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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 March 31, 2007

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 1-12002

**ACADIA REALTY TRUST**

(Exact name of registrant in its charter)

MARYLAND  
(State or other jurisdiction of  
incorporation or organization)

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

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

10605  
(Zip Code)

(914) 288-8100

(Registrant's telephone number, including area code)

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

YES  NO

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

Large Accelerated Filer  Accelerated Filer  Non-accelerated Filer

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act) Yes  No

As of May 9, 2007, there were 32,130,608 common shares of beneficial interest, par value \$.001 per share, outstanding.

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ACADIA REALTY TRUST AND SUBSIDIARIES

FORM 10-Q

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

(dollars in thousands)	<b>March 31, 2007</b> (unaudited)	<b>December 31, 2006</b>
<b>ASSETS</b>		
<b>Real estate</b>		
Land	\$ 174,038	\$ 152,930
Buildings and improvements	541,374	497,638
Construction in progress	23,160	26,670
	<u>738,572</u>	<u>677,238</u>
Less: accumulated depreciation	147,370	142,071
Net real estate	591,202	535,167
Cash and cash equivalents	111,643	139,571
Cash in escrow	6,987	7,639
Restricted cash	2,185	549
Investments in and advances to unconsolidated affiliates	12,157	31,049
Rents receivable, net	10,914	12,949
Notes receivable	34,134	38,322
Prepaid expenses	2,026	1,865
Deferred charges, net	36,326	33,255
Acquired lease intangibles	13,519	11,653
Other assets, net	20,406	39,673
	<u>\$ 841,499</u>	<u>\$ 851,692</u>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Mortgage notes payable	\$ 337,265	\$ 347,402
Convertible notes payable	115,000	100,000
Acquired leases and other intangibles	3,918	4,919
Accounts payable and accrued expenses	8,984	10,548
Dividends and distributions payable	6,661	6,661
Distributions in excess of income from and investment in unconsolidated affiliates	21,622	21,728
Other liabilities	11,821	5,578
Total liabilities	505,271	496,836
Minority interest in Operating Partnership	4,911	8,673
Minority interests in partially-owned affiliates	86,476	105,064
Total minority interests	91,387	113,737
<b>Shareholders' equity</b>		
Common shares	32	31
Additional paid-in capital	231,074	227,555
Accumulated other comprehensive loss	(232)	(234)
Retained earnings	13,967	13,767
Total shareholders' equity	<u>244,841</u>	<u>241,119</u>
	<u>\$ 841,499</u>	<u>\$ 851,692</u>

See accompanying notes

## ACADIA REALTY TRUST AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF INCOME  
FOR THE THREE MONTHS ENDED MARCH 31, 2007 AND 2006

(unaudited)

(dollars in thousands, except per share amounts)	Three months ended	
	2007	2006
<b>Revenues</b>		
Minimum rents	\$ 18,854	\$ 17,287
Percentage rents	138	185
Expense reimbursements	3,342	3,877
Other property income	264	209
Management fee income from related parties, net	1,075	1,201
Interest income	2,860	1,746
Other	165	1,141
Total revenues	<u>26,698</u>	<u>25,646</u>
<b>Operating Expenses</b>		
Property operating	4,906	3,867
Real estate taxes	2,198	2,700
General and administrative	5,448	5,307
Depreciation and amortization	6,537	6,230
Total operating expenses	<u>19,089</u>	<u>18,104</u>
<b>Operating income</b>	7,609	7,542
Equity in earnings of unconsolidated affiliates	130	2,971
Interest expense	(6,147)	(5,185)
Minority interest	2,288	(1,076)
Income from continuing operations before income taxes	3,880	4,252
Income taxes	(44)	(449)
Income from continuing operations	<u>3,836</u>	<u>3,803</u>
<b>Discontinued Operations</b>		
Operating income from discontinued operations	—	561
Minority interest	—	(11)
Income from discontinued operations	—	550
Income before extraordinary item	<u>3,836</u>	<u>4,353</u>
<b>Extraordinary item</b>		
Share of extraordinary gain from investment in unconsolidated affiliate	23,690	—
Minority interest	(18,959)	—
Income taxes	(1,848)	—
Extraordinary gain	2,883	—
Net income	<u>\$ 6,719</u>	<u>\$ 4,353</u>
<b>Basic Earnings per Share</b>		
Income from continuing operations	\$ 0.12	\$ 0.12
Income from discontinued operations	—	0.01
Income from extraordinary item	0.09	—
Basic earnings per share	<u>\$ 0.21</u>	<u>\$ 0.13</u>
<b>Diluted Earnings per Share</b>		
Income from continuing operations	\$ 0.11	\$ 0.12
Income from discontinued operations	—	0.01
Income from extraordinary item	0.09	—
Diluted earnings per share	<u>\$ 0.20</u>	<u>\$ 0.13</u>

See accompanying notes

## ACADIA REALTY TRUST AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE THREE MONTHS ENDED MARCH 31, 2007 AND 2006

(unaudited)

(dollars in thousands)	March 31, 2007	March 31, 2006
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 6,719	\$ 4,353
<b>Adjustments to reconcile net income to net cash provided by operating activities</b>		
Depreciation and amortization	6,537	6,682
Minority interests	16,671	1,087
Amortization of lease intangibles	62	178
Amortization of mortgage note premium	(34)	(30)
Equity in earnings of unconsolidated affiliates	(23,820)	(2,971)
Fees received from unconsolidated affiliates	122	145
Distributions recognized as income from unconsolidated affiliates	23,883	3,983
Amortization of derivative included in interest expense	109	109
<b>Changes in assets and liabilities</b>		
Restricted cash	(1,636)	(1)
Funding of escrows, net	652	(419)
Rents receivable	2,035	(472)
Prepaid expenses	(161)	154
Other assets	19,001	(5,863)
Accounts payable and accrued expenses	(1,846)	918
Other liabilities	6,099	4,476
Net cash provided by operating activities	<u>54,393</u>	<u>12,329</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Expenditures for real estate and improvements	(64,613)	(26,991)
Deferred acquisition and leasing costs	(3,550)	(2,341)
Investments in and advances to unconsolidated affiliates	(2,274)	(367)
Return of capital from unconsolidated affiliates	20,875	6,551
Collections of notes receivable	5,583	—
Advances of notes receivable	(1,368)	(27,359)
Net cash used in investing activities	<u>(45,347)</u>	<u>(50,507)</u>

## ACADIA REALTY TRUST AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE THREE MONTHS ENDED MARCH 31, 2007 AND 2006

(unaudited)

	March 31, 2007	March 31, 2006
(dollars in thousands)		
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Principal payments on mortgages and notes payable	(42,607)	(28,483)
Proceeds received on mortgage notes payable	32,764	64,809
Proceeds received on convertible debt issuance	15,000	—
Payment of deferred financing and other costs	(392)	(69)
Capital contributions from partners and members	2,166	—
Distributions to partners and members	(35,012)	(34,053)
Dividends paid	(6,519)	(5,905)
Distributions to minority interests in Operating Partnership	(133)	(121)
Distributions on preferred Operating Partnership Units	(9)	(63)
Distributions to minority interests in partially-owned affiliates	(2,260)	(36)
Contributions from minority interests in partially-owned affiliates	—	2,261
Common Shares issued under Employee Stock Purchase Plan	28	24
Net cash used in financing activities	<u>(36,974)</u>	<u>(1,636)</u>
Decreases in cash and cash equivalents	(27,928)	(39,814)
Cash and cash equivalents, beginning of period	139,571	90,475
Cash and cash equivalents, end of period	<u>\$ 111,643</u>	<u>\$ 50,661</u>
<b>Supplemental disclosure of cash flow information</b>		
Cash paid during the period for interest, including capitalized interest of \$12 and \$11, respectively	<u>\$ 4,950</u>	<u>\$ 5,334</u>
Cash paid for income taxes	<u>\$ 205</u>	<u>\$ 1,190</u>
<b>Supplemental disclosure of non-cash investing and financing activities</b>		
Acquisition of real estate through assumption of debt	<u>\$ —</u>	<u>\$ 12,509</u>
<b>Recapitalization of the Brandywine Portfolio</b>		
Real estate, net	\$ —	\$ 124,962
Other assets and liabilities	—	(11,413)
Mortgage debt	—	(66,984)
Minority interests	—	(36,504)
Investment in unconsolidated affiliates	—	(10,428)
Cash included in investments and advances to unconsolidated affiliates	<u>\$ —</u>	<u>\$ (367)</u>

See accompanying notes

## ACADIA REALTY TRUST AND SUBSIDIARIES

### 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 March 31, 2007, 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 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 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 a total of approximately \$300.0 million in investments. As of March 31, 2007, the Operating Partnership has contributed \$16.5 million to Fund I and \$2.7 million to Mervyns I.

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

During June of 2004, the Company formed a limited liability company, Acadia Strategic Opportunity Fund II, LLC (“Fund II”), and during August 2004 formed another limited liability company, Acadia Mervyn II, LLC (“Mervyns II”), with the investors from Fund I as well as two additional institutional investors. With \$300.0 million of committed discretionary capital, Fund II and Mervyns II combined expect to be able to acquire up to \$900.0 million of investments on a leveraged basis. The Operating Partnership’s share of committed capital is \$60.0 million. The Operating Partnership is the sole 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 March 31, 2007, the Operating Partnership has contributed \$18.0 million to Fund II and \$7.1 million to Mervyns II.

#### 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 Emerging Issues Task Force Issue No. 04-5. 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 thereof, are accounted for using the equity method of accounting. Accordingly, the Company’s share of the earnings (or loss) of these entities are included in consolidated net income. 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.

Although the Company accounts for its investment in Albertson’s, which it has made through the Retailer Controlled Property Venture (“RCP Venture”), 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 paragraph 19 of Accounting Principles Board (“APB”) 18 “Equity Method of Accounting for Investments in Common Stock”. Cash distributions received during the first quarter of 2007 from Albertson’s in excess of invested capital were recorded as income in the period when the distribution is received.

The preparation of the 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 three months ended March 31, 2007 are not necessarily indicative of the results



## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

that may be expected for the fiscal year ending December 31, 2007. 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, 2006.

During June 2006, the Financial Accounting Standards Board ("FASB") issued Interpretation No. 48, "Accounting for Uncertainty in Income Taxes — an interpretation of SFAS No. 109." ("Interpretation No. 48"), Interpretation No. 48 defines a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. Interpretation No. 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. Interpretation No. 48 is effective for fiscal years beginning after December 15, 2006.

The Company adopted Interpretation No. 48 on January 1, 2007. Based on its evaluation, the Company had no uncertain tax positions and no unrecognized tax benefits as of the adoption date or as of March 31, 2007. The Company has no interest or penalties relating to income taxes recognized in the statement of income for the three months ended March 31, 2007 or in the balance sheet as of March 31, 2007. It is the Company's accounting policy to classify interest and penalties relating to unrecognized tax benefits as interest expense and tax expense, respectively. As of March 31, 2007, the tax years 2003 through and including 2006 remain open to examination by the Internal Revenue Service. State income tax returns are generally subject to examination for a period of three to five years after filing of the respective returns. There are currently no federal or state tax examinations in progress.

On February 15, 2007, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities". This Statement permits companies and not-for-profit organizations to make a one-time election to carry eligible types of financial assets and liabilities at fair value, even if fair value measurement is not required under GAAP. SFAS 159 is effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the effect of the adoption of SFAS No. 159.

**3. EARNINGS PER COMMON SHARE**

Basic earnings per share was determined by dividing the applicable net income to common shareholders for the period by the weighted average number of Common Shares outstanding during each period consistent with SFAS No. 128. 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 March 31,	
	2007	2006
(dollars in thousands, except per share amounts)		
<b>Numerator:</b>		
Net income — basic	\$ 6,719	\$ 4,353
Income allocated to Preferred OP units	8	—
Net income — diluted	<u>\$ 6,727</u>	<u>\$ 4,353</u>
<b>Denominator:</b>		
Weighted average shares — basic earnings per share	32,753	32,468
Effect of dilutive securities:		
Employee stock options	342	298
Convertible Preferred OP Units	179	—
Dilutive Potential Common Shares	<u>521</u>	<u>298</u>
Denominator for diluted earnings per share	<u>33,274</u>	<u>32,766</u>
Basic earnings per share	<u>\$ 0.21</u>	<u>\$ 0.13</u>
Diluted earnings per share	<u>\$ 0.20</u>	<u>\$ 0.13</u>

The weighted average shares used in the computation of basic earnings per share include unvested restricted shares and Share Units (Note 13) that are entitled to receive dividend equivalent payments. The effect of the conversion of Common OP Units is not reflected in the above table as they are exchangeable for Common Shares on a one-for-one basis. The income allocable to such units is allocated on this same basis and reflected as minority interest 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 effect of the conversion of 178,993 Series A and B Preferred OP Units was dilutive for the three months ended March 31, 2007 and is included in the above table. The effect of the conversion of 337,097 Preferred OP Units for the three months ended March 31, 2006, is not reflected in the above table as such conversion was anti-dilutive.

## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**4. COMPREHENSIVE INCOME**

The following table sets forth comprehensive income for the three months ended March 31, 2007 and 2006:

(dollars in thousands)	Three months ended March 31,	
	2007	2006
Net income	\$ 6,719	\$ 4,353
Other comprehensive income	2	1,098
Comprehensive income	<u>\$ 6,721</u>	<u>\$ 5,451</u>

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

The following table sets forth the change in accumulated other comprehensive loss for the three months ended March 31, 2007:

**Accumulated other comprehensive loss**

(dollars in thousands)	
Balance at December 31, 2006	\$ (234)
Unrealized gain on valuation of derivative instruments and amortization of derivative	2
Balance at March 31, 2007	<u>\$ (232)</u>

**5. SHAREHOLDERS' EQUITY AND MINORITY INTERESTS**

The following table summarizes the change in the shareholders' equity and minority interests since December 31, 2006:

(dollars in thousands)	Shareholders' Equity	Minority Interest in Operating Partnership	Minority Interest in partially-owned affiliates
Balance at December 31, 2006	\$ 241,119	\$ 8,673	\$ 105,064
Dividends and distributions declared of \$0.20 per Common Share and Common OP Unit	(6,519)	(133)	—
Net income for the period January 1 through March 31, 2007	6,719	144	16,527
Distributions paid	—	—	(37,281)
Conversion of Series B Preferred OP Units	3,800	(3,800)	—
Other comprehensive income — Unrealized loss on valuation of swap agreements	(107)	—	—
Other comprehensive income — Amortization of derivative	109	—	—
Common shares issued under employee stock purchase plan	28	—	—
Minority interest contributions	—	—	2,166
Employee restricted share awards	785	—	—
Employee cancellation of restricted shares	(1,093)	—	—
Employee restricted partnership unit awards	—	27	—
Balance at March 31, 2007	<u>\$ 244,841</u>	<u>\$ 4,911</u>	<u>\$ 86,476</u>

Minority interest in the Operating Partnership represents (i) the limited partners' interest of 642,272 Common OP Units at March 31, 2007 and December 31, 2006, (ii) 188 Series A Preferred OP Units at March 31, 2007 and December 31, 2006, with a nominal value of \$1,000 per unit, which are entitled to a preferred quarterly distribution of the greater of (a) \$22.50 (9% annually) per Series A Preferred OP Unit or (b) the quarterly distribution attributable to a Series A Preferred OP Unit if such unit were converted into a Common OP Unit, and (iii) 200 and 4,000 Series B Preferred OP Units at March 31, 2007 and December 31, 2006, respectively, with a nominal value of \$1,000 per unit, which are entitled to a preferred quarterly distribution of the greater of (a) \$13.00 (5.2% annually) per unit or (b) the quarterly distribution attributable to a Series B Preferred OP Unit if such unit were converted into a Common OP Unit.

During January 2007, 43,865 employee restricted shares were cancelled to pay taxes. During the quarter ended March 31, 2007, the Company recognized accrued Common Share and Common OP Unit-based compensation totaling \$0.8 million. (Note 13)

## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**5. SHAREHOLDERS' EQUITY AND MINORITY INTERESTS, (continued)**

During February 2007, Klaff (Note 7) converted 3,800 Series B Preferred Units into 296,412 Common OP Units and ultimately into the same number of Common Shares.

Minority interests in partially-owned affiliates include third-party interests in three partnerships in which the Company has a majority ownership position and non-managing members' interests in Funds I and II, and Mervyns I and II which the Company consolidates in accordance with EITF 04-5.

The following table summarizes the minority interest contributions and distributions since December 31, 2006:

(dollars in thousands)	<u>Contributions</u>	<u>Distributions</u>
Minority interest in majority-owned affiliates	\$ —	\$ (2,260)
Fund I	—	(109)
Fund II	2,130	—
Mervyns II	36	(34,912)
	<u>\$ 2,166</u>	<u>\$ (37,281)</u>

**6. ACQUISITION AND DISPOSITION OF PROPERTIES AND DISCONTINUED OPERATIONS****Acquisition of Properties**

On March 20, 2007, the Company purchased a retail commercial condominium at 200 West 54<sup>th</sup> Street in Manhattan, New York. The 10,000 square foot property was acquired for \$36.4 million.

Additionally, on March 20, 2007, the Company purchased a single tenant building at 1545 East Service Road in Staten Island, New York for \$17.0 million. The 52,000 square foot building is currently being renovated and is leased to a single tenant.

**Discontinued Operations**

SFAS No. 144 requires discontinued operations presentation for disposals of a "component" of an entity. In accordance with SFAS No. 144, for all periods presented, the Company reclassified its consolidated statements of income to reflect income and expenses for properties which were sold or became held for sale subsequent to March 31, 2006, 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 results of operations of properties held for sale are reported separately as discontinued operations for the three months ended March 31, 2006. These are related to the Soundview Marketplace, Bradford Towne Centre, Greenridge Plaza, Luzerne Street Shopping Center and the Pittston Plaza, all of which the Company sold during the fourth quarter of 2006. There were no discontinued operations for the three months ended March 31, 2007.

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

(dollars in thousands)	<u>For the three months ended March 31, 2006</u>
Total revenues	\$ 2,373
Total expenses	1,812
Operating income from discontinued operations	561
Minority interest	(11)
Income from discontinued operations	<u>\$ 550</u>

## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS

**Investments In and Advances to Unconsolidated Partnerships****Retailer Controlled Property Venture**

On January 27, 2004, the Company entered into the RCP Venture with Klaff Realty, L.P. (“Klaff”) and Lubert-Adler Management, Inc. (“Lubert-Adler”) for the purpose of making investments in surplus or underutilized properties owned by retailers. On September 2, 2004, affiliates of Fund I and Fund II, through separately organized, newly formed limited liability companies on a non-recourse basis, invested in the acquisition of the Mervyns department store chain through the RCP Venture, which, as part of an investment consortium of Sun Capital and Cerberus acquired Mervyns from Target Corporation. The total acquisition price was \$1.2 billion, with such affiliates’ combined \$24.6 million share of the investment divided equally between them. The Operating Partnership’s share of the Mervyns investment totaled \$5.2 million. Since inception, Mervyns I and II received distributions totaling \$47.3 million.

During June of 2006, the RCP Venture made its second investment with its participation in the acquisition of Albertson’s and Cub Foods. Affiliates of Fund II, through the same limited liability companies which were formed for the investment in Mervyns, invested \$20.7 million in the acquisition of Albertson’s through the RCP Venture, along with others as part of an investment consortium. The Operating Partnership’s share of the invested capital was \$4.2 million.

During 2006, Fund II made additional investments of \$1.8 million in Shopko and Marsh. It also made investments of \$2.3 million, through the RCP Venture, in three Albertson’s add-on investments, Camellia, Newkirk, and Colorado Springs. The Operating Partnership’s share of the additional investments totaled \$0.7 million. The Company accounts for these investments using the cost method due to the minor ownership percent interest and the inability to exert influence over the entity’s operating and financial policies.

During the first quarter of 2007, the Company received a cash distribution of \$44.4 million from its ownership position in Albertson’s. The distribution resulted from cash proceeds obtained by Albertson’s in connection with its disposition of certain operating stores and a refinancing of the remaining assets held by the entity. The Operating Partnership’s share of this distribution, after allocation to minority interests, was \$8.9 million. The distribution in excess of invested capital has been reflected as an extraordinary gain of \$23.7 million to the Company of which the Operating Partnership’s share, net of minority interests and income taxes, amounted to \$2.9 million. This gain is characterized as extraordinary in the Company’s financial statements as a result of the expected nature of the income to be passed through from Albertson’s. The extraordinary gain is expected to result from the allocation of purchase price in accordance with SFAS No. 141 “Business Combinations” to the Albertson’s assets.

**Brandywine Portfolio**

The Company owns a 22.2% interest in a one million square foot retail portfolio located in Wilmington, Delaware (the “Brandywine Portfolio”). The Company accounts for its investment in the Brandywine Portfolio 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. The Company accounts for its investment in Crossroads using the equity method.

**Other Investments****Fund I Investments**

Fund I has joint ventures with third-party investors in the ownership and operation of the following shopping centers which are accounted for using the equity method of accounting.

<u>Shopping Center</u>	<u>Location</u>	<u>Year Acquired</u>	<u>Gross Leasable Area</u>
Hitchcock/Pine Log Plaza	Aiken, SC	2004	256,093
Haygood Shopping Center	Virginia Beach, VA	2004	178,497
Sterling Heights Shopping Center	Detroit, MI	2004	154,835
Total			<u>589,425</u>

**Fund II Investments**

Fund II acquired for \$1.0 million, a 50% equity interest from Klaff and other parties in an entity which has a leasehold interest in a former Levitz Furniture store located in Rockville, Maryland. The investment in this property is accounted for using the equity method of accounting.

## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS, (continued)

The following tables summarize the Company's investment in unconsolidated subsidiaries as of March 31, 2007 and December 31, 2006.

	March 31, 2007				
(dollars in thousands)	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
<b>Balance Sheets</b>					
<b>Assets:</b>					
Rental property, net	\$ —	\$ 129,366	\$ 5,901	\$ 40,350	\$ 175,617
Investment in unconsolidated affiliates	40,240	—	—	—	40,240
Other assets	—	6,858	4,948	6,725	18,531
<b>Total assets</b>	<b>\$ 40,240</b>	<b>\$ 136,224</b>	<b>\$ 10,849</b>	<b>\$ 47,075</b>	<b>\$ 234,388</b>
<b>Liabilities and partners' equity</b>					
Mortgage note payable	\$ —	\$ 167,568	\$ 64,000	\$ 30,444	\$ 262,012
Other liabilities	—	11,687	850	4,546	17,083
Partners equity (deficit)	40,240	(43,031)	(54,001)	12,085	(44,707)
<b>Total liabilities and partners' equity</b>	<b>\$ 40,240</b>	<b>\$ 136,224</b>	<b>\$ 10,849</b>	<b>\$ 47,075</b>	<b>\$ 234,388</b>
Company's investment in unconsolidated affiliates	<u>\$ 2,455</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 9,702</u>	<u>\$ 12,157</u>
Distributions in excess of income from and investment in unconsolidated affiliates	<u>\$ —</u>	<u>\$ (10,313)</u>	<u>\$ (11,309)</u>	<u>\$ —</u>	<u>\$ (21,622)</u>
	<b>December 31, 2006</b>				
(dollars in thousands)	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
<b>Balance Sheets</b>					
<b>Assets:</b>					
Rental property, net	\$ —	\$ 127,146	\$ 6,017	\$ 43,660	\$ 176,823
Investment in unconsolidated affiliates	385,444	—	—	—	385,444
Other assets	—	6,747	4,511	6,632	17,890
<b>Total assets</b>	<b>\$ 385,444</b>	<b>\$ 133,893</b>	<b>\$ 10,528</b>	<b>\$ 50,292</b>	<b>\$ 580,157</b>
<b>Liabilities and partners' equity</b>					
Mortgage note payable	\$ —	\$ 166,200	\$ 64,000	\$ 28,558	\$ 258,758
Other liabilities	—	12,709	1,858	8,862	23,429
Partners equity (deficit)	385,444	(45,016)	(55,330)	12,872	297,970
<b>Total liabilities and partners' equity</b>	<b>\$ 385,444</b>	<b>\$ 133,893</b>	<b>\$ 10,528</b>	<b>\$ 50,292</b>	<b>\$ 580,157</b>
Company's investment in unconsolidated affiliates	<u>\$ 23,539</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 7,510</u>	<u>\$ 31,049</u>
Distributions in excess of income from and investment in unconsolidated affiliates	<u>\$ —</u>	<u>\$ (10,541)</u>	<u>\$ (11,187)</u>	<u>\$ —</u>	<u>\$ (21,728)</u>

## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS, (continued)

## Other Investments (continued)

(dollars in thousands)	Three Months Ended March 31, 2007				
	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
Statements of Operations					
Total revenue	\$ —	\$ 4,869	\$ 2,066	\$ 1,465	\$ 8,400
Operating and other expenses	—	1,482	650	621	2,753
Interest expense	—	2,491	859	521	3,871
Equity in earnings of unconsolidated affiliates	20,747	—	—	—	20,747
Equity in earnings of unconsolidated affiliates — extraordinary gain	125,264	—	—	—	125,264
Depreciation and amortization	—	763	107	581	1,451
Net income (loss)	<u>\$ 146,011</u>	<u>\$ 133</u>	<u>\$ 450</u>	<u>\$ (258)</u>	<u>\$ 146,336</u>
Company's share of net income before extraordinary gain	<u>\$ —</u>	<u>\$ 31</u>	<u>\$ 123</u>	<u>\$ (24)</u>	<u>\$ 130</u>
Company's share of extraordinary gain	<u>\$ 23,690</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 23,690</u>

(dollars in thousands)	Three Months Ended March 31, 2006				
	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
Statements of Operations					
Total revenue	\$ —	\$ 4,514	\$ 2,163	\$ 925	\$ 7,602
Operating and other expenses	—	1,214	644	683	2,541
Interest expense	—	5,009	859	245	6,113
Equity in earnings of affiliates	31,562	—	—	—	31,562
Depreciation and amortization	—	724	143	281	1,148
Net income (loss)	<u>\$ 31,562</u>	<u>\$ (2,433)</u>	<u>\$ 517</u>	<u>\$ (284)</u>	<u>\$ 29,362</u>
Company's share of net income	<u>\$ 3,316</u>	<u>\$ (419)</u>	<u>\$ 154</u>	<u>\$ (80)</u>	<u>\$ 2,971</u>

## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**8. DERIVATIVE FINANCIAL INSTRUMENTS**

The following table summarizes the notional values and fair values of the Company's derivative financial instruments as of March 31, 2007. The notional value does not represent exposure to credit, interest rate or market risks.

<u>Hedge Type</u>	<u>Notional Value</u>	<u>Interest Rate</u>	<u>Forward Start Date</u>	<u>Maturity</u>	<u>Fair Value</u>
(dollars in thousands)					
Current Interest Rate Swaps					
LIBOR Swap	\$ 4,607	4.71%	n/a	1/1/10	\$ (26)
LIBOR Swap	11,322	4.90%	n/a	10/1/11	15
Total Interest Rate Swaps	<u>15,929</u>				<u>(11)</u>
Forward — Starting Interest Rate Swaps					
LIBOR Swap	\$ 8,434	5.14%	6/1/07	3/1/12	(106)
Interest Rate Caps					
LIBOR Cap	\$ 30,000	6.00%	n/a	4/1/08	(27)
Net Interest Rate Swap Liability					<u>\$ (144)</u>

The interest rate swap liability is included in other liabilities on the Consolidated Balance Sheets.

**9. MORTGAGE LOANS**

During the first quarter of 2007, the Company drew an additional \$6.7 million on existing construction loans. As of March 31, 2007, the outstanding balance on these construction loans was \$18.5 million.

During the first quarter of 2007, the Company paid off a variable-rate loan balance of \$21.5 million.

On January 25, 2007, the Company obtained a new \$26.0 million loan secured by a property. The loan bears interest at a fixed rate of 5.4% and matures on February 11, 2017. A portion of the proceeds was used to pay down the existing \$15.7 million loan.

On March 29, 2007, the Company closed on a \$30.0 million revolving credit facility that bears interest at LIBOR plus 125 basis points and matures on March 29, 2010. As of March 31, 2007, this line of credit was fully available.

**10. CONVERTIBLE NOTES PAYABLE**

In connection with the underwriter's over-allotment option related to the \$100.0 million issuance of 3.75% convertible notes payable in December 2006, the Company issued an additional \$15.0 million of these notes in January 2007, resulting in proceeds of \$14.7 million.

**11. RELATED PARTY TRANSACTIONS**

During February of 2005, the Operating Partnership issued 4,000 Restricted Preferred OP Units to Klaff for certain management contract rights and the rights to certain potential future revenue streams. During February of 2007, Klaff converted 3,800 of these units into 296,412 Common Shares (Note 5).

The Company also 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 \$0.7 million and \$1.0 million for the three months ended March 31, 2007 and 2006, respectively.

Lee Wielansky, the Lead Trustee of the Company, was paid a consulting fee of \$0.03 million for both the three months ended March 31, 2007 and 2006, respectively.

## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 12. SEGMENT REPORTING

The Company has two reportable segments: retail properties and multi-family properties. The accounting policies of the segments are the same as those described in the summary of significant accounting policies as discussed in the Company's Annual Report on Form 10-K for the year ended December 31, 2006. The Company evaluates property performance primarily based on net operating income before depreciation, amortization and certain nonrecurring items. The reportable segments are managed separately due to the differing nature of the leases and property operations associated with the retail versus residential tenants. The following tables set forth certain segment information for the Company for continuing operations as of and for the three months ended March 31, 2007 and 2006 and does not include activity related to unconsolidated partnerships:

(dollars in thousands)	Three months ended March 31, 2007			
	Retail Properties	Multi-Family Properties	All Other	Total
Revenues	\$ 20,675	\$ 1,923	\$ 4,100	\$ 26,698
Property operating expenses and real estate taxes	6,141	963	—	7,104
Other expenses	4,219	392	837	5,448
Net property income before depreciation, amortization and certain nonrecurring items	\$ 10,315	\$ 568	\$ 3,263	\$ 14,146
Depreciation and amortization	\$ 5,993	\$ 380	\$ 164	\$ 6,537
Interest expense	\$ 5,852	\$ 295	\$ —	\$ 6,147
Real estate at cost	\$ 696,139	\$ 42,433	\$ —	\$ 738,572
Total assets	\$ 770,571	\$ 35,068	\$ 35,860	\$ 841,499
Expenditures for real estate and improvements	\$ 64,603	\$ 10	\$ —	\$ 64,613
Reconciliation to net income				
Net property income before depreciation and amortization	\$ 14,146			
Depreciation and amortization	(6,537)			
Equity in earnings of unconsolidated partnerships	130			
Interest expense	(6,147)			
Minority interest	2,288			
Income taxes	(44)			
Income from extraordinary item	2,883			
Net income	\$ 6,719			



## ACADIA REALTY TRUST AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 12. SEGMENT REPORTING (continued)

(dollars in thousands)	Three months ended March 31, 2006			
	Retail Properties	Multi-Family Properties	All Other	Total
Revenues	\$ 19,522	\$ 2,036	\$ 4,088	\$ 25,646
Property operating expenses and real estate taxes	5,512	1,055	—	6,567
Other expenses	4,258	429	620	5,307
Net property income before depreciation, amortization and certain nonrecurring items	\$ 9,752	\$ 552	\$ 3,468	\$ 13,772
Depreciation and amortization	\$ 5,737	\$ 376	\$ 117	\$ 6,230
Interest expense	\$ 4,831	\$ 354	\$ —	\$ 5,185
Real estate at cost	\$ 585,436	\$ 41,772	\$ —	\$ 627,208
Total assets	\$ 647,843	\$ 38,832	\$ 46,037	\$ 732,712
Expenditures for real estate and improvements	\$ 768	\$ 139	\$ —	\$ 907
Reconciliation to net income				
Net property income before depreciation and amortization	\$ 13,772			
Depreciation and amortization	(6,230)			
Equity in earnings of unconsolidated partnerships	2,971			
Interest expense	(5,185)			
Minority interest	(1,076)			
Income taxes	(449)			
Income from discontinued operations	550			
Net income	\$ 4,353			

## 13. STOCK-BASED COMPENSATION

The Company has adopted the fair value method of recording stock-based compensation contained in SFAS No. 123R, "Accounting for Stock-Based Compensation". On January 15, 2007 (the "Grant Date"), the Company issued 108,823 Restricted Common Shares ("Restricted Shares") to officers and 20,735 Restricted Shares to employees of the Company. The Restricted Shares do not carry the rights of Common Shares, including voting rights, until vesting and may not be transferred, assigned or pledged until the recipients have a vested non-forfeitable right to such shares. The dividend will not be paid until the Restricted Shares have vested but there will be a catch-up payment upon vesting from the Grant Date to the applicable vesting date. All Restricted Shares are subject to the recipients' continued employment with the Company through the applicable vesting dates. Vesting with respect to 61,940 of the Restricted Shares issued to officers, is over four years with 25% vesting on each of the next four anniversaries of the Grant Date. In addition, vesting on 50% of the unvested Restricted Shares is also subject to certain total shareholder returns on the Company's Common Shares. Vesting with respect to 46,883 of the Restricted Shares issued to officers is over three years with 30% vesting on the first anniversary and 35% vesting on the following two anniversaries of the Grant Date. Vesting with respect to the Restricted Shares issued to employees, is over four years with 25% vesting on each of the next four anniversaries of the Grant Date. In addition, vesting on 25% of the unvested Restricted Shares is also subject to certain total shareholder returns on the Company's Common Shares.

On the Grant Date, the Company also issued 50,000 Restricted Shares to an officer in connection with his promotion to Executive Vice President. Vesting with respect to these Restricted Shares, is over five years with 20% vesting on each of the next five anniversaries of the Grant Date.

**ACADIA REALTY TRUST AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**13. STOCK-BASED COMPENSATION (continued)**

The total value of the above Restricted Share awards on the date of grant was \$4.5 million. Compensation expense of \$0.3 million has been recognized in the accompanying consolidated financial statements related to these Restricted Shares for the three months ended March 31, 2007.

On the Grant Date, the Company also issued 20,322 Restricted Partnership Units (“LTIP Units”) to officers and 1,214 LTIP Units to employees of the Company. LTIP Units are similar to Restricted Shares but provide for a quarterly partnership distribution in a like amount as paid to Common Partnership Units. This distribution is paid on both unvested and vested LTIP Units. The LTIP Units are convertible into Common Partnership Units and Common Shares upon vesting and a revaluation of the book capital accounts. Vesting with respect to the LTIP Units is over four years with 25% vesting on each of the next four anniversaries of the Grant Date. In addition, vesting on 50% of the officers unvested LTIP Units and 25% of the employees unvested LTIP Units are also subject to certain total shareholder returns on the Company’s Common Shares.

The total value of these LTIP Units on the date of the grant was \$0.5 million. Compensation expense of \$27,000 has been recognized in the accompanying financial statements related to these LTIP Units for the three months ended March 31, 2007.

**14. DIVIDENDS AND DISTRIBUTIONS PAYABLE**

On March 22, 2007, the Board of Trustees of the Company approved and declared a cash dividend for the quarter ended March 31, 2007 of \$0.20 per Common Share and Common OP Unit. The dividend was paid on April 13, 2007 to shareholders of record as of March 31, 2007.

## **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 March 31, 2007 and 2006 and for the three 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 which 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, 2006 and include, among others, the following: general economic and business conditions, 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 and acquisition; governmental actions and initiatives; and environmental/safety requirements.

### **OVERVIEW**

We currently operate 75 properties, which we own or have an ownership interest in, within our core portfolio or within our Funds I & II. These properties consist of 73 commercial properties, primarily neighborhood and community shopping centers, and two multi-family properties, which are located primarily in the Northeast, Mid-Atlantic and Midwestern regions of the United States. Our core portfolio consists of 34 properties comprising approximately five million square feet. Fund I has 32 properties comprising approximately two million square feet and Fund II has seven properties comprising approximately one million square feet. We consider our investments in the RCP Venture to be private equity investments and, therefore, not real estate investments. We receive income primarily from the rental revenue from our real estate properties, including recoveries from tenants, offset by operating and overhead expenses.

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 portfolio of community and neighborhood shopping centers and mixed-use properties with a retail component located in markets with strong demographics.
- Generate internal growth within the portfolio through aggressive redevelopment, re-anchoring and leasing activities.
- 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.
- Partner with private equity investors for the purpose of making investments in operating retailers with significant embedded value in their real estate assets.
- Maintain a strong and flexible balance sheet through conservative financial practices while ensuring access to sufficient capital to fund future growth.

### **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 the following critical accounting policies affect the significant judgments and estimates used by us in the preparation of our consolidated financial statements.

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

On a quarterly basis, we review both properties held for use and for sale for indicators of impairment. We record impairment losses and reduce the carrying value of properties when indicators of impairment are present and the expected undiscounted cash flows related to those properties are less than their carrying amounts. In cases where we do not expect to recover our carrying costs on properties held for use, we reduce our carrying cost to fair value, and for properties held for sale, we reduce our carrying value to the fair value less costs to sell. Management does not believe that the value of any properties in our portfolio was impaired as of March 31, 2007.

#### **Bad Debts**

We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of tenants to make payments on arrearages in billed rents, as well as the likelihood that tenants will not have the ability to make payment on unbilled rents including estimated expense recoveries and straight-line rent. As of March 31, 2007, we have recorded an allowance for doubtful accounts of \$3.4 million. If the financial condition of our tenants were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

**RESULTS OF OPERATIONS****Comparison of the three months ended March 31, 2007 ("2007") to the three months ended March 31, 2006 ("2006")**

(in millions)	2007	2006	Change	
			\$	%
<b>Revenues:</b>				
Minimum rents	\$ 18.8	17.3	\$ 1.5	9%
Percentage rents	0.1	0.2	(0.1)	(50)%
Expense reimbursements	3.3	3.9	(0.6)	(15)%
Other property income	0.3	0.2	0.1	50%
Management fee income	1.1	1.2	(0.1)	(8)%
Interest income	2.9	1.7	1.2	71%
Other	0.2	1.1	(0.9)	(82)%
<b>Total revenues</b>	<b>\$ 26.7</b>	<b>\$ 25.6</b>	<b>\$ 1.1</b>	<b>4%</b>

The increase in minimum rents was attributable to additional rents following our acquisition of 200 W. 54<sup>th</sup> Street, 145 East Service Road, Chestnut Hill and 2914 Third Avenue ("2006/2007 Acquisitions") as well as Liberty Avenue (Fund II) being placed in service January 1, 2007. In addition, minimum rents increased as a result of re-tenanting activities across our portfolio.

Common area maintenance ("CAM") expense reimbursement decreased \$0.1 million primarily as a result of the impact of the 2006 year-end CAM reconciliation billings and related adjustments completed during the first quarter of 2007. This decrease was partially offset by higher CAM recovery following increased snow removal costs in 2007. Real estate tax reimbursements decreased \$0.5 million, primarily as a result of lower real estate tax expense in 2007.

The increase in interest income was attributable to interest income on notes and other advances receivable originated in 2006 as well as higher balances in interest earning assets in 2007.

The decrease in other income was primarily attributable to a \$1.1 million reimbursement of certain fees by the institutional investors of Fund I for the Brandywine Portfolio in 2006.

(in millions)	2007	2006	Change	
			\$	%
<b>Operating Expenses:</b>				
Property operating	\$ 4.9	\$ 3.9	\$ 1.0	26%
Real estate taxes	2.2	2.7	(0.5)	(19)%
General and administrative	5.5	5.3	0.2	4%
Depreciation and amortization	6.5	6.2	0.3	5%
<b>Total operating expenses</b>	<b>\$ 19.1</b>	<b>\$ 18.1</b>	<b>\$ 1.0</b>	<b>6%</b>

The increase in property operating expenses was primarily the result of increased snow removal costs during 2007 and increased property operating expenses following the 2006/2007 Acquisitions.

The decrease in real estate taxes was due to a tax refund of \$0.2 million and adjustments of prior years estimated taxes of \$0.3 million recorded in 2007 and \$0.2 million related to the capitalization of construction period real estate taxes at a property that was operating in 2006. These decreases were partially offset by increased real estate tax expense following the 2006/2007 Acquisitions.

The increase in general and administrative expense was attributable to increased compensation expense of \$0.5 million related to additional personnel hired in 2006 and 2007 as well as increases in existing employee salaries. These increases were offset by a decrease in stock-based compensation in 2007 of \$0.3 million related to timing differences in vesting between 2006 and 2007 Restricted Share grants.

Depreciation expense increased \$0.2 million in 2007. This was principally a result of increased depreciation expense following the 2006/2007 Acquisitions. Amortization expense increased \$0.1 million, which was primarily the result of increased amortization of loan costs following our convertible note issuances in December 2006 and January 2007.

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(in millions)	2007	2006	Change	
			\$	%
Other:				
Equity in earnings of unconsolidated affiliates	\$ 0.1	\$ 3.0	\$ (2.9)	(97)%
Interest expense	(6.1)	(5.2)	(0.9)	(17)%
Minority interest	2.3	(1.1)	3.4	309%
Income taxes	—	(0.4)	0.4	100%
Income from discontinued operations	—	0.6	(0.6)	(100)%
Extraordinary item	2.9	—	2.9	100%

Equity in earnings of unconsolidated affiliates decreased as a result of our pro rata share of earnings and gains on sale from our Mervyns investments in 2006.

Interest expense increased \$0.9 million in 2007. This was the result of a \$1.1 million increase attributable to higher average outstanding borrowings in 2007 and an increase of \$0.4 million related to defeasance costs associated with a loan payoff in 2007. These increases were offset by a \$0.6 million decrease resulting from a lower average interest rate on the portfolio mortgage debt in 2007.

The variance in minority interest is attributable to the minority partners' share of earnings and gains from the sale of Mervyns assets in 2006.

Income taxes in 2006 relate to taxes at the taxable REIT subsidiary ("TRS") level on our share of gains from the sale of Mervyns locations in 2006.

Income from discontinued operations represents activity related to properties sold during 2006.

The extraordinary gain in 2007 relates to our share of income, net of income taxes and minority interest, from our Albertson's investment.

### **Funds from Operations**

Consistent with the National Association of Real Estate Investment Trusts ("NAREIT") definition, we define funds from operations ("FFO") as net income (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.

In addition to presenting FFO in accordance with the NAREIT definition, we also disclose FFO for the quarter ended March 31, 2007 as adjusted to include the extraordinary gain from our RCP investment in Albertson's. As discussed in Note 7 in the Notes to the Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q, this gain is a result of distributions we received in excess of our invested capital of which the Operating Partnership's share, net of minority interests and income taxes, amounted to \$2.9 million. This gain is characterized as extraordinary in our GAAP financial statements as a result of the expected nature of the income to be passed through from Albertson's. The extraordinary gain is expected to result from the allocation of purchase price to the Albertson's assets. We believe that income or gains derived from our RCP investments, including our investment in Albertson's, are private-equity type investments and, as such, should be treated as operating income and therefore FFO. The character of this income in our underlying accounting does not impact this conclusion. Accordingly, we believe that this supplemental adjustment more appropriately reflects the results of our operations.

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 and FFO, as adjusted, are presented to assist investors in analyzing our performance. They are helpful as they exclude various items included in net income that are not indicative of the operating performance, such as gains (or losses) from sales of property and depreciation and amortization. However, our method of calculating FFO and FFO, as adjusted, may be different from methods used by other REITs and, accordingly, may not be comparable to such other REITs. FFO and FFO, as adjusted, do not represent cash generated from operations as defined by GAAP and are not indicative of cash available to fund all cash needs, including distributions. They 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.

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The reconciliation of net income to FFO for the three months ended March 31, 2007 and 2006 is as follows:

(in millions)	Three months ended	
	March 31,	
	2007	2006
Net income	\$ 6.7	\$ 4.4
Depreciation of real estate and amortization of leasing costs (net of minority interests):		
Wholly-owned and consolidated affiliates	4.8	5.0
Unconsolidated affiliates	0.4	0.4
Income attributable to Minority interest in Operating Partnership (1)	0.2	0.1
Distributions — Preferred OP Units	—	0.1
Gain on sale (net of minority interests' share and income taxes)	—	(0.4)
Extraordinary item (net of minority interests' share and income taxes)	(2.9)	—
Funds from operations	9.2	9.6
Extraordinary item, net (2)	2.9	—
Funds from operations, adjusted for extraordinary item	\$ 12.1	\$ 9.6
Cash flows provided by (used in):		
Operating activities	\$ 54.4	\$ 12.3
Investing activities	\$ (45.3)	\$ (50.5)
Financing activities	\$ (37.0)	\$ (1.6)

Notes:

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

(2) The extraordinary item represents the Company's share of estimated extraordinary gain related to its investment in Albertson's. The Albertson's entity has recorded an extraordinary gain in connection with the allocation of purchase price to assets acquired. The Company considers this an investment in an operating business as opposed to real estate. Accordingly, all gains and losses from this investment are included in FFO.

## **USES OF LIQUIDITY**

Our principal uses of liquidity are expected to be for (i) distributions to our shareholders and OP unit holders, (ii) investments which include the funding of our joint venture commitments, property acquisitions and redevelopment/re-tenanting activities within our existing portfolio and (iii) debt service and loan repayments.

## **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. Through March 31, 2007, we paid quarterly dividends and distributions on our Common Shares and Common OP Units totaling \$6.7 million.

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### **Investments**

#### **Fund I and Mervyns I**

Reference is made to Note 1 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. The institutional investors have received all of their invested capital and accumulated preferred return in Fund I, thus triggering our Promote distribution in all future Fund I distributions. There are currently 32 assets comprising approximately two million square feet remaining in Fund I as follows:

<b>Shopping Center</b>	<b>Location</b>	<b>Year acquired</b>	<b>GLA</b>
<b>New York Region</b>			
<i>New York</i>			
Tarrytown Shopping Center	Westchester	2004	35,291
<b>Mid-Atlantic Region</b>			
<i>South Carolina</i>			
Hitchcock/Pine Log Plaza	Aiken	2004	256,093
<i>Virginia</i>			
Haygood Shopping Center	Virginia Beach	2004	178,497
<b>Midwest Region</b>			
<i>Ohio</i>			
Amherst Marketplace	Cleveland	2002	79,945
Granville Centre	Columbus	2002	134,997
Sheffield Crossing	Cleveland	2002	112,534
<i>Michigan</i>			
Sterling Heights Shopping Center	Detroit	2004	154,835
<b>Various Regions</b>			
Kroger/Safeway Portfolio	Various	2003	1,018,100
Total			<u>1,970,292</u>

In addition, we, along with our Fund I investors have invested in Mervyns as discussed further below.

#### **Fund II and Mervyns II**

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 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 (the "RCP Venture")**

During January of 2004, along with our investors in Funds I and II, we entered into the RCP Venture with Klaff Realty, L.P. ("Klaff") and Lubert-Adler Management, Inc. ("Lubert-Adler") for the purpose of making investments in retailers or the surplus or underutilized properties owned by retailers. The initial size of the RCP Venture is expected to be approximately \$300 million in equity based on anticipated investments of approximately \$1 billion. Each participant in the RCP Venture has the right to opt out of any potential investment. Affiliates of Funds I and II have invested \$49.4 million in the RCP Venture through March 31, 2007. We anticipate investing the remaining portion of the original 20% of the equity of the RCP Venture through Fund II and through acquisition funds that we may establish in the future. Cash flow is to be distributed to the RCP partners 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). We will also earn market-rate fees for property management, leasing and construction services to the extent we provide such services on behalf of the RCP 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. During the first quarter of 2007, the Company received a cash distribution of \$44.4 million from its ownership position in Albertson's, of which the Operating Partnership's share, after allocation to minority interests, was \$8.9 million.

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The following table summarizes the RCP Venture investments from inception through March 31, 2007:

Investment	Year acquired	Invested capital	Distributions	Operating Partnership Share	
				Invested capital	Distributions
Mervyns	2004	\$ 23.2	\$ 46.1	\$ 4.9	\$ 11.2
Mervyns add-on investments	2005	1.3	1.2	0.3	0.3
Albertson's	2006	20.7	44.4	4.2	8.9
Albertson's add-on investments	2006/2007	2.4	—	0.4	—
Shopko	2006	1.1	—	0.2	—
Marsh	2006	0.7	—	0.1	—
<b>Total</b>		<b>\$ 49.4</b>	<b>\$ 91.7</b>	<b>\$ 10.1</b>	<b>\$ 20.4</b>

### New York Urban Infill Redevelopment Initiative

In September of 2004, we, through Fund II, launched our New York Urban Infill Redevelopment initiative. Fund II, together with an unaffiliated partner, P/A Associates, LLC ("P/A"), formed Acadia-P/A Holding Company, LLC ("Acadia-P/A") for the purpose of acquiring, constructing, developing, owning, operating, leasing and managing certain retail real estate properties in the New York City metropolitan area. P/A has agreed to invest 10% of required capital up to a maximum of \$2.0 million and Fund II, the managing member, has agreed to invest the balance to acquire assets in which Acadia-P/A agrees to invest.

During February of 2007, Acadia-P/A entered into an agreement for the purchase of the leasehold interest in The Gallery at Fulton Street and adjacent parking garage in downtown Brooklyn for approximately \$120.0 million. The fee position in the property is owned by the City of New York and the agreement includes an option to purchase this fee position at a later date. Acadia P/A is partnering with MacFarlane Partners ("MacFarlane") to co-develop the project.

Plans for the property include the demolition of the existing structure and the development of a 1.6 million square foot mixed-use complex. The proposed development calls for the construction of a combination of retail, office and residential components, all of which are currently allowed as of right. The new lease with the City of New York is subject to approval at a hearing of the Mayor's Office of Contracts.

Acadia P/A, the majority partner, together with MacFarlane, will develop and operate the retail component, which is anticipated to total 475,000 square feet of retail space. Acadia P/A will also participate in the development of the office component with MacFarlane, which is expected to include approximately 125,000 square feet of office space. MacFarlane plans to develop and operate approximately 1,000 residential units with underground parking. Acadia P/A does not plan on participating in the development of, or have an ownership interest in, the residential component of the project. To date, Fund II has, in conjunction with P/A, invested in eight projects, of which two are currently under contract to acquire and for which closing cannot be assured, as follows:

Property	Location	Year acquired	Purchase price	Redevelopment (dollars in millions)		
				Anticipated additional costs	Estimated completion	Square feet upon completion
Liberty Avenue	Queens	2005	\$ —(1)	\$ 15.0	1st half 2007	125,000
216th Street	Manhattan	2005	7.0	18.0	2nd half 2007	60,000
Pelham Manor	Westchester	2004	—(1)	45.0	2nd half 2008	320,000
161st Street	Bronx	2005	49.0	16.0	2nd half 2008	232,000
Fordham Place	Bronx	2004	30.0	90.0	1st half 2009	285,000
Canarsie Plaza	Brooklyn	(2)	—(2)	70.0	1st half 2009	323,000
Sherman Plaza	Manhattan	2005	25.0	30.0	2nd half 2009	175,000
Albee Square	Brooklyn	(2)	—(2)	300.0	(3)	600,000
<b>Total</b>			<b>\$ 111.0</b>	<b>\$ 584.00</b>		<b>2,120,000</b>

#### Notes:

- (1) The Fund acquired a ground lease interest at this property
- (2) Closing is anticipated during 2007, although such closing cannot be assured
- (3) To be determined



## Other Investments

Reference is made to Note 6 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for a discussion of property acquisitions. As part of maintaining a strong core portfolio, we continue to focus on the opportunistic upgrading of our core properties by selling non-core or secondary assets and replacing them with assets located in higher-quality infill/supply constrained markets. When practical, we complete these transactions in accordance with Section 1031 of the Internal Revenue Code to accomplish these transactions in a tax efficient manner. During the quarter ended March 31, 2007, the Operating Partnership furthered this goal with the completion of one acquisition in Manhattan and another in Staten Island, New York for a total of \$53.4 million. The Staten Island acquisition enabled us to defer, for income tax purposes, a \$14.5 million taxable gain from the fourth quarter 2006 sale of a non-core asset. The Manhattan acquisition established a “reverse” 1031 exchange position, which will require the completion of the sale of one or more of our existing properties within 180 days from the date of the Manhattan acquisition, as well as other requirements, to qualify for the deferral of any gain realized from the sold property.

## Property Development, Redevelopment and Expansion

Our redevelopment program focuses on selecting well-located neighborhood and community shopping centers within our core portfolio and creating significant value through re-tenanting and property redevelopment. During the quarter ended March 31, 2007, we did not undertake any significant redevelopment projects within our core portfolio, nor do we currently anticipate commencing any additional redevelopment projects within the core portfolio during the balance of 2007.

## 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. The repurchase of our Common Shares was not a use of our liquidity during 2006. There were no Common Shares repurchased by us during the quarter ended March 31, 2007.

## SOURCES OF LIQUIDITY

We intend on using Fund II, as well as new funds that we may establish in the future, as a primary vehicle for our future acquisitions, including investments in the RCP Venture and New York Urban/Infill Redevelopment initiative. Sources of capital for funding property acquisitions, redevelopment, expansion and re-tenanting and RCP investments are expected to be obtained primarily from (i) the issuance of public equity or debt instruments, (ii) cash on hand, (iii) additional debt financings, (iv) unrelated member capital contributions and (v) future sales of existing properties. As of March 31, 2007, we had approximately \$159.9 million of additional capacity under existing debt facilities and cash and cash equivalents on hand of \$111.6 million. In addition, during the first quarter of 2007, we, through our RCP Venture, received a cash distribution on our ownership position in Albertson’s as discussed under Uses of Liquidity in this Form 10-Q, “RCP Venture”. We anticipate that cash flow from operating activities will continue to provide adequate capital for all of our debt service payments, recurring capital expenditures and REIT distribution requirements.

## Financing and Debt

At March 31, 2007, mortgage and convertible notes payable aggregated \$450.4 million and were collateralized by 52 properties and related tenant leases. Interest rates on our outstanding mortgage indebtedness and convertible notes payable ranged from 3.75% to 8.5% with maturities that ranged from July 2007 to November 2032. Taking into consideration \$15.9 million of notional principal under variable to fixed-rate swap agreements currently in effect, \$371.0 million of the portfolio, or 82%, was fixed at a 5.2% weighted average interest rate and \$79.4 million, or 18% was floating at a 6.8% weighted average interest rate. There is \$52.3 million and \$40.7 million of debt scheduled to mature in 2007 and 2008, respectively, at weighted average interest rates of 6.3% for 2007 and 6.7% for 2008. As 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.

The following summarizes our financing and refinancing transactions since December 31, 2006:

During the first quarter of 2007, we drew an additional \$6.7 million on existing construction loans. As of March 31, 2007, the outstanding balance on these construction loans was \$18.5 million.

During the first quarter of 2007, we paid off a variable-rate loan balance of \$21.5 million.

On January 25, 2007, we obtained a new \$26.0 million loan secured by a property. The loan bears interest at a fixed rate of 5.4% and matures on February 11, 2017. A portion of the proceeds was used to pay down the existing \$15.7 million balance.

On March 29, 2007, we closed on a \$30.0 million revolving credit facility that bears interest at LIBOR plus 125 basis points and matures on March 29, 2010. As of March 31, 2007, this line of credit was fully available.

The following table summarizes our mortgage indebtedness as of March 31, 2007 and December 31, 2006:

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(in millions)	March 31, 2007	December 31, 2006	Interest Rate at March 31, 2007	Maturity	Properties Encumbered	Payment Terms
<b>Mortgage notes payable — variable-rate</b>						
Washington Mutual Bank, FA	\$ —	\$ 21.5	6.57% (LIBOR +1.25%)	3/29/2010	(1)	(27)
Bank of America, N.A.	10.0	10.0	6.72% (LIBOR +1.40%)	6/29/2012	(2)	(27)
RBS Greenwich Capital	30.0	30.0	6.72% (LIBOR +1.40%)	4/1/2008	(3)	(28)
Bank of America, N.A.	10.7	6.4	6.57% (LIBOR +1.25%)	12/31/2008	(4)	(28)
PNC Bank, National Association	7.8	5.4	6.97% (LIBOR +1.65%)	5/18/2009	(5)	(35)
JP Morgan Chase	2.9	2.9	7.32% (LIBOR +2.00%)	10/5/2007	(6)	(27)
Bank of China	18.0	18.0	7.07% (LIBOR +1.75%)	11/1/2007	(7)	(28)
Bank of America, N.A.	15.9	16.0	6.62% (LIBOR +1.30%)	12/1/2011	(8)	(27)
Bank of America, N.A.	—	—	0.00% (LIBOR +1.25%)		(9)	(29)
Interest rate swaps	(15.9)	(16.0)				
Total variable-rate debt	79.4	94.2				
<b>Mortgage notes payable — fixed-rate</b>						
Sun America Life Insurance Company	12.6	12.7	6.46%	7/1/2007	(10)	(27)
Bank of America, N.A.	15.6	15.7	7.55%	1/1/2011	(11)	(27)
RBS Greenwich Capital	26.0	—	5.42%	2/11/2017	(12)	(28)
RBS Greenwich Capital	—	15.7	5.19%	6/1/2013	(12)	(28)
RBS Greenwich Capital	14.9	14.9	5.64%	9/6/2014	(13)	(27)
RBS Greenwich Capital	17.6	17.6	4.98%	9/6/2015	(14)	(30)
RBS Greenwich Capital	12.5	12.5	5.12%	11/6/2015	(15)	(31)
Bear Stearns Commercial	34.6	34.6	5.53%	1/1/2016	(16)	(32)
Bear Stearns Commercial	20.5	20.5	5.44%	3/1/2016	(17)	(28)
LaSalle Bank, N.A.	3.8	3.8	8.50%	4/11/2028	(18)	(27)
GMAC Commercial	8.5	8.6	6.40%	11/1/2032	(19)	(27)
Column Financial, Inc.	10.0	10.0	5.45%	6/11/2013	(20)	(27)
Merrill Lynch Mortgage Lending, Inc.	23.5	23.5	6.06%	8/29/2016	(21)	(27)
Bank of China	19.0	19.0	5.26%	9/1/2007	(22)	(28)
Cortlandt Deposit Corp	4.9	7.4	6.62%	2/1/2009	(23)	(34)
Cortlandt Deposit Corp	4.9	7.3	6.51%	1/15/2009	(24)	(34)
The Ohio National Life Insurance Company	4.5	4.5	8.20%	6/1/2022	(25)	(27)
Canada Life Insurance Company	6.7	6.7	8.00%	1/1/2023	(26)	(27)
Interest rate swaps	15.9	16.0	6.25%	(36)		
Total fixed-rate debt	256.0	251.0				
Total fixed and variable debt	335.4	345.2				
Valuation of debt at date of acquisition, net of amortization	1.9	2.2				
Total	\$ 337.3	\$ 347.4				

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### Notes:

- (1) Ledgewood Mall
- (2) Smithtown Shopping Center
- (3) 161<sup>st</sup> Street
- (4) 216<sup>th</sup> Street
- (5) Liberty Avenue
- (6) Granville Center
- (7) Fordham Place
- (8) Branch Shopping Center
- (9) Marketplace of Absecon  
Bloomfield Town Square  
Hobson West Plaza  
Village Apartments  
Town Line Plaza  
Methuen Shopping Center  
Abington Towne Center
- (10) Merrillville Plaza
- (11) GHT Apartments/Colony Apartments
- (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) Clark-Diversey
- (19) Boonton Shopping Center
- (20) Chestnut Hill
- (21) Walnut Hill
- (22) Sherman Avenue
- (23) Kroger Portfolio
- (24) Safeway Portfolio
- (25) Amherst Marketplace
- (26) Sheffield Crossing
- (27) Monthly principal and interest.
- (28) Interest only monthly.
- (29) Annual principal and monthly interest.
- (30) Interest only monthly until 9/10; monthly principal and interest thereafter.
- (31) Interest only monthly until 12/08; monthly principal and interest thereafter.
- (32) Interest only monthly until 1/10; monthly principal and interest thereafter.
- (33) Interest only monthly until 11/11; monthly principal and interest thereafter.
- (34) Annual principal and semi-annual interest payments.
- (35) Interest only upon draw down on construction loan.
- (36) Maturing between 1/1/10 and 10/1/11.

## CONTRACTUAL OBLIGATIONS AND OTHER COMMITMENTS

At March 31, 2007, maturities on our mortgage notes ranged from July 2007 to November 2032. In addition, we have non-cancelable ground leases at seven of our shopping centers. We also lease space for our White Plains corporate office for a term expiring in 2008. The following table summarizes our debt maturities and obligations under non-cancelable operating leases as of March 31, 2007:

(in millions)	Payments due by period				
	Total	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
<b>Contractual obligation</b>					
Future debt maturities	\$ 450.4	\$ 53.6	\$ 61.8	\$ 149.6	\$ 185.4
Interest obligations on debt	141.9	18.4	39.4	34.1	50.0
Operating lease obligations	119.1	3.6	6.5	8.0	101.0
<b>Total</b>	<b>\$ 711.4</b>	<b>\$ 75.6</b>	<b>\$ 107.7</b>	<b>\$ 191.7</b>	<b>\$ 336.4</b>

## 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 non-controlling interest. As such, our financial statements reflect our share of income 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:

(dollars in millions)	Investment	Pro rata share of mortgage debt	Interest rate at March 31, 2007	Maturity date
	Crossroads	\$ 31.4	5.40%	December 2014
	Brandywine	36.9	5.99%	July 2016
	Fund I investments	2.8	6.95%	August 2010
	<b>Total</b>	<b>\$ 71.1</b>		

In addition, we have arranged for the provision of five separate letters of credit in connection with certain leases and investments. As of March 31, 2007, there were no outstanding balances under any of these letters of credit. If these letters of credit were fully drawn, the combined maximum amount of exposure would be \$15.1 million.

## HISTORICAL CASH FLOW

The following discussion of historical cash flow compares our cash flow for the three months ended March 31, 2007 ("2007") with our cash flow for the three months ended March 31, 2006 ("2006").

Cash and cash equivalents were \$111.6 million and \$50.7 million at March 31, 2007 and 2006, respectively. The increase of \$60.9 million was a result of the following increases and decreases in cash flows:

(in millions)	Three months ended March 31,		
	2007	2006	Change
Net cash provided by operating activities	\$ 54.4	\$ 12.3	\$ 42.1
Net cash (used in) provided by investing activities	(45.3)	(50.5)	5.2
Net cash used in financing activities	(37.0)	(1.6)	(35.4)
<b>Totals</b>	<b>\$ (27.9)</b>	<b>\$ (39.8)</b>	<b>\$ 11.9</b>

The variance in net cash provided by operating activities resulted from an increase of \$16.7 million in operating income before non-cash expenses in 2007, which was primarily due to the increase of \$19.9 million in distributions of operating income from unconsolidated affiliates as a result of the distributions from Albertson's in 2007. In addition, a net increase in cash of \$25.4 million resulted from changes in operating assets and liabilities, primarily other assets, which was the result of the repayment of a note from our qualified intermediary relating to Section 1031 transactions.

The decrease in net cash used in investing activities resulted from \$27.4 million of notes receivable originated in 2006, \$14.3 million of additional return of capital from unconsolidated affiliates in 2007, primarily from our investment in Albertson's and \$5.6 million of collections from notes receivable in 2007. These net decreases were offset by \$38.8 million of additional expenditures for real estate acquisitions, development and tenant installations in 2007.

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The increase in net cash used in financing activities resulted from \$14.1 million of additional cash used for the repayment of debt in 2007 and a decrease of \$32.0 million of cash provided by additional borrowings in 2007. These increases were partially offset by an additional \$15.0 million in cash received from the issuance of convertible debt in 2007.

### 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 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 March 31, 2007, we had total mortgage debt and convertible notes payable of \$450.4 million of which \$371.0 million or 82%, was fixed-rate, inclusive of interest rate swaps, and \$79.4 million, or 18%, was variable-rate based upon LIBOR plus certain spreads. As of March 31, 2007, we were a party to two interest rate swaps transactions and one interest rate cap transaction to hedge our exposure to changes in interest rates with respect to \$15.9 million and \$30.0 million of LIBOR-based variable-rate debt, respectively. We also have one forward-starting interest rate swap which commences during 2007 and matures in 2012 that will hedge our exposure to changes in interest rates with respect to \$8.4 million of current LIBOR-based variable rate debt through maturity.

The following table sets forth information as of March 31, 2007 concerning our long-term debt obligations, including principal cash flows by scheduled maturity and weighted-average interest rates of maturing amounts:

Consolidated mortgage debt and convertible notes payable:

<u>Year</u>	<u>Scheduled amortization</u>	<u>Principal at maturity</u>	<u>Total obligation</u>	<u>Weighted average interest rate</u>
(in millions)				
2007	\$ 1.3	\$ 52.3	\$ 53.6	6.3%
2008	6.5	40.7	47.2	6.7%
2009	6.8	7.8	14.6	7.0%
2010	2.4	14.8	17.2	7.6%
2011	2.6	129.8	132.4	4.1%
Thereafter	31.5	153.9	185.4	5.6%
	<u>\$ 51.1</u>	<u>\$ 399.3</u>	<u>\$ 450.4</u>	

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

<u>Year</u>	<u>Scheduled amortization</u>	<u>Principal at maturity</u>	<u>Total obligation</u>	<u>Weighted average interest rate</u>
(in millions)				
2007	\$ 0.4	\$ —	\$ 0.4	n/a%
2008	0.4	—	0.4	n/a%
2009	0.5	—	0.5	n/a%
2010	0.5	2.8	3.3	7.0%
2011	0.5	—	0.5	n/a%
Thereafter	1.7	64.3	66.0	5.7%
	<u>\$ 4.0</u>	<u>\$ 67.1</u>	<u>\$ 71.1</u>	

Of our total consolidated and pro-rata share of unconsolidated outstanding debt, \$52.3 million and \$40.7 million will become due in 2007 and 2008, 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 \$0.9 million annually if the interest rate on the refinanced debt increased by 100 basis points. Interest expense on our variable-debt, net of variable to fixed-rate swap agreements currently in effect, as of March 31, 2007 would increase by \$0.8 million if LIBOR increased by 100 basis points. 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 Annual Report on Form 10-K for the year ended December 31, 2006.

**Item 1A. Risk Factors.**

There have been no material changes to the risk factors previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2006.

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

As previously reported on a Form 8-K filed on December 11, 2006, we entered into a purchase agreement (the "Purchase Agreement") with Lehman Brothers Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Initial Purchasers") for the sale by us and the purchase by the Initial Purchasers of \$100.0 million aggregate principal amount of 3.75% Convertible Notes due 2026 (the "Notes"), which closed on December 11, 2006. The Purchase Agreement also granted the Initial Purchasers a 30-day option to purchase up to an additional \$15.0 million aggregate principal amount of the Notes. The terms of the Notes, including the terms of their conversion into Common Shares, have been previously disclosed in this 8-K.

As previously reported on a Form 8-K filed on January 15, 2007, on January 8, 2007, the Initial Purchasers exercised their option pursuant to the Purchase Agreement to purchase an additional \$15.0 million aggregate principal amount of the Notes. The net proceeds from the sale of the additional Notes, after deducting the Initial Purchasers' offering expenses, were approximately \$14.7 million.

We offered and sold the Notes to the Initial Purchasers in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act. The Initial Purchasers then sold the Notes only to qualified institutional buyers in the United States in reliance upon the exemption from registration provided by Rule 144A under the Securities Act. We relied on these exemptions from registration based in part on representations made by the Initial Purchasers in the Purchase Agreement.

**Item 3. Defaults upon Senior Securities.**

None

**Item 4. Submission of Matters to a Vote of Security Holders.**

None

**Item 5. Other Information.**

None

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### **Item 6. Exhibits**

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)
4.1	Voting Trust Agreement between the Company and Yale University dated February 27, 2002 (4)
10.61	Loan Agreement between 239 Greenwich Associates Limited Partnership and Wachovia Bank, National Association dated January 25, 2007. (8)
10.62	Revolving Credit Agreement between Acadia Realty Limited Partnership and Washington Mutual Bank dated March 29, 2007. (8)
21	List of Subsidiaries of Acadia Realty Trust (8)
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 (8)
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 (8)
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 (8)
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 (8)
99.1	Amended and Restated Agreement of Limited Partnership of the Operating Partnership (5)
99.2	First and Second Amendments to the Amended and Restated Agreement of Limited Partnership of the Operating Partnership (5)
99.3	Third Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (6)
99.4	Fourth Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (6)
99.5	Certificate of Designation of Series A Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (7)
99.6	Certificate of Designation of Series B Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (6)

#### 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) 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
- (6) 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
- (7) 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
- (8) Filed herewith.



**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**

May 9, 2007

/s/ Kenneth F. Bernstein

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

May 9, 2007

/s/ Michael Nelsen

Michael Nelsen  
Senior Vice President and Chief Financial Officer  
(Principal Financial Officer)

PREPARED BY AND UPON RECORDATION  
RETURN TO:

Moore & Van Allen PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, North Carolina 28202-4003  
Attention: Timothy W. Gilbert, Esq.

Loan No.: 50-2858925

239 Greenwich Avenue

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239 GREENWICH ASSOCIATES LIMITED PARTNERSHIP,  
as Borrower

to

WACHOVIA BANK, NATIONAL ASSOCIATION,  
as Lender

\_\_\_\_\_  
MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING  
\_\_\_\_\_

Dated as of January \_\_\_, 2007

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**MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING**

**THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING** (as the same may be from time to time amended, consolidated, renewed or replaced, this "Mortgage") is made as of January \_\_, 2007 by 239 GREENWICH ASSOCIATES LIMITED PARTNERSHIP, a Connecticut limited partnership, as grantor ("Borrower"), whose address is c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, White Plains, New York 10605, to WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, as beneficiary (together with its successors and assigns, "Lender"), whose address is Commercial Real Estate Services, 8739 Research Drive URP – 4, NC 1075, Charlotte, North Carolina 28262.

**WITNESSETH:**

THAT FOR AND IN CONSIDERATION OF THE SUM OF TEN AND NO/100 DOLLARS (\$10.00), AND OTHER VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, BORROWER HEREBY IRREVOCABLY MORTGAGES, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, with power of sale, all of Borrower's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired by Borrower (collectively, the "Property"):

(A) All that certain real property situated in the County of Fairfield, State of Connecticut, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Premises (the "Improvements");

(C) All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Borrower and now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Borrower as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Premises or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

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(D) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, and other emblements now or hereafter located on the Premises or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(E) All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Premises or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

(F) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Premises;

(G) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Mortgage or any other of the Loan Documents (as hereinafter defined), including, without limitation, all funds now or hereafter on deposit in the Reserves (as hereinafter defined);

(H) All leases (including, without limitation, oil, gas and mineral leases), licenses, concessions and occupancy agreements of all or any part of the Premises or the Improvements (each, a "Lease" and collectively, "Leases"), whether written or oral, now or hereafter entered into and all rents, royalties, issues, profits, bonus money, revenue, income, rights and other benefits (collectively, the "Rents and Profits") of the Premises or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future Lease or other agreement pertaining thereto or arising from any of the Leases or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees or licensees (each, a "Tenant" and collectively, "Tenants"), as applicable, of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject, however, to the provisions contained in Section 2.7 hereinbelow;

(I) All contracts and agreements now or hereafter entered into covering any part of the Premises or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Premises or the Improvements (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Premises or the Improvements;

(J) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Premises or the Improvements;

(K) All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including, without limitation, trademarks, trade names, service marks and symbols now or hereafter used in connection with any part of the Premises or the Improvements, all names by which the Premises or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Premises or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Premises or the Improvements (collectively, the “General Intangibles”);

(L) All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Premises or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Premises or the Improvements;

(M) All building materials, supplies and equipment now or hereafter placed on the Premises or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Premises or the Improvements;

(N) All right, title and interest of Borrower in any insurance policies or binders now or hereafter relating to the Property, including any unearned premiums thereon;

(O) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

(P) All other or greater rights and interests of every nature in the Premises or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower.

FOR THE PURPOSE OF SECURING:

(1) The loan (the “Loan”) evidenced by that certain Promissory Note (such Promissory Note, together with any and all renewals, amendments, modifications, consolidations and extensions thereof, is hereinafter referred to as the “Note”) of even date with this Mortgage, made by Borrower payable to the order of Lender in the principal face amount of Twenty-Six Million and No/100 Dollars (\$26,000,000.00), together with interest as therein provided;



(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the Debt (as hereinafter defined) including, but not limited to, the Environmental Indemnity Agreement (as hereinafter defined) and the Indemnity and Guaranty Agreement (as hereinafter defined) (the Note, this Mortgage, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums herein or therein covenanted to be paid;

(3) Any and all additional advances made by Lender to protect or preserve the Property or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Property at the time of such advances); and

(4) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, including, without limitation, all prepayment fees, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof, it being contemplated by Borrower and Lender that Borrower may hereafter become so indebted to Lender.

(All of the sums referred to in Paragraphs (1) through (4) above are herein referred to as the "Debt").

TO HAVE AND TO HOLD the Property unto Lender, its successors and assigns forever, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property, subject to the Permitted Encumbrances (as hereinafter defined), to Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof;

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note or under the other Loan Documents, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and the Debt shall have been paid and all other covenants contained in the Loan Documents shall have been performed, then, in such case, the liens, security interests, estates and rights granted by this Mortgage shall be satisfied and the estate, right, title and interest of Lender in the Property shall cease, and upon payment to Lender of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Lender shall promptly satisfy and release this Mortgage of record and the lien hereof by proper instrument.

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Lender, its successors and assigns, that:

Section 1.1 Organization; Special Purpose. Borrower and its general partner have been duly organized and are each validly existing and in good standing under the laws of the state of its formation, with requisite power and authority, and all rights, licenses, permits and authorizations, governmental or otherwise, necessary to own its properties and to transact the business in which it is now engaged. Borrower and its general partner are each duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, business and operations. Borrower possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits necessary for the conduct of its business substantially as now conducted. Borrower and its general partner are each a Single-Purpose Entity in compliance with the provisions of Section 2.29 hereof.

Section 1.2 Title. Borrower has good, marketable and indefeasible fee simple title to the Property, subject only to those matters expressly set forth as exceptions to or subordinate matters in the title insurance policy insuring the lien of this Mortgage delivered as of the date hereof which Lender has agreed to accept, excepting therefrom all preprinted and/or standard exceptions (such items being the “Permitted Encumbrances”), and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer, encumber and mortgage its interest in the Property in the manner and form hereby done or intended. Borrower will preserve its interest in and title to the Property and will forever warrant and defend the same to Lender against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Encumbrances. This Mortgage creates (i) a valid, perfected lien on the Premises, subject only to Permitted Encumbrances and the liens created by the Loan Documents and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. There are no security agreements or financing statements affecting all or any portion of the Property other than (i) as disclosed in writing by Borrower to Lender prior to the date hereof and (ii) the security agreements and financing statements created in favor of Lender. There are no claims for payment for work, labor or materials affecting the Premises which are or may become a lien prior to, or of equal priority with, the liens created by the Loan Documents. None of the Permitted Encumbrances, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Mortgage, materially and adversely affect the value of the Premises, impair the use or operations of the Premises or impair Borrower’s ability to pay its obligations in a timely manner. The foregoing warranty of title shall survive the foreclosure of this Mortgage and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Property pursuant to any foreclosure.

Section 1.3 No Bankruptcy Filing. No bankruptcy, insolvency proceedings or liquidation of all or a substantial portion of the Property is pending or contemplated by Borrower or, to the best knowledge of Borrower, against Borrower or by or against any endorser or cosigner of the Note or of any portion of the Debt, or any guarantor or indemnitor under any guaranty or indemnity agreement, including, without limitation, that certain Indemnity and Guaranty Agreement, dated the date hereof, executed by Acadia Realty Limited Partnership, a Delaware limited partnership, in favor of Lender (the "Indemnity and Guaranty Agreement"), executed in connection with the Note or the loan evidenced thereby and secured hereby (an "Indemnitor"). No petition in bankruptcy has been filed against Borrower or any general partner, manager, sole member, managing member or majority shareholder of Borrower, as applicable (collectively, the "Borrower Parties", each a "Borrower Party"), and neither Borrower Party or any principal of a Borrower Party has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors.

Section 1.4 Full and Accurate Disclosure. No statement of fact made by Borrower in any Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein not misleading. There is no material fact presently known to Borrower that has not been disclosed to Lender which adversely affects, or, as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of Borrower and the Property (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Borrower and the Property as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered, except as disclosed therein. Borrower has no contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, unrealized or anticipated losses from any unfavorable commitments or any liabilities or obligations not expressly permitted by this Mortgage. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower or the Property from that set forth in said financial statements.

Section 1.5 Proceedings; Enforceability. The execution, delivery and performance of this Mortgage, the Note and all of the other Loan Documents have been duly authorized by all necessary action to be, and are, binding and enforceable against Borrower in accordance with the respective terms thereof and do not contravene, result in a breach of or constitute a default (nor upon the giving of notice or the passage of time or both will same constitute a default) under the partnership agreement, articles of incorporation, operating agreement or other organizational documents of Borrower or any contract or agreement of any nature to which Borrower is a party or by which Borrower or any of its property may be bound and do not violate or contravene any law, order, decree, rule or regulation to which Borrower is subject. The Loan Documents are not subject to, and Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

Section 1.6 No Conflicts. Borrower is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any governmental

authority or agency in connection with or as a condition to the execution, delivery or performance of this Mortgage, the Note or the other Loan Documents which has not been so obtained or filed. Borrower has obtained or made all necessary (i) consents, approvals and authorizations and registrations and filings of or with all governmental authorities or agencies and (ii) consents, approvals, waivers and notifications of partners, stockholders, members, creditors, lessors and other non-governmental persons and/or entities, in each case, which are required to be obtained or made by Borrower in connection with the execution and delivery of, and the performance by Borrower of its obligations under, the Loan Documents.

Section 1.7 Federal Reserve Regulations; Investment Company Act. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation T, U or X or any other regulation of such Board of Governors, or for any purpose prohibited by law or any Loan Document. Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 1.8 Taxes. Borrower and any general partner or managing member of Borrower, if any, has filed all federal, state and local tax returns required to be filed as of the date hereof and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and any general partner or managing member, if any, as of the date hereof. Borrower and any general partner or managing member, if any, believe that their respective tax returns properly reflect the income and taxes of Borrower and said general partner or managing member, if any, for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit. Borrower and the Property are free from any past due obligations for sales and payroll taxes.

Section 1.9 ERISA. Borrower (i) has no knowledge of any material liability that has been incurred or is expected to be incurred by Borrower that is or remains unsatisfied for any taxes or penalties with respect to any "employee benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or any "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code") or any other benefit plan (other than a multi-employer plan) maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under the common control with Borrower within the meaning of ERISA Section 4001(a)(14) (collectively, a "Plan") or any plan that would be a Plan but for the fact that it is a multi-employer plan within the meaning of ERISA Section 3(37) and (ii) has made and shall continue to make when due all required contributions to all such Plans, if any. Each such Plan, if any, has been and will be administered in compliance with its terms and the applicable provisions of ERISA, the Code and any other applicable Federal or state law and no action shall be taken or fail to be taken that would result in the disqualification or loss of the tax-exempt status of any such Plan, if any, intended to be

qualified or tax-exempt. The assets of Borrower do not constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

Section 1.10 Property Compliance. The Premises and the Improvements and the current intended use thereof by Borrower comply in all material respects with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to the knowledge of Borrower, threatened with respect to the zoning of the Premises. Neither the zoning nor any other right to construct, use or operate the Premises is in any way dependent upon or related to any property other than the Premises. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Premises have been obtained and are in full force and effect. The Premises and Improvements constitute one or more separate tax parcels for purposes of ad valorem taxation. The Premises and Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements.

Section 1.11 Utilities. All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Premises and the Improvements for their intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or perpetual private easements approved by Lender. The Property is free from delinquent water charges, sewer rents, taxes and assessments.

Section 1.12 Public Access. All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Premises and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Premises and the Improvements without further condition or cost to Borrower. All curb cuts, driveways and traffic signals shown on the survey delivered to Lender prior to the execution and delivery of this Mortgage are existing and have been fully approved by the appropriate governmental authority.

Section 1.13 Litigation; Agreements. There are no judicial, administrative, mediation or arbitration actions, suits or proceedings pending or threatened against or affecting Borrower (or, if Borrower is a partnership or a limited liability company, any of its general partners or members) or the Property which, if adversely determined, would materially impair either the Property or Borrower’s ability to perform the covenants or obligations required to be performed under the Loan Documents. Borrower is not a party to any agreement or instrument or subject to any restriction which might adversely affect Borrower or the Property, or Borrower’s business, properties, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the

obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Property is bound.

Section 1.14 Physical Condition. As of the date of this Mortgage, (i) the Property is free from unrepaired damage caused by fire, flood, accident or other casualty, (ii) no part of the Premises or the Improvements has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending or, to Borrower's knowledge and belief, threatened or contemplated, (iii) except as may otherwise be disclosed in that certain Property Condition Report (the "Property Condition Report") dated January 4, 2007 and prepared by IVI Due Diligence Services, Inc., the Improvements are structurally sound, in good repair and free of defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto, and (iv) all major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition.

Section 1.15 Contracts. Borrower has delivered to Lender true, correct and complete copies of all Contracts and all amendments thereto or modifications thereof. Each Contract constitutes the legal, valid and binding obligation of Borrower and, to the best of Borrower's knowledge and belief, is enforceable against any other party thereto. No default exists, or with the passing of time or the giving of notice or both would exist, under any Contract which would, in the aggregate, have a material adverse effect on Borrower or the Property. No Contract provides any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Mortgage. All Contracts affecting the Property have been entered into at arms-length in the ordinary course of Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

Section 1.16 Leases. Borrower has delivered (i) a true, correct and complete schedule (the "Rent Roll") of all Leases affecting the Property as of the date hereof, which accurately and completely sets forth in all material respects for each such Lease, the following: the name of the Tenant, the Lease expiration date, extension and renewal provisions, the base rent payable, the security deposit held thereunder and any other material provisions of such Lease and (ii) true, correct and complete copies of all Leases described in the Rent Roll. Each Lease constitutes the legal, valid and binding obligation of Borrower and, to the best of Borrower's knowledge and belief, is enforceable against the Tenant thereof. No default exists, or with the passing of time or the giving of notice or both would exist, under any Lease which would, in the aggregate, have a material adverse effect on Borrower or the Property. No Tenant under any Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, and the rents under such Leases have not been waived, released, or otherwise discharged or compromised. All security deposits required under such Leases have been fully funded and are held by Borrower in a separate segregated account or as otherwise required by applicable law. All work to be performed by Borrower under the Leases has been substantially performed, all contributions to be made by Borrower to the Tenants thereunder have been made and all other conditions precedent to each such Tenant's obligations thereunder have been satisfied. Each Tenant under a Lease has entered into occupancy of the demised premises. To the best of Borrower's knowledge and belief, each Tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors. No Lease provides

any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Mortgage.

Section 1.17 Foreign Person. Borrower is not a “foreign person” within the meaning of §1445(f)(3) of the Code, and the related Treasury Department regulations, including temporary regulations.

Section 1.18 Management Agreement. The property management agreement relating to the Premises (the “Management Agreement”) is in full force and effect and to the best of Borrower’s knowledge, there is no default, breach or violation existing thereunder by any party thereto beyond the expiration of applicable notice and grace periods thereunder and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation by any party thereunder. The fee due under the Management Agreement, and the terms and provisions of the Management Agreement, are subordinate to this Mortgage.

Section 1.19 Fraudulent Transfer. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Borrower’s assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower’s total liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower’s assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Borrower).

Section 1.20 Backward Representations.

(a) Borrower. Borrower hereby represents that Borrower:

- (i) is and always has been duly formed, validly existing, and in good standing in the state of its formation and in all other jurisdictions where it is qualified to do business;
- (ii) has no judgments or liens of any nature against it except for tax liens not yet due;
- (iii) is in compliance with all laws, regulations, and orders applicable to it and, except as otherwise disclosed in this Mortgage, has received all permits necessary for it to operate;
- (iv) is not involved in any dispute with any taxing authority;

- (v) has paid all taxes which it owes;
- (vi) has never owned any real property other than the Property and personal property necessary or incidental to its ownership or operation of the Property and has never engaged in any business other than the ownership and operation of the Property;
- (vii) is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that is still pending or that resulted in a judgment against it that has not been paid in full;
- (viii) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and
- (ix) has no material contingent or actual obligations not related to the Property.

(b) Separateness. Borrower hereby represents that, from the date of Borrower's formation to the date of this Mortgage, Borrower:

- (i) has not entered into any contract or agreement with any of its Affiliates, constituents, or owners, or any guarantors of any of its obligations or any Affiliate of any of the foregoing (individually, a "Related Party" and collectively, the "Related Parties"), except upon terms and conditions that are commercially reasonable and substantially similar to those available in an arm's-length transaction with an unrelated party;
- (ii) has paid all of its debts and liabilities from its assets;
- (iii) has done or caused to be done all things necessary to observe all organizational formalities applicable to it and to preserve its existence;
- (iv) has maintained all of its books, records, financial statements and bank accounts separate from those of any other Person;
- (v) has not had its assets listed as assets on the financial statement of any other Person;
- (vi) has filed its own tax returns (except to the extent that it has been a tax-disregarded entity not required to file tax returns under applicable law) and, if it is a corporation, has not filed a consolidated federal income tax return with any other Person;
- (vii) has been, and at all times has held itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate or other Related Party);
- (viii) has corrected any known misunderstanding regarding its status as a separate entity;



- (ix) has conducted all of its business and held all of its assets in its own name;
- (x) has not identified itself or any of its Affiliates as a division or part of the other;
- (xi) has maintained and utilized separate invoices and checks bearing its own name;
- (xii) has not commingled its assets with those of any other Person and has held all of its assets in its own name;
- (xiii) has not guaranteed or become obligated for the debts of any other Person;
- (xiv) has not held itself out as being responsible for the debts or obligations of any other Person;
- (xv) has allocated fairly and reasonably any overhead expenses that have been shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate or Related Party;
- (xvi) has not pledged its assets to secure the obligations of any other Person and no such pledge remains outstanding except in connection with the loan secured hereby;
- (xvii) has maintained adequate capital in light of its contemplated business operations;
- (xviii) has maintained a sufficient number of employees in light of its contemplated business operations and has paid the salaries of its own employees from its own funds;
- (xix) has not owned any subsidiary or any equity interest in any other entity;
- (xx) has not incurred any indebtedness that is still outstanding other than indebtedness that is permitted under the Loan Documents; and
- (xxi) has not had any of its obligations guaranteed by an Affiliate, except for guarantees that have been either released or discharged (or that will be discharged as a result of the closing of the loan secured hereby) or guarantees that are expressly contemplated by the Loan Documents.

(c) Tenants. None of the tenants holding leasehold interests with respect to the Property are affiliated with the Borrower.

For purposes of this Section 1.20, "Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

For purposes of this Section 1.20, “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

For purposes of this Section 1.20, “Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

All of the representations and warranties in this Article I and elsewhere in the Loan Documents (i) shall survive for so long as any portion of the Debt remains owing to Lender and (ii) shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## ARTICLE II COVENANTS OF BORROWER

For the purposes of further securing the Debt and for the protection of the security of this Mortgage, for so long as the Debt or any part thereof remains unpaid, Borrower covenants and agrees as follows:

Section 2.1 Defense of Title. If, while this Mortgage is in force, the title to the Property or the interest of Lender therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Borrower, at Borrower’s expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel approved by Lender, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Lender determines that Borrower is not adequately performing its obligations under this Section, Lender may, without limiting or waiving any other rights or remedies of Lender hereunder, take such steps with respect thereto as Lender shall deem necessary or proper and any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

Section 2.2 Performance of Obligations. Borrower shall pay when due the principal of and the interest on the Debt in accordance with the terms of the Note. Borrower shall also pay all charges, fees and other sums required to be paid by Borrower as provided in the Loan Documents, in accordance with the terms of the Loan Documents, and shall observe, perform and discharge all obligations, covenants and agreements to be observed, performed or discharged by Borrower set forth in the Loan Documents in accordance with their terms.

Further, Borrower shall promptly and strictly perform and comply with all covenants, conditions, obligations and prohibitions required of Borrower in connection with any other document or instrument affecting title to the Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Mortgage.

Section 2.3 Insurance. Borrower shall, at Borrower's expense, maintain in force and effect on the Property at all times while this Mortgage continues in effect the following insurance:

(a) Insurance against loss or damage to the Property by fire, lightning, windstorm, tornado, hail, terrorism, riot and civil commotion, vandalism, malicious mischief, burglary and theft and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by a "special causes of loss" type of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost (insurable value) of the Improvements (as established by a Member of the Appraisal Institute appraisal), without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Lender's election, by reference to such indices, appraisals or information as Lender determines in its reasonable discretion in order to reflect increased value due to inflation. Absent such annual adjustment, each policy shall contain inflation guard coverage insuring that the policy limit will be increased over time to reflect the effect of inflation. "Full replacement cost," as used herein and elsewhere in this Section 2.3, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor. Borrower shall also maintain insurance against loss or damage to furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Borrower from time to time to the extent applicable. Each policy shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Lender's approval. The maximum deductible shall be \$25,000.00.

(b) If the "special causes of loss" policy required in subsection (a) above excludes coverage for wind damage, Borrower shall maintain separate coverage for such risk. Furthermore, if the Property is located in the State of Florida, or within twenty five (25) miles of the ocean coast of the states of Texas, Louisiana, Mississippi, Alabama, Georgia, North Carolina, Hawaii or South Carolina, windstorm insurance must be maintained in an amount equal to the lesser of (i) the full replacement cost of the Property or (ii) the maximum limit of coverage available with respect to the Improvements and Equipment. If available, a minimum of eighteen (18) months general business income coverage specifically relating to wind damage shall be required. The maximum deductible shall be \$25,000.00.

(c) Ordinance and law insurance is required if the Property is "non-conforming" with respect to any zoning requirements. Borrower shall maintain "Coverage A" against loss on value to the undamaged portion of the Improvements for the full replacement cost of the Improvements. Borrower shall also maintain "Coverage B" against the cost of demolition in an amount equal to ten percent (10%) of the total value of the Improvements and "Coverage

C” against increased cost of reconstruction in an amount equal to twenty percent (20%) of the total value of the Improvements. The maximum deductible shall be \$25,000.00.

(d) Commercial General Liability Insurance against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Premises or the Improvements in amounts not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate plus umbrella coverage in an amount not less than \$25,000,000. Lender hereby retains the right to periodically review the amount of said liability insurance being maintained by Borrower and to require an increase in the amount of said liability insurance should Lender deem an increase to be reasonably prudent under then existing circumstances. The maximum deductible shall be \$25,000.00.

(e) Equipment breakdown (also known as boiler and machinery) insurance is required if steam boilers or other pressure-fired vessels are in operation at the Premises. Minimum liability coverage per accident must equal the greater of the replacement cost (insurable value) of the Improvements housing such boiler or pressure-fired machinery or \$2,000,000.00. If one or more large HVAC units is in operation at the Premises, “Systems Breakdowns” coverage shall be required, as determined by Lender. Minimum liability coverage per accident must equal the value of such unit(s). If available, a minimum of eighteen (18) months general business income coverage specifically relating to boiler and machinery damage shall be required. The maximum deductible shall be \$25,000.00. Co-insurance is prohibited.

(f) If the Improvements or any part thereof is situated in an area designated by the Federal Emergency Management Agency (“FEMA”) as a special flood hazard area (Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Debt if replacement cost coverage is not available for the type of building insured), or (ii) the maximum insurance available under the appropriate National Flood Insurance Administration program. If available, a minimum of eighteen (18) months general business income coverage specifically relating to flood damage shall be required. The maximum deductible shall be \$3,000.00 per building or a higher minimum amount as required by FEMA or other applicable law.

(g) If the Property is situated in an area designated by FEMA as a high probability earthquake area (Zone 2b or greater), Lender may require a Probable Maximum Loss (“PML”) study to be conducted at the Property. If the PML study reveals a PML equal to or exceeding twenty percent (20%) of the full replacement cost of the Improvements, Borrower shall be required to maintain earthquake insurance in an amount equal to the PML percentage of full replacement cost of the Improvements. If available, a minimum of eighteen (18) months Business Income coverage specifically relating to earthquake damage shall be required. The maximum deductible shall be no more than five percent (5%) of the value at risk or the lowest deductible available in the State in which the Property is located.

(h) During the period of any construction, renovation or alteration of the existing Improvements which exceeds the lesser of 10% of the principal amount of the Note or \$750,000, at Lender’s request, a completed value, “All Risk” Builder’s Risk form or “Course of Construction” insurance policy in non-reporting form, in an amount approved by Lender, may be

required. During the period of any construction of any addition to the existing Improvements, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Lender, shall be required. The maximum deductible shall be \$25,000.00.

(i) When required by applicable law, ordinance or other regulation, Worker's Compensation and Employer's Liability Insurance covering all persons subject to the worker's compensation laws of the state in which the Property is located. Additionally, if Borrower has direct employees, Hired and Non-Owned Auto Insurance is required in an amount equal to \$1,000,000 per occurrence. The maximum deductible shall be \$25,000.00.

(j) In addition to the specific risk coverages required herein, general business income (loss of rents) insurance in amounts sufficient to compensate Borrower for all Rents and Profits or income during a period of not less than eighteen (18) months. The "actual loss" amount of coverage shall be adjusted annually to reflect the greater of (i) estimated Rents and Profits or income payable during the succeeding eighteen (18) month period or (ii) the projected operating expenses, capital expenses and debt service for the Property as approved by Lender in its sole discretion. Additionally, Lender, in its sole discretion, may require an "Extended Period of Indemnity" endorsement for an additional six (6) months to allow for re-leasing of the Property. The maximum deductible shall be \$25,000.00.

(k) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, Sinkhole, Mine Subsidence and Environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be with insurers fully licensed and authorized to do business in the state within which the Premises is located and who have and maintain a rating of at least (A) A or higher from Standard & Poors and (B) AIX or higher from A.M. Best, (ii) contain the complete address of the Premises (or a complete legal description), (iii) be for terms of at least one year, with premium prepaid, and (iv) be subject to the approval of Lender as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates, and (v) include a standard, non-contributory, mortgagee clause naming EXACTLY:

Wachovia Bank, National Association,  
its Successors and Assigns ATIMA  
c/o Wachovia Bank, National Association, as Servicer  
P.O. Box 563956  
Charlotte, North Carolina 28256-3956

(A) as an additional insured under all liability insurance policies, (B) as the first mortgagee on all property insurance policies and (C) as the loss payee on all loss of rents or loss of business income insurance policies.

Borrower shall, as of the date hereof, deliver to Lender evidence that said insurance policies have been prepaid as required above and certified copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance satisfactory to Lender. Borrower shall renew all such insurance and deliver to Lender an Acord 28 certificate for proof of commercial property insurance and an Acord 25 certificate for proof of liability insurance, together with such other certificates reasonably requested by Lender. Borrower further agrees that each such insurance policy: (i) shall provide for at least thirty (30) days' prior written notice to Lender prior to any policy reduction or cancellation for any reason other than non-payment of premium and at least ten (10) days' prior written notice to Lender prior to any cancellation due to non-payment of premium; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of subrogation against Lender; and (iv) may be in the form of a blanket policy provided that, in the event that any such coverage is provided in the form of a blanket policy, Borrower hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Property or by any other action not relating to the Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the Property as if a separate policy were issued for 100% of Replacement Cost at the time of loss and otherwise meet all of Lender's applicable insurance requirements set forth in this Section 2.3. The delivery to Lender of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies relating to the Property by Borrower to Lender as further security for the Debt. In the event of foreclosure of this Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Lender or other transferee in the event of such other transfer of title. Approval of any insurance by Lender shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Lender may, but shall not be obligated to, procure such insurance and Borrower shall pay all amounts advanced by Lender therefor, together with interest thereon at the Default Interest Rate from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender. Any amounts so advanced by Lender, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Lender shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Lender has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance. Borrower shall not obtain insurance for the Property in addition to that required by Lender without the prior written consent of Lender, which consent will not be unreasonably withheld provided that (i) Lender is a named insured on such insurance, (ii) Lender receives complete copies of all policies evidencing such insurance, and (iii) such insurance complies with all of the applicable requirements set forth herein.

Section 2.4 Payment of Taxes. Borrower shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 3.3 of this Mortgage, all taxes and assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Borrower shall furnish Lender with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such taxes and assessments at least fifteen (15) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Borrower may, in good faith, by appropriate proceedings and upon notice to Lender, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, (b) Lender determines, in its subjective opinion, that such contest suspends the obligation to pay the tax and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Lender therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax or assessment, Borrower deposits in the Impound Account (as hereinafter defined) an amount determined by Lender to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Borrower shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

Section 2.5 Casualty and Condemnation. Borrower shall give Lender prompt written notice of (i) the occurrence of any casualty affecting the Property or any portion thereof, (ii) the institution of any proceedings for eminent domain or for the condemnation of the Property or any portion thereof or (iii) any written notification threatening the institution of any proceedings for eminent domain or for the condemnation of the Property or any portion thereof or any written request to execute a deed in lieu of condemnation affecting the Property or any portion thereof. All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking, or any deed in lieu of condemnation, affecting all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Lender. Lender may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries, and Lender is hereby authorized, in its own name or in Borrower's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Borrower shall from time to time deliver to Lender any instruments required to permit such participation; provided, however, that, so long as no Event of Default has occurred, and no event has occurred or failed to occur which with the passage of time, the giving of notice, or both would constitute an Event of Default (a "Default"), Lender shall not have the right to participate in the adjustment of any loss which is not in excess of the lesser of (i) five percent (5%) of the then outstanding principal balance of the Note and (ii) \$100,000. Lender shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, reasonable legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

(a) In the event that less than (x) fifteen percent (15%), in the case of condemnation, or thirty percent (30%), in the case of casualty, of the fair market value or net rentable square footage of the Improvements located on the Premises have been taken or destroyed and (y) Leases covering in the aggregate at least sixty-five percent (65%) of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such casualty or condemnation, whichever the case may be, and each Major Lease (as hereinafter defined) in effect as of such date shall remain in full force and effect during and after the completion of the restoration without abatement of rent beyond the time required for restoration, then if and so long as:

(1) no Default or Event of Default has occurred hereunder or under any of the other Loan Documents, and

(2) the Property can, in Lender's judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage within the earlier to occur of (A) nine (9) months after the initial receipt of any insurance proceeds or condemnation awards by either Borrower or Lender but in any event prior to the expiration or lapse of rent loss or general business income necessary to satisfy current obligations of the Loan, and (B) six (6) months prior to the stated maturity date of the Note, and

(3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property as described in Section (a)(2) above, and

(4) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Borrower, the full amount of which shall, at Lender's option, have been deposited with Lender) for such restoration or repair (including, without limitation, for any costs and expenses of Lender to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and

(5) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Property and debt service on the Debt in full with the same coverage ratio considered by Lender in its determination to make the loan secured hereby, and

(6) in the event that the insurance proceeds or condemnation awards received as a result of such casualty or partial taking exceed the lesser of (i) five percent (5%) of the then outstanding principal balance of the Note and (ii) \$150,000, Borrower shall have delivered to Lender, at Borrower's sole cost and expense, an appraisal report in form and substance satisfactory to Lender appraising the value of the Property as proposed to be restored or repaired to be not less than the appraised value of the Property considered by Lender in its determination to make the loan secured hereby, and

(7) Borrower so elects by written notice delivered to Lender within five (5) days after settlement of the aforesaid insurance or condemnation claim.



Lender shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required for such restoration or repair, and any funds deposited by Borrower therefor, to Borrower in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Lender in its discretion, with any remainder being applied by Lender for payment of the Debt in whatever order Lender directs in its absolute sole discretion, or at the discretion of Lender, the same may be paid, either in whole or in part, to, or for the benefit of, Borrower for such purposes as Lender shall designate in its discretion.

(b) In all other cases, namely, in the event that (x) more than fifteen percent (15%), in the case of condemnation, or thirty percent (30%), in the case of casualty, of the fair market value or net rentable square footage of the Improvements located on the Premises have been taken or destroyed, (y) Leases covering in the aggregate at least sixty-five percent (65%) of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such casualty or condemnation, whichever the case may be, and each Major Lease (as hereinafter defined) in effect as of such date will not remain in full force and effect during and after the completion of the restoration without abatement of rent beyond the time required for restoration, or (z) Borrower does not elect to restore or repair the Property pursuant to clause (a) above or otherwise fails to meet the requirements of clause (a) above, then, in any of such events, Lender shall elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security to do either of the following: (1) accelerate the maturity date of the Note and declare any and all of the Debt to be immediately due and payable and apply the remainder of such sums received pursuant to this Section to the payment of the Debt in whatever order Lender directs in its absolute discretion, with any remainder being paid to Borrower, or (2) notwithstanding that Borrower may have elected not to restore or repair the Property pursuant to the provisions of Section 2.5(a)(Z) above, so long as the proceeds of any such award with respect to any casualty or condemnation are made available to the Borrower for restoration, require Borrower to restore or repair the Property in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the deposit by Borrower with Lender, within thirty (30) days after demand therefor, of any deficiency reasonably determined by Lender to be necessary in order to assure the availability of sufficient funds to pay for such restoration or repair, including Lender's costs and expenses to be incurred in connection therewith, the prior approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Lender in its discretion, and apply the remainder of such sums toward such restoration and repair, with any balance thereafter remaining being applied by Lender for payment of the Debt in whatever order Lender directs in its absolute sole discretion, or at the discretion of Lender, the same may be paid, either in whole or in part, to, or for the benefit of, Borrower for such purposes as Lender shall designate in its discretion.

Any reduction in the Debt resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and elects to apply such sums to the Debt and, in any event, the unpaid portion of the Debt shall remain in full force and effect and Borrower shall not be excused in the payment thereof. Partial payments received by Lender, as described in the preceding sentence, shall be applied first to the final payment due under the Note and thereafter to installments due under the Note in the inverse order of their due date. If Borrower elects or Lender directs Borrower to restore or repair the Property after the occurrence of a casualty or partial taking of the Property as provided above, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Borrower shall pay to Lender all costs and expenses of Lender incurred in administering said rebuilding, restoration or repair, provided that Lender makes such proceeds or award available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any award, damage, insurance proceeds, payment or other compensation. Lender is hereby irrevocably constituted and appointed the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any portion of the Debt is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

Section 2.6 Construction Liens. Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Premises or the Improvements; provided, however, that, Borrower shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Lender and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Borrower shall contest any such claim or demand, Borrower shall promptly notify Lender of such contest and thereafter shall, upon Lender's request, promptly provide a bond, cash deposit or other security satisfactory to Lender to protect Lender's interest and security should the contest be unsuccessful. If Borrower shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Lender may do so and any and all expenses incurred by Lender, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt.

Section 2.7 Rents and Profits. As additional and collateral security for the payment of the Debt and cumulative of any and all rights and remedies herein provided for, Borrower hereby absolutely and presently assigns to Lender all existing and future Rents and Profits. Borrower hereby grants to Lender the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give

valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Borrower does hereby irrevocably make, constitute and appoint Lender its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any portion of the Debt is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof). Lender shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of an Event of Default under this Mortgage or under any other of the Loan Documents, Borrower shall have a license to collect, receive, use and enjoy the Rents and Profits when due and prepayments thereof for not more than one (1) month prior to due date thereof. Upon the occurrence of an Event of Default, Borrower's license shall automatically terminate without notice to Borrower and Lender may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Borrower shall be the agent of Lender in collection of the Rents and Profits, and all of the Rents and Profits so collected by Borrower shall be held in trust by Borrower for the sole and exclusive benefit of Lender, and Borrower shall, within one (1) business day after receipt of any Rents and Profits, pay the same to Lender to be applied by Lender as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Lender shall constitute any assumption by Lender of any obligations under any agreement relating thereto. Lender is obligated to account only for such Rents and Profits as are actually collected or received by Lender. Borrower irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Lender of an Event of Default, pay said Rents and Profits to Lender without liability to determine the actual existence of any Event of Default claimed by Lender. Borrower hereby waives any right, claim or demand which Borrower may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Lender, and any such payment shall discharge such payor's obligation to make such payment to Borrower. All Rents collected or received by Lender may be applied against all expenses of collection, including, without limitation, reasonable attorneys' fees, against costs of operation and management of the Property and against the Debt, in whatever order or priority as to any of the items so mentioned as Lender directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Lender of any rights under this Section nor the application of any Rents to the Debt shall cure or be deemed a waiver of any Event of Default. The assignment of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property. Borrower has executed an Assignment of Leases and Rents dated of even date herewith (the "Lease Assignment") in favor of Lender covering all of the right, title and interest of Borrower, as landlord, lessor or licensor, in and to any Leases. All rights and remedies granted to Lender under the Lease Assignment shall be in addition to and cumulative of all rights and remedies granted to Lender hereunder.

Section 2.8 Leases.

(a) Borrower covenants and agrees that it shall not enter into any retail Lease (i) affecting 5,000 square feet or more of the Property or (ii) having a term of ten (10) years or more (inclusive of any renewals or extensions) (each, a "Major Lease") without the prior written approval of Lender, which approval shall not be unreasonably withheld. The request for

approval of each such proposed new Lease shall be made to Lender in writing and shall state that, pursuant to the terms of this Mortgage, failure to approve or disapprove such proposed Lease within fifteen (15) business days is deemed approval and Borrower shall furnish to Lender (and any loan servicer specified from time to time by Lender): (i) such biographical and financial information about the proposed Tenant as Lender may require in conjunction with its review, (ii) a copy of the proposed form of Lease, and (iii) a summary of the material terms of such proposed Lease (including, without limitation, rental terms and the term of the proposed lease and any options). It is acknowledged that Lender intends to include among its criteria for approval of any such proposed Lease the following: (i) such Lease shall be with a bona-fide arm's-length Tenant; (ii) such Lease shall not contain any rental or other concessions which are not then customary and reasonable for similar properties and Leases in the market area of the Premises; (iii) such Lease shall provide that the Tenant pays for its expenses; (iv) the rental shall be at least at the market rate then prevailing for similar properties and leases in the market areas of the Premises; and (v) such Lease shall contain subordination and attornment provisions in form and content acceptable to Lender. Failure of Lender to approve or disapprove any such proposed Lease within fifteen (15) business days after receipt of such written request and all the documents and information required to be furnished to Lender with such request shall be deemed approval, provided that the written request for approval specifically mentioned the same.

(b) Prior to execution of any Leases of space in the Improvements after the date hereof, Borrower shall submit to Lender, for Lender's prior approval, which approval shall not be unreasonably withheld, a copy of the form Lease Borrower plans to use in leasing space in the Improvements or at the Property in a form for commercial/retail leases as set forth on Exhibit B-1 and for residential leases as set forth in Exhibit B-2, both attached hereto. All such Leases of space in the Improvements or at the Property shall be on terms consistent with the terms for similar leases in the market area of the Premises, shall provide for free rent only if the same is consistent with prevailing market conditions and shall provide for market rents then prevailing in the market area of the Premises. Such Leases shall also provide for security deposits in reasonable amounts consistent with prevailing market conditions. Borrower shall also submit to Lender for Lender's approval, which approval shall not be unreasonably withheld, prior to the execution thereof, any proposed Lease of the Improvements or any portion thereof that differs materially and adversely from the aforementioned form Lease. Borrower shall not execute any Lease for all or a substantial portion of the Property, except for an actual occupancy by the Tenant, lessee or licensee thereunder, and shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all Leases with respect to the Property, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so, but in any event by January 1 of each year, a current Rent Roll, certified by Borrower as being true and correct, containing the names of all Tenants with respect to the Property, the terms of their respective Leases, the spaces occupied and the rentals or fees payable thereunder and the amount of each Tenant's security deposit. Upon the request of Lender, Borrower shall deliver to Lender a copy of each such Lease. Borrower shall not do or suffer to be done any act, or omit to take any action, that might result in a default by the landlord, lessor or licensor under any such Lease or allow the Tenant thereunder to withhold payment of rent or cancel or terminate same and shall not further assign any such Lease or any such Rents and Profits. Borrower, at no cost or expense to Lender, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each

of the parties under such Leases and Borrower shall not anticipate, discount, release, waive, compromise or otherwise discharge any rent payable under any of the Leases. Borrower shall not, without the prior written consent of Lender, modify any of the Leases, terminate or accept the surrender of any Leases, waive or release any other party from the performance or observance of any obligation or condition under such Leases except, with respect only to Leases which are not Major Leases, in the normal course of business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Property is located. Lender reserves the right to condition its consent to any termination or surrender of any Lease upon the payment to Lender of any lease termination or other payment due from the applicable tenant in connection with such termination or surrender. Borrower and Lender agree that all such sums paid to Lender shall be held by Lender as a tenant improvement and leasing commission reserve and shall be considered a "Reserve" as described in Section 3.1 hereof and all such amounts shall be held, maintained, applied and disbursed in accordance with Lender's standard procedures relating to similar reserves. Borrower shall not permit the prepayment of any rents under any of the Leases for more than one (1) month prior to the due date thereof.

(c) Each Lease executed after the date hereof affecting any of the Premises or the Improvements must provide, in a manner approved by Lender, that the Tenant will recognize as its landlord, lessor or licensor, as applicable, and attorn to any person succeeding to the interest of Borrower upon any foreclosure of this Mortgage or deed in lieu of foreclosure. Each such Lease shall also provide that, upon request of said successor-in-interest, the Tenant shall execute and deliver an instrument or instruments confirming its attornment as provided for in this Section; provided, however, that neither Lender nor any successor-in-interest shall be bound by any payment of rent for more than one (1) month in advance, or any amendment or modification of said Lease made without the express written consent of Lender or said successor-in-interest.

(d) Upon the occurrence of an Event of Default under this Mortgage, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Mortgage, forthwith, upon demand of Lender, Borrower shall surrender to Lender, and Lender shall be entitled to take actual possession of, the Property or any part thereof personally, or by its agent or attorneys. In such event, Lender shall have, and Borrower hereby gives and grants to Lender, the right, power and authority to make and enter into Leases with respect to the Property or portions thereof for such rents and for such periods of occupancy and upon conditions and provisions as Lender may deem desirable in its sole discretion, and Borrower expressly acknowledges and agrees that the term of any such Lease may extend beyond the date of any foreclosure sale of the Property, it being the intention of Borrower that in such event Lender shall be deemed to be and shall be the attorney-in-fact of Borrower for the purpose of making and entering into Leases of parts or portions of the Property for the rents and upon the terms, conditions and provisions deemed desirable to Lender in its sole discretion and with like effect as if such Leases had been made by Borrower as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Mortgage. The power and authority hereby given and granted by Borrower to Lender shall be deemed to be coupled with an interest, shall not be revocable by Borrower so long as any portion of the Debt is outstanding, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof. In connection with any action taken by

Lender pursuant to this Section, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease covering the Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Borrower shall, and does hereby, indemnify Lender for, and hold Lender harmless from, any and all claims, actions, demands, liabilities, loss or damage which may or might be incurred by Lender under any such Lease or under this Mortgage or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such Lease other than those finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of Lender. Should Lender incur any such liability, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the Debt. Nothing in this Section shall impose on Lender any duty, obligation or responsibility for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such Lease, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Borrower hereby assents to, ratifies and confirms any and all actions of Lender with respect to the Property taken under this Section.

(e) If requested by Lender, Borrower shall furnish, or shall cause the applicable tenant to furnish, to Lender financial data and/or financial statements in accordance with Regulation AB (as defined herein) for any tenant of any Property if, in connection with a securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the mortgage loans included or expected to be included, as applicable, in such securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor (as defined herein); provided, however, that in the event the related lease does not require the related tenant to provide the foregoing information, Borrower shall use commercially reasonable efforts to cause the applicable tenant to furnish such information.

Section 2.9 Alienation and Further Encumbrances.

(a) Borrower acknowledges that Lender has relied upon the principals of Borrower and their experience in owning and operating the Property and properties similar to the Property in connection with the closing of the loan evidenced by the Note. Accordingly, except as specifically allowed hereinbelow in this Section and notwithstanding anything to the contrary contained in Section 6.6 hereof, in the event that the Property or any part thereof or direct or indirect interest therein or direct or indirect interest in Borrower shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to Tenants of space in the Improvements in accordance with the provisions of Section 2.8 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Borrower shall be divested of its title to the Property or

any direct or indirect interest therein, in any manner or way, whether voluntarily or involuntarily (each, a “Transfer”), without the prior written consent of Lender being first obtained, which consent may be withheld in Lender’s sole discretion, then the same shall constitute an Event of Default and Lender shall have the right, at its option, to declare any or all of the Debt, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article V hereof.

(b) A Transfer within the meaning of this Section 2.9 shall be deemed to include, among other things: (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; and (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to any Leases or any Rents and Profits.

(c) Notwithstanding the foregoing, the following Transfers shall be permitted under this Section 2.9 without the prior consent of Lender: (i) a Transfer of corporate stock, partnership interests (other than the general partner’s direct interests in Borrower owned by any SPE Equity Owner) and/or membership interests (other than the managing member’s direct interests in Borrower owned by any SPE Equity Owner) in Borrower, or in any partner or member of Borrower, or any direct or indirect legal or beneficial owner of Borrower, so long as following such Transfer (whether in one or a series of transactions) or, with respect to any creation or issuance of new limited partnership interests or membership interests, not more than 49% of the beneficial economic interest in Borrower (whether directly or indirectly) has been transferred in the aggregate and there is no Change of Control and the persons responsible for the day to day management of the Property and Borrower remain unchanged following such Transfer, (ii) any involuntary Transfer caused by the death of Borrower, or any partner, shareholder, joint venturer, member or beneficial owner of a trust, or any direct or indirect legal or beneficial owner of Borrower, so long as Borrower is promptly reconstituted, if required, following such death and so long as there is no Change of Control and those persons responsible for the day to day management of the Property and Borrower remain unchanged as a result of such death or any replacement management or controlling parties are approved by Lender, (iii) a Transfer comprised of gifts for estate planning purposes of any individual’s interests in Borrower, or in any of Borrower’s partners, members, shareholders, beneficial owners of a trust or joint venturers, or any direct or indirect legal or beneficial owner of Borrower, to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower is reconstituted promptly, if required, following such gift and so long as there is no Change of Control and those persons responsible for the day to day management of the Property and Borrower remain unchanged following such gift, (iv) transfers of stock in Acadia Realty Trust as traded on the New York Stock Exchange, (v) a Transfer of 100% of the membership interests of Acadia Realty Limited Partnership in Borrower and Acadia 239 Greenwich Avenue, LLC, the sole general partner of Borrower (“Sole General Partner”), to Aberdeen-239, LLC, a Connecticut limited liability company (“Aberdeen”), provided prior to the consummation of such Transfer Lender has obtained satisfactory legal due diligence searches on James Cummings, including, but not limited to, credit, bankruptcy, litigation, tax lien, judgment and UCC searches at Borrower’s expense, which searches must be satisfactory to Lender in all respects before any such Transfer under this Section 2.9(c)(v) may be consummated and provided further that after such Transfer James

Cummings owns 50% or more of the membership interests in Aberdeen and controls the management of Aberdeen, (vi) a Transfer by Aberdeen of 100% of its partnership interest in Borrower to General Partner or a related subsidiary or parent of General Partner, (vii) a transfer by General Partner of 100% of its partnership interest in Borrower to Aberdeen provided prior to the consummation of such Transfer Lender has obtained satisfactory legal due diligence searches on James Cummings, including, but not limited to, credit, bankruptcy, litigation, tax lien, judgment and UCC searches at Borrower's expense, which searches must be satisfactory to Lender in all respects before any such Transfer under this Section 2.9(c)(vii) may be consummated and provided further that after such Transfer James Cummings owns 50% or more of the membership interests in Aberdeen and controls the management of Aberdeen and (viii) one or more Transfers of the membership interests in Aberdeen provided after each such Transfer James Cummings owns 50% or more of the membership interests in Aberdeen and controls the management of Aberdeen. Notwithstanding any provision of this Mortgage to the contrary, and except as provided in Section 2.9(c), (iv), (v), (vi), (vii) and (viii) above, no person or entity may become an owner of a direct or indirect interest in Borrower, which interest exceeds forty-nine (49%) percent, without Lender's prior written consent unless Borrower has complied with the provisions set forth in Section 2.9(d) below. For purposes of this Section 2.9(c), "Change of Control" shall mean a change in the identity of the individual or entities or group of individuals or entities who have the right, by virtue of any partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement or any other agreement, with or without taking any formative action, to cause Borrower to take some action or to prevent, restrict or impede Borrower from taking some action which, in either case, Borrower could take or could refrain from taking were it not for the rights of such individuals. "Control" shall mean the right, by virtue of any partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement or any other agreement, with or without taking any formative action, to cause Borrower to take some action or to prevent, restrict or impede Borrower from taking some action which, in either case, Borrower could take or could refrain from taking were it not for the rights of such individuals. No fees, legal opinions or No-Downgrade Confirmations (as hereinafter defined) shall be required for any of the permitted transfers in this Section 2.9(c).

(d) Notwithstanding the foregoing provisions of this Section, Lender shall consent to (x) one or more Transfers of the Property in its entirety, or (y) one or more Transfers of direct or indirect interests in the Borrower for which consent is required under this Section 2.9 (any such hereinafter, a "Sale") to any person or entity provided that, for each Sale, each of the following terms and conditions are satisfied:

(1) No Default and no Event of Default is then continuing hereunder or under any of the other Loan Documents;

(2) Borrower gives Lender written notice of the terms of such prospective Sale not less than sixty (60) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Lender all such information concerning the proposed transferee of the Property or the proposed owner of the direct or indirect interest in the Borrower for which consent is required under this Section 2.9, as applicable (hereinafter, "Buyer") as Lender would require in evaluating an initial extension of credit to a borrower (it being acknowledged and agreed that (x) such information required to be



delivered with respect to the related Buyer shall not be materially more extensive than the corresponding information provided by the initial Borrower and initial Indemnitor and (y) the initial Borrower and initial Indemnitor shall not be required to deliver any additional information with respect to such initial Borrower, Indemnitor or their respective members or partners which are not then currently required to be delivered by the initial Borrower and initial Indemnitor pursuant to the terms hereof or of any other Loan Document), including, without limitation, information evidencing the Buyer's compliance with the provisions of Section 2.30 and Section 2.31 hereof and pays to Lender a non-refundable application fee in the amount of \$5,000. Lender shall have the right to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Lender shall consider the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, that, notwithstanding Lender's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Lender determines to be commercially reasonable in Lender's sole discretion and, if given, may be given subject to such conditions as Lender may deem appropriate For Loans of less than \$50,000,000: provided, further, however, notwithstanding the foregoing, Lender shall evaluate the proposed Buyer and any replacement Indemnitor pursuant to this clause (d) as if it were evaluating an initial extension of credit to a borrower pursuant to permanent market underwriting standards and without regard to the financial or other condition of the Borrower or any current Indemnitor and without regard to the impact on the trust which owns the Loan in connection with any Secondary Market Transaction or any class of Securities issued thereunder;

(3) Borrower pays Lender, concurrently with the closing of such Sale, a non-refundable assumption fee in an amount equal to one percent (1.0%) of the then outstanding principal balance of the Note plus an amount equal to all out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees and Rating Agency fees, incurred by Lender in connection with the Sale;

(4) In the event that such Sale is a Transfer of the Property in its entirety, the Buyer assumes and agrees to pay the Debt subject to the provisions of Section 6.27 hereof and, in all cases (whether such Sale is a Transfer of the Property in its entirety or a Transfer of direct or indirect interests in the Borrower for which consent is required under this Section 2.9), prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions (including, without limitation, a REMIC opinion) as Lender may require;

(5) A party associated with the Buyer approved by Lender in its sole discretion assumes the obligations of the current Indemnitor under its guaranty or indemnity agreement and environmental indemnity agreement and such party associated with the Buyer executes, without any cost or expense to Lender, a substitution agreement

or a new guaranty or indemnity agreement or environmental indemnity agreement in form and substance satisfactory to Lender and delivers such legal opinions as Lender may require; provided, however, in connection with an assumption of the Loan, (x) the Buyer shall not be required to post any additional collateral with Lender or deposit any additional reserves with Lender beyond that in effect immediately prior to the related assumption and (y) the party associated with the Buyer which enters into such substitution agreement or new guaranty or indemnity agreement or environmental indemnity shall not be required to maintain evidence of credit worthiness greater than that required by permanent market underwriting standards;

(6) Borrower and the Buyer execute, without any cost or expense to Lender, new financing statements or financing statement amendments (and new financing statements as may be necessary) and any additional documents reasonably requested by Lender;

(7) Borrower delivers to Lender, without any cost or expense to Lender, such replacement policy or endorsements to Lender's title insurance policy, hazard insurance policy endorsements or certificates and other similar materials as Lender may deem necessary at the time of the Sale, all in form and substance satisfactory to Lender, including, without limitation, a replacement policy or an endorsement or endorsements to Lender's title insurance policy insuring the lien of this Mortgage, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in subparagraph (4) of this Section, with no additional exceptions added to such policy, and, in the event that such Sale is a Transfer of the Property in its entirety, insuring that fee simple title to the Property is vested in the Buyer;

(8) Borrower and any current Indemnitor execute and deliver to Lender, without any cost or expense to Lender, a release of Lender, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents, through and including the date of the closing of the Sale, which agreement shall be in form and substance satisfactory to Lender and shall be binding upon the Buyer and any new Indemnitor;

(9) Subject to the provisions of Section 6.27 hereof, such Sale is not construed so as to relieve Borrower of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale, whether or not same is discovered prior or subsequent to the closing of such Sale, and Borrower executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of said personal liability. In the event that such Transfer is a Sale of the Property in its entirety, Borrower shall be released from and relieved of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising after the closing of such Sale which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale;

(10) Such Sale is not construed so as to relieve any current Indemnitee of its obligations under any guaranty or indemnity agreement for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale, and each such current Indemnitee executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of each such guaranty and indemnity agreement. In the event that such Sale is a Transfer of the Property in its entirety, each such current Indemnitee shall be released from and relieved of any of its obligations under any guaranty or indemnity agreement executed in connection with the loan secured hereby for any acts or events occurring or obligations arising after the closing of such Sale which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale;

(11) The Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all appropriate papers evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the Debt, which papers shall include certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners of the Buyer. In the event that such Sale is a Transfer of the Property in its entirety, the Buyer shall be a Single Purpose Entity whose formation documents shall be approved by counsel to Lender, and who shall comply with the requirements set forth in Section 2.29 hereof;

(12) Borrower delivers to Lender confirmation in writing (a "No-Downgrade Confirmation") from each Rating Agency that such Sale will not result in a qualification, downgrade or withdrawal of any ratings issued in connection with any Secondary Market Transaction (as hereinafter defined) or, in the event the Secondary Market Transaction has not yet occurred, Lender shall, in its sole discretion, have approved the Sale;

(13) The applicable transfer will not result in an increase in the real property taxes for the Premises and Improvements that would cause the debt service coverage ratio of the Debt with respect to the immediately succeeding twelve (12) month period to be less than the debt service coverage ratio of the Debt for the twelve (12) month period immediately preceding such transfer, in each case as determined by Lender; and

(14) Borrower delivers to Lender an opinion with respect to substantive non-consolidation opinion after giving effect to such transfer in form and substance and from a law firm acceptable to Lender and the Rating Agencies.

Section 2.10 Payment of Utilities, Assessments, Charges, Etc. Borrower shall pay when due all utility charges which are incurred by Borrower or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Premises and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Premises and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

Section 2.11 Access Privileges and Inspections. Lender and the agents, representatives and employees of Lender shall, subject to the rights of Tenants, have full and free access to the Premises and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times and, except in the event of an emergency, upon not less than 24 hours prior notice (which notice may be telephonic) for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Borrower relating to the Property. Borrower shall lend assistance to all such agents, representatives and employees of Lender.

Section 2.12 Waste; Alteration of Improvements. Borrower shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Borrower shall maintain the Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Lender other than in connection with non-structural day to day maintenance and except for tenant improvements under Leases. Without the prior written consent of Lender, Borrower shall not commence construction of any improvements on the Premises other than improvements required for the maintenance or repair of the Property. Lender reserves the right to condition its consent to any material alteration, removal, demolition or new construction on the following: (i) such conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender of plans and specifications, construction budgets, contractors and form of construction contracts and the furnishing to Lender of evidence regarding funds, permits, approvals bonds, insurance, lien waivers, title endorsements, appraisals, surveys, certificates of occupancy, certificates regarding completion, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Lender in its discretion, (ii) the delivery of an opinion from counsel satisfactory to Lender in its discretion and in form and substance satisfactory to Lender in its discretion opining as to such matters as Lender may reasonably require, including, without limitation, an opinion that such alteration, removal, demolition or new construction will not have an adverse effect on the status of any trust formed in connection with a Secondary Market Transaction a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code ("**REMIC**"), and (iii) Borrower's agreement to pay all fees, costs and expenses incurred by Lender in granting such consent, including, without limitation, reasonable attorneys' fees and expenses.

Section 2.13 Zoning. Without the prior written consent of Lender, Borrower shall not seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Premises or the Improvements. Borrower shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Premises or the Improvements. Borrower shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. Borrower shall keep all licenses, permits, franchises and other approvals necessary for the operation of the Property in full force and effect. Borrower shall operate the Property as a mixed retail/residential project for so long as the Debt is outstanding. If, under applicable zoning provisions, the use of all or any part of the Premises or the Improvements is or becomes a nonconforming use, Borrower shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Further, without Lender's prior written consent, Borrower shall not file or subject any part of the Premises or the Improvements to any declaration of condominium or co-operative or convert any

part of the Premises or the Improvements to a condominium, co-operative or other form of multiple ownership and governance.

Section 2.14 Financial Statements and Books and Records. Borrower shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender and its duly authorized representatives shall have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. So long as this Mortgage continues in effect, Borrower shall provide to Lender, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified to Lender as being true and correct by Borrower or the person or entity to which they pertain, as applicable, and, with respect to the financial statements and information set forth in subsection (d) hereof, compiled by an independent certified public accountant, be prepared in accordance with the income tax basis of accounting consistently applied and be in form and substance acceptable to Lender:

(a) copies of all tax returns filed by Borrower, within thirty (30) days after the date of filing, including extensions;

(b) monthly operating statements (net operating income on an accrual basis) for the Property, within thirty (30) days after the end of each of the first (1st) twelve (12) calendar months following the date hereof; and

(c) quarterly operating statements for the Property on the same basis as the monthly operating statements described above, and a Rent Roll, within forty-five (45) days after the end of each March, June, September and December commencing with the first (1st) of such months to occur following the first (1st) anniversary of the date hereof;

(d) annual balance sheet and statement of operations for the Property and annual financial statements for Borrower, and each Indemnitor, within ninety (90) days after the end of each calendar year; and

(e) such other information with respect to the Property, Borrower, the principals or general partners in Borrower and each Indemnitor, which may be reasonably requested from time to time by Lender, within a reasonable time after the applicable request.

If, at the time one or more Disclosure Documents are being prepared for a securitization, Lender expects that Borrower alone or Borrower and one or more affiliates of Borrower collectively, or the Property alone or the Property and any other parcel(s) of real property, together with improvements thereon and personal property related thereto, that is "related", within the meaning of the definition of Significant Obligor, to the Property (a "Related Property") collectively, will be a Significant Obligor, Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB and meeting the requirements thereof, if Lender expects that the principal amount of the Loan, together with any loans made to an affiliate of Borrower or secured by a Related Property that is included in a securitization with the Loan (a "Related Loan"), as of the cut-off date for such

securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such securitization and at any time during which the Loan and any Related Loans are included in a securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB and meeting the requirements thereof, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such securitization and at any time during which the Loan and any Related Loans are included in a securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after notice from Lender in connection with the preparation of Disclosure Documents for the securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than seventy-five (75) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Securities Exchange Act of 1934 in connection with or relating to the securitization (an "Exchange Act Filing") is not required. As used herein, "Regulation AB" shall mean Regulation AB under the Securities Act of 1933 and the Securities Exchange Act of 1934 (as amended). As used herein, "Disclosure Document" shall mean a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, in each case in preliminary or final form, used to offer securities in connection with a securitization. As used herein, "Significant Obligor" shall have the meaning set forth in Item 1101(k) of Regulation AB.

If any of the aforementioned materials are not furnished to Lender within the applicable time periods, are not prepared in accordance with generally accepted accounting principles or Lender is dissatisfied with the form of any of the foregoing and has notified Borrower of its dissatisfaction, in addition to any other rights and remedies of Lender contained herein and provided Lender has given Borrower at least ten (10) days notice of such failure and opportunity to cure, (i) Borrower shall pay to Lender upon demand, at Lender's option and in its sole discretion, an amount equal to \$2,500 per reporting period, and (ii) Lender shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Lender, in which event Borrower agrees to pay, or to reimburse Lender for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit.

Section 2.15 Further Assurances. Borrower shall, on the request of Lender and at the expense of Borrower: (a) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the contents of any of the other Loan Documents; (b) promptly execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and

thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (c) promptly execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically, without limitation, any financing statement) deemed advisable by Lender to protect, continue or perfect the liens or the security interests hereunder against the rights or interests of third persons; and (d) promptly furnish to Lender, upon Lender's request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Lender and in form and substance supplied by Lender, setting forth all amounts due under the Note, stating whether any Default or Event of Default has occurred hereunder, stating whether any offsets or defenses exist against the Debt and containing such other matters as Lender may reasonably require.

Section 2.16 Payment of Costs; Reimbursement to Lender. Borrower shall pay all costs and expenses of every character reasonably incurred in connection with the closing of the loan evidenced by the Note and secured hereby, attributable or chargeable to Borrower as the owner of the Property or otherwise attributable to any consent requested of Lender or any Rating Agency under the terms hereof or any other Loan Document, including, without limitation, customary servicing and consent fees, appraisal fees, recording fees, documentary, stamp, mortgage or intangible taxes, brokerage fees and commissions, title policy premiums and title search fees, uniform commercial code/tax lien/litigation search fees, escrow fees, consultants' fees, No-Downgrade Confirmations and reasonable attorneys' fees. If Borrower defaults in any such payment, which default is not cured within any applicable grace or cure period, Lender may pay the same and Borrower shall reimburse Lender on demand for all such costs and expenses incurred or paid by Lender, together with such interest thereon at the Default Interest Rate from and after the date of Lender's making such payment until reimbursement thereof by Borrower. Any such sums disbursed by Lender, together with such interest thereon, shall be additional indebtedness of Borrower secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Further, Borrower shall promptly notify Lender in writing of any litigation or threatened litigation affecting the Property, or any other demand or claim which, if enforced, could impair or threaten to impair Lender's security hereunder. Without limiting or waiving any other rights and remedies of Lender hereunder, if Borrower fails to perform any of its covenants or agreements contained in this Mortgage or in any of the other Loan Documents and such failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Lender's interest in the Property or Lender's right to enforce its security, then Lender may, at its option, with or without notice to Borrower, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage or to remedy the failure of Borrower to perform its covenants and agreements (without, however, waiving any default of Borrower). Borrower agrees to pay on demand all expenses of Lender incurred with respect to the foregoing (including, but not limited to, reasonable fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Lender incurs such expenses until reimbursement thereof by Borrower. Any such expenses so incurred by Lender, together with interest thereon as provided above, shall be additional indebtedness of Borrower secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. The necessity for any such actions and of the amounts to be paid shall be determined by Lender in its discretion. Lender is hereby empowered

to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Borrower hereby acknowledges and agrees that the remedies set forth in this Section 2.16 shall be exercisable by Lender, and any and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower with interest thereon at the Default Interest Rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Lender after the filing by Borrower of a voluntary case or the filing against Borrower of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended, Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Borrower, Lender, any Indemnitor, the Debt or any of the Loan Documents. Borrower hereby indemnifies and holds Lender harmless from and against all loss, cost and expenses with respect to any Event of Default hereof, any liens (i.e., judgments, mechanics' and materialmen's liens, or otherwise), charges and encumbrances filed against the Property, and from any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Premises or the Improvements or any nuisance made or suffered thereon, except those that are due to Lender's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction, including, without limitation, in any case, reasonable attorneys' fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level, and such indemnity shall survive payment in full of the Debt. This Section shall not be construed to require Lender to incur any expenses, make any appearances or take any actions.

Section 2.17 Security Interest. This Mortgage is also intended to encumber and create a security interest in, and Borrower hereby grants to Lender a security interest in, all sums on deposit with Lender pursuant to the provisions of Article III hereof or any other Section hereof or of any other Loan Document and all fixtures, chattels, accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Premises or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Premises and the Improvements. The foregoing security interest shall also cover Borrower's leasehold interest in any of the foregoing property which is leased by Borrower. Notwithstanding the foregoing, all of the foregoing property shall be owned by Borrower and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Lender. Borrower shall, from time to time upon the request of Lender, supply Lender with a current inventory of all of the property in which Lender is granted a security interest hereunder, in such detail as Lender may reasonably require. Borrower shall promptly replace all of the Collateral subject to the lien or security interest of this Mortgage when worn or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Lender, remove from the Premises or the Improvements any of the Collateral subject to the lien or security interest of this Mortgage except such as is replaced by an article of equal suitability and value as above provided, owned



by Borrower free and clear of any lien or security interest except that created by this Mortgage and the other Loan Documents. All of the Collateral shall be kept at the location of the Premises except as otherwise required by the terms of the Loan Documents. Borrower shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

Section 2.18 Security Agreement. This Mortgage constitutes a security agreement between Borrower and Lender with respect to the Collateral in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower to execute and deliver and, if appropriate, to file with the appropriate filing officer or office, such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. To the extent specifically provided herein, Lender shall have the right of possession of all cash, securities, instruments, negotiable instruments, documents, certificates and any other evidences of cash or other property or evidences of rights to cash rather than property, which are now or hereafter a part of the Property, and Borrower shall promptly deliver the same to Lender, endorsed to Lender, without further notice from Lender. Borrower agrees to furnish Lender with notice of any change in the name, identity, organizational structure, residence, or principal place of business or mailing address of Borrower within ten (10) days of the effective date of any such change. Upon the occurrence of any Event of Default, Lender shall have the rights and remedies as prescribed in this Mortgage, or as prescribed by general law, or as prescribed by any applicable Uniform Commercial Code, all at Lender's election. Any disposition of the Collateral may be conducted by an employee or agent of Lender. Any person, including both Borrower and Lender, shall be eligible to purchase any part or all of the Collateral at any such disposition. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Lender's reasonable attorneys' fees and legal expenses), together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Lender shall have the right to enter upon the Premises and the Improvements or any real property where any of the property which is the subject of the security interest granted herein is located to take possession of, assemble and collect the same or to render it unusable, or Borrower, upon demand of Lender, shall assemble such property and make it available to Lender at the Premises, or at a place which is mutually agreed upon or, if no such place is agreed upon, at a place reasonably designated by Lender to be reasonably convenient to Lender and Borrower. If notice is required by law, Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale of such property, or adjournments thereof, or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with a foreclosure sale as provided in Section 5.1(e) hereof upon giving the same notice with respect to the sale of the Property

hereunder as is required under said Section 5.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Lender pursuant to any applicable Uniform Commercial Code:

(a) In the event of a foreclosure sale, the Property may, at the option of Lender, be sold as a whole; and

(b) It shall not be necessary that Lender take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

(c) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender. The name and address of Borrower (as Debtor under any applicable Uniform Commercial Code) are as set forth on the first page hereof. The name and address of Lender (as Secured Party under any applicable Uniform Commercial Code) are as set forth on the first page hereof.

Section 2.19 Easements and Rights-of-Way. Borrower shall not grant any easement or right-of-way with respect to all or any portion of the Premises or the Improvements without the prior written consent of Lender. Borrower shall comply with all easements affecting the Property. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Mortgage and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Lender consents to the grant of an easement or right-of-way, Lender agrees to grant such consent without charge to Borrower other than expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in the review of Borrower's request and in the preparation of documents effecting the subordination.

Section 2.20 Compliance with Laws. Borrower shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; provided, however, that, Borrower may, upon providing Lender with security satisfactory to Lender, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Borrower shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any Lease of or any other agreement applicable to the Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

Section 2.21 Additional Taxes. In the event of the enactment after the date hereof of any law of the state in which the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxing any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of deeds of trust, mortgages or security agreements or debts secured by deeds of trust, mortgages or security agreements or the interest of the Lender, mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Mortgage or the Debt or Lender, then, and in any such event, Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Lender may elect, by notice in writing given to Borrower, to declare all of the Debt to be and become due and payable in full thirty (30) days from the giving of such notice, and, in connection with the payment of such Debt, no prepayment premium or fee shall be due unless, at the time of such payment, an Event of Default or a Default shall have occurred, which Default or Event of Default is unrelated to the provisions of this Section 2.21, in which event any applicable prepayment premium or fee in accordance with the terms of the Note shall be due and payable.

Section 2.22 Secured Indebtedness. It is understood and agreed that this Mortgage shall secure payment of not only the indebtedness evidenced by the Note but also any and all substitutions, replacements, renewals and extensions of the Note, any and all indebtedness and obligations arising pursuant to the terms hereof and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents, all of which indebtedness is equally secured with and has the same priority as any amounts advanced as of the date hereof. It is agreed that any future advances made by Lender to or for the benefit of Borrower from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, or otherwise, made for any purpose, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage.

Section 2.23 Borrower's Waivers. To the full extent permitted by law, Borrower agrees that Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the Debt prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Borrower, for Borrower and Borrower's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the Debt (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes

and forever forgoes all right to a marshaling of the assets of Borrower, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; and (c) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under applicable law. To the full extent permitted by law, Borrower shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Property, for the collection of the Debt without any prior or different resort for collection, or the right of Lender under the terms of this Mortgage to the payment of the Debt out of the proceeds of sale of the Property in preference to every other claimant whatever. Furthermore, Borrower hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any of the Debt to the fullest extent permitted by law. Borrower covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Borrower shall not seek a supplemental stay or otherwise shall not seek pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

Section 2.24 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

**(a) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE IN WHICH THE PREMISES IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN THE COUNTY IN WHICH THE PREMISES IS LOCATED, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (iv) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM).**

**(b) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR**

**PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE DEBT OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**

Section 2.25 Attorney-in-Fact Provisions. With respect to any provision of this Mortgage or any other Loan Document whereby Borrower grants to Lender a power-of-attorney, provided no Default or Event of Default has occurred under this Mortgage, Lender shall first give Borrower written notice at least three (3) days prior to acting under such power, which notice shall demand that Borrower first take the proposed action within such period and advising Borrower that if it fails to do so, Lender will so act under the power; provided, however, that, in the event that a Default or an Event of Default has occurred, or if necessary to prevent imminent death, serious injury, damage, loss, forfeiture or diminution in value to the Property or any surrounding property or to prevent any adverse affect on Lender's interest in the Property, Lender may act immediately and without first giving such notice. In such event, Lender will give Borrower notice of such action as soon thereafter as reasonably practical.

Section 2.26 Management. The management of the Property shall be by either: (a) Borrower or Acadia Realty Trust ("Acadia") or any of Acadia's subsidiaries for so long as Borrower or Acadia or Acadia's subsidiary is managing the Property in a first class manner; or (b) a professional property management company approved by Lender. Aberdeen Properties, Inc., a Delaware corporation, is approved by Lender as property manager under the property management agreement submitted to Lender. Any property management other than by Borrower shall be pursuant to a written agreement approved by Lender. In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Lender which approval may be conditioned upon, among other things, receipt by Lender of a No-Downgrade Confirmation from each Rating Agency. After an Event of Default or a default under any management contract then in effect, which default is not cured within any applicable grace or cure period or if at any time during the term of the Loan the debt service coverage ratio of the Property is ever less than 1.20:1.00, as determined by Lender, Lender shall have the right to terminate, or to direct Borrower to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new management agent approved by Lender which approval may be conditioned upon, among other things, receipt by Lender of a No-Downgrade Confirmation from each Rating Agency. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to this Mortgage and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Borrower and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied.

Section 2.27 Hazardous Waste and Other Substances.

(a) Borrower hereby represents and warrants to Lender that, as of the date hereof to the best of Borrower's knowledge, information and belief and other than as set forth in that certain Phase I Environmental Site Assessment dated January 4, 2007 prepared by IVI Due Diligence Services, Inc.: (i) none of Borrower nor the Property nor any Tenant at the Premises nor the operations conducted thereon is in direct or indirect violation of or otherwise exposed to any liability under any local, state or federal law, rule or regulation or common law duty pertaining to human health, natural resources or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.) ("CERCLA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Emergency Planning and Community-Right-to-Know Act (42 U.S.C. §11001 et seq.), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.) and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), regulations promulgated pursuant to said laws, all as amended from time to time (collectively, "Environmental Laws") or otherwise exposed to any liability under any Environmental Law relating to or affecting the Property, whether or not used by or within the control of Borrower; (ii) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos or asbestos-containing materials, lead based paint, Toxic Mold (as hereinafter defined) polychlorinated biphenyls, petroleum or petroleum products or byproducts, flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on, in or under or have been handled, generated, stored, processed or disposed of on or released or discharged from the Property (including underground contamination), except for those substances used by Borrower or any Tenant in the ordinary course of their respective businesses and in compliance with all Environmental Laws and where such Hazardous Substances could not reasonably be expected to give rise to liability under Environmental Laws; (iii) radon is not present at the Property in excess or in violation of any applicable thresholds or standards or in amounts that require disclosure under applicable law to any tenant or occupant of or invitee to the Property or to any governmental agency or the general public; (iv) the Property is not subject to any private or governmental lien or judicial or administrative notice or action arising under Environmental Laws; (v) there is no pending, nor, to Borrower's knowledge, information or belief, threatened litigation arising under Environmental Laws affecting Borrower or the Property; (vi) there are no and have been no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances or landfills or dumps on the Property; (vii) Borrower has received no notice of, and to the best of Borrower's knowledge and belief, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Borrower know of any basis for such an investigation, action, proceeding or claim; and (viii) Borrower has received no notice of and, to the best of Borrower's knowledge and belief, there has been no claim by any party that any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property, nor does Borrower know of any basis for such an investigation,

action, proceeding or claim. For the purposes hereof, "Toxic Mold" shall mean any mold or fungus at the Property which is of a type (i) that might pose a significant risk to human health or the environment or (ii) that would negatively impact the value of the Property.

(b) Borrower has not received nor to the best of Borrower's knowledge, information and belief has there been issued, any notice, notification, demand, request for information, citation, summons, or order in any way relating to any actual, alleged or potential violation or liability arising under Environmental Laws.

(c) Neither the Property, nor to the best of Borrower's knowledge, information and belief, any property to which Borrower has, in connection with the maintenance or operation of the Property, directly or indirectly transported or arranged for the transportation of any Hazardous Substances is listed or, to the best of Borrower's knowledge, information and belief, proposed for listing on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or on any similar federal or state list of sites requiring environmental investigation or clean-up.

(d) Borrower shall comply with all applicable Environmental Laws. Borrower shall keep the Property or cause the Property to be kept free from Hazardous Substances (except those substances used by Borrower or any Tenant in the ordinary course of their respective businesses and except in compliance with all Environmental Laws and where such Hazardous Substances could not reasonably be expected to give rise to liability under Environmental Laws) and in compliance with all Environmental Laws, Borrower shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all Tenants in quantities or conditions that would violate or give rise to any obligation to take remedial or other action under any applicable Environmental Laws. Without limiting the generality of the foregoing, during the term of this Mortgage, Borrower shall not install in the Improvements or permit to be installed in the Improvements any asbestos or asbestos-containing materials.

(e) Borrower shall promptly notify Lender if Borrower shall become aware of (i) the actual or potential existence of any Hazardous Substances on the Property other than those occurring in the ordinary course of Borrower's business and which do not violate, or would not otherwise give rise to liability under Environmental Laws, (ii) any direct or indirect violation of, or other exposure to liability under, any Environmental Laws, (iii) any lien, action or notice affecting the Property or Borrower resulting from any violation or alleged violation of or liability or alleged liability under any Environmental Laws, (iv) the institution of any investigation, inquiry or proceeding concerning Borrower or the Property pursuant to any Environmental Laws or otherwise relating to Hazardous Substances, or (v) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Mortgage incorrect in any respect if made at the time of such discovery. Immediately upon receipt of same, Borrower, shall deliver to Lender copies of any and all requests for information, complaints, citations, summonses, orders, notices, reports or other communications, documents or instruments in any way relating to any actual, alleged or potential violation or liability of any nature whatsoever arising under Environmental Laws and relating to the Property or to Borrower. Borrower shall remedy or cause to be remedied in a timely manner (and in any event within the time period permitted by applicable Environmental Laws) any violation of

Environmental Laws or any condition that could give rise to liability under Environmental Laws. Without limiting the foregoing, Borrower shall, promptly and regardless of the source of the contamination or threat to the environment or human health, at its own expense, take all actions as shall be necessary or prudent, for the clean-up of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Lender) and shall further pay or cause to be paid, at no expense to Lender, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Borrower fails to do so, Lender may, but shall not be obligated to, cause the Property or other affected property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Borrower hereby grants to Lender and its agents and employees access to the Property and a license to remove any items deemed by Lender to be Hazardous Substances and to do all things Lender shall deem necessary to bring the Property into conformance with Environmental Laws.

(f) Borrower covenants and agrees, at Borrower's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Lender), and hold Lender harmless from and against any and all liens, damages (including without limitation, punitive or exemplary damages), losses, liabilities (including, without limitation, strict liability), obligations, settlement payments, penalties, fines, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or the Property, and arising directly or indirectly from or out of: (i) any violation or alleged violation of, or liability or alleged liability under, any Environmental Law; (ii) the presence, release or threat of release of or exposure to any Hazardous Substances or radon on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Borrower; (iii) any transport, treatment, recycling, storage, disposal or arrangement therefor of Hazardous Substances whether on the Property, originating from the Property, or otherwise associated with Borrower or any operations conducted on the Property at any time; (iv) the failure by Borrower to comply fully with the terms and conditions of this Section 2.27; (v) the breach of any representation or warranty contained in this Section 2.27; or (vi) the enforcement of this Section 2.27, including, without limitation, the cost of assessment, investigation, containment, removal and/or remediation of any and all Hazardous Substances from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with Environmental Laws in connection with



all or any portion of the Property or any surrounding areas. The indemnity set forth in this Section 2.27 shall also include any diminution in the value of the security afforded by the Property or any future reduction in the sales price of the Property by reason of any matter set forth in this Section 2.27. The foregoing indemnity shall specifically not include any such costs relating to Hazardous Substances which are initially placed on, in or under the Property after foreclosure or other taking of title to the Property by Lender or its successor or assigns. Lender's rights under this Section shall survive payment in full of the Debt and shall be in addition to all other rights of Lender under this Mortgage, the Note and the other Loan Documents.

(g) Upon Lender's request, at any time after the occurrence of an Event of Default or at such other time as Lender has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on the Property, or on property contiguous with the Property, or that the Property may be in violation of the Environmental Laws, Borrower shall perform or cause to be performed, at Borrower's sole cost and expense and in scope, form and substance satisfactory to Lender, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Lender indicating the presence or absence of Hazardous Substances on the Property, the compliance or non-compliance status of the Property and the operations conducted thereon with applicable Environmental Laws, or an inspection or audit of the Property prepared by an engineering or consulting firm approved by Lender indicating the presence or absence of friable asbestos or substances containing asbestos or lead or substances containing lead or lead based paint ("Lead Based Paint") on the Property. If Borrower fails to provide reports of such inspection or audit within thirty (30) days after such request, Lender may order the same, and Borrower hereby grants to Lender and its employees and agents access to the Property and an irrevocable license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt.

(h) Reference is made to that certain Environmental Indemnity Agreement of even date herewith by and among Borrower and any other principal signatory named therein in favor of Lender (the "Environmental Indemnity Agreement"). The provisions of this Mortgage and the Environmental Indemnity Agreement shall be read together to maximize the coverage with respect to the subject matter thereof, as determined by Lender.

(i) If prior to the date hereof, it was determined that the Property contains asbestos-containing materials ("ACM's"), Borrower covenants and agrees to institute, within thirty (30) days after the date hereof, an operations and maintenance program (the "Maintenance Program") designed by an environmental consultant, satisfactory to Lender, with respect to ACM's, consistent with "Guidelines for Controlling Asbestos-Containing Materials in Buildings" (USEPA, 1985) and other relevant guidelines, and such Maintenance Program will hereafter continuously remain in effect until the Debt secured hereby is repaid in full. In furtherance of the foregoing, Borrower shall inspect and maintain all ACM's on a regular basis and ensure that all ACM's shall be maintained in a condition that prevents exposure of residents to ACM's at all times. Without limiting the generality of the preceding sentence, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as

Lender may specify, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) at Borrower's sole expense, supplemental examination of the Property by consultants specified by Lender, and (iv) variation of the operations and maintenance program in response to the reports provided by any such consultants.

(j) If, prior to the date hereof, it was determined that the Property contains Lead Based Paint, Borrower had prepared an assessment report describing the location and condition of the Lead Based Paint (a "Lead Based Paint Report"). If, at any time hereafter, Lead Based Paint is suspected of being present on the Property, Borrower agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, acceptable to Lender. Borrower agrees that if it has been, or if at any time hereafter it is, determined that the Property contains Lead Based Paint, on or before thirty (30) days following (i) the date hereof, if such determination was made prior to the date hereof or (ii) such determination, if such determination is hereafter made, as applicable, Borrower shall, at its sole cost and expenses, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an operations, abatement and maintenance plan for the Lead Based Paint on the Property, which plan shall be prepared by an expert, and be in form, scope and substance, acceptable to Lender (together with any Lead Based Paint Report, the "O&M Plan"). If an O&M Plan has been prepared prior to the date hereof, Borrower agrees to diligently and continually carry out (or cause to be carried out) the provisions thereof. Compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Laws.

Section 2.28 Indemnification; Subrogation.

(a) Borrower shall indemnify, defend and hold Lender harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Property or the Debt, and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Lender's reasonable attorneys' fees) of whatever kind or nature which may be asserted against, imposed on or incurred by Lender in connection with the Debt, this Mortgage, the Property, or any part thereof, or the exercise by Lender of any rights or remedies granted to it under this Mortgage or arise from the information provided in accordance with the terms hereof; provided, however, that nothing herein shall be construed to obligate Borrower to indemnify, defend and hold harmless Lender from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Lender by reason of Lender's willful misconduct or gross negligence.

(b) If Lender is made a party defendant to any litigation or any claim is threatened or brought against Lender concerning the Debt, this Mortgage, the Property, or any part thereof, or any interest therein, or the construction, maintenance, operation or occupancy or use thereof, then Borrower shall indemnify, defend and hold Lender harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees and expenses incurred by Lender in any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. If Lender commences an action against Borrower to enforce

any of the terms hereof or to prosecute any breach by Borrower of any of the terms hereof or to recover any sum secured hereby, Borrower shall pay to Lender its reasonable attorneys' fees and expenses. The right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Borrower breaches any term of this Mortgage, Lender may engage the services of an attorney or attorneys to protect its rights hereunder, and in the event of such engagement following any breach by Borrower, Borrower shall pay Lender reasonable attorneys' fees and expenses incurred by Lender, whether or not an action is actually commenced against Borrower by reason of such breach. All references to "attorneys" in this Subsection and elsewhere in this Mortgage shall include, without limitation, any attorney or law firm engaged by Lender and Lender's in-house counsel, and all references to "fees and expenses" in this Subsection and elsewhere in this Mortgage shall include, without limitation, any fees of such attorney or law firm, any appellate counsel fees, if applicable, and any allocation charges and allocation costs of Lender's in-house counsel.

(c) A waiver of subrogation shall be obtained by Borrower from its insurance carrier and, consequently, Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

Section 2.29 Covenants with Respect to Existence, Indebtedness, Operations, Fundamental Changes of Borrower.

(a) Borrower, and any general partner or managing member of Borrower, as applicable, have each done since the date of their formation and shall do or cause to be done all things necessary to (i) preserve, renew and keep in full force and effect its existence, rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all licenses, and (iv) qualify to do business and remain in good standing under the laws of each jurisdiction, in each case as and to the extent required for the ownership, maintenance, management and operation of the Property. Borrower hereby represents, warrants and covenants as of the date hereof and until such time as the Debt is paid in full, that Borrower has been, since the date of its formation, is and shall remain a Single-Purpose Entity (as hereinafter defined). Each general partner or the SPE Member (as hereinafter defined) of Borrower (each, an "SPE Equity Owner"), has since the date of its formation complied and will at all times comply, with each of the representations, warranties and covenants contained in this Section 2.29 as if such representation, warranty or covenant was made directly by such SPE Equity Owner. A "Single-Purpose Entity" or "SPE" means a corporation, limited partnership or limited liability company that:

(1) if a corporation, must have at least one Independent Director (as hereinafter defined), or if requested by Lender (which request Borrower shall comply with within five (5) business days) in connection with a Secondary Market Transaction, two Independent Directors, and must not take any action that, under the terms of any certificate or articles of incorporation, by-laws, or any voting trust agreement with respect to such entity's common stock, requires the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including, without

limitation, all Independent Directors, shall have participated in such vote (“SPE Corporation”);

(2) if a limited partnership, must have each general partner be an SPE Corporation;

(3) if a limited liability company, must have one managing member (the “SPE Member”) and such managing member must be an SPE Corporation. Only the SPE Member may be designated as a manager under Borrower’s operating agreement and pursuant to the law where Borrower is organized. Borrower may be a single member Delaware limited liability company without an SPE Corporation managing member so long as Borrower complies with the provisions set forth in Sections 2.29(b) and (c) below;

(4) was and will be organized solely for the purpose of (i) owning an interest in the Property, (ii) acting as a general partner of a limited partnership that owns an interest in the Property, or (iii) acting as the managing member of a limited liability company that owns an interest in the Property;

(5) will not, nor will any partner, limited or general, member or shareholder thereof, as applicable, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation, by-laws, operating agreement, articles of organization, or other formation agreement or document, as applicable, in any material term or manner, or in a manner which adversely affects Borrower’s existence as a Single Purpose Entity;

(6) will not liquidate or dissolve (or suffer any liquidation or dissolution), or enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any entity;

(7) will not, nor will any partner, limited or general, member or shareholder thereof, as applicable, violate the terms of its partnership certificate, partnership agreement, articles of incorporation, by-laws, operating agreement, articles of organization, or other formation agreement or document, as applicable;

(8) has not and will not guarantee, pledge its assets for the benefit of, or otherwise become liable on or in connection with, any obligation of any other person or entity;

(9) does not own and will not own any asset other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;

(10) is not engaged and will not engage, either directly or indirectly, in any business other than the ownership, management and operation of the Property;

(11) will not enter into any contract or agreement with any general partner, principal, affiliate or member of Borrower, as applicable, or any affiliate of any general

partner, principal or member of Borrower, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than an affiliate;

(12) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Debt, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Property customarily satisfied within thirty (30) days not evidenced by a note and in an aggregate amount not to exceed two percent (2.0%) of the existing principal balance of the Note, and no other debt will be secured (senior, subordinate or pari passu) by the Property;

(13) has not made and will not make any loans or advances to any third party (including any affiliate);

(14) is and will be solvent and pay its debts from its assets as the same shall become due;

(15) has done or caused to be done and will do all things necessary to preserve its existence, and will observe all formalities applicable to it;

(16) will conduct and operate its business in its own name and as presently conducted and operated;

(17) will maintain financial statements, books and records and bank accounts separate from those of its affiliates, including, without limitation, its general partners or members, as applicable;

(18) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including, without limitation, any affiliate, general partner, or member, as applicable, or any affiliate of any general partner or member of Borrower, as applicable) and will correct any known misunderstanding concerning its separate identity;

(19) will file its own tax returns;

(20) will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(21) will establish and maintain an office through which its business will be conducted separate and apart from those of its affiliates or shall allocate fairly and reasonably any overhead and expense for shared office space;

(22) will not commingle the funds and other assets of Borrower with those of any general partner, member, affiliate, principal or any other person;

(23) has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person;

(24) does not and will not hold itself out to be responsible for the debts or obligations of any other person;

(25) will pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(26) will pay any liabilities out of its own funds, including salaries of its employees, not funds of any affiliate; and

(27) will use stationery, invoices, and checks separate from its affiliates.

(b) In the event Borrower is a single-member Delaware limited liability company, the limited liability company agreement of Borrower (the "LLC Agreement") shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower ("Member") to cease to be the member of Borrower (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower and the admission of the transferee, or (B) the resignation of Member and the admission of an additional member in either case in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as a special or springing member of Borrower shall without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower, automatically be admitted to Borrower ("Special Member") and shall continue Borrower without dissolution and (ii) Special Member may not resign from Borrower or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower as Special Member in accordance with requirements of Delaware law and (B) such successor Special Member has also accepted its appointment as a Special Member. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower upon the admission to Borrower of a substitute Member, (ii) Special Member shall be a member of Borrower that has no interest in the profits, losses and capital of Borrower and has no right to receive any distributions of Borrower assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "Act"), Special Member shall not be required to make any capital contributions to Borrower and shall not receive a limited liability company interest in Borrower, (iv) Special Member, in its capacity as Special Member, may not bind Borrower, and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower, including, without limitation, the merger, consolidation or conversion of Borrower. In order to implement the admission to Borrower of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower as Special Member, Special Member shall not be a member of Borrower.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of Borrower, to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the

continued membership of Member in Borrower, agree in writing (i) to continue Borrower and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of Member of Borrower in Borrower. Any action initiated by or brought against Member or Special Member under any creditors rights laws shall not cause Member or Special Member to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower upon the occurrence of any action initiated by or brought against Member or Special Member under any creditors rights laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower.

As used in this Section 2.29, “Independent Director” shall mean a duly appointed member of the board of directors of any SPE Corporation or board of managers or of a single member Delaware limited liability company which is an SPE who is provided by a nationally-recognized company that provides professional independent directors who shall not have been at the time of initial appointment or at any time while serving as an Independent Director, and may not have been at any time during the preceding five years (i) a stockholder, director, officer, employee, partner, attorney or counsel of such SPE Corporation, single member Delaware limited liability company which is an SPE, Borrower or any affiliate of any of them, (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with such SPE Corporation, single member Delaware limited liability company which is an SPE, Borrower or any affiliate of any of them, (iii) a Person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other Person, or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. As used herein, the term “affiliate” shall mean: (1) any person or entity directly or indirectly owning, controlling or holding with power to vote ten percent (10%) or more of the outstanding voting securities or interests of such other person or entity; (2) any person or entity ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such other person or entity; (3) any person or entity directly or indirectly controlling, controlled by or under common control with such other person or entity; (4) any officer, director or partner of such other person or entity; (5) if such other person or entity is an officer, director or partner, any company for which such person or entity acts in any such capacity; and (6) any close relative or spouse of the specified person.

Section 2.30 Embargoed Person. At all times throughout the term of the Loan, including after giving effect to any Sale hereunder, (a) none of the funds or assets of Indemnitor that are used to repay the Loan or of Borrower shall constitute property of, or shall be beneficially owned directly or, to Borrower’s best knowledge, indirectly, by any person subject to sanctions or trade restrictions under United States law (“Embargoed Person” or “Embargoed Persons”) that are identified on (1) the “List of Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury, and/or to Borrower’s best knowledge, as of the date thereof, based upon reasonable

inquiry by Borrower, on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or regulation promulgated thereunder, with the result that the investment in Borrower or any Indemnitor, as applicable (whether directly or indirectly), is prohibited by law, or the Loan made by Lender would be in violation of law, or (2) Executive Order 13224 (September 23, 2001) issued by the President of the United States (“Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”), any related enabling legislation or any other similar Executive Orders, and (b) no Embargoed Person shall have any direct interest, and to Borrower’s best knowledge, as of the date hereof, based upon reasonable inquiry by Borrower, indirect interest, of any nature whatsoever in Borrower or any Indemnitor, as applicable, with the result that the investment in Borrower or any Indemnitor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

Section 2.31 Anti-Money Laundering. At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, none of the funds of Borrower or any Indemnitor, as applicable, that are used to repay the Loan shall be derived from any unlawful activity, with the result that the investment in Borrower or any Indemnitor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

Section 2.32 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Mortgage or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Lender in its sole discretion, that (i) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to Federal or state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(1) Equity interests in Borrower are publicly offered securities within the meaning of 29 C.F.R. Section 2510.3-101(b)(2);

(2) Less than 25 percent of each outstanding class of equity interests in Borrower are held by “benefit plan investors” within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); or

(3) Borrower qualifies as an “operating company” within the meaning of 29 C.F.R. Section 2510.3-101 or an investment company registered under the Investment Company Act of 1940.



(c) Borrower shall indemnify Lender and defend and hold Lender harmless from and against all civil penalties, excise taxes, or other loss, cost damage and expense (including, without limitation, reasonable attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under this Section. This indemnity shall survive any termination, satisfaction or foreclosure of this Mortgage.

Section 2.33 Opinion Assumptions. Borrower shall at all times conduct its business so that the assumptions made with respect to Borrower in the Non-Consolidation Opinion shall be true and correct in all respects.

### **ARTICLE III**

#### **RESERVES AND CASH MANAGEMENT**

##### **Section 3.1 Reserves Generally**

(a) As additional security for the payment and performance by Borrower of all duties, responsibilities and obligations under the Note and the other Loan Documents, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over and confirms unto Lender, and hereby grants to Lender a security interest in, (i) the Payment Reserve, the Impound Account, the Immediate Repair Reserve, the Replacement Reserve, as applicable (each as hereinafter defined) and any other reserve or escrow account established pursuant to the terms hereof or of any other Loan Document (collectively, the "Reserves"), (ii) the accounts into which the Reserves have been deposited, (iii) all insurance on said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Reserves or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Borrower hereby authorizes and consents to the account into which the Reserves have been deposited being held in Lender's name or the name of any entity servicing the Note for Lender and hereby acknowledges and agrees that Lender, or at Lender's election, such servicing agent, shall have exclusive control over said account. Notice of the assignment and security interest granted to Lender herein may be delivered by Lender at any time to the financial institution wherein the Reserves have been established, and Lender, or such servicing entity, shall have possession of all passbooks or other evidences of such accounts. Borrower hereby assumes all risk of loss with respect to amounts on deposit in the Reserves. Funds on deposit in the Replacement Reserve shall bear interest at a rate equal to the then prevailing commercial money market rate. All amounts deemed earned on funds contributed to the Replacement Reserve at the rate referenced in the immediately preceding sentence shall be retained by Lender and accumulated for the benefit of Borrower and added to the balance in the Replacement Reserve and shall be disbursed for payment of the items for which other funds in the Replacement Reserve are to be disbursed. Borrower shall not be entitled to earn any interest with respect to funds on deposit in the

Payment Reserve, the Impound Account and the Immediate Repairs Reserve. Borrower hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the advancement of the funds from the Reserves as set forth herein is at Borrower's direction and is not the exercise by Lender of any right of set-off or other remedy upon a Default or an Event of Default. Borrower hereby waives all right to withdraw funds from the Reserves except as provided for in this Mortgage. If an Event of Default shall occur hereunder or under any other of the Loan Documents Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, reasonable attorneys' fees, costs and expenses) to the Debt or any other obligations of Borrower under the other Loan Documents in such manner as Lender shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Borrower, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any Default or Event of Default.

(b) The Reserves shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Lender's option and in Lender's discretion, may either be held in a separate account or be commingled by Lender with the general funds of Lender. The Reserves are solely for the protection of Lender and entail no responsibility on Lender's part beyond the payment of the respective items for which they are held following receipt of bills, invoices or statements therefor in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. Upon assignment of this Mortgage by Lender, any funds in the Reserves shall be turned over to the assignee and any responsibility of Lender, as assignor, with respect thereto shall terminate. If the funds in the applicable Reserve shall exceed the amount of payments actually applied by Lender for the purposes and items for which the applicable Reserve is held, such excess may be credited by Lender on subsequent payments to be made hereunder or, at the option of Lender, refunded to Borrower. If, however, the applicable Reserve shall not contain sufficient funds to pay the sums required by the dates on which such sums are required to be on deposit in such account, Borrower shall, within ten (10) days after receipt of written notice thereof, deposit with Lender the full amount of any such deficiency. If Borrower shall fail to deposit with Lender the full amount of such deficiency as provided above, Lender shall have the option, but not the obligation, to make such deposit, and all amounts so deposited by Lender, together with interest thereon at the Default Interest Rate from the date so deposited by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. If there is an Event of Default under this Mortgage, Lender may, but shall not be obligated to, apply at any time the balance then remaining in any or all of the Reserves against the Debt in whatever order Lender shall subjectively determine. No such application of any or all of the Reserves shall be deemed to cure any Event of Default. Upon full payment of the Debt in accordance with its terms or at such earlier time as Lender may elect, the balance of any or all of the Reserves then in Lender's possession shall be paid over to Borrower and no other party shall have any right or claim thereto.

Section 3.2 Payment Reserve.

(a) Contemporaneously with the execution hereof, Borrower has established with Lender a reserve in the amount of the first (1st) payment of principal, interest and deposits for any applicable reserves or escrow accounts required under the terms of this Mortgage or the other Loan Documents as calculated by Lender (the "Payment Reserve"). Borrower understands and agrees that, notwithstanding the establishment of the Payment Reserve as herein required, all of the proceeds of the Note have been, and shall be considered, fully disbursed and shall bear interest and be payable on the terms provided therein.

(b) For so long as no Event of Default has occurred hereunder or under any of the other Loan Documents, Lender shall, on the First Payment Date (as defined in the Note) under the Note, advance from the Payment Reserve to itself the amount of the monthly installment due and payable by Borrower under the Note on the First Payment Date and shall also advance from the Payment Reserve into the Impound Account the amount of any deposit for taxes and insurance premiums and into the Replacement Reserve (as hereinafter defined) the amount of any deposit for Repairs (as hereinafter defined) and into any other reserve account the amount of any deposit in accordance with the terms of any other Loan Document required to be paid by Borrower concurrently with such monthly installment pursuant to the terms hereof and thereof. Provided no Default or Event of Default has occurred, after the scheduled disbursement from the Payment Reserve, any amounts then remaining in the Payment Reserve shall be paid to Borrower. Nothing contained herein, including, without limitation, the existence of the Payment Reserve, shall release Borrower of any obligation to make payments under the Note, this Mortgage or the other Loan Documents strictly in accordance with the terms hereof or thereof and, in this regard, without limiting the generality of the foregoing, should the amounts contained in the Payment Reserve not be sufficient to pay in full the monthly installments and the Impound Account, Replacement Reserve and any other applicable reserve account deposits referenced above in this subparagraph, Borrower shall be responsible for paying such deficiency on the First Payment Date.

Section 3.3 Impound Account. Borrower shall establish and maintain at all times while this Mortgage continues in effect an impound account (the "Impound Account") with Lender for payment of real estate taxes and assessments and insurance on the Property and as additional security for the Debt. Simultaneously with the execution hereof, Borrower shall deposit in the Impound Account an amount determined by Lender to be necessary to ensure that there will be on deposit with Lender an amount which, when added to the monthly payments subsequently required to be deposited with Lender hereunder on account of real estate taxes, assessments and insurance premiums, will result in there being on deposit with Lender in the Impound Account an amount sufficient to pay the next due installment of real estate taxes and assessments on the Property at least one (1) month prior to the earlier of (a) the due date thereof or (b) any such date by which Borrower or Lender is required by law to pay same and the next due annual insurance premiums with respect to the Property at least one (1) month prior to the due date thereof. Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Debt is fully paid and performed, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Borrower is required to maintain hereunder, each as

estimated and determined by Lender. So long as no Default or Event of Default has occurred, and no event has occurred or failed to occur which with the passage of time, the giving of notice, or both would constitute an Event of Default (a "Default"), all sums in the Impound Account shall be held by Lender in the Impound Account to pay said taxes, assessments and insurance premiums before the same become delinquent. Borrower shall be responsible for ensuring the receipt by Lender, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and so long as no Event of Default has occurred, Lender shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. In making any payment from the Impound Account, Lender shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof.

Section 3.4 Immediate Repair Reserve. Prior to the execution of this Mortgage, Lender has caused the Property to be inspected and such inspection has revealed that the Property is in need of certain maintenance, repairs and/or remedial or corrective work. Contemporaneously with the execution hereof, Borrower has established with Lender a reserve in the amount of \$5,250.00 (the "Immediate Repair Reserve") by depositing such amount with Lender. Borrower shall cause each of the items described in that certain Property Condition Report (the "Deferred Maintenance") to be completed, performed, remediated and corrected to the satisfaction of Lender and as necessary to bring the Property into compliance with all applicable laws, ordinances, rules and regulations on or before the expiration of six (6) months after the effective date hereof, as such time period may be extended by Lender in its sole discretion. So long as no Event of Default has occurred, all sums in the Immediate Repair Reserve shall be held by Lender in the Immediate Repair Reserve to pay the costs and expenses of completing the Deferred Maintenance. So long as no Default or Event of Default has occurred, Lender shall, to the extent funds are available for such purpose in the Immediate Repair Reserve, disburse to Borrower the amount paid or incurred by Borrower in completing, performing, remediating or correcting the Deferred Maintenance upon (a) the receipt by Lender of a written request from Borrower for disbursement from the Immediate Repair Reserve and a certification by Borrower in a form as may be required by Lender that the applicable item of Deferred Maintenance has been completed in accordance with the terms of this Mortgage, (b) delivery to Lender of invoices, receipts or other evidence satisfactory to Lender verifying the costs of the Deferred Maintenance to be reimbursed, (c) delivery to Lender of a certification from an inspecting architect, engineer or other consultant reasonably acceptable to Lender describing the completed work, verifying the completion of the work and the value of the completed work and, if applicable, certifying that the Property is, as a result of such work, in compliance with all applicable laws, ordinances, rules and regulations relating to the Deferred Maintenance so performed, and (d) delivery to Lender of affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished materials or labor to the Property have been paid all amounts due for such labor and materials furnished to the Property. Lender shall not be required to make advances from the Immediate Repair Reserve more frequently than once in any thirty

(30) day period. In making any payment from the Immediate Repair Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of any such amount. Borrower hereby grants to Lender a power-of-attorney, coupled with an interest, to cause the Deferred Maintenance to be completed, performed, remediated and corrected to the satisfaction of Lender upon Borrower's failure to do so in accordance with the terms and conditions of this Section 3.4, and to apply the amounts on deposit in the Immediate Repair Reserve to the costs associated therewith, all as Lender may determine in its sole and absolute discretion but without obligation to do so.

Section 3.5 Replacement Reserve. As additional security for the Debt, Borrower shall establish and maintain at all times while this Mortgage continues in effect a repair reserve (the "Replacement Reserve") with Lender for payment of costs and expenses incurred by Borrower in connection with the performance of work to the roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, exterior walls, exterior doors and doorways, windows, elevators and mechanical and HVAC equipment (collectively, the "Repairs"). Commencing on the first monthly Payment Date under the Note and continuing thereafter on each monthly Payment Date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Debt is fully paid and performed, a deposit to the Replacement Reserve in an amount equal to \$647.93 per month. So long as no Event of Default has occurred, all sums in the Replacement Reserve shall be held by Lender in the Replacement Reserve to pay the costs and expenses of Repairs. So long as no Default or Event of Default has occurred, Lender shall, to the extent funds are available for such purpose in the Replacement Reserve, disburse to Borrower the amount paid or incurred by Borrower in performing such Repairs within ten (10) days following: (a) the receipt by Lender of a written request from Borrower for disbursement from the Replacement Reserve and a certification by Borrower in a form approved in writing by Lender that the applicable item of Repair has been completed; (b) the delivery to Lender of invoices, receipts or other evidence satisfactory to Lender, verifying the cost of performing the Repairs; (c) for disbursement requests in excess of \$25,000.00, the delivery to Lender of affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Property have been paid all amounts due for labor and materials furnished to the Property; (d) for disbursement requests in excess of \$25,000.00, delivery to Lender of a certification from an inspecting architect or other third party acceptable to Lender describing the completed Repairs and verifying the completion of the Repairs and the value of the completed Repairs; and (e) for disbursement requests in excess of \$25,000.00, delivery to Lender of a new certificate of occupancy for the portion of the Improvements covered by such Repairs, if said new certificate of occupancy is required by law, or a certification by Borrower that no new certificate of occupancy is required. Lender shall not be required to make advances from the Replacement Reserve more frequently than once in any thirty (30) day period. In making any payment from the Replacement Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of any such amount. Lender may, at Borrower's expense, make or cause to be made during the term of this Mortgage an annual inspection of the Property to determine the need, as determined by Lender in its reasonable judgment, for further Repairs of the Property. In the event that such inspection reveals that further Repairs of the Property are required, Lender shall provide Borrower with a written description of the required Repairs and Borrower shall

complete such Repairs to the reasonable satisfaction of Lender within ninety (90) days after the receipt of such description from Lender, or such later date as may be approved by Lender in its sole discretion.

**ARTICLE IV**  
**EVENTS OF DEFAULT**

Section 4.1 Events of Default. The occurrence of any of the following events shall be an Event of Default hereunder:

(a) Borrower (x) fails to pay any payments due under the Note or to the Reserves on the date when the same is due and payable, or (y) fails to pay any money to Lender required hereunder at the time or within any applicable grace period set forth herein, or if no grace period is set forth herein, then within seven (7) days of the date such payment is due (except those regarding payments to be made under the Note or to the Reserves, which failure is not subject to any grace or cure period).

(b) Borrower fails to provide insurance as required by Section 2.3 hereof or fails to perform any covenant, agreement, obligation, term or condition set forth in Section 2.27 or Section 2.29 hereof.

(c) Borrower fails to perform any other covenant, agreement, obligation, term or condition set forth herein, other than those otherwise described in this Section 4.1, and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Lender to Borrower; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Lender, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.

(d) Any representation or warranty made herein, in or in connection with any application or commitment relating to the loan evidenced by the Note, or in any of the other Loan Documents to Lender by Borrower, by any principal, general partner, manager or member in Borrower, or by any Indemnitor is determined by Lender to have been false or misleading in any material respect at the time made.

(e) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrancing of the Property, Borrower or its general partners or managing members, or any portion thereof or any interest therein, in violation of Section 2.9 hereof.

(f) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

(g) Borrower, general partner or managing member in Borrower or any Indemnitor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or files a petition in bankruptcy, or is voluntarily adjudicated insolvent or bankrupt or admits in writing the inability to pay its debts as they mature, or petitions or applies to any tribunal for or consents to or fails to contest the appointment of a receiver, trustee, custodian or similar officer for Borrower, for any such general partner or managing member of Borrower or for any Indemnitor or for a substantial part of the assets of Borrower, of any such general partner or managing member of Borrower or of any Indemnitor, or commences any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(h) A petition is filed or any case, proceeding or other action is commenced against Borrower, against any general partner or managing member of Borrower or against any Indemnitor seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Borrower, against any general partner or managing member of Borrower or against any Indemnitor, as debtor, or an order, judgment or decree is entered appointing, with or without the consent of Borrower, of any such general partner or managing member of Borrower or of any Indemnitor, a receiver, trustee, custodian or similar officer for Borrower, for any such general partner or managing member of Borrower or for any Indemnitor, or for any substantial part of any of the properties of Borrower, of any such general partner or managing member of Borrower or of any Indemnitor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree is not dismissed within sixty (60) days after being commenced.

(i) The Property or any part thereof is taken on execution or other process of law in any action against Borrower.

(j) Borrower abandons all or a portion of the Property.

(k) The holder of any lien or security interest on the Property (without implying the consent of Lender to the existence or creation of any such lien or security interest), whether superior or subordinate to this Mortgage or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) The Property, or any part thereof, is subjected to waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Lender determines that it is not adequately protected from any loss, damage or risk associated therewith.

(m) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower, any general partner or any managing member, or any Indemnitor.

## ARTICLE V

### REMEDIES

Section 5.1 Remedies Available. If there shall occur an Event of Default under this Mortgage, then this Mortgage is subject to foreclosure as provided by law and Lender may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the Debt to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.

(b) Entry on the Property. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law, unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Lender's judgment to complete any unfinished construction on the Premises, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof, and all sums expended by Lender therefor, together with interest thereon at the Default Interest Rate, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the Debt.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue or otherwise collect the Rents and Profits, including those past due and unpaid.

(d) Appointment of Receiver. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Property for the repayment of the Debt or the solvency of Borrower or any person or persons liable for the payment of the Debt, and Borrower does hereby irrevocably consent to such appointment, waive any and all notices of and defenses to such appointment and agree not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not



impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 5.3 below. Such receivership shall, at the option of Lender, continue until full payment of all of the Debt or until title to the Property shall have passed by foreclosure sale under this Mortgage or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions with respect to any of the Debt, pursuant to the statutes in such case made and provided, and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Lender. In the event foreclosure proceedings are instituted by Lender, all expenses incident to such proceedings, including, but not limited to, reasonable attorneys' fees and costs, shall be paid by Borrower and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. The Debt and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Lender or its assigns may become the purchaser of the Property or any part thereof.

(f) Judicial Remedies. Proceed by suit or suits, at law or in equity, instituted by or on behalf of Lender, to enforce the payment of the Debt or the other obligations of Borrower hereunder or pursuant to the Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Lender with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Lender.

(g) Other. Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

Section 5.2 Application of Proceeds. To the fullest extent permitted by law, the proceeds of any sale under this Mortgage shall be applied, to the extent funds are so available, to the following items in such order as Lender in its discretion may determine:

(a) To payment of the reasonable costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Lender's rights and remedies hereunder and under the other Loan Documents, including, but not limited to,

receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(b) To payment of all sums expended by Lender under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Interest Rate.

(c) To payment of the Debt and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Lender chooses in its sole discretion.

(d) The remainder, if any, of such funds shall be disbursed to Borrower or to the person or persons legally entitled thereto.

Section 5.3 Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney. Upon the occurrence of an Event of Default, and entry upon the Property pursuant to Section 5.1(b) hereof or appointment of a receiver pursuant to Section 5.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Lender's or the receiver's sole discretion, all at Borrower's expense, Lender or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Borrower and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Lender may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Lender's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Lender as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) initiate a cause of action for unpaid Rents and Profits, payments, income or proceeds in the name of Borrower or Lender; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign

any and all rights and powers given to Lender by this Mortgage; and (r) do any acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Lender, at the request of Lender, to pay all amounts owing under any Lease, contract, concession, license or other agreement to Lender without proof of the Event of Default relied upon. Any such lessee or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Lender for the payment to Lender of any Rents and Profits or other sums which may be or thereafter become due under its Lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such Lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any Event of Default under this Mortgage or under any of the other Loan Documents has actually occurred or is then existing. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Borrower's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any portion of the Debt is outstanding. Any money advanced by Lender in connection with any action taken under this Section 5.3, together with interest thereon at the Default Interest Rate from the date of making such advancement by Lender until actually paid by Borrower, shall be a demand obligation owing by Borrower to Lender and shall be secured by this Mortgage and by every other instrument securing all or any portion of the Debt.

Section 5.4 Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Borrower or Borrower's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Borrower (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Premises is located.

Section 5.5 Notice to Account Debtors. Lender may, at any time after an Event of Default, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Borrower included in the Property to pay Lender directly. Borrower shall at any time or from time to time upon the request of Lender provide to Lender a current list of all such account debtors and obligors and their addresses.

Section 5.6 Cumulative Remedies. All remedies contained in this Mortgage are cumulative and Lender shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Lender and may be exercised in any order and as often as occasion therefor shall arise. No act of Lender shall be construed as an election to proceed under any particular provisions of this Mortgage to the exclusion of any other provision of this Mortgage or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Lender. No delay or failure by Lender to exercise any right or remedy under this Mortgage shall be construed to be a waiver of that right or remedy or of any Event of Default. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

Section 5.7 Payment of Expenses. Borrower shall pay on demand all of Lender's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, fees of any Rating Agency, fees related to any No-Downgrade Confirmation, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Lender until actually paid by Borrower at the Default Interest Rate, and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt.

## ARTICLE VI

### MISCELLANEOUS TERMS AND CONDITIONS

Section 6.1 Time of Essence. Time is of the essence with respect to all provisions of this Mortgage.

Section 6.2 Release of Mortgage. If all of the Debt be paid, then and in that event only, all rights under this Mortgage, except for those provisions hereof which by their terms survive, shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be promptly released of record by Lender in due form at Borrower's cost. No release of this Mortgage or the lien hereof shall be valid unless executed by Lender.

Section 6.3 Certain Rights of Lender. Without affecting Borrower's liability for the payment of any of the Debt, Lender may from time to time and without notice to Borrower: (a) release any person liable for the payment of the Debt; (b) extend or modify the terms of payment of the Debt; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the Debt; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Mortgage or any agreement subordinating the lien hereof.

Section 6.4 Waiver of Certain Defenses. No action for the enforcement of the lien hereof or of any provision hereof shall be subject to any defense which would not be good

and available to the party interposing the same in an action at law upon the Note or any of the other Loan Documents.

Section 6.5 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page of this Mortgage or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 6.6 Successors and Assigns; Joint and Several Liability. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Borrower and the successors and assigns of Borrower, including all successors in interest of Borrower in and to all or any part of the Property, and shall inure to the benefit of Lender, its directors, officers, shareholders, employees and agents and their respective successors and assigns and shall constitute covenants running with the land. All references in this Mortgage to Borrower or Lender shall be deemed to include all such parties' successors and assigns, and the term "Lender" as used herein shall also mean and refer to any lawful holder or owner, including pledgees and participants, of any of the Debt. If Borrower consists of more than one person or entity, each is jointly and severally liable to perform the obligations of Borrower hereunder and all representations, warranties, covenants and agreements made by Borrower hereunder are joint and several.

Section 6.7 Severability. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

Section 6.8 Gender. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

Section 6.9 Waiver; Discontinuance of Proceedings. Lender may waive any single Event of Default by Borrower hereunder without waiving any other prior or subsequent Event of Default. Lender may remedy any Event of Default by Borrower hereunder without

waiving the Event of Default remedied. Neither the failure by Lender to exercise, nor the delay by Lender in exercising, any right, power or remedy upon any Event of Default by Borrower hereunder shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Lender of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Lender of any payment in an amount less than the amount then due on any of the Debt shall be deemed an acceptance on account only and shall not in any way affect the existence of an Event of Default. In case Lender shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right to do so and, in such an event, Borrower and Lender shall be restored to their former positions with respect to the Debt, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if the same had never been invoked.

Section 6.10 Section Headings. The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

Section 6.11 GOVERNING LAW. THIS MORTGAGE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED, PROVIDED THAT TO THE EXTENT THAT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING, AND PROVIDED FURTHER THAT THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED SHALL GOVERN AS TO THE CREATION, PRIORITY AND ENFORCEMENT OF LIENS AND SECURITY INTERESTS IN THE PROPERTY LOCATED IN SUCH STATE.

Section 6.12 Counting of Days. The term “days” when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Premises is located, the period shall be deemed to end on the next succeeding business day. The term “business day” when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

Section 6.13 Relationship of the Parties. The relationship between Borrower and Lender is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

Section 6.14 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

Section 6.15 Unsecured Portion of Indebtedness. If any part of the Debt cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Mortgage.

Section 6.16 Cross Default. An Event of Default hereunder which has not been cured within any applicable grace or cure period shall be a default under each of the other Loan Documents.

Section 6.17 Interest After Sale. In the event the Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by law, the sum for which the same shall have been sold shall, for purposes of redemption (pursuant to the laws of the state in which the Premises is located), bear interest at the Default Interest Rate.

Section 6.18 Inconsistency with Other Loan Documents. In the event of any inconsistency between the provisions hereof and the provisions in any of the other Loan Documents, it is intended that the provisions of the Note shall control over the provisions of this Mortgage, and that the provisions of this Mortgage shall control over the provisions of the Lease Assignment, the Indemnity and Guaranty Agreement, the Environmental Indemnity Agreement, and the other Loan Documents.

Section 6.19 Construction of this Document. This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

Section 6.20 No Merger. It is the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Property. It is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in such other or additional interests in or to the Property, toward the end that this Mortgage may be foreclosed as if owned by a stranger to said other or additional interests.

Section 6.21 Rights With Respect to Junior Encumbrances. Any person or entity purporting to have or to take a junior mortgage or other lien upon the Property or any interest therein shall be subject to the rights of Lender to amend, modify, increase, vary, alter or

supplement this Mortgage, the Note or any of the other Loan Documents, and to extend the maturity date of the Debt, and to increase the amount of the Debt, and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the Debt, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Mortgage losing its priority over the rights of any such junior lien.

Section 6.22 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or the principals, general partners or managing members in Borrower, or their respective creditors or property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire Debt at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

Section 6.23 Fixture Filing. This Mortgage shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures. This Mortgage shall also be effective as a financing statement covering minerals or the like (including oil and gas) and is to be filed for record in the real estate records of the county where the Premises is situated. The mailing address of Borrower and the address of Lender from which information concerning the security interests may be obtained are set forth in Section 2.18 above.

Section 6.24 After-Acquired Property. All property acquired by Borrower after the date of this Mortgage which by the terms of this Mortgage shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Mortgage. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further mortgages, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Mortgage.

Section 6.25 No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Lender.

Section 6.26 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Mortgage may be detached from any counterpart of this Mortgage without impairing the legal effect of any



signatures thereon and may be attached to another counterpart of this Mortgage identical in form hereto but having attached to it one or more additional signature pages.

Section 6.27 Personal Liability. Notwithstanding anything to the contrary contained in this Mortgage, the liability of Borrower and its officers, directors, general partners, managers, members and principals for the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in the Note.

Section 6.28 Recording and Filing. Borrower will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Lender shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Borrower shall reimburse Lender, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of taxes and assessments on the Property.

Section 6.29 Entire Agreement and Modifications. This Mortgage and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated. This Mortgage and the other Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

Section 6.30 Intentionally Reserved.

Section 6.31 Secondary Market. Lender may sell, transfer and deliver the Note and the Loan Documents to one or more investors in the secondary mortgage market (a "Secondary Market Transaction"). In connection with such sale, Lender may retain or assign responsibility for servicing the loan evidenced by the Note or may delegate some or all of such responsibility and/or obligations to a servicer, including, but not limited to, any subservicer or master servicer, on behalf of the Investors (as hereinafter defined). All references to Lender herein shall refer to and include, without limitation, any such servicer, to the extent applicable.

Section 6.32 Dissemination of Information. If Lender determines at any time to sell, transfer or assign the Note, this Mortgage and the other Loan Documents, and any or all servicing rights with respect thereto, or to grant participations therein (the "Participations") or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"), Lender may forward to each purchaser, transferee, Lender, servicer, participant, investor, or their respective successors in such Participations and/or Securities (collectively, the "Investors") or any rating agency rating such Securities (each a "Rating Agency"), each prospective Investor and each of the foregoing's respective counsel, all documents and information which Lender now has or may hereafter acquire relating to the Debt, to Borrower, any guarantor, any indemnitor, and the Property, which

shall have been furnished by Borrower and any Indemnitor, as Lender determines necessary or desirable.

Section 6.33 Certain Matters Relating to Property Located in the State of Connecticut. With respect to the Property which is located in the State of Connecticut, notwithstanding anything contained herein to the contrary.

(a) This Mortgage secures and Debt includes: (i) all advances made by Lender with respect to any of the Property for the payment of taxes, maintenance charges, insurance premiums or costs incurred for the protection of any of the Property or the lien of this Mortgage and (ii) all expenses incurred by Lender by reason of an Event of Default hereunder. This Mortgage shall constitute a lien on Borrower's fee interest in the Property from the time this Mortgage is left of record (or, if this is a purchase money mortgage, from the time of delivery hereof to Lender) for, among other things, all such advances and expenses, plus interest thereon, regardless of the time when such advances are made or such expenses are incurred.

(c) Borrower represents and warrants to Lender that Borrower is organized for a profit and is engaged primarily in commercial, manufacturing, industrial or other non-consumer pursuits (within the meaning of Section 37-9 of the Connecticut General Statutes).

(d) Borrower represents and warrants to Lender that no part of the Premises has, at any time during the period of three (3) years immediately preceding the date of this Mortgage, been included in the "property description" of any real estate contiguous with the Property (within the meaning of Section 22a-452a(c) of the Connecticut General Statutes).

**(e) BORROWER ACKNOWLEDGES THAT IT HAS THE RIGHT UNDER SECTION 52-278a ET SEQ. OF THE CONNECTICUT GENERAL STATUTES, SUBJECT TO CERTAIN LIMITATIONS, TO NOTICE OF AND HEARING ON THE RIGHT OF LENDER TO OBTAIN A PREJUDGMENT REMEDY, SUCH AS ATTACHMENT, GARNISHMENT OR REPLEVIN, UPON COMMENCING ANY LITIGATION AGAINST BORROWER. NOTWITHSTANDING SUCH RIGHT, BORROWER HEREBY WAIVES ALL RIGHTS TO NOTICE, JUDICIAL HEARING OR PRIOR COURT ORDER TO WHICH IT MIGHT OTHERWISE HAVE THE RIGHT UNDER SAID STATUTE OR UNDER ANY OTHER STATE OR FEDERAL STATUTE OR CONSTITUTION IN CONNECTION WITH THE OBTAINING BY LENDER OF ANY PREJUDGMENT REMEDY IN CONNECTION WITH THIS MORTGAGE. BORROWER FURTHER CONSENTS TO THE ISSUANCE OF ANY PREJUDGMENT REMEDIES WITHOUT A BOND AND AGREES NOT TO REQUEST OR FILE MOTIONS SEEKING TO REQUIRE THE POSTING OF A BOND UNDER PUBLIC ACT 93-431 IN CONNECTION WITH LENDER'S EXERCISE OF ANY PREJUDGMENT REMEDY. BORROWER ALSO WAIVES ANY AND ALL OBJECTION THAT IT MIGHT OTHERWISE ASSERT, NOW OR IN THE FUTURE, TO THE EXERCISE OR USE BY LENDER OF ANY RIGHT OF SETOFF, REPOSSESSION OR SELF HELP AS MAY PRESENTLY**

**EXIST UNDER STATUTE OR COMMON LAW, AND TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISEMENT, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.**

(f) Borrower hereby waives, for itself or any of its assigns who assume this Mortgage, any right it may have under Section 49-2(c)(7) of the Connecticut General Statutes, as amended, or otherwise, to terminate the right to make "optional future advances" as defined under said statute, including, without limitation, advances by Lender pursuant to this Mortgage.

Section 6.34 REMIC Opinions. In the event Borrower requests Lender's consent with respect to any proposed action or Borrower proposes to take any action not otherwise requiring Lender's specific consent under the Loan Documents, which Lender determines, in its discretion, may affect (i) the "REMIC" status of Lender, its successors or assigns, or (ii) the status of this Mortgage as a "qualified mortgage" as defined in Section 860G of the Internal Revenue Code of 1986 (or any succeeding provision of such law), Lender reserves the right to require Borrower, at Borrower's sole expense, to obtain, from counsel satisfactory to Lender in its discretion, an opinion, in form and substance satisfactory to Lender in its discretion, that no adverse tax consequences will arise as a result of the proposed course of action.

Section 6.35 Splitting the Loan. Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages, deeds of trust and other security documents (the "Severed Loan Documents") in such denominations and priorities as Lender shall determine in its sole discretion, provided, however, that the terms, provisions and clauses of the Severed Loan Documents shall be no more adverse to Borrower than those contained in the Note, this Mortgage and the other Loan Documents. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, that Lender shall not make or execute any such documents under such power until not less than three (3) days has passed after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power.

[THE BALANCE OF THIS PAGE WAS LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, Borrower has executed this Mortgage on the day and year first written above.

**BORROWER:**

239 GREENWICH ASSOCIATES LIMITED  
PARTNERSHIP, a Connecticut limited partnership

By: Acadia 239 Greenwich Avenue, LLC,  
a Delaware limited liability company,  
its general partner

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

By: Acadia Realty Trust,  
its general partner

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

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STATE OF \_\_\_\_\_ )  
 )ss.:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 2007, by Robert Masters, Senior Vice-President of Acadia Realty Trust, the general partner of Acadia Realty Limited Partnership, a Delaware limited partnership, the sole member of Acadia 239 Greenwich Avenue, LLC, a Delaware limited liability company, the general partner of 239 Greenwich Associates Limited Partnership, a Connecticut limited partnership, and acknowledged the same to be his free act and deed and the free act and deed of 239 Greenwich Associates Limited Partnership.

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT A

Legal Description

REVOLVING CREDIT AGREEMENT

Between

WASHINGTON MUTUAL BANK,  
as Lender

and

ACADIA REALTY LIMITED PARTNERSHIP,  
as Borrower

Dated as of March \_\_\_\_, 2007

Loan No. 625029471

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## REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT (this “Agreement”), dated as of the date set forth on the cover page of this Agreement, is made by and between ACADIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership (“Borrower”), and WASHINGTON MUTUAL BANK, a federal association (“Lender”).

### RECITALS

Borrower has requested that Lender make loan advances to Borrower from time to time. Subject to the terms and conditions of this Agreement and of the other Loan Documents (as defined below) Lender is willing to make such advances as provided in this Agreement.

Accordingly, the parties agree as follows:

## AGREEMENT

### ARTICLE I

#### DEFINITIONS AND ACCOUNTING TERMS

Section 1.1. Certain Defined Terms. As used in this Agreement, the following terms will have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“Advance” means an advance of proceeds of the Loan by Lender to Borrower pursuant to Article II.

“Affiliate” means any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, another identified Person. A Person will be deemed to control a corporation or other entity if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or other entity, whether through the ownership of voting securities, by contract or otherwise.

“Applicable Margin” means the interest rate per annum specified as the Applicable Margin in Schedule 1, which is to be added to the Current Index in determining the Interest Rate.

“Authorized Officer” means any one of the individuals identified as Authorized Officers in Schedule 1, or such other officer or other individual as Borrower may designate as an Authorized Officer by means satisfactory to Lender.

“Borrower” has the meaning specified in the preamble to this Agreement.

“Borrowing” means a borrowing consisting of the making of an Advance.

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“Borrowing Request” means a request in substantially the form of Exhibit B, or in such other form as Lender may specify from time to time, made by Borrower to Lender for a Borrowing pursuant to the terms of this Agreement.

“Business Day” means a day that is not a Saturday, Sunday or other day on which banks are required or authorized to close in the location of Lender’s Applicable Office.

“Commitment” has the meaning specified in Section 2.1.

“Current Index” has the meaning specified in Section 2.5.

“Date Down Endorsement” has the meaning specified in Section 3.1.

“Debt Service Coverage Ratio” has the meaning specified in Schedule 1.

“Default” has the meaning specified in the definition of “Event of Default”.

“Default Rate” has the meaning specified in Section 2.8.

“Dollars”, “dollars” or the symbol “\$” means lawful money of the United States of America denominated in United States dollars.

“Equity Interest” means: (a) if Borrower is a corporation, its capital stock; (b) if Borrower is a limited liability company, its membership interests; or (c) if Borrower is a partnership, its partnership interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Event of Default” means any of the events specified in Section 7.1, provided that there has been satisfied any requirement in connection with such event for the giving of notice, or the lapse of time, or the happening of any further condition, event or act, and “Default” will mean any of such events, whether or not any such requirement has been satisfied.

“Extension Debt Service Coverage Ratio” means the Debt Service Coverage Ratio recalculated to exclude from NOI any income from any Qualifying Lease which has a remaining term of less than twenty-four (24) months from the Initial Maturity Date.

“Extension Request” has the meaning specified in Section 2.13.

“Extension Term” has the meaning specified in Section 2.13.

“Facility Fee” has the meaning specified in Section 2.2.

“Financial Covenant Parties” has the meaning specified in Schedule 1.

“GAAP” means generally accepted accounting principles applicable in the United States, consistently applied.

“Indebtedness” means, with respect to any Person: (a) all items of Indebtedness or liability that would be included in determining total liabilities as shown on the liability side of a balance sheet as of the date of determination; (b) Indebtedness secured by any Lien on property carried on the asset side of the balance sheet of such Person whether or not such Indebtedness has been assumed; (c) any other Indebtedness or liability for borrowed money or for the deferred purchase price of property or services for which such Person is directly or contingently liable as obligor, guarantor, or otherwise, or in respect of which such Person otherwise assures a creditor against loss; and (d) any other obligations of such Person under leases that have been or, pursuant to GAAP, should be recorded as capital leases.

“Indemnity” means that certain Certificate of Indemnity Regarding Hazardous Materials dated as of the date hereof from Borrower and Lender, as the same may be modified, amended, restated or replaced from time to time.

“Initial Maturity Date” has the meaning specified in Section 2.13.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, any assignment for the benefit of creditors, or any other proceeding seeking reorganization, arrangement or other relief from Indebtedness.

“Interest Adjustment Date” has the meaning specified in Section 2.5.

“Interest Rate” has the meaning specified in Section 2.5.

“Legal Proceeding” has the meaning specified in Section 8.8.

“Lender’s Applicable Office” means the office of Lender principally responsible for servicing the Loan, which initially will be the office at the address for notices to Lender shown on Schedule 1.

“LIBOR Rate” has the meaning specified in Section 2.5.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, or any lease in the nature thereof).

“Loan” means the loan to be made pursuant to this Agreement.

“Loan Documents” means this Agreement, the Note, the Note Modification Agreement, the Mortgage, the Indemnity, the Guaranty, if any, and all other documents, instruments and agreements related thereto.

“Loan Parties” means Borrower, and, if Borrower is a partnership, Borrower’s general partners.

“London Banking Day” has the meaning specified in Section 2.5.

“Material Adverse Effect” means, as to any Person, any material adverse effect on: (a) the business, assets, operations, capitalization, property, condition (financial or otherwise) or prospects of such Person; or (b) the ability of such Person to pay and perform its obligations as they become due, including, as to Borrower, all obligations of Borrower under the Loan Documents.

“Maturity Date” means February \_\_\_\_, 2010, unless Lender’s obligation to make Advances is earlier terminated pursuant to Section 7.2, in which case the Maturity Date will be such date of earlier termination.

“Mortgage” means that certain mortgage described in, and amended and restated by, that certain Mortgage Modification Agreement between Borrower and Lender dated as of the date hereof, as the same may be modified, amended, restated or replaced from time to time.

“NOI” has the meaning specified in Schedule 2.

“Note” means the replacement promissory note payable to the order of Lender, delivered pursuant to the Note Modification Agreement, evidencing the aggregate Indebtedness of Borrower to Lender under this Agreement.

“Note Modification Agreement” means that certain Note Modification Agreement dated as of the date hereof between Borrower and Lender.

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, limited liability company, trust, unincorporated association, joint venture or other entity, or any governmental authority or entity.

“Property” has the meaning specified in the Mortgage.

“Qualifying Lease” means a bona fide arm’s-length lease of space in the Property to a tenant unaffiliated with Borrower that is: (i) fully-executed; (ii) unmodified, in full force and effect and not in default or subject to notice of termination; (iii) entered into in compliance with all requirements contained in the Mortgage; (iv) with all tenant improvements completed and paid for by Borrower, to the extent required by the lease; and (v) with the tenant in possession pursuant to all requisite permits and government approvals and paying rent under the lease.

“Rent Roll” means a rent roll for the Property that: (i) shows the tenant name, leased space (by unit number and floor and/or square footage, as applicable), expiration date, gross monthly rent and other tenant charges for each lease of space in the Property; (ii) identifies each listed lease as to whether it is an Qualifying Lease; (iii) is certified as true, complete and correct by a representative of Borrower satisfactory to Lender; and (iv) is otherwise in form and content satisfactory to Lender.

“Subsidiary” means any corporation, limited liability company, partnership or other entity a majority of (a) the total combined voting power of all classes of Equity Interests of which or (b) the outstanding Equity Interests of which are, as of the date of determination, owned by Borrower either directly or through Subsidiaries.

“Title Insurer” has the meaning specified in Section 3.1.

“Unused Commitment” means, as of any date of determination, an amount equal to the Commitment minus the sum of: (a) the outstanding principal balance of the Loan, and (b) the aggregate principal amount of Advances for which a Borrowing Request has been made pursuant to Section 2.4 but which have not been disbursed as of the date of determination.

“Unused Fee” has the meaning specified in Section 2.2.

Section 1.2. Computation of Time Periods. In this Agreement, in the computation of periods of time from a specified date to a later specified date: (a) the word “from” means “from and including,” (b) the words “to” and “until” each means “to but excluding”; and (c) the word “through” means “through and including”.

Section 1.3. Accounting Terms. All accounting terms not specifically defined in this Agreement will be construed, and all accounting procedures will be performed, in accordance with GAAP applicable as of the date of this Agreement.

## ARTICLE II

### AMOUNTS AND TERMS OF THE BORROWINGS

Section 2.1. The Commitment. Subject to the terms and conditions of this Agreement, Lender will make available to Borrower a revolving credit facility in the maximum amount set forth as the Commitment Amount in Schedule 1 (the “Commitment”), subject to reduction in accordance with the terms and provisions of Schedule 2.

Section 2.2. Fees.

(a) On or before the earlier of the date of the first Advance or the 30th day after the date of this Agreement, Borrower will pay to Lender a nonrefundable facility fee (the “Facility Fee”) in the amount set forth in Schedule 1.

(b) Borrower shall, during the term of the Loan, pay to Lender a fee (the “Unused Fee”), computed on the daily Unused Commitment for each day at a rate per annum equal to 0.0125% per annum, calculated on the basis of a year of three hundred sixty (360) days for the actual number of days elapsed. The accrued Unused Fee shall be due and payable quarterly in arrears on the first day of January, April, July and October of each year commencing on July 1, 2007, and upon the Maturity Date (as stated, by acceleration or otherwise).

Section 2.3. The Borrowings.

(a) Lender agrees, on the terms and subject to the conditions set forth in this Agreement, during the period from the date of this Agreement to the Maturity Date, to make Advances to Borrower from time to time on any Business Day in an aggregate amount not to exceed the Unused Commitment. Lender will have no obligation to make any Advances on or

after the Maturity Date. Lender will have no obligation to make more than three Advances in any calendar month.

(b) Each request for an Advance must be in an amount not less than \$50,000 or an integral multiple of \$10,000 in excess thereof; provided, that Borrower may, subject to the other terms and conditions of this Agreement, request an Advance in the amount of the entire Unused Commitment.

(c) Borrower may prepay all or any part of any the outstanding principal balance of the Loan pursuant to Section 2.11 and reborrow pursuant to this Section 2.3.

Section 2.4. Procedure for Borrowings.

(a) Borrowing Requests. Each Borrowing Request will be made by Borrower to Lender not later than 10:00 a.m. (prevailing local time at Lender's Applicable Office) on the second Business Day prior to the date of the proposed Borrowing. Each Borrowing Request will be made by an Authorized Officer of Borrower by telecopy, e-mail or overnight courier delivery, in writing, on the form of Borrowing Request attached as Exhibit A.

(b) Availability of Borrowings. Lender will make Borrowings available to Borrower in immediately available funds to an account of Borrower with Lender, or such other account of Borrower as may be approved by Lender.

Section 2.5. Interest Rate. The Note, the Loan and all amounts owing under this Agreement and the other Loan Documents will bear interest at the rate provided in this Section 2.5 (the "Interest Rate").

(a) Interest Rate Adjustments. The Interest Rate will be adjusted daily to the Current Index (as defined below) plus the Applicable Margin.

(b) Definitions. As used in this Section 2.5, the following terms have the meanings set forth below:

"Current Index" means, as of any date of determination, the LIBOR Rate figure available on such day (or if such day is not a London Banking Day, on the most recent London Banking Day) as of 11:00 a.m., London time.

"LIBOR Rate" means the rate, rounded to the nearest one-thousandth of one percentage point (0.001%) for deposits in United States dollars for maturities of one month as determined by Lender based upon the British Bankers Association fixing of the London Interbank Offered Rate.

"London Banking Day" means any day (i) that is not a Saturday or Sunday and (ii) on which commercial banks are generally open for business (including dealings in foreign exchange and foreign currency deposits) in London, England and dealings are carried on in the London interbank market.

Section 2.6. Payment of Interest. Borrower will pay all accrued interest on the outstanding principal amount of the Loan on the first day of each calendar month.

Section 2.7. Unavailability of LIBOR Rate. If in the sole judgment of Lender (a) it becomes unlawful for Lender to obtain funds in the London interbank market or to continue to fund or maintain principal amounts bearing interest at rates determined by reference to the LIBOR Rate; or (b) because of conditions in the relevant money markets, the LIBOR Rate will not adequately reflect the cost to Lender of making, funding or maintaining the principal amount of the Loan; or (c) the LIBOR Rate is no longer available or is no longer calculated or reported on a basis reasonably comparable to the basis on which it is calculated and reported on the date of this Agreement, then, in any such event, Lender will choose a new index that reasonably reflects the cost to Lender of making, funding or maintaining the principal amount of the Loan, and such new index will then be the Index. Lender will give Borrower notice of such choice.

Section 2.8. Default Rate. Upon the occurrence of an Event of Default, and without notice or demand, all amounts outstanding hereunder and under the Note and the other Loan Documents, including all accrued but unpaid interest, will thereafter bear interest at a variable rate, adjusted at the times at which the Interest Rate would otherwise have been adjusted pursuant to Section 2.5, of five percent per annum above the Interest Rate that would have been applicable from time to time had there been no Event of Default (the "Default Rate") until all Events of Default are cured. Failure to exercise any option granted to Lender hereunder will not waive the right to exercise the same in the event of any subsequent Event of Default. Interest at the Default Rate will commence to accrue upon the occurrence of any Event of Default, including the failure to pay all sums outstanding hereunder and under the other Loan Documents at maturity.

Section 2.9. Maximum Interest. In no event will charges constituting interest payable by Borrower to Lender exceed the maximum amount permitted under any applicable law or regulation, and if any payments by Borrower exceed such maximum amount, the excess will be applied first to reduce the amounts owing to Lender under this Agreement and the other Loan Documents in such order as Lender may elect, next to reduce any other amounts owing by Borrower to Lender in such order as Lender may elect, and any excess will be refunded to Borrower.

Section 2.10. Late Charge. If any amount payable under this Agreement, the Note or the other Loan Documents is not paid within fifteen (15) days after the due date thereof, Borrower will pay a late charge of five percent of the delinquent amount as liquidated damages for the extra expense in handling past due payments. Any late charge payable under this Section is in addition to any interest payable at the Default Rate.

Section 2.11. Prepayments. Borrower may prepay the outstanding principal balance of the Loan in full or in part without premium or penalty at any time and from time to time.

Section 2.12. Reduction of Balance to Zero. Borrower will reduce the balance of principal and all other amounts outstanding under this Agreement to zero for not less than thirty (30) consecutive days at least once during each successive 364-day period during which this

Agreement remains in effect starting with the 364-day period beginning on the date of this Agreement.

Section 2.13. Maturity; Extension of Maturity Date.

(a) Maturity. Borrower will repay all remaining unpaid principal of and interest on the Loan on or before the Maturity Date.

(b) Extension. Borrower may request that Lender extend the Maturity Date of this Note (the "Initial Maturity Date") for one (1) (but only one) twenty-four (24) month period (the "Extension Term") by giving Lender notice of such request (an "Extension Request") to so extend at least thirty (30) days but not more than sixty (60) days prior to the Initial Maturity Date. The date of such request is referred to as the "Request Date". Borrower may extend the Initial Maturity Date as provided above only upon satisfaction of the following conditions:

(i) There shall be an Extension Debt Service Coverage Ratio of at least 1.2 to 1.0;

(ii) Not less than eighty-nine percent (89%) net rentable square feet of the Property must be leased under Qualifying Leases as of the Request Date; and

(iii) A current estoppel certificate in the form executed and delivered by Borrower showing no adverse information (which, if required by Lender, must be dated within ten (10) days prior to the Initial Maturity Date).

(c) Rent Roll. Borrower must deliver to Lender with the Extension Request (i) a Rent Roll current as of the Request Date; (ii) copies of all Qualifying Leases listed on that Rent Roll; and (iii) such further supporting information as Lender may reasonably require.

(d) Payment of Costs. Borrower must have paid to Lender all of Lender's costs and expenses incurred in connection with the extension of the Initial Maturity Date, including but not limited to attorneys' fees, if any, or must have arranged for such payment to Lender's satisfaction.

(e) Absence of Default or Adverse Change. As of the Request Date: (a) no Default or Event of Default shall exist; (b) no material adverse change in the financial condition or the management of the Property, Borrower or any guarantor of the Loan shall have occurred since the date hereof; and (c) no material adverse change shall have occurred with respect to the Property. Borrower must so certify in writing if requested by Lender.

Section 2.14. Evidence of Indebtedness. The Advances made by Lender to Borrower will be evidenced by the Note, payable to the order of Lender. Lender may maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of Borrower resulting from Advances and payments made from time to time under this Agreement. In any legal action or proceeding in respect of this Agreement or the Note, the entries made in such account or accounts will be presumptive evidence of the existence and amounts of the obligations of Borrower therein recorded absent manifest error.

Section 2.15. Illegality. Notwithstanding any other provision of this Agreement, if the introduction of or any change in or in the interpretation of any law or regulation will make it unlawful, or any central bank or other governmental authority will assert that it is unlawful, for Lender to perform its obligations under this Agreement to make or maintain Advances, Lender may, by notice to Borrower, suspend the right of Borrower to elect such Advances and, if necessary in the reasonable opinion of Lender to comply with such law or regulation, Borrower will prepay the outstanding balance of principal and other sums owed to Lender under this Agreement and under the other Loan Documents at the latest time permitted by the applicable law or regulation or, if earlier, on the date such amounts are due and payable under the terms of this Agreement and the other Loan Documents.

### ARTICLE III

#### CONDITIONS OF BORROWING

Section 3.1. Conditions Precedent to Initial Advance. The obligation of Lender to make the initial Advance is subject to satisfaction by Borrower of the following conditions precedent:

(a) Lender must have received the following documents in form and substance satisfactory to Lender and, as appropriate, duly executed by the parties thereto:

(i) This Agreement, the Mortgage, the Indemnity, the Note and all other applicable Loan Documents;

(ii) Copies of such authorizing resolutions of Borrower and its constituent entities, if any, as Lender may require with respect to the Loan and the Loan Documents;

(iii) One or more certificates of such Person or Persons on behalf of Borrower and its constituent entities, if any, as Lender may require certifying: (A) the names and true signatures of the officers or other representatives of the applicable entity authorized to sign the Loan Documents; (B) that true and correct copies of the organizational documents of the applicable entities are attached to such certificate or certificates; and (C) such other matters as Lender may require;

(iv) Current financial statements of Borrower and with respect to the Property and such other financial data as Lender shall require;

(v) An independent M.A.I. appraisal of the Property and Improvements complying in all respects with the standards for real estate appraisals established pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(vi) The policies of insurance required by the Mortgage, together with evidence of the payment of the premiums therefor;

(vii) A detailed report by a properly qualified engineer, which shall include, inter alia, a certification that such engineer has obtained and examined a list of prior



owners, tenants and other users of all or any portion of the Property or any improvements thereon, and has made an on-site physical examination of the Property, and a visual observation of the surrounding areas, and has found no evidence of past or present hazardous materials activities or the presence of hazardous materials;

(viii) A paid title insurance policy, in the amount of the Loan Allocation for each property in ALTA 10-17-92 or other form approved by Lender, issued by a title insurance company reasonably acceptable to Lender (the "Title Insurer") which shall insure the Mortgage to be a valid lien on Borrower's interest in the Property free and clear of all defects and encumbrances except those previously received and approved by Lender, and shall contain (i) full coverage against mechanics' liens (filed and inchoate), (ii) a reference to the survey but no survey exceptions except those theretofore approved by Lender, (iii) such affirmative insurance and endorsements as Lender may require, and (iv) if any such policy is dated earlier than the date of the disbursement of the Loan, an endorsement to such policy, in form approved by Lender, redating the policy and setting forth no additional exceptions except those approved by Lender's Counsel (a "Date Down Endorsement"); and shall be accompanied by such reinsurance agreements between the Title Insurer and title companies approved by Lender, in ALTA 1994 facultative form, as Lender may require;

(ix) An as-built survey of the Property, certified to Lender and the Title Insurer;

(x) Certified copies of all leases in respect of the Property and an estoppel regarding lease matters from each tenant or from Borrower;

(xi) Opinions of Borrower's counsel and local counsel to the effects reasonably required by Lender; Borrower hereby acknowledges that each of its counsel delivering opinion letters to Lender on or about the date hereof has been requested and directed by Borrower to do so;

(xii) Copies of the certificate(s) of occupancy for the Property and of any and all other authorizations (including plot plan and subdivision approvals, zoning variances, water, sewer, building and other permits) required by governmental authorities or otherwise necessary for the use, occupancy and operation of the Property for their intended purposes in accordance with all applicable laws;

(xiii) UCC, judgment and litigation searches against Borrower and advice from the Title Insurer to the effect that searches of proper public records disclose no materially adverse matters, leases of personalty or financing statements filed or recorded against the Mortgaged Property or Borrower; and

(xiv) Such other documents as Lender may require;

(b) Payment of all fees due and payable pursuant to Section 2.2.

(c) The representations and warranties made to Lender herein, in the other Loan Documents and in any other document, certificate or statement executed or delivered to

Lender in connection with the Loan shall be true and correct on and as of the date of the advance of the Loan with the same effect as if made on such date.

(d) The Property shall not have been materially injured or damaged by fire or other casualty.

(e) Such other conditions precedent as Lender may reasonably require.

Section 3.2. Conditions Precedent to Each Advance. The obligation of Lender to make each Advance (including but not limited to the initial Advance) will be subject to the further conditions precedent that, on the date of such Advance, before and immediately after giving effect thereto, the following statements must be true and correct, and the making by Borrower of the applicable Borrowing Request will constitute Borrower's representation and warranty that on and as of the date of such Borrowing Request and as of the date of the requested Borrowing, before and immediately after giving effect thereto, the following statements are and will be true and correct:

(i) Lender shall have received a Date Down Endorsement from the Title Insurer effective as of the date of the Advance;

(ii) The representations and warranties contained in Article IV of this Agreement are and will be true and correct in all material respects as though made on and as of such date, unless such representations and warranties are expressly stated to be made as of an earlier date;

(iii) There shall have occurred no material adverse change in the condition or value of the Property, as defined in the Mortgage;

(iv) After giving effect to the requested Advance, the Unused Commitment will not be less than zero;

(v) No event has occurred and is continuing or would result from the requested Advance that constitutes or would constitute a Default or an Event of Default;

(vi) The most recent financial statements delivered to Lender pursuant to Section 5.3 present fairly the financial position and results of operations of Borrower and the other Persons reported therein as of the date of, and for the periods presented in, such financial statements, and since the date of such financial statements there has not been any material adverse change in the financial condition or operations of Borrower or the other Persons reported therein; and

(vii) Borrower is and will be in compliance with all covenants contained in Articles V and VI of this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as follows:

Section 4.1. Organization. Borrower is duly organized and validly existing under the laws of the jurisdiction of its organization. Borrower has full power and authority to own its properties and to transact the businesses in which it is presently engaged or presently proposes to engage. Borrower is duly qualified to do business and is in good standing in all jurisdictions in which the failure so to qualify could reasonably be expected to have a Material Adverse Effect.

Section 4.2. Authorization; No Breach. The execution, delivery, and performance of this Agreement and the other Loan Documents by Borrower, to the extent to be executed, delivered or performed by Borrower, have been duly authorized by all necessary corporate, limited liability company, partnership or similar action, as applicable; do not require the consent or approval of any other Person, regulatory authority or governmental body; and do not conflict with, result in a violation of, or constitute a default under (a) any provision of Borrower's organizational documents, or any agreement or other instrument binding upon Borrower or (b) any law, governmental regulation, court decree, or order applicable to Borrower.

Section 4.3. Financial Information. Each financial statement of Borrower or any other Person supplied to Lender in connection with the Loan truly and completely disclosed Borrower's or such other Person's financial condition as of the date of the statement, and there has been no material adverse change in such financial condition subsequent to the date of the most recent financial statement supplied to Lender. Neither Borrower nor any such other Person has any material contingent obligation except as disclosed in such financial statements or in footnotes thereto or otherwise disclosed to Lender in writing.

Section 4.4. Legal Effect. This Agreement and the other Loan Documents constitute legal, valid and binding obligations of Borrower and the other parties thereto (other than Lender) enforceable against Borrower and such other parties in accordance with their respective terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity (whether considered in a proceeding at law or in equity).

Section 4.5. Compliance with Law. Borrower, the other Loan Parties, and the properties and activities of each thereof, are in compliance with all applicable laws, rules, regulations and court and administrative orders, except to the extent that failure so to comply could not reasonably be expected to have a Material Adverse Effect.

Section 4.6. Hazardous Substances. Borrower, each other Loan Party and the properties of each thereof comply in all material respects with all applicable laws and regulations relating to the environment, including without limitation, all laws and regulations relating to pollution and environmental control.

Section 4.7. Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower or any other Loan Party is pending or threatened, and no other event has occurred that could reasonably be expected to have a Material Adverse Effect.

Section 4.8. Taxes. All tax returns and reports of Borrower and each other Loan Party that are required to have been filed, have been filed, and all taxes, assessments and other governmental charges that have become due and payable by Borrower or any other Loan Party have been paid in full, except those presently being, or promptly to be, contested in good faith, by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP.

Section 4.9. Employee Benefit Plans. Each employee benefit plan as to which Borrower or any other Loan Party may have any liability complies in all material respects with all applicable requirements of law and regulations, and (a) no reportable event or prohibited transaction (each as defined in ERISA) has occurred with respect to any such plan, (b) neither Borrower nor any other Loan Party has withdrawn from any such plan or initiated steps to do so, (c) no steps have been taken to terminate any such plan, and (d) there are no unfunded liabilities in connection with any such plan.

Section 4.10. Regulated Entities. None of Borrower, any Person controlling Borrower, or any Subsidiary is an "Investment Company" within the meaning of the Investment Company Act of 1940, or subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, any state public utilities code, or any other federal or state statute or regulation limiting its ability to incur or guarantee Indebtedness.

Section 4.11. Information. All information furnished by Borrower or any other Loan Party to Lender in connection with this Agreement or any transaction contemplated hereby is, and all information hereafter furnished by or on behalf of Borrower or any other Loan Party to Lender will be, true and accurate in every material respect on the date as of which such information is dated or certified; and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading.

Section 4.12. Survival of Representations and Warranties. Borrower understands and agrees that Lender, without independent investigation, is relying upon the above representations and warranties in entering into this Agreement and the other Loan Documents. Such representations and warranties will be continuing in nature and will remain true and correct until all of Borrower's Indebtedness under this Agreement has been paid in full, and Lender's Commitment to make Advances under this Agreement has been permanently terminated in writing.

ARTICLE V

AFFIRMATIVE COVENANTS

So long as the Note or any other amount payable by Borrower under the Loan Documents remains unpaid or Lender has any Commitment to make Advances under this Agreement, Borrower covenants and agrees that it will:

Section 5.1. Changes in Financial Condition; Litigation. Promptly inform Lender in writing of (a) all material adverse changes in the financial condition of any Financial Covenant Party, and (b) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting any Financial Covenant Party that could reasonably be expected to have a Material Adverse Effect.

Section 5.2. Financial Records. Cause the books and records of each Financial Covenant Party to be maintained in accordance with GAAP.

Section 5.3. Reporting Requirements. Deliver to Lender the financial statements, tax returns and other items required under the Mortgage.

Section 5.4. Other Agreements. Comply in all material respects with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other Person and notify Lender immediately in writing of any default in connection with any such agreement that could reasonably be expected to have a Material Adverse Effect.

Section 5.5. Executive Personnel. Maintain, and cause each Financial Covenant Party to maintain, executive and management personnel with substantially the same qualifications and experience as its present executive and management personnel.

Section 5.6. Compliance With Law. Conduct, and cause each Financial Covenant Party to conduct, its business affairs in a reasonable and prudent manner and in compliance with all applicable laws, ordinances, rules, regulations and court and administrative orders, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.7. Inspection. Permit, and cause each Financial Covenants Party to permit, employees or agents of Lender at any reasonable time to inspect any and all of its properties and to examine or audit its books, accounts, and records (including any thereof held by third parties) and to make copies and memoranda of its books, accounts, and records.

Section 5.8. Existence. Preserve and keep in full force and effect the corporate, limited liability company or partnership existence, as the case may be, of Borrower and each other Financial Covenant Party, and qualify to do business in each jurisdiction where the failure so to qualify could reasonably be expected to have a Material Adverse Effect.

Section 5.9. Maintenance of Insurance. Maintain, and cause each other Financial Covenant Party to maintain, insurance with financially sound and reputable insurers in such amounts and covering such risks as are customarily carried by Persons engaged in

businesses and activities similar to those of Borrower and the other Financial Covenant Parties and otherwise similarly situated.

Section 5.10. Use of Proceeds. Use the proceeds of the Borrowings only for general business and commercial purposes and not use any thereof, directly or indirectly: (a) for any personal, family or household purpose; (b) to purchase or carry any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System); (c) to extend credit to others for the purpose of purchasing or carrying any margin stock; or (d) for any purpose that violates, or is inconsistent with, the provisions of Regulations U, T or X of the Board of Governors of the Federal Reserve System.

Section 5.11. Information for Participants, Etc.; Publicity. Borrower agrees to furnish such information and confirmation as may be required from time to time by Lender on request of potential loan participants and assignees and agrees to make adjustments in the Loan Documents to accommodate such participants' or assignees' requirements, provided that such adjustments do not vary the economic terms of the credit extensions under this Agreement or increase in any material way the obligations of Borrower or any other Loan Party. Borrower hereby authorizes Lender to disclose to potential participants and assignees any information in Lender's possession with respect to Loan, Borrower and the other Loan Parties and Financial Covenant Parties.

Section 5.12. Additional Assurances. Make, execute and deliver to Lender such promissory notes, instruments, documents and other agreements as Lender may reasonably request to evidence the Borrowings and otherwise to carry out the purpose and intent of this Agreement.

## ARTICLE VI

### NEGATIVE COVENANTS

So long as the Note or any other amount payable by Borrower under the Loan Documents remains unpaid or Lender has any Commitment to make Advances under this Agreement, Borrower covenants and agrees that it will not, and will not permit any Financial Covenant Party to:

Section 6.1. Business Activities. Engage in any business activities of a type substantially different from those in which it is currently engaged.

Section 6.2. Loans and Guaranties. (a) Lend or advance money to any other Person, except (i) commercial bank demand deposits and time deposits maturing within one year, (ii) marketable general obligations of the United States or a state thereof or marketable obligations fully guaranteed by the United States, (iii) short-term commercial paper with the highest rating of a generally recognized rating service, (iv) loans and advances to employees or other Loan Parties or Financial Covenant Parties in the ordinary course of business related to expenses incurred in the ordinary course of business, (v) other loans in the ordinary course of business not to exceed \$35,000,000 in any single transaction or series of related transactions and not to exceed \$100,000,000 in the aggregate at any one time and (vi) other investments

reasonably acceptable to Lender; or (b) incur any obligation as surety or guarantor other than in the ordinary course of business.

Section 6.3. Dividends and Distributions. Directly or indirectly declare or pay any dividends or purchase, redeem, retire or otherwise acquire for value any of its Equity Interests, or make any distribution of assets to holders of any of its Equity Interest as such whether in cash, assets or obligations of Borrower if a Default exists or if the same would result in the occurrence of a Default or would cause a violation of any financial covenant set forth in Schedule 2 if such financial covenant were to be tested immediately after such action, provided, however, that notwithstanding the foregoing, this Section 6.3 shall not prohibit Borrower from making any dividends to the extent dividends are necessary for Borrower to maintain its status as a Real Estate Investment Trust for federal income taxation purposes.

Section 6.4. Liquidation, Merger, Sale of Assets. Liquidate, cease operations, dissolve or enter into any merger, consolidation or other combination nor sell, lease, or dispose of all or substantially all of its business or assets nor transfer or sell assets except transfers, sales or dispositions of personal property assets that are obsolete or worn out property disposed of in the ordinary course of business.

Section 6.5. Transactions with Affiliates. Directly or indirectly engage in any transaction (including, without limitation, the purchase, sale or exchange of assets or the rendering of any service) with any Affiliate of Borrower or a Financial Covenant Party except in the ordinary course, and pursuant to the reasonable requirements, of Borrower's or such Financial Covenant Party's business and upon fair and reasonable terms that are no less favorable to Borrower or such Financial Covenant Party than those that might be obtained in an arm's-length transaction at the time from parties that are not Affiliates.

Section 6.6. Financial Covenants. Permit the Financial Covenant Parties to be out of compliance with the financial covenants set forth in Schedule 2.

## ARTICLE VII

### DEFAULT AND REMEDIES

Section 7.1. Events of Default. Each of the following events will constitute an event of default ("Event of Default") under this Agreement:

(a) Default on Indebtedness to Lender. Any regular monthly payment under this Agreement is not paid so that it is received by Lender within ten (10) days after the date when due, or any other amount payable pursuant to this Agreement or the other Loan Documents (including but not limited to any payment of principal or interest due on the Maturity Date) is not paid so that it is received by Lender when due.

(b) Covenant Default.

(i) Violation of any of the covenants contained in Article VI of this Agreement, or

(ii) Failure by Borrower or any Affiliate of Borrower to perform, keep, or observe any other material term, provision, condition, covenant, or agreement contained in this Agreement, in the Mortgage, any of the other Loan Documents, or in any other present or future agreement between Borrower or such Affiliate on the one hand and Lender or any Affiliate of Lender on the other hand, and as to any such failure that can be cured and does not pose an imminent risk of loss to Lender, the failure of Borrower or such Affiliate to cure such Default within thirty (30) days after Borrower receives written notice thereof from Lender or after any officer, member, manager or partner of Borrower or such Affiliate becomes aware thereof; provided, however, that if the Default cannot by its nature be cured within the thirty (30) day period or cannot after diligent attempts by Borrower or such Affiliate be cured within such thirty (30) day period, and such Default is likely to be cured within a reasonable time, then Borrower or such Affiliate will have an additional reasonable period (which will not in any case exceed an additional thirty (30) days) to attempt to cure such failure, and within such reasonable time period the failure to have cured such failure will not be deemed an Event of Default (provided that Lender will have no obligation to make Advances during such cure period).

(c) Material Adverse Change. If there occurs a material adverse change in the business or financial condition of Borrower or any other Loan Party or Financial Covenant Party, or if there is a material impairment of the prospect of repayment of any portion of the Indebtedness owing by Borrower under this Agreement and the other Loan Documents.

(d) Certain Legal Matters. If (i) any material portion of the assets of any Loan Party or Financial Covenant Party is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity for such Loan Party or Financial Covenant Party or the assets thereof, and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within ten (10) days, or (ii) a Loan Party or Financial Covenant Party is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or (iii) a judgment or other claim becomes a Lien upon any material portion of the assets of a Loan Party or Financial Covenant Party, or if a notice of lien, levy, or assessment is filed of record with respect to any of the assets of a Loan Party or Financial Covenant Party by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within ten (10) days after Borrower or the applicable Loan Party or Financial Covenant Party receives notice thereof; provided, however, that none of the foregoing will constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower or the applicable Loan Party or Financial Covenant Party (provided further that no Advances will be required to be made during such cure period).

(e) Insolvency. If (i) any Loan Party or Financial Covenant Party becomes insolvent, (ii) an Insolvency Proceeding is commenced by any Loan Party or Financial Covenant Party, or (iii) an Insolvency Proceeding is commenced against any Loan Party or Financial Covenant Party and is not dismissed or stayed within sixty (60) days (provided that no Advances will be made prior to the dismissal of such Insolvency Proceeding).



(f) Other Agreements. If (i) there is an Event of Default under the Mortgage, there is a default under any agreement to which any Loan Party or Financial Covenant Party is a party with Lender and such default is not cured within the applicable cure period, if any, under such agreement, or (ii) there is a default under any agreement to which any Loan Party or Financial Covenant Party is a party with a third party resulting in a right by such third party, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of \$100,000.

(g) Judgments. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of \$1,000,000 or more will be rendered against any Loan Party or Financial Covenant Party and will remain unsatisfied and unstayed for a period of forty-five (45) days.

(h) Misrepresentations. If any material misrepresentation or material misstatement now or hereafter exists in any representation or warranty set forth in this Agreement, the Mortgage or in any certificate or Borrowing Request submitted to Lender in connection with the Loan.

(i) Full Force and Effect, Defective Documentation, Etc. If this Agreement or any of the other Loan Documents ceases to be in full force and effect, at any time and for any reason, or Borrower or any other Loan Party repudiates any Loan Document or asserts that any Loan Document is not in full force and effect.

Section 7.2. Remedies. At any time after the occurrence and during the continuance of an Event of Default, Lender may, by notice to Borrower, (a) declare the obligation of Lender to make Advances to be terminated, whereupon the same will forthwith terminate, (b) exercise any and all rights and remedies provided in the Mortgage and (c) declare (i) the Note and all interest thereon and (ii) all other amounts payable under this Agreement and the other Loan Documents to be immediately due and payable, whereupon the Note, all such interest, and all such other amounts will become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower; provided, however, that if an Insolvency Proceeding by or against Borrower is commenced, (A) the obligation of Lender to make Advances will automatically be terminated and (B) the Note, all interest thereon, and all other amounts payable under this Agreement and the other Loan Documents will automatically become and be immediately due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by Borrower.

Section 7.3. Right of Offset. After the occurrence and during the continuance of an Event of Default, Lender and its Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by Lender or its Affiliates to or for the credit or the account of Borrower or any other Loan Party against any and all of the obligations of Borrower or any other Loan Party now or hereafter existing under this Agreement and the other Loan Documents irrespective of whether Lender has made any demand. The rights of Lender under this Section are in addition to other rights and remedies (including, without limitation, other rights of offset) that Lender may have.

Section 7.4. Cumulative Remedies. After the occurrence and during the continuance of an Event of Default, Lender may proceed to enforce the Loan Documents by exercising such remedies as are available thereunder or in respect thereof under applicable law, whether for specific performance of any covenant or other agreement contained in the Loan Documents or in aid of the exercise of any power granted in the Loan Documents. No remedy conferred in this Agreement or the other Loan Documents is intended to be exclusive of any other remedy, and each and every such remedy will be cumulative and will be in addition to every other remedy conferred herein or therein or now or hereafter existing at law, in equity, by statute or otherwise.

Section 7.5. Application of Payments. After the occurrence and during the continuance of an Event of Default, Lender will apply all funds received in respect of amounts owing under this Agreement and the other Loan Documents in such order as Lender may determine in its sole discretion notwithstanding any instruction from Borrower or any other Person.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.1. Amendments. An amendment or waiver of any provision of this Agreement or the other Loan Documents, or a consent to any departure therefrom, will be effective against Lender if, but only if, it is in writing and signed by Lender, and then such a waiver or consent will be effective only in the specific instance and for the specific purpose for which given.

Section 8.2. Notices. Except as otherwise specifically provided in this Agreement, all notices and other communications provided for under this Agreement must be in writing and mailed, telecopied or otherwise transmitted or delivered to the recipient at its address as set forth in Schedule 1; or at such other address within the United States as may be designated by such party in a written notice to the other party or parties. All such notices and communications will, (a) if mailed, be effective three (3) Business Days following deposit in the United States mail, postage prepaid; (b) if delivered by recognized overnight delivery service (such as Federal Express) be effective upon delivery and (c) if telecopied, be effective when telecopied and electronic confirmation of transmission is received, except that notices and communications to Lender pursuant to Article II will not be effective until received by Lender.

Section 8.3. No Waiver; Remedies. No failure on the part of Lender to exercise, and no delay in exercising, any right under this Agreement or any other Loan Document will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement and the other Loan Documents are cumulative and not exclusive of any remedies provided by law.

Section 8.4. Costs and Expenses; Indemnification.

(a) Costs of Preparation and Administration of Loan Documents. Whether or not the transactions provided for in this Agreement are consummated, Borrower will pay on demand: (i) the reasonable fees and out-of-pocket expenses of counsel for Lender in connection with the preparation, execution and delivery of this Agreement and the other Loan Documents and any amendments or modifications thereof or waivers or consents with respect thereto; (ii) any and all out-of-pocket costs and expenses reasonably incurred by Lender in connection with the execution and delivery of this Agreement and the other Loan Documents and the administration thereof.

(b) Costs of Enforcement. In the event of any Default or Event of Default, or in the event that any dispute arises (whether or not such dispute is with Borrower) relating to the interpretation, enforcement or performance of this Agreement or any of the other Loan Documents, or Lender's rights thereunder, Lender will be entitled to collect from Borrower on demand all reasonable fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, paralegals, accountants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Borrower will pay all such costs and expenses incurred in connection with: (i) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (ii) bankruptcy or other Insolvency Proceedings of Borrower, any other Loan Party, or any party having any interest in any security for the Loan (if any); (iii) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any property securing the Loan (if any); (iv) post-judgment collection proceedings; (v) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Agreement or any other Loan Document; (vi) all preparation for any of the foregoing; and (vii) all settlement negotiations with respect to any of the foregoing.

(c) Survival. The provisions of this Section 8.4 will survive the termination of the commitment to lend under this Agreement and the repayment of the Loan and all other amounts payable under the Loan Documents.

Section 8.5. Binding Effect; Assignments and Participations. This Agreement will become effective when it has been executed by Borrower and Lender and thereafter will be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, except that Borrower will not have the right to assign its rights under this Agreement or any interest herein without the prior written consent of Lender. Lender may assign or grant participations in or to all or any part of its rights and obligations under this Agreement and the other Loan Documents.

Section 8.6. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement.

Section 8.7. Governing Law. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey, without reference to the choice of law principles of the State of New Jersey.

Section 8.8. Jurisdiction and Venue.

(a) **WAIVER OF JURY TRIAL**. EACH OF BORROWER AND LENDER (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT SITTING WITHOUT A JURY.

(b) Application to Certain Actions. Without limiting the foregoing, the provisions of the above Subsection (a) will apply to any action, counterclaim or other proceeding that seeks, in whole or in part, to challenge the validity or enforceability of this Agreement or the other Loan Documents or any provision hereof or thereof. Such subsection will apply to all amendments, renewals, supplements and modifications of this Agreement and the other Loan Documents.

Section 8.9. Further Assurances. If Lender at any time discovers that this Agreement, the Note or any other Loan Documents contains any error that was caused by a clerical mistake, calculation error, computer error, printing error or similar error, Borrower shall, upon demand by Lender re-execute any such documents as are necessary or appropriate to correct any such error and Lender shall have no liability to Borrower or any other person or entity as a result of such error. If the Note is lost, stolen, mutilated or destroyed and Lender delivers to Borrower an indemnification agreement reasonably indemnifying Borrower against any loss or liability resulting therefrom, Borrower will execute and deliver to Lender a replacement thereof in form and content identical to the original document which will have the effect of the original for all purposes.

Section 8.10. No Fiduciary Duty. Borrower acknowledges that Lender has no fiduciary relationship with, or fiduciary duty to, Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Lender and Borrower in connection herewith or therewith is solely that of creditor and debtor. None of this Agreement or the other Loan Documents create a joint venture among the parties.

Section 8.11. Severability. Any provision of the Loan Documents that is prohibited or unenforceable in any jurisdiction will be ineffective to the extent of such prohibition or unenforceability in such jurisdiction without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, the parties waive any provision of law that renders any

provision of this Agreement or any other Loan Document prohibited or unenforceable in any respect.

Section 8.12. Entire Agreement. This Agreement and the other Loan Documents constitute the final and complete expression of the parties with respect to the transactions contemplated by this Agreement and replace and supersede all prior discussions, negotiations and understandings with respect thereto. Neither this Agreement nor any term hereof nor of the other Loan Documents may be changed, waived, discharged or terminated except as provided herein.

Section 8.13. Descriptive Headings. The descriptive headings of the various provisions of this Agreement are for convenience of reference only, do not constitute a part hereof, and will not affect the meaning or construction of any provision hereof.

Section 8.14. Gender and Number. Whenever appropriate to the meaning of this Agreement or the other Loan Documents, use of the singular will be deemed to refer to the plural, the use of the plural to the singular, and pronouns of certain gender to either or both the other genders.

Section 8.15. Prior Agreement Amended and Restated. This Agreement amends and restates the following agreement in its entirety: Term Loan Agreement dated March 30, 2000 by and between The Dime Savings Bank of New York, FSB and Borrower, as modified by that certain Term Loan Modification Agreement dated as of March 26, 2004 by and between Washington Mutual Bank, FA, successor by merger to The Dime Savings Bank of New York, FSB, and Borrower.

Section 8.16. Non-Recourse/Limited Liability.

(a) Any other provision of this Agreement, the Note or the Mortgage seemingly to the contrary notwithstanding, it is understood and agreed that, except as provided in this Section 8.16, the Property shall be the sole recourse of Lender in the event of an Event of Default and that the liability of Borrower (and, if Borrower is a partnership, its partners) for any amounts due under this Agreement, the Note and/or under the Mortgage is limited to the interest of Borrower or its partners in the Property.

(b) Lender may join Borrower (and, if Borrower is a partnership, its partners) as defendants in any legal action it undertakes to enforce its rights and remedies under this Agreement, the Note or under any of the Mortgage, provided that except as otherwise provided in the immediately succeeding paragraph, any judgment in such action may be satisfied by recourse only to the Property and not by recourse directly to Borrower or its partners or by execution on other property or assets of Borrower or its partners.

(c) The foregoing notwithstanding, Lender shall have full recourse against Borrower (and, if Borrower is a partnership, its general partners) and such general partners shall be jointly and severally liable with Borrower and with one another for the full payment of: (i) the amount of any income, proceeds or profits (including rents) of the Property and any funds constituting a part of the Property that are, at the time of receipt, required for the payment of operating expenses for the Property (including the establishment of a reasonable reserve for this

purpose) and/or the payment of amounts that are then due and payable under this Agreement or the Note and that are not so used; (ii) any condemnation or insurance proceeds, or other similar funds or payments attributable to the Property, that under the terms of the Mortgage should have been paid to Lender but that have not been so paid to Lender; (iii) any tenant security deposits, advances or prepaid rents, or other similar sums that have been paid to Borrower or held for the account of Borrower by any other person or entity in connection with the operation of the Property and that have not either been applied or refunded in accordance with the relevant lease or been paid over to Lender; (iv) the amount of any loss suffered by Lender as a result of misrepresentations or fraud by or on behalf of Borrower in connection with the loan evidenced by the Note; (v) the amount of any loss suffered by Lender as a result of waste or gross mismanagement by or permitted by Borrower; (vi) the amount of any loss suffered by Lender as a result of violations of any governmental statute, rule or regulation applicable to the Property, but specifically excluding any loss suffered by Lender arising directly or indirectly from the presence or release of any hazardous or toxic substance, material or waste on the Property or Costs (as defined in the separate certificate and indemnity agreement regarding hazardous substances of even date herewith (the "Indemnity Agreement") executed and delivered by Borrower to Lender); (vii) the amount of any loss suffered by Lender as a result of any Unconsented Transfer (as defined in the Security Instrument) or as a result of any attempt by or on behalf of Borrower to hinder, delay or defeat Lender's realization on its security for this Agreement or the Note after the occurrence and during the continuance of an Event of Default (including without limitation the filing of any bankruptcy or insolvency proceeding or action to enjoin foreclosure); (viii) interest on the amounts described in clauses (i) through (ix) of this paragraph at the Default Rate; and (ix) reasonable attorneys' fees and other costs incurred by Lender in collecting any of the foregoing.

(d) In addition, nothing contained in this Section 8.16 shall: (i) be deemed to be a release or impairment of the lien created by the Mortgage; or (ii) limit or otherwise prejudice in any way the rights of Lender to enforce any of its rights and remedies under any of the Mortgage, the Indemnity Agreement or any guaranty of the indebtedness evidenced by this Agreement or the Note.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written.

ACADIA REALTY LIMITED PARTNERSHIP, a  
Delaware limited partnership

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

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

LENDER:

WASHINGTON MUTUAL BANK

By \_\_\_\_\_  
Brian Scesney  
Assistant Vice President

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SCHEDULE 1

CERTAIN SPECIFIED PROVISIONS

1. Commitment Amount: \$30,000,000, subject to reduction in accordance with the terms and provisions of Schedule 2
2. Facility Fee: \$37,500
3. Applicable Margin: 1.25% per annum
4. Financial Covenant Parties means Borrower.
5. Authorized Officer(s):

Name

Robert Masters

Michael Nelsen

Title

Senior Vice President

Senior Vice President

6. Notice address for Borrower:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605  
Telephone: 914-288-8100  
Telefax: 914-428-3646

7. Notice address for Lender:

Washington Mutual Bank  
National Commercial Operations Center  
P.O. Box 9178  
Coppell, Texas 75019-9178  
Attention: Portfolio Administration  
Telephone: 866-708-2841  
Telefax 469-549-5607

with a copy to:

Mr. Paul M. Carroll  
Washington Mutual Bank  
589 Fifth Avenue

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New York, New York 10017  
Telephone: 212-326-6931  
Telefax: 212-326-6020

SCHEDULE 2  
FINANCIAL COVENANTS

If at any time during the term of the Loan, Lender shall determine in its reasonable discretion that as of the last day of a calendar year (the "Testing Date") the Debt Service Coverage Ratio (as hereinafter defined), calculated using the Assumed Debt Service (as hereinafter defined), is less than 1.2 to 1.0, the Commitment shall be automatically and permanently reduced by an aggregate amount which will have the effect of increasing the Debt Service Coverage Ratio such that the ratio shall not be less than 1.2 to 1.0 and, in the event the outstanding principal amount of the Loan would exceed the Commitment as a result of any such reduction, Borrower covenants and agrees that within ten (10) days of notice from Lender of such determination Borrower shall prepay the outstanding principal amount of the Loan by such amount as is necessary such that the outstanding principal amount of the Loan is equal to or less than the Commitment as a result of such reduction, together with any applicable prepayment premium or other amount provided for herein or in the Note as a result of such prepayment. Borrower's failure to effect such prepayment by the expiration of such thirty (30) day period shall constitute an Event of Default. For purposes of this paragraph, the following terms shall have the following meanings:

"Assumed Debt Service" shall mean debt service for a twelve (12) month period of equal monthly payments of principal and interest calculated using an amount equal to the Commitment Amount Lender's then applicable underwriting rate for commercial real estate loans and an amortization period of three hundred (300) months.

"Debt Service Coverage Ratio" shall mean the ratio of (i) the aggregate amount of the NOI for the Property to (ii) the Assumed Debt Service.

"NOI" shall mean, as of the Testing Date, the current monthly rental payments with respect to all Qualifying Leases multiplied by twelve (12), minus (i) the actual Operating Expenses (as defined below) for the twelve (12) month period immediately preceding the Testing Date and (ii) an amount for reasonable management expenses equal to the greater of four percent (4%) of rents with respect to Qualifying Leases or the actual management expenses for the twelve (12) month period immediately preceding the Testing Date.

"Operating Expenses" shall mean all reasonable operating expenses of the Property, including, without limitation, those for maintenance, repairs, annual taxes, insurance, utilities and other annual expenses (but not capital expenses) that are standard and customary for properties similar to the Property. Operating Expenses for this purpose shall not include any interest or principal payments on the Loan or any allowance for depreciation.

The determination of NOI and Operating Expenses shall be made by Lender in its reasonable discretion.

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Borrower covenants and agrees to provide to Lender such information as Lender shall reasonably request in connection with the calculation of NOI. Any failure or refusal by Borrower to provide such information promptly following Lender's request shall constitute an Event of Default hereunder and under the Mortgage.

EXHIBIT A  
BORROWING REQUEST

Washington Mutual Bank  
National Operations Center  
3929 W. John Carpenter Freeway  
Irving, Texas 75063  
Attention: CREL/Asset Administration — 3545CCTX  
Telefax: 469-549-5619  
Email: aacreclosing@wamu.net

Date: \_\_\_\_\_, \_\_\_\_\_

This refers to the Revolving Credit Agreement dated as of March \_\_, 2007 (the "Credit Agreement") (capitalized terms used herein and not otherwise defined have the meanings given to them in the Credit Agreement), between the undersigned ("Borrower") and Washington Mutual Bank ("Lender"), and hereby gives Lender notice, irrevocably, pursuant to Section 2.3 of the Credit Agreement that Borrower hereby requests a Borrowing under the Credit Agreement, and in that connection sets forth below the information relating to such Borrowing (the "Requested Borrowing") as required by the Credit Agreement:

REQUESTED BORROWING

- (i) The Business Day on which the Requested Borrowing is to be made is \_\_\_\_\_, 20\_\_.
- (ii) The aggregate amount of the Requested Borrowing is \$\_\_\_\_\_.
- (iii) Borrower intends to use the funds requested pursuant to the Requested Borrowing for the following purpose(s): \_\_\_\_\_.
- (iv) Borrower anticipates repaying the Requested Borrowing from the following source: \_\_\_\_\_ (NOTE — this information is requested for information purposes only).

CERTIFICATIONS

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Requested Borrowing, before and immediately after giving effect thereto and to the application of the proceeds therefrom:

- (A) The representations and warranties contained in Article IV of the Credit Agreement are true and correct as though made on and as of such dates, unless such representations and warranties are expressly stated to be made as of an earlier date;
-

(B) The most recent financial statements of Borrower delivered pursuant to the Mortgage (as defined in the Credit Agreement) present fairly the financial position and results of operations of Borrower and the other Financial Covenant Parties as of the date of, and for the periods presented in, such financial statements, and since the date of such financial statements there has not been any material adverse change in the financial condition or operations of Borrower or any other Financial Covenant Party;

(C) Borrower is in full compliance with all covenants contained in Articles V and VI of the Credit Agreement;

(D) No event has occurred and is continuing, or would result from such Requested Borrowing, that constitutes or would constitute an Event of Default or a Default under the Credit Agreement; and

(E) The Unused Commitment is not less than zero nor will it be less than zero immediately after giving effect to the Requested Borrowing.

Very truly yours,

BORROWER:

ACADIA REALTY LIMITED PARTNERSHIP, a  
Delaware limited partnership

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

By \_\_\_\_\_  
Name:  
Title:

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

This Certificate, dated as of \_\_\_\_\_, 20\_\_ is executed and delivered by the undersigned (“Borrower”). Borrower and WASHINGTON MUTUAL BANK (“Lender”) are the Borrower and Lender, respectively, under the terms of an unsecured Revolving Credit Agreement (the “Credit Agreement”) dated as of \_\_\_\_\_, 20\_\_. Capitalized terms used in this Certificate and not otherwise defined have the meanings given to those terms in the Credit Agreement.

The undersigned hereby certifies to Lender as follows:

1. I have reviewed, and am familiar with, the terms of the Credit Agreement and the other Loan Documents. I have made, or have caused to be made, an analysis of the condition and affairs of Borrower as of the end of the fiscal quarter ending \_\_\_\_\_, 20\_\_ (the “Applicable Period-End”).
  2. Such analysis did not disclose, and I am not aware of, the existence of any Event of Default as of either the Applicable Period-End or the date of this Certificate.
  3. Such analysis did not disclose, and I am not aware, that any representation or warranty set forth in the Credit Agreement or the other Loan Documents was or is untrue in any material respect as of either the Applicable Period-End or the date of this Certificate, in each case as if remade on and as of such date.
  4. Without limiting the generality of the foregoing, Borrower and the other Financial Covenant Parties were in full compliance with all financial covenants set forth in Schedule 2 to the Credit Agreement at the Applicable Period-End. Attached to this Certificate are detailed computations demonstrating compliance with those financial covenants.
  5. All information and calculations set forth in this Certificate and its attachments, or submitted to Lender with this Certificate, is true and correct in all material respects.
-

DATED as of the date first set forth above.

Very truly yours,

BORROWER:

ACADIA REALTY LIMITED PARTNERSHIP, a  
Delaware limited partnership

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

By \_\_\_\_\_  
Name:  
Title:

Computations Supporting Financial Covenant Compliance



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**LIST OF AFFILIATES OF  
ACADIA REALTY TRUST**

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**Last Revised 5/8/07**

Acadia Realty Trust  
Acadia Realty Limited Partnership

ACRS, Inc.

Acadia Bartow Avenue, LLC  
Acadia Mad River Property LLC  
Acadia Merrillville Realty, L.P.  
Acadia Town Line, LLC  
Blackman Fifty L.P.  
Heathcote Associates, L.P.  
Mark Plaza Fifty L.P.  
Mark Twelve Associates, L.P.  
Pacesetter/Ramapo Associates  
RD Abington Associates Limited Partnership  
RD Absecon Associates, L.P.  
RD Bloomfield Associates Limited Partnership  
RD Branch Associates L.P.  
RD Columbia Associates, L.P.  
RD Elmwood Associates, L.P.  
RD Hobson Associates, L.P.  
RD Methuen Associates Limited Partnership  
RD Smithtown, LLC  
RD Village Associates Limited Partnership  
RD Whitegate Associates, L.P.  
RD Woonsocket Associates Limited Partnership

Acadia 239 Greenwich Avenue, LLC  
Acadia Heathcote, LLC  
Acadia Merrillville Realty, Inc.  
Acadia Pacesetter LLC  
Acadia Property Holdings, LLC  
Blackman Fifty Realty Corp.  
Mark Plaza Fifty Realty Corp.  
New Castle Fifty Realty Corp.

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RD Absecon, Inc.

239 Greenwich Associates Limited Partnership  
Crossroads II  
Crossroads Joint Venture  
Port Bay Associates, LLC

Acadia Realty Acquisition I, LLC  
Acadia Strategic Opportunity Fund, LP

Acadia Amherst, LLC  
Acadia Granville, LLC  
Acadia Sheffield Crossing, LLC

Acadia Brandywine Condominium, LLC  
Acadia Brandywine Subsidiary, LLC  
Acadia Brandywine Town Center, LLC  
Acadia Market Square, LLC

Acadia K-H, LLC  
AmCap Acadia 8<sup>th</sup> Addition, LLC  
AmCap Acadia 9<sup>th</sup> Addition, LLC  
AmCap Acadia Agent, LLC  
AmCap Acadia Atlanta LP  
AmCap Acadia Batesville, LLC  
AmCap Acadia Benton, LLC  
AmCap Acadia Carthage LP  
AmCap Acadia Cary, LLC  
AmCap Acadia Cincinnati, LLC  
AmCap Acadia Conroe LP  
AmCap Acadia Great Bend, LLC  
AmCap Acadia Hanrahan, LLC  
AmCap Acadia Indianapolis, LLC  
AmCap Acadia Irving LP  
AmCap Acadia K-H Holding, LLC  
AmCap Acadia K-H, LLC  
AmCap Acadia Little Rock, LLC  
AmCap Acadia Longview, LLC  
AmCap Acadia Mustang, LLC  
AmCap Acadia Pratt, LLC  
AmCap Acadia Roanoke, LLC

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AmCap Acadia Roswell, LLC  
AmCap Acadia Ruidoso, LLC  
AmCap Acadia San Ramon, LLC  
AmCap Acadia Shreveport, LLC  
AmCap Acadia Springerville, LLC  
AmCap Acadia Tucson, LLC  
AmCap Acadia Tulsa, LLC

Acadia Tarrytown, LLC  
Acadia-Noddle Tarrytown Development Co., LLC

Acadia D.R. Management, Inc.  
Acadia Hendon Hitchcock Plaza, LLC

Acadia Haygood, LLC  
Acadia Sterling Heights, LLC

Acadia Realty Acquisition II, LLC  
Acadia Strategic Opportunity Fund II, LLC

Acadia Crossroads, LLC  
Crossroads Joint Venture, LLC  
Crossroads II, LLC

Acadia New Loudon, LLC

Acadia Mervyn I, LLC  
Acadia Mervyn II, LLC  
Acadia Mervyn Investors I, LLC  
Acadia Mervyn Investors II, LLC  
Acadia Mervyn Promote Member I, LLC  
Acadia Mervyn Promote Member II, LLC

Acadia-PA East Fordham Acquisitions, LLC  
P/A-Acadia Pelham Manor, LLC  
Acadia-P/A Holding Company, LLC

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Acadia Crescent Plaza LLC

Acadia-P/A Canarsie, LLC

Acadia-P/A Sherman Avenue, LLC

Acadia Rockville, LLC

Acadia Berlin LLC

Acadia Boonton LLC

ABR Amboy Road LLC

APA 216st Street LLC

Acadia-P/A 161st Street LLC

Acadia-P/A Liberty LLC

Acadia Oakbrook LLC

Acadia Clark-Diversey LLC

Acadia Naamans Road LLC

Acadia Elmwood Park LLC

Acadia Chestnut LLC

Acadia Chestnut Hill LLC

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Acadia-P/A GWB LLC  
George Washington Bridge Bus Station Development Venture LLC

Acadia Shore Road LLC

Secor Pelham LLC

Acadia Albertsons Investors LLC

Acadia Shopko Investors LLC

Acadia Cub Foods Investors LLC

Acadia Walnut Hill LLC

Acadia Medford Crossings LLC

Acadia Marsh Investors LLC

Acadia 2914 Third Avenue LLC

Albee Development LLC  
Acadia-P/A/T Albee LLC  
Acadia-P/A Albee LLC  
Albee Office Development LLC

Acadia Atlantic Avenue LLC

Acadia West Shore Expressway LLC

Acadia West 54<sup>th</sup> Street LLC

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Fordham Place Office LLC

Acadia Strategic Opportunity Fund III LLC

Acadia Realty Acquisition III LLC

Acadia Investors III, Inc.

Acadia-P/A Holding Company II LLC

Acadia 3319 Atlantic Avenue LLC

Canarsie Plaza LLC



## EXHIBIT 31.1

### CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO RULE 13a — 14(a) (SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002)

I, Kenneth F. Bernstein, certify that:

1. I have reviewed this 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

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Kenneth F. Bernstein  
President and Chief Executive Officer  
May 9, 2007

## EXHIBIT 31.2

### 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

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Michael Nelsen  
Senior Vice President and  
Chief Financial Officer  
May 9, 2007

**EXHIBIT 32.1**

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 (SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

In connection with the Quarterly Report of Acadia Realty Trust (the "Company") on Form 10-Q for the quarter ended March 31, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kenneth F. Bernstein, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

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

/s/ Kenneth F. Bernstein

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Kenneth F. Bernstein  
President and Chief Executive Officer  
May 9, 2007

**EXHIBIT 32.2**

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 (SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

In connection with the Quarterly Report of Acadia Realty Trust (the "Company") on Form 10-Q for the quarter ended March 31, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Nelsen, Sr. Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

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

/s/ Michael Nelsen  
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Michael Nelsen  
Senior Vice President and  
Chief Financial Officer  
May 9, 2007