:

NORTH 47° 40' 06" EAST 15.49 FEET;  
NORTH 57° 07' 47" EAST 41.34 FEET;  
NORTH 46° 37' 24" EAST 65.92 FEET;  
NORTH 60° 47' 16" EAST 135.27 FEET;  
NORTH 58° 29' 38" EAST 200.48 FEET;  
NORTH 76° 26' 07" EAST 65.57 FEET;  
NORTH 53° 06' 18" EAST 114.53 FEET;  
NORTH 59° 20' 46" EAST 157.01 FEET;  
NORTH 67° 37' 05" EAST 102.26 FEET;  
NORTH 39° 31' 22" EAST 47.05 FEET;  
NORTH 62° 09' 00" EAST 123.28 FEET;  
NORTH 59° 26' 00" EAST 57.40 FEET;  
NORTH 58° 13' 00" EAST 81.60 FEET;  
NORTH 61° 59' 00" EAST 41.60 FEET;  
NORTH 38° 58' 00" EAST 17.42 FEET;  
NORTH 61° 26' 39" EAST 147.75 FEET;  
NORTH 57° 24' 50" EAST 100.18 FEET;  
NORTH 63° 24' 40" EAST 64.74 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF BERKO, WHICH POINT OCCUPIES COORDINATE POSITION

N 478,912.07 (Y)  
E 628,275.78 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE SOUTHERLY ALONG THE SAID BERKO LANDS AND CONTINUING ALONG LANDS NOW OR FORMERLY OF FELDMAN, NOW OR FORMERLY OF BERTINO, AND LANDS NOW OR FORMERLY OF MOHEGAN REALTY CO., THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

SOUTH 8° 21' 49" EAST 184.14 FEET;  
SOUTH 7° 23' 59" EAST 204.45 FEET;  
SOUTH 8° 27' 49" EAST 457.05 FEET;  
SOUTH 7° 57' 49" EAST 226.72 FEET;  
SOUTH 8° 03' 49" EAST 841.87 FEET TO LANDS NOW OR FORMERLY OF BOGIN, WHICH POINT OCCUPIES COORDINATE POSITION

N 477,016.99 (Y)  
E 628,545.67 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE ALONG SAID LANDS ON A COURSE OF SOUTH 84° 45' 51" WEST FOR A DISTANCE OF 565.62 FEET TO A POINT THAT IS A CORNER THEREOF, WHICH POINT IS AT THE SOUTHEASTERLY END OF THE LINE DIVIDING PARCEL NO. 2A, ON THE SOUTHWEST FROM PARCEL NO 1, ON THE NORTHEAST, BOTH AS SHOWN ON SAID FILED MAP 21741, WHICH POINT OCCUPIES COORDINATE POSITION

N 476,965.38 (Y)  
E 627,982.41 (X) OF THE NEW YORK STATE COORDINATE SYSTEM, EAST ZONE;

THENCE CONTINUING ALONG LANDS NOW OR FORMERLY OF BOGIN AND DEANIN ON A COURSE OF SOUTH 8° 44' 49" EAST FOR A DISTANCE OF 775.84 FEET TO LANDS NOW OR FORMERLY OF MCKEEL;

THENCE ALONG THE SAID MCKEEL LANDS AND IN PART ALONG THE ORIGINAL CENTER LINE OF A BROOK AS THE SAID CENTER LINE APPEARS ON THAT CERTAIN MAP ENTITLED "SURVEY... MIDWESTCHESTER INDUSTRIAL PARK INC...", WHICH WAS FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON JANUARY 24, 1969 ON MAP NO. 16581 THE FOLLOWING COURSES AND DISTANCES:

SOUTH 83° 29' 51" WEST 1204.04 FEET;  
SOUTH 64° 31' 01" WEST 35.43 FEET;  
SOUTH 87° 29' 41" WEST 100.66 FEET;  
SOUTH 79° 30' 01" WEST 100.04 FEET;  
SOUTH 80° 21' 21" WEST 99.99 FEET;  
SOUTH 82° 37' 11" WEST 219.69 FEET;  
SOUTH 81° 10' 01" WEST 102.96 FEET;  
SOUTH 74° 14' 51" WEST 99.92 FEET;  
SOUTH 75° 42' 31" WEST 81.58 FEET;  
SOUTH 73° 18' 21" WEST 101.89 FEET;  
SOUTH 87° 12' 21" WEST 100.12 FEET;  
SOUTH 89° 38' 51" WEST 100.44 FEET;  
SOUTH 84° 23' 51" WEST 107.95 FEET;

SOUTH 81° 42' 51" WEST 119.29 FEET;  
SOUTH 58° 38' 31" WEST 47.83 FEET;  
SOUTH 48° 18' 59" WEST 109.79 FEET AND;  
NORTH 68° 22' 19" WEST 32.81 FEET TO A POINT AT THE LINE OF LANDS NOW OR FORMERLY OF SHELBY-COLERIDGE HOLDING CORP;

THENCE ALONG THE SAID SHELBY-COLERIDGE HOLDING CORP. LANDS AND ALONG THE NORTHEASTERLY LINES OF LOT NO. 19 AND LOT 21 AS SHOWN ON THE AFOREMENTIONED "MAP NO. 1 GULL MANOR..." FILED MAP NO. 8930, THE FOLLOWING COURSES:

NORTH 68° 14' 09" WEST 17.28 FEET;  
SOUTH 89° 44' 51" WEST 61.00 FEET;  
NORTH 46° 00' 09" WEST 54.45 FEET;  
NORTH 61° 11' 09" WEST 72.08 FEET;  
NORTH 55° 43' 09" WEST 93.25 FEET TO THE AFOREMENTIONED SOUTHEASTERLY LINE OF U.S. ROUTE 6 AND THE POINT OR PLACE OF BEGINNING.

TOGETHER WITH THE BENEFITS AND SUBJECT TO THE BURDENS OF THE GRANT OF SANITARY SEWER EASEMENT MADE BY AND BETWEEN HARDEE'S AND MID-WESTCHESTER INDUSTRIAL PARK, INC. RECORDED IN LIBER 7137 PAGE 92.

TOGETHER WITH THE BENEFITS OF THE EASEMENT RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 7099 OF DEEDS AT PAGE 228 AND REPEATED IN LIBER 7143 OF DEEDS AT PAGE 449 AND LIBER 7235 OF DEEDS AT PAGE 88.

TOGETHER WITH THE BENEFITS OF THE DECLARATION AND GRANT OF RECIPROCAL EASEMENTS MADE BY CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11673 OF DEEDS AT PAGE 78.

TOGETHER WITH THE BENEFITS OF THE RECIPROCAL EASEMENT AND OPERATION AGREEMENT MADE BY BETWEEN CORTLANDT TOWN CENTER LIMITED PARTNERSHIP AND HOME DEPOT U.S.A. INC. AND RECORDED IN THE WESTCHESTER COUNTY CLERK'S LIBER 11618 OF DEEDS AT PAGE 1.

EXHIBIT B

Permitted Encumbrances

Those exceptions set forth in Schedule B of that certain title insurance policy issued by First American Title Insurance Company of New York under their title no. 3008-272268 insuring the lien of this Mortgage.

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EXHIBIT C

Partial Release

NONE

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NOTE

\$2,000,000

July 29, 2009

FOR VALUE RECEIVED, ACADIA CORTLANDT LLC, a Delaware limited liability company ("Borrower", whether one or more) hereby promises to pay to the order of Bank of America, N.A. ("Lender") under that certain Loan Agreement (defined below) among Borrower and Bank of America N.A., a national banking association and administrative agent (together with any and all of its successors and assigns, "Administrative Agent") for the benefit of Lenders from time to time a party to that certain Loan Agreement (the "Loan Agreement") of even date herewith, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent's Office as defined in the Loan Agreement, the principal sum of Two Million Dollars (\$2,000,000) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Future Advance Notes referred to in Loan Agreement and is entitled to the benefits thereof. The entire principal balance of this Note then unpaid shall be due and payable at the times as set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate as set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and if applicable a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of \$2,000,000 (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Mortgage") dated as of July 29, 2009 from Borrower to Administrative Agent covering certain property in the Town of Cortlandt, Westchester County, New York described therein (the "Property"). This Note, the Mortgage, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), are, as the same have been or may be amended, restated, modified or supplemented from time to time, herein sometimes called individually a "Loan Document" and together the "Loan Documents".

3. Defaults.

(a) It shall be a default ("Default") under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full when due, regardless of how such amount may have become due; (ii) any covenant, agreement, condition, representation or warranty herein or in any other Loan Documents is not fully and timely performed, observed or kept; or (iii) there shall occur any default or event of default under the Mortgage or any other Loan Document. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

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(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lenders hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Mortgage and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in the first paragraph of Page 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY NEW YORK LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

7. No Usury. It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and all Lenders at all times to comply with applicable state Law or applicable United States federal Law (to the extent that it permits a Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state Law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal Law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Administrative Agent's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable Law, then it is Administrative Agent's and each Lender's express intent that all excess amounts theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of this Note and all other indebtedness and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lenders for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.



THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has duly executed this Note under seal as of the date first above written.

ACADIA CORTLANDT LLC, a Delaware limited liability company

By \_\_\_\_\_  
Robert Masters  
Senior Vice President

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 6, 2009

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 6, 2009

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, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kenneth F. Bernstein, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Kenneth F. Bernstein  
Kenneth F. Bernstein  
President and Chief Executive Officer  
November 6, 2009

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, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Nelsen, Sr. Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Michael Nelsen

Michael Nelsen  
Senior Vice President and  
Chief Financial Officer  
November 6, 2009