

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, 2009

or

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

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

Commission File Number 1-12002

ACADIA REALTY TRUST

(Exact name of registrant in its charter)

MARYLAND  
(State or other jurisdiction of  
incorporation or organization)

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

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

10605  
(Zip Code)

(914) 288-8100

(Registrant's telephone number, including area code)

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

YES  NO

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

YES  NO

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

Large Accelerated Filer  Accelerated Filer

Non-accelerated Filer  Smaller Reporting Company

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

As of May 7, 2009 there were 39,659,273 common shares of beneficial interest, par value \$.001 per share, outstanding.

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## FORM 10-Q

## INDEX

	<u>Page</u>
<b><u>Part I:</u></b>	
<b><u>Financial Information</u></b>	
<b><u>Item 1:</u></b>	
<b><u>Financial Statements</u></b>	
<u>Consolidated Balance Sheets as of March 31, 2009 (unaudited) and December 31, 2008</u>	1
<u>Consolidated Statements of Income for the three months ended March 31, 2009 and 2008 (unaudited)</u>	2
<u>Consolidated Statements of Cash Flows for the three months ended March 31, 2009 and 2008 (unaudited)</u>	3
<u>Notes to Consolidated Financial Statements</u>	5
<b><u>Item 2:</u></b>	
<b><u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u></b>	21
<b><u>Item 3:</u></b>	
<b><u>Quantitative and Qualitative Disclosure About Market Risk</u></b>	32
<b><u>Item 4:</u></b>	
<b><u>Controls and Procedures</u></b>	32
<b><u>Part II:</u></b>	
<b><u>Other Information</u></b>	
<b><u>Item 1:</u></b>	
<b><u>Legal Proceedings</u></b>	33
<b><u>Item 1A:</u></b>	
<b><u>Risk Factors</u></b>	33
<b><u>Item 2:</u></b>	
<b><u>Unregistered Sales of Equity Securities and Use of Proceeds</u></b>	33
<b><u>Item 3:</u></b>	
<b><u>Defaults Upon Senior Securities</u></b>	33
<b><u>Item 4:</u></b>	
<b><u>Submission of Matters to a Vote of Security Holders</u></b>	33
<b><u>Item 5:</u></b>	
<b><u>Other Information</u></b>	33
<b><u>Item 6:</u></b>	
<b><u>Exhibits</u></b>	33
<u>Signatures</u>	33
<u>Exhibit Index</u>	34

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

(dollars in thousands)	March 31, 2009	December 31, 2008
	(unaudited)	as adjusted
<b>ASSETS</b>		
<b>Real estate</b>		
Land	\$ 337,905	\$ 294,132
Buildings and improvements	754,107	729,159
Construction in progress	88,025	70,423
	<u>1,180,037</u>	<u>1,093,714</u>
Less: accumulated depreciation	172,585	165,803
	<u>1,007,452</u>	<u>927,911</u>
Net real estate	1,007,452	927,911
Cash and cash equivalents	115,973	86,691
Cash in escrow	6,110	6,794
Investments in and advances to unconsolidated affiliates	53,619	54,978
Rents receivable, net	14,275	12,660
Notes receivable and preferred equity investment	126,290	125,587
Deferred charges, net of amortization	21,662	21,899
Acquired lease intangibles, net of amortization	29,575	19,476
Prepaid expenses and other assets, net of amortization	23,108	31,735
Assets of discontinued operations	¾	3,652
	<u>\$ 1,398,064</u>	<u>\$ 1,291,383</u>
Total assets	\$ 1,398,064	\$ 1,291,383
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Mortgage notes payable	\$ 781,105	\$ 653,543
Convertible notes payable, net of unamortized discount of \$5,032 and \$6,597, respectively	83,479	100,403
Acquired lease and other intangibles, net of amortization	9,254	6,506
Accounts payable and accrued expenses	19,362	22,193
Dividends and distributions payable	7,376	25,514
Distributions in excess of income from, and investments in, unconsolidated affiliates	20,902	20,633
Other liabilities	20,244	18,912
Liabilities of discontinued operations	¾	1,451
	<u>941,722</u>	<u>849,155</u>
Total liabilities	941,722	849,155
<b>Equity</b>		
Common shares	34	32
Additional paid-in capital	233,390	218,527
Accumulated other comprehensive loss	(4,362)	(4,508)
Retained earnings	16,818	13,671
	<u>245,880</u>	<u>227,722</u>
Total Common Shareholders equity	245,880	227,722
Noncontrolling interests in subsidiaries	210,462	214,506
	<u>456,342</u>	<u>442,228</u>
Total equity	456,342	442,228
Total liabilities and equity	\$ 1,398,064	\$ 1,291,383

See accompanying notes

## ACADIA REALTY TRUST AND SUBSIDIARIES

**CONSOLIDATED STATEMENTS OF INCOME**  
**FOR THE THREE MONTHS ENDED MARCH 31, 2009 AND 2008**

(unaudited)

(dollars in thousands, except per share amounts)	Three months ended March 31,	
	2009	2008
	as adjusted	
<b>Revenues</b>		
Minimum rents	\$ 21,322	\$ 18,334
Percentage rents	201	180
Expense reimbursements	5,483	4,459
Other property income	506	224
Management fee income	756	2,019
Interest income	5,143	2,805
Other	1,700	¾
<b>Total revenues</b>	<b>35,111</b>	<b>28,021</b>
<b>Operating Expenses</b>		
Property operating	7,387	5,096
Real estate taxes	3,685	2,730
General and administrative	6,141	6,053
Depreciation and amortization	8,592	6,221
<b>Total operating expenses</b>	<b>25,805</b>	<b>20,100</b>
Operating income	9,306	7,921
Equity in (losses) earnings of unconsolidated affiliates	(3,307)	13,235
Interest and other finance expense	(7,821)	(6,596)
Gain on debt extinguishment	3,150	¾
Income from continuing operations before income taxes	1,328	14,560
Income tax provision	(526)	(1,857)
Income from continuing operations	802	12,703
<b>Discontinued Operations</b>		
Operating income from discontinued operations	178	747
Gain on sale of property	5,637	¾
Income from discontinued operations	5,815	747
<b>Net income</b>	<b>6,617</b>	<b>13,450</b>
Loss (income) attributable to noncontrolling interests in subsidiaries:		
Continuing operations	8,547	(5,013)
Discontinued operations	(4,865)	(199)
Net loss (income) attributable to noncontrolling interests in subsidiaries	3,682	(5,212)
Net income attributable to Common Shareholders	\$ 10,299	8,238
<b>Supplemental Information</b>		
Income from continuing operations attributable to Common Shareholders	\$ 9,349	\$ 7,690
Income from discontinued operations attributable to Common Shareholders	950	548
Net Income attributable to Common Shareholders	\$ 10,299	\$ 8,238
<b>Basic Earnings per Share</b>		
Income from continuing operations	\$ 0.27	\$ 0.23
Income from discontinued operations	0.03	0.01
Basic earnings per share	\$ 0.30	\$ 0.24
<b>Diluted Earnings per Share</b>		
Income from continuing operations	\$ 0.27	\$ 0.23
Income from discontinued operations	0.03	0.01

Diluted earnings per share

\$ 0.30 \$ 0.24

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See accompanying notes

## ACADIA REALTY TRUST AND SUBSIDIARIES

**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FOR THE THREE MONTHS ENDED MARCH 31, 2009 AND 2008**

(unaudited)

(dollars in thousands)	March 31, 2009	March 31, 2008
	as adjusted	
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 6,617	\$ 13,450
<b>Adjustments to reconcile net income to net cash provided by (used in) operating activities</b>		
Depreciation and amortization	8,592	6,611
Gain on sale of property	(5,637)	¾
Gain on debt extinguishment	(3,150)	¾
Amortization of lease intangibles	2,455	175
Amortization of mortgage note premium	(9)	(20)
Amortization of discount on convertible debt	447	521
Non-cash accretion of notes receivable	(1,258)	(37)
Share compensation expense	1,133	868
Equity in earnings of unconsolidated affiliates	3,307	(13,235)
Distributions of operating income from unconsolidated affiliates	139	583
Provision for bad debt	359	321
<b>Changes in assets and liabilities</b>		
Cash in escrows	684	(775)
Rents receivable	(2,080)	(718)
Prepaid expenses and other assets, net	8,477	(18,169)
Accounts payable and accrued expenses	(2,361)	464
Other liabilities	1,430	4,681
	19,145	(5,280)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Investment in real estate and improvements	(96,052)	(154,868)
Deferred acquisition and leasing costs	(694)	(903)
Investments in and advances to unconsolidated affiliates	(2,242)	(1,567)
Return of capital from unconsolidated affiliates	301	75
Collections on notes receivable	902	¾
Advances on notes receivable	(347)	¾
Proceeds from sale of property	9,481	¾
	(88,651)	(157,263)

## ACADIA REALTY TRUST AND SUBSIDIARIES

**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FOR THE THREE MONTHS ENDED MARCH 31, 2009 AND 2008**

(unaudited)

(dollars in thousands)	March 31, 2009	March 31, 2008
		as adjusted
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Principal payments on mortgage notes	(24,319)	(60,616)
Proceeds received on mortgage notes	150,565	168,796
Purchase of convertible notes	(13,925)	¾
Payment of deferred financing and other costs	(1,124)	(2,719)
Capital contributions from noncontrolling interests in partially-owned affiliates	¾	46,014
Distributions to noncontrolling interests in partially-owned affiliates	(404)	(519)
Dividends paid to Common Shareholders	(8,671)	(14,121)
Distributions to noncontrolling interests in Operating Partnership	(630)	(287)
Distributions on preferred Operating Partnership Units to noncontrolling interests	(19)	(11)
Repurchase and cancellation of shares	(2,715)	(1,494)
Common Shares issued under Employee Share Purchase Plan	30	41
Exercise of options to purchase Common Shares	¾	6
	<hr/>	<hr/>
Net cash provided by financing activities	98,788	135,090
	<hr/>	<hr/>
Increase (decrease) in cash and cash equivalents	29,282	(27,453)
Cash and cash equivalents, beginning of period	86,691	123,343
	<hr/>	<hr/>
Cash and cash equivalents, end of period	\$ 115,973	\$ 95,890
	<hr/>	<hr/>
<b>Supplemental disclosure of cash flow information</b>		
Cash paid during the period for interest, including capitalized interest of \$969 and \$1,446, respectively	\$ 7,589	\$ 6,611
	<hr/>	<hr/>
Cash paid for income taxes	\$ 30	\$ 2,415
	<hr/>	<hr/>
<b>Supplemental disclosure of non-cash investing and financing activities</b>		
Acquisition of real estate through assumption of debt	\$ —	\$ 39,967
	<hr/>	<hr/>
Dividends paid through the issuance of Common Shares	\$ 16,192	\$ —
	<hr/>	<hr/>

See accompanying notes

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**1. THE COMPANY**

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

All of the Company’s assets are held by, and all of its operations are conducted through, Acadia Realty Limited Partnership (the “Operating Partnership”) and entities in which the Operating Partnership owns a controlling interest. As of March 31, 2009, the Trust controlled 98% of the Operating Partnership as the sole general partner. As the general partner, the Trust is entitled to share, in proportion to its percentage interest, in the cash distributions and profits and losses of the Operating Partnership. The limited partners represent entities or individuals who contributed their interests in certain properties or entities to the Operating Partnership in exchange for common or preferred units of limited partnership interest (“Common or Preferred OP Units”). Limited partners holding Common OP Units are generally entitled to exchange their units on a one-for-one basis for common shares of beneficial interest of the Trust (“Common Shares”). This structure is commonly referred to as an umbrella partnership REIT or “UPREIT.”

During 2001, the Company formed a partnership, Acadia Strategic Opportunity Fund I, LP (“Fund I”), and in 2004 formed a limited liability company, Acadia Mervyn Investors I, LLC (“Mervyns I”), with four institutional investors. The Operating Partnership committed a total of \$20.0 million to Fund I and Mervyns I, and the four institutional shareholders committed \$70.0 million, for the purpose of acquiring real estate investments. As of March 31, 2009, Fund I was fully invested and closed to new investors.

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

During 2004, the Company, along with the investors from Fund I as well as two additional institutional investors, formed Acadia Strategic Opportunity Fund II, LLC (“Fund II”), and Acadia Mervyn Investors II, LLC (“Mervyns II”) with \$300.0 million of committed discretionary capital available to acquire or develop real estate investments. The Operating Partnership’s share of committed capital is \$60.0 million. The Operating Partnership is the managing member with a 20% interest in both Fund II and Mervyns II. The terms and structure of Fund II and Mervyns II are substantially the same as Fund I and Mervyns I, including the Promote structure, with the exception that the Preferred Return is 8%. As of March 31, 2009, the Operating Partnership had contributed \$30.8 million to Fund II and \$7.6 million to Mervyns II.

During 2007, the Company formed Acadia Strategic Opportunity Fund III LLC (“Fund III”) with 14 institutional investors, including all of the investors from Fund I and a majority of the investors from Fund II with \$503 million of committed discretionary capital available to acquire or develop real estate investments. The Operating Partnership’s share of the committed capital is \$100.0 million and it is the managing member with a 19.9% interest in Fund III. The terms and structure of Fund III are substantially the same as the previous Funds, including the Promote structure, with the exception that the Preferred Return is 6%. As of March 31, 2009, the Operating Partnership had contributed \$19.2 million to Fund III.

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

**2. BASIS OF PRESENTATION**

The consolidated financial statements include the consolidated accounts of the Company and its controlling investments in partnerships and limited liability companies in which the Company is presumed to have control in accordance with Emerging Issues Task Force Issue No. 04-05. The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. Investments in entities for which the Company has the ability to exercise significant influence over, but does not have financial or operating control, are accounted for using the equity method of accounting. Accordingly, the Company’s share of the net earnings (or loss) of these entities are included in consolidated net income under the caption, Equity in Earnings of Unconsolidated Affiliates. The information furnished in the accompanying consolidated financial statements reflects all adjustments that, in the opinion of management, are necessary for a fair presentation of the aforementioned consolidated financial statements for the interim periods.



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 2. BASIS OF PRESENTATION, (continued)

Although the Company accounts for its investment in Albertson's, which it has made through the Retailer Controlled Property Venture ("RCP Venture") (Note 7), using the equity method of accounting, the Company adopted the policy of not recording its equity in earnings or losses of the unconsolidated affiliate until the Company receives the audited financial statements of Albertson's to support the equity earnings or losses in accordance with paragraph 19 of Accounting Principles Board ("APB") 18 "Equity Method of Accounting for Investments in Common Stock."

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from these estimates. Operating results for the three months ended March 31, 2009 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2009. For further information, refer to the consolidated financial statements and accompanying footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2008.

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

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

The Company adopted FASB Staff Position No. APB 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)", ("FSP 14-1"). FSP 14-1 requires the proceeds from the issuance of convertible debt be allocated between a debt component and an equity component. The debt component is measured based on the fair value of similar debt without an equity conversion feature, and the equity component is determined as the residual of the fair value of the debt deducted from the original proceeds received. The resulting discount on the debt component is amortized over the period the convertible debt is expected to be outstanding, which is December 11, 2006 to December 20, 2011, as additional non-cash interest expense. The equity component recorded as additional paid-in capital was \$11.3 million, which represented the difference between the proceeds from the issuance of the convertible notes payable and the fair value of the liability at the time of issuance. The additional non cash interest expense recognized in the Consolidated Statements of Income was \$0.4 million and \$0.5 million for the quarters ended March 31, 2009 and 2008, respectively. Accumulated amortization related to the convertible notes payable was \$1.0 million and \$1.1 million as of March 31, 2009 and December 31, 2008, respectively, after giving effect to repurchases.

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

(dollars in thousands)

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

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 2. BASIS OF PRESENTATION, (continued)

(dollars in thousands, except per share amounts)

Affected Consolidated Income Statement Accounts	Three months ended March 31, 2008		
	As Originally Reported	As Adjusted	Effect of Change
Depreciation and amortization	\$ 6,237	\$ 6,221	\$ 16
Interest expense	\$ 6,075	\$ 6,596	\$ (521)
Net income attributable to Common Shareholders	\$ 8,743	\$ 8,238	\$ (505)
Basic earnings per share	\$ 0.26	\$ 0.24	\$ (0.02)
Diluted earnings per share	\$ 0.26	\$ 0.24	\$ (0.02)

(dollars in thousands)

Affected Consolidated Statement of Cash Flow Accounts	Three months ended March 31, 2008		
	As Originally Reported	As Adjusted	Effect of Change
Depreciation and amortization	\$ 6,627	\$ 6,611	\$ (16)
Amortization of discount on convertible debt	\$ —	\$ 521	\$ 521

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

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

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

During October of 2008, the FASB issued FSP FAS 157-3, "Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active," ("FSP FAS 157-3") which clarifies the application of SFAS No. 157, "Fair Value Measurements." FSP FAS 157-3 provides guidance in determining the fair value of a financial asset when the market for that financial asset is not active. The adoption of FSP FAS 157-3 did not have an impact on the Company's financial position and results of operations.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 3. EARNINGS PER COMMON SHARE

Basic earnings per share was determined by dividing the applicable net income attributable to Common Shareholders for the period by the weighted average number of Common Shares outstanding during each period consistent with SFAS No. 128, "Earnings per Share." Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue Common Shares were exercised or converted into Common Shares or resulted in the issuance of Common Shares that then shared in the earnings of the Company.

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

(in thousands, except per share amounts)	Three months ended March 31,	
	2009	2008
<b>Numerator:</b>		
Income from continuing operations attributable to Common Shareholders	\$ 9,349	\$ 7,690
Effect of dilutive securities:		
Preferred OP Unit distributions	5	5
Numerator for diluted earnings per Common Share	\$ 9,354	\$ 7,695
<b>Denominator:</b>		
Weighted average shares for basic earnings per share	33,903	33,748
Effect of dilutive securities:		
Employee share options	122	471
Convertible Preferred OP Units	25	25
Dilutive potential Common Shares	147	496
Denominator for diluted earnings per share	34,050	34,244
Basic earnings per Common Share from continuing operations attributable to Common Shareholders	\$ 0.27	\$ 0.23
Diluted earnings per Common Share from continuing operations attributable to Common Shareholders	\$ 0.27	\$ 0.23

The weighted average shares used in the computation of basic earnings per share include unvested Restricted Shares and Restricted OP units ("LTIP Units") (Note 15) that are entitled to receive dividend equivalent payments. The effect of the conversion of Common OP Units is not reflected in the above table, as they are exchangeable for Common Shares on a one-for-one basis. The income allocable to such units is allocated on this same basis and reflected as noncontrolling interests in subsidiaries in the accompanying consolidated financial statements. As such, the assumed conversion of these units would have no net impact on the determination of diluted earnings per share. The conversion of the convertible notes payable (Note 11) is not reflected in the table as such conversion would be anti-dilutive. The effect of the assumed conversion of 25,067 Series A Preferred OP Units would be dilutive for the three months ended March 31, 2009 and March 31, 2008 and they are included in the table.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 4. COMPREHENSIVE INCOME

The following table sets forth comprehensive income for the three months ended March 31, 2009 and 2008:

(dollars in thousands)	Three months ended March 31,	
	2009	2008
Net income attributable to Common Shareholders	\$ 10,299	\$ 8,238
Other comprehensive income (loss)	146	(826)
Comprehensive income attributable to Common Shareholders	\$ 10,445	\$ 7,412

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

The following table sets forth the change in accumulated other comprehensive income for the three months ended March 31, 2009:

## Accumulated other comprehensive loss

(dollars in thousands)	
Balance at December 31, 2008	\$ (4,508)
Unrealized income on valuation of derivative instruments and amortization of derivative instrument	146
Balance at March 31, 2009	\$ (4,362)

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

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

(dollars in thousands)	Common Shareholders' Equity	Noncontrolling interests	Total
Balance at December 31, 2008 (as adjusted)	\$ 227,722	\$ 214,506	\$ 442,228
Dividends and distributions declared of \$0.21 per Common Share and Common OP Unit	(7,152)	(223)	(7,375)
Net income for the period January 1 through March 31, 2009	10,299	(3,682)	6,617
Distributions paid	¾	(404)	(404)
Other comprehensive income – Unrealized gain on valuation of derivative instruments	146	36	182
Conversion options on Convertible Notes purchased (Note 11)	(60)	¾	(60)
Common Shares issued under Employee Share Purchase Plan	30	¾	30
Issuance of Common Shares to Trustees	434	¾	434
Issuance of shares through special dividend	16,193		16,193
Employee Restricted Share awards	983	¾	983
Employee Restricted Shares cancelled	(2,715)	¾	(2,715)
Employee LTIP Unit awards	¾	229	229
Balance at March 31, 2009	\$ 245,880	\$ 210,462	\$ 456,342

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

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

For the three months ended March 31, 2009, 107,331 employee restricted Common Shares ("Restricted Shares") were cancelled to pay the employees' income taxes due on the value of the portion of the Restricted Shares that vested during the period. During the three months ended March 31, 2009 and 2008, the Company recognized accrued Common Share and Common OP Unit-based compensation totaling \$1.1 million and \$0.9 million, respectively.

## 6 ACQUISITION AND DISPOSITION OF PROPERTIES AND DISCONTINUED OPERATIONS

## Acquisition of Properties

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

## Discontinued Operations

In accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" which requires discontinued operations presentation for disposals of a "component" of an entity, for all periods presented, the Company reclassified its consolidated statements of income to reflect income and expenses for properties that were sold or became held for sale prior to March 31, 2009, as discontinued operations and reclassified its consolidated balance sheets to reflect assets and liabilities related to such properties as assets and liabilities related to discontinued operations.

The combined assets and liabilities of properties held for sale for the period ended March 31, 2009 and December 31, 2008 and the combined results of operations for the three months ended March 31, 2009 and March 31, 2008 are reported separately as discontinued operations. Discontinued operations include six Kroger Supermarket locations that were sold in February of 2009. In addition, 2008 discontinued operations included a residential complex located in North Carolina. The Company sold this complex in April 2008.

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

(dollars in thousands)	December 31, 2008
<b>ASSETS</b>	
Net real estate	\$ 3,652
Total assets of discontinued operations	\$ 3,652
<b>LIABILITIES</b>	
Accounts payable and accrued expenses	\$ 1,368
Other liabilities	83
Total liabilities of discontinued operations	\$ 1,451

STATEMENTS OF OPERATIONS (dollars in thousands)	Three months ended March 31,	
	2009	2008
Total revenues	\$ 188	\$ 1,662
Total expenses	10	915
Operating income	178	747
Gain on sale of property	5,637	—
Income from discontinued operations	5,815	747
Income from discontinued operations attributable to noncontrolling interests in subsidiaries	(4,865)	(199)
Income from discontinued operations attributable to Common Shareholders	\$ 950	\$ 548

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS

## A. Investments In and Advances to Unconsolidated Partnerships

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

During January of 2004, the Company commenced the RCP Venture with Klaff Realty, LP (“Klaff”) and Lubert-Adler Management, Inc., through a limited liability company (“KLA”), for the purpose of making investments in surplus or underutilized properties owned by retailers. As of March 31, 2009, the Company has invested \$60.5 million through the RCP Venture on a non-recourse basis. Cash flow from any investment in which the RCP Venture participants elect to invest, is to be distributed to the participants until they have received a 10% cumulative return and a full return of all contributions. Thereafter, remaining cash flow is to be distributed 20% to Klaff and 80% to the partners (including Klaff).

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

*Mervyns Department Stores*

During September of 2004, the RCP Venture invested in a consortium to acquire the Mervyns Department Store chain (“Mervyns”) consisting of 262 stores (“REALCO”) and its retail operation (“OPCO”) from Target Corporation. The gross acquisition price of \$1.2 billion was financed with \$800 million of debt and \$400 million of equity. The Company contributed \$23.2 million of equity and received an approximate 5.2% interest in REALCO and an approximate 2.5% interest in OPCO (which the Company sold in 2007). Subsequent to the initial acquisition, the Company made additional investments of \$4.3 million including \$1.4 million during the quarter ended March 31, 2009. To date, REALCO has disposed of a significant portion of the portfolio.

During the quarter ended March 31, 2009, REALCO recorded an impairment charge on its investment in certain Mervyns Department Store locations and leasehold interests of which Mervyns I and II recognized a combined loss of \$3.1 million. The Operating Partnership’s share of this loss, net of taxes, was \$0.4 million.

Through March 31, 2009, the Company made additional investments in locations that are separate from the original investment (“Add-On Investments”) in Mervyns totaling \$3.4 million. The Company accounts for these Add-On Investments using the cost method due to the minor ownership interest and the inability to exert influence over KLA’s operating and financial policies.

*Albertson’s*

During June of 2006, the RCP Venture made its second investment as part of an investment consortium, acquiring Albertson’s and Cub Foods, of which the Company’s share was \$20.7 million. Through March 31, 2009, the Company has received distributions from this investment totaling \$63.8 million.

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

*Other RCP Venture Investments*

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

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

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

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS (continued)

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

The following table summarizes the Company's RCP Venture investments from inception through March 31, 2009:

(dollars in thousands)

Investor	Investment	Year Acquired	Invested Capital and Advances	Distributions	Operating Partnership Share	
					Invested Capital and Advances	Distributions
Mervyns I and Mervyns II	Mervyns	2004	\$ 27,503	\$ 45,966	\$ 4,901	\$ 11,251
Mervyns I and Mervyns II	Mervyns Add-On Investments	2005/2008	3,445	1,703	283	283
Mervyns II	Albertson's	2006	20,717	63,833	4,239	11,847
Mervyns II	Albertson's Add-On Investments	2006/2007	2,409	466	386	93
Fund II	Shopko	2006	1,100	1,100	220	220
Fund II	Marsh	2006	2,667	1,010	533	202
Mervyns II	Rex Stores	2007	2,701	—	535	—
Total			\$ 60,542	\$ 114,078	\$ 11,097	\$ 23,896

**Brandywine Portfolio**

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

**Crossroads**

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

**Other Investments***Fund I Investments*

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

*Fund II Investments*

Fund II's approximately 25% investment in CityPoint is accounted for using the equity method. The Company has determined that CityPoint is a variable interest entity, and the Company is not the primary beneficiary. The Company's maximum exposure is the carrying value of its investment of \$34.2 million.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS, (continued)

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

## Summary of Investments in Unconsolidated Affiliates

The following tables summarize the Company's investments in unconsolidated affiliates as of March 31, 2009 and December 31, 2008.

(dollars in thousands)	March 31, 2009					Total
	RCP Venture	CityPoint	Brandywine Portfolio	Crossroads	Other Investments	
<b>Balance Sheets</b>						
Assets:						
Rental property, net	\$ —	\$ 162,134	\$ 128,886	\$ 5,273	\$ 11,371	\$ 307,664
Investment in unconsolidated affiliates	276,733	—	—	—	—	276,733
Other assets	—	3,390	8,991	4,758	2,023	19,162
<b>Total assets</b>	<b>\$ 276,733</b>	<b>\$ 165,524</b>	<b>\$ 137,877</b>	<b>\$ 10,031</b>	<b>\$ 13,394</b>	<b>\$ 603,559</b>
Liabilities and partners' equity						
Mortgage note payable	\$ —	\$ 34,000	\$ 166,200	\$ 62,948	\$ 5,083	\$ 268,231
Other liabilities	—	1,654	7,837	2,013	941	12,445
Partners' equity (deficit)	276,733	129,870	(36,160)	(54,930)	7,370	322,883
<b>Total liabilities and partners' equity</b>	<b>\$ 276,733</b>	<b>\$ 165,524</b>	<b>\$ 137,877</b>	<b>\$ 10,031</b>	<b>\$ 13,394</b>	<b>\$ 603,559</b>
Company's investment in and advances to unconsolidated affiliates	\$ 16,130	\$ 34,232	\$ —	\$ —	\$ 3,257	\$ 53,619
Share of distributions in excess of share of income and investment in unconsolidated affiliates	\$ —	\$ —	\$ (8,354)	\$ (12,548)	\$ —	\$ (20,902)
<b>December 31, 2008</b>						
(dollars in thousands)	RCP Venture	CityPoint	Brandywine Portfolio	Crossroads	Other Investments	Total
<b>Balance Sheets</b>						
Assets:						
Rental property, net	\$ —	\$ 159,922	\$ 129,679	\$ 5,143	\$ 11,481	\$ 306,225
Investment in unconsolidated affiliates	295,168	—	—	—	—	295,168
Other assets	—	3,983	8,769	5,283	2,770	20,805
<b>Total assets</b>	<b>\$ 295,168</b>	<b>\$ 163,905</b>	<b>\$ 138,448</b>	<b>\$ 10,426</b>	<b>\$ 14,251</b>	<b>\$ 622,198</b>
Liabilities and partners' equity						
Mortgage note payable	\$ —	\$ 34,000	\$ 166,200	\$ 63,176	\$ 5,173	\$ 268,549
Other liabilities	—	2,307	7,895	2,072	1,083	13,357
Partners equity (deficit)	295,168	127,598	(35,647)	(54,822)	7,995	340,292
<b>Total liabilities and partners' equity</b>	<b>\$ 295,168</b>	<b>\$ 163,905</b>	<b>\$ 138,448</b>	<b>\$ 10,426</b>	<b>\$ 14,251</b>	<b>\$ 622,198</b>
Company's investment in and advances to unconsolidated affiliates	\$ 18,066	\$ 33,445	\$ —	\$ —	\$ 3,467	\$ 54,978
Share of distributions in excess of share of income and investment in unconsolidated affiliates	\$ —	\$ —	\$ (8,236)	\$ (12,397)	\$ —	\$ (20,633)



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENTS, (continued)

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

## Summary of Investments in Unconsolidated Affiliates (continued)

Three Months Ended March 31, 2009

(dollars in thousands)	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
<i>Statements of Operations</i>					
Total revenue	\$ ¾	\$ 4,917	\$ 2,109	\$ 459	\$ 7,485
Operating and other expenses	¾	1,564	773	304	2,641
Interest expense	¾	2,519	846	37	3,402
Equity in losses of affiliates	(32,194)	¾	¾	¾	(32,194)
Depreciation and amortization	¾	848	148	127	1,123
Loss on sale of property, net	¾	¾	¾	(390)	(390)
Net (loss) income	\$ (32,194)	\$ (14)	\$ 342	\$ (399)	\$ (32,265)
Company's share of net (loss) income	\$ (3,381)	\$ 43	\$ 166	\$ (38)	\$ (3,210)
Amortization of excess investment	¾	¾	(97)	¾	(97)
Company's share of net (loss) income	\$ (3,381)	\$ 43	\$ 69	\$ (38)	\$ (3,307)

Three Months Ended March 31, 2008

(dollars in thousands)	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
<i>Statements of Operations</i>					
Total revenue	\$ —	\$ 5,156	\$ 2,063	\$ 1,241	\$ 8,460
Operating and other expenses	¾	1,617	798	1,278	3,693
Interest expense	¾	2,519	867	244	3,630
Equity in earnings of affiliates	138,487	¾	¾	¾	138,487
Depreciation and amortization	¾	1,067	271	226	1,564
Net income (loss)	\$ 138,487	\$ (47)	\$ 127	\$ (507)	\$ 138,060
Company's share of net income (loss)	\$ 13,326	\$ (11)	\$ 61	\$ (44)	\$ 13,332
Amortization of excess investment	¾	¾	(97)	¾	(97)
Company's share of net income (loss)	\$ 13,326	\$ (11)	\$ (36)	\$ (44)	\$ 13,235

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 8. NOTES RECEIVABLE AND PREFERRED EQUITY INVESTMENT

At March 31, 2009, the Company's preferred equity investment and notes receivable aggregated \$126.3 million, and were collateralized by the underlying properties, the borrower's ownership interest in the entities that own the properties and/or by the borrower's personal guarantee. Interest rates on the Company's preferred equity investment and notes receivable ranged from 3.41% to in excess of 20% with maturities through January 2017. Notes receivable and preferred equity investments as of March 31, 2009 are as follows:

Description	Effective interest Rate	Final maturity date	Periodic payment terms	Prior liens	Current balance
<b>(dollars in thousands)</b>					
<b>Borrower</b>					
Mezzanine Loans:					
Hitchcock Plaza	15.00%	(1)	(1)	\$ 16,400	\$ 4,286
72nd Street	20.85%	7/18/2011	(2)	185,000(5)	37,122
Georgetown A	10.25%	11/12/2010	(4)	8,576	8,000
Georgetown B	13.50%	6/27/2010	(3)	114,150	40,000
Notes individually less than 3%	3.41% to 22.33%	Demand note to 1/1/2017			11,189
<b>Total Mezzanine Loans</b>					<b>100,597</b>
First Mortgages:					
East Shore Rd.	10.00%	Demand note	(4)	—	6,150
Fairchild	12.75%	9/11/2010	(4)	—	10,000
Levitz	11.60%	7/17/2010	(4)	—	6,713
Union Plaza	9.50%	6/14/2009			2,830
<b>Total First Mortgages</b>					<b>25,693</b>
<b>Total</b>					<b>\$ 126,290</b>

## Notes:

- (1) Principal and interest due upon capital event.
- (2) Principal and interest, including a \$7.5 million exit fee, are due upon maturity.
- (3) Payable upon maturity. In accordance with SFAS 150, the preferred equity investment is treated as a debt instrument.
- (4) Interest only payable monthly, principal due on maturity.
- (5) The balance represents a construction loan when fully drawn.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 9. DERIVATIVE FINANCIAL INSTRUMENTS

The following table summarizes the notional values and fair values of the Company's derivative financial instruments as of March 31, 2009. The notional value does not represent exposure to credit, interest rate or market risks.

Hedge Type	Notional Value	Rate	Maturity	Fair Value
<b>(dollars in thousands)</b>				
Interest rate swaps				
LIBOR Swap	\$ 4,449	4.71%	01/01/10	\$ (135)
LIBOR Swap	10,900	4.90%	10/01/11	(926)
LIBOR Swap	8,155	5.14%	03/01/12	(816)
LIBOR Swap	9,800	4.47%	10/29/10	(532)
LIBOR Swap	15,000	3.79%	11/30/12	(1,094)
LIBOR Swap	15,000	3.41%	11/30/12	(903)
LIBOR Swap	10,000	2.65%	11/30/12	(345)
Interest rate swaps	\$ 73,304			(4,751)
Interest rate LIBOR Cap	\$ 30,000	6.0%	04/01/09	¾
Net Derivative instrument liability (1)				\$ (4,751)

(1) The derivatives liability is included in Other Liabilities in the Consolidated Balance Sheets.

## 10. MORTGAGE LOANS

The Company completed the following transactions related to mortgage loans during the three months ended March 31, 2009:

i) borrowed \$6.6 million on three existing construction loans

ii) paid off \$4.8 million of self-amortizing debt

iii) closed on a \$19.0 million loan that bears interest at a floating rate of LIBOR plus 150 basis points and matures on January 15, 2010 the proceeds of which were used to repay a maturing loan of \$19.0 million; and

iv) extended a note that was to mature on March 1, 2009 for one year and adjusted the interest rate from LIBOR plus 100 basis points to LIBOR plus 250 basis points.

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

(dollars in thousands) Borrower	Total available credit facilities	Amount borrowed as of December 31, 2008	2009 net borrowings (repayments) during the three months ended March 31, 2009	Amount borrowed as of March 31, 2009	Letters of credit outstanding as of March 31, 2009	Amount available under credit facilities as of March 31, 2009
Acadia Realty, LP	\$ 72,250	\$ 48,900	\$ ¾	\$ 48,900	\$ 10,675	\$ 12,675
Acadia Realty, LP	30,000	¾	25,000	25,000	¾	5,000
Fund II	70,000	34,681	19,000	53,681	600	15,719
Fund III	245,000	62,250	81,000	143,250	500	101,250
Total	\$ 417,250	\$ 145,831	\$ 125,000	\$ 270,831	\$ 11,775	\$ 134,644

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**11. CONVERTIBLE NOTES PAYABLE**

In December 2006 and January 2007, the Company issued \$115.0 million of convertible notes with a fixed interest rate of 3.75% due 2026 (the “Convertible Notes”). The Convertible Notes were issued at par and require interest payments semi-annually in arrears on June 15<sup>th</sup> and December 15<sup>th</sup> of each year. The Convertible Notes are unsecured unsubordinated obligations and rank equally with all other unsecured and unsubordinated indebtedness. During the fourth quarter 2008, the Company purchased \$8.0 million in principal amount of its Convertible Notes for \$6.0 million which resulted in a \$2.0 million gain. In addition, during the first quarter of 2009, the Company purchased \$18.5 million in principal amount of its Convertible Notes for \$13.9 million resulting in a \$3.2 million gain.

**12. FAIR VALUE MEASUREMENTS**

SFAS No. 157, “Fair Value Measurements” defines fair value as the price that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants.

SFAS No. 157’s valuation techniques are based on observable or unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company’s market assumptions. These two types of inputs have created the following fair value hierarchy:

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

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

**Derivative Instruments** — The Company’s derivative financial liabilities primarily represent interest rate swaps and a cap and are valued using Level 2 inputs. The fair value of these instruments is based upon the estimated amounts the Company would sell an asset or pay to transfer a liability in an orderly transaction between market participants at the reporting date and is determined using interest rate market pricing models. With the adoption of SFAS No. 157, the Company has amended the techniques used in measuring the fair value of its derivative positions. This amendment includes the impact of credit valuation adjustments on derivatives measured at fair value. The implementation of this amendment did not have a material impact on the Company’s consolidated financial position or results of operations.

The following table presents the Company’s liabilities measured at fair value based on level of inputs at March 31, 2009:

(dollars in thousands)	Level 1	Level 2	Level 3
<u>Liabilities</u>			
Derivatives	\$ —	\$ 4,751	\$ —
<b>Total liabilities measured at fair value</b>	<b>\$ —</b>	<b>\$ 4,751</b>	<b>\$ —</b>

**13. RELATED PARTY TRANSACTIONS**

The Company earns asset management, leasing, disposition, development and construction fees for providing services to an existing portfolio of retail properties and/or leasehold interests in which Klaff has an interest. Fees earned by the Company in connection with this portfolio were \$0.2 million and \$0.4 million for the three months ended March 31, 2009 and 2008, respectively.

Lee Wielansky, the Lead Trustee of the Company, was paid a consulting fee of \$25,000 for each of the three months ended March 31, 2009 and 2008, respectively.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 14. SEGMENT REPORTING

The Company has four reportable segments: Core Portfolio, Opportunity Funds, Storage Portfolio, and Other. During 2008, the Company acquired a portfolio of self storage properties and later determined that it constitutes, as of year end 2008, a new reportable segment. "Other" primarily consists of management fees, interest income, preferred equity investment and notes receivable. The accounting policies of the segments are the same as those described in the summary of significant accounting policies. The Company evaluates property performance primarily based on net operating income before depreciation, amortization and certain nonrecurring items. Investments in the Core Portfolio are typically held long-term. Given the contemplated finite life of the Opportunity Funds, these investments are typically held for shorter terms. Fees earned by the Company as general partner/member of the Opportunity Funds are eliminated in the Company's consolidated financial statements. The following table sets forth certain segment information for the Company, reclassified for discontinued operations, as of and for three months ended March 31, 2009 and 2008 (does not include unconsolidated affiliates):

**Three Months Ended March 31, 2009**

(dollars in thousands)	Core Portfolio	Opportunity Funds	Storage Portfolio	Other	Amounts Eliminated in Consolidation	Total
Revenues	\$ 18,816	\$ 8,517	\$ 1,761	\$ 12,177	\$ (6,160)	\$ 35,111
Property operating expenses and real estate taxes	5,626	4,051	2,390	—	(995)	11,072
Impairment of notes receivable	—	—	—	—	—	—
Other expenses	6,921	3,106	44	—	(3,930)	6,141
Net income (loss) before depreciation and amortization	\$ 6,269	\$ 1,360	\$ (673)	\$ 12,177	\$ (1,235)	\$ 17,898
Depreciation and amortization	\$ 4,155	\$ 3,388	\$ 1,049	\$ —	\$ —	\$ 8,592
Interest expense	\$ 5,157	\$ 1,471	\$ 1,193	\$ —	\$ —	\$ 7,821
Real estate at cost	\$ 475,896	\$ 526,015	\$ 186,339	\$ —	\$ (8,213)	\$ 1,180,037
Total assets	\$ 567,584	\$ 608,239	\$ 190,828	\$ 126,290	\$ (94,877)	\$ 1,398,064
Expenditures for real estate and improvements	\$ 46	\$ 96,196	\$ (190)	\$ —	\$ —	\$ 96,052

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

Net property income before depreciation and amortization	\$ 17,898
Gain on debt extinguishment	3,150
Depreciation and amortization	(8,592)
Equity in (loss) earnings of unconsolidated affiliates	(3,307)
Interest expense	(7,821)
Income tax provision	(526)
Income from discontinued operations	5,815
Net income	6,617
Net loss attributable to noncontrolling interests in subsidiaries	3,682
Net income attributable to Common Shareholders	\$ 10,299

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 14. SEGMENT REPORTING (continued)

Three Months Ended March 31, 2008

(dollars in thousands)	Core Portfolio	Opportunity Funds	Storage Portfolio	Other	Amounts Eliminated in Consolidation	Total
Revenues	\$ 17,255	\$ 4,514	\$ 1,419	\$ 11,991	\$ (7,158)	\$ 28,021
Property operating expenses and real estate taxes	5,536	2,898	741	—	(1,349)	7,826
Other expenses	6,697	3,115	58	—	(3,817)	6,053
Net income before depreciation and amortization	\$ 5,022	\$ (1,499)	\$ 620	\$ 11,991	\$ (1,992)	\$ 14,142
Depreciation and amortization	\$ 3,925	\$ 1,916	\$ 380	\$ —	\$ —	\$ 6,221
Interest expense	\$ 4,782	\$ 1,435	\$ 379	\$ —	\$ —	\$ 6,596
Real estate at cost	\$ 459,793	\$ 392,753	\$ 180,177	\$ —	\$ (5,344)	\$ 1,027,379
Total assets	\$ 567,019	\$ 453,559	\$ 184,232	\$ 57,698	\$ (81,252)	\$ 1,181,256
Expenditures for real estate and improvements	\$ 791	\$ 153,043	\$ 1,034	\$ —	\$ —	\$ 154,868

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

Net property income before depreciation and amortization	\$ 14,142
Depreciation and amortization	(6,221)
Equity in earnings of unconsolidated partnerships	13,235
Interest expense	(6,596)
Income tax provision	(1,857)
Income from discontinued operations	747
Net income	13,450
Net (income) attributable to noncontrolling interests in subsidiaries	(5,212)
Net income attributable to Common Shareholders	\$ 8,238

## 15. LONG-TERM INCENTIVE COMPENSATION

On March 5, 2009, the Company issued 8,612 Restricted Shares and 200,574 LTIP Units to officers of the Company. Vesting with respect to these awards is recognized ratably over the next five annual anniversaries of the issuance date. The vesting on 50% of these awards is also generally subject to achieving certain total shareholder returns on the Company's Common Shares or certain Company performance measures.

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

The total value of the above Restricted Shares and LTIP Units issued was \$2.6 million. Compensation expense of \$0.2 million has been recognized in the accompanying financial statements related to these Restricted Shares and LTIP Units for the three months ended March 31, 2009.

In 2009, the Company adopted the Long Term Investment Alignment Program (the "Program") pursuant to which the Company may award units for up to 25% of its Fund III Promote to senior executives when and if such Promote is ultimately realized. As of March 31, 2009, the Company has awarded units representing 60% of the Program, which were determined to have no value at issuance. In accordance with SFAS 123R, "Share-Based Payments," compensation relating to these awards will be recorded based on the change in the estimated fair value at each reporting period.

Total long-term incentive compensation expense for the three months ended March 31, 2009 and 2008 was \$1.1 million and \$0.9 million, respectively.

## 16. DIVIDENDS AND DISTRIBUTIONS PAYABLE

On March 9, 2009, the Board of Trustees of the Company approved and declared a cash dividend for the quarter ended March 31, 2009 of \$0.21 per Common Share and Common OP Unit. The dividend was paid on April 15, 2009 to shareholders of record as of March 31, 2009.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**17. SUBSEQUENT EVENTS**

During April 2009, the Company completed a public share offering whereby it issued 5.75 million Common Shares, which generated net proceeds of approximately \$65.0 million.

During April 2009, the Company paid down a total of \$33.0 million on two lines of credit.

During April 2009, the Company purchased an additional \$11.1 million in principal amount of its outstanding Convertible Notes for \$9.3 million.

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

The following discussion is based on the consolidated financial statements of the Company as of March 31, 2009 and 2008 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 that may cause our actual results, performance or achievements to be materially different from any future results performance or achievements expressed or implied by such forward-looking statements. Such factors are set forth under the heading "Item 1A. Risk Factors" in our Form 10-K for the year ended December 31, 2008 and Item 1A of Part II of this Form 10-Q 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. Except as required by law, we do not undertake any obligation to update or revise any forward-looking statements contained in this Form 10-Q.

### OVERVIEW

As of March 31, 2009, we operated 80 properties, which we own or have an ownership interest in, within our Core Portfolio or within our three Opportunity Funds. Our Core Portfolio consists of those properties either 100% owned by, or partially owned through joint venture interests by the Operating Partnership, or subsidiaries thereof, not including those properties owned through our Opportunity Funds. These 80 properties consist of commercial properties, primarily neighborhood and community shopping centers, self-storage and mixed-use properties with a retail component. The properties we operate are located primarily in the Northeast, Mid-Atlantic and Midwestern regions of the United States. Our Core Portfolio consists of 35 properties comprising approximately 5.5 million square feet. Fund I has 21 properties comprising approximately 1.0 million square feet. Fund II has 10 properties, six of which (representing 1.1 million square feet) are currently operating, two are under construction, and two are in design phase. The Fund II portfolio will approximate 2.0 million square feet upon completion of all current construction and anticipated redevelopment activities. Fund III has 14 properties totaling approximately 1.8 million square feet, of which 11 locations representing 0.9 million net rentable square feet are self storage facilities. The majority of our operating income is derived from rental revenues from these 80 properties, including recoveries from tenants, offset by operating and overhead expenses. As our RCP Venture invests in operating companies, we consider these investments to be private-equity style, as opposed to real estate, investments. Since these are not traditional investments in operating rental real estate, the Operating Partnership invests in these through a taxable REIT subsidiary ("TRS").

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

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

### BUSINESS OUTLOOK

The U.S. economy is currently in a recession, which has resulted in a significant decline in retail sales due to reduced consumer spending. Many financial and economic analysts are predicting that this business recession will extend through 2009 and perhaps beyond. Although the occupancy and net operating income within our portfolio has not been materially adversely affected through March 31, 2009, should retailers continue to experience deteriorating sales performance, the likelihood of tenant bankruptcy filings may increase which would negatively impact our results of operations. In addition to the impact on retailers, the economic recession has had an unprecedented impact on the U.S. credit markets. Traditional sources of financing, such as the commercial-mortgage backed security market, have become severely curtailed. If these conditions continue, our ability to finance new acquisitions will be adversely affected. Accordingly, our ability to generate external growth in income could be limited.



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

## CRITICAL ACCOUNTING POLICIES

Management’s discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. Management bases its estimates on historical experience and assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe there have been no material changes to the items that we disclosed as our critical accounting policies under Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” in our 2008 Form 10-K.

## RESULTS OF OPERATIONS

### Comparison of the three months ended March 31, 2009 (“2009”) to the three months ended March 31, 2008 (“2008”)

#### Revenues

(dollars in millions)	2009				2008			
	Core Portfolio	Opportunity Funds	Storage Portfolio	Other (1)	Core Portfolio	Opportunity Funds	Storage Portfolio	Other (1)
Minimum rents	\$ 12.6	\$ 7.2	\$ 1.5	\$ —	\$ 12.7	\$ 4.3	\$ 1.3	\$ —
Percentage rents	0.2	—	—	—	0.2	—	—	—
Expense reimbursements	4.1	1.4	—	—	4.2	0.3	—	—
Other property income	0.2	—	0.3	—	0.1	—	0.1	—
Management fee income	—	—	—	0.8	—	—	—	2.0
Interest income	—	—	—	5.1	—	—	—	2.8
Other income	1.7	—	—	—	—	—	—	—
<b>Total revenues</b>	<b>\$ 18.8</b>	<b>\$ 8.6</b>	<b>\$ 1.8</b>	<b>\$ 5.9</b>	<b>\$ 17.2</b>	<b>\$ 4.6</b>	<b>\$ 1.4</b>	<b>\$ 4.8</b>

(1) Includes fees earned by the Company as general partner/managing member of the Opportunity Funds that are eliminated in consolidation. These fees are adjusted in noncontrolling interests. Reference is made to Note 14 to the Notes to Consolidated Financial Statements in Part 1, Item 1 of this Form 10-Q for an overview of our four reportable segments.

The increase in minimum rents in the Opportunity Funds primarily relates to additional rents following the acquisition of Cortlandt Towne Center (“2009 Fund Acquisition”) of \$1.4 million and Fordham Place being partially placed in service in the second half of 2008 of \$1.5 million.

Expense reimbursements in the Opportunity Funds increased for both real estate taxes and common area maintenance as a result of the 2009 Fund Acquisition as well as Pelham Manor Shopping Center and Fordham Place being partially placed in service in the second half of 2008.

Management fee income decreased primarily as a result of lower fees earned of \$1.0 million from the City Point development project.

The increase in interest income was the result of higher interest earning assets in 2009, primarily from a new preferred equity investment and a note receivable originated during the later part of 2008.

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

## Operating Expenses

(dollars in millions)	2009				2008			
	Core Portfolio	Opportunity Funds	Storage Portfolio	Other	Core Portfolio	Opportunity Funds	Storage Portfolio	Other
Property operating	\$ 3.4	\$ 2.1	\$ 1.9	\$ —	\$ 3.3	\$ 1.2	\$ 0.6	\$ —
Real estate taxes	2.3	0.9	0.5	—	2.3	0.3	0.1	—
General and administrative	6.9	4.1	—	(4.9)	6.7	4.5	0.1	(5.2)
Depreciation and amortization	4.2	3.4	1.0	—	3.9	1.9	0.4	—
<b>Total operating expenses</b>	<b>\$ 16.8</b>	<b>\$ 10.5</b>	<b>\$ 3.4</b>	<b>\$ (4.9)</b>	<b>\$ 16.2</b>	<b>\$ 7.9</b>	<b>\$ 1.2</b>	<b>\$ (5.2)</b>

The increase in property operating expenses in the Opportunity Funds was primarily the result of the 2009 Fund Acquisition. The increase in property operating expenses in the Storage Portfolio relates to the February 2008 acquisition of the Storage Post Portfolio ("2008 Storage Acquisition").

The increase in real estate taxes in the Opportunity Funds was attributable to the 2009 Fund Acquisition. The increase in real estate taxes in the Storage Portfolio relates to the 2008 Storage Acquisition.

The increase in general and administrative expense in the Core Portfolio was primarily attributable to severance costs in 2009 associated with staff reductions. This increase was partially offset by employee terminations in the second half of 2008. The decrease in general and administrative expense in the Opportunity Funds primarily relates to the reduction in Promote expense attributable to Fund I and Mervyns I. The increase in general and administrative expense in Other primarily relates to the elimination of the Fund I and Mervyns I Promote expense for consolidated financial statement presentation purposes.

Depreciation expense in the Core Portfolio increased \$0.4 million as a result of Ledgewood Mall being reclassified as a continuing operation in 2009 as opposed to being held for sale, or a discontinued operation in 2008. Depreciation expense increased \$1.1 million in the Opportunity Funds due to the 2009 Fund Acquisition as well as Pelham Manor Shopping Plaza and Fordham Plaza being partially placed in service in the second half of 2008. Amortization expense increased \$0.4 million in the Opportunity Funds as a result of additional amortization of loan costs related to Pelham and Fordham Plaza being partially placed in service in the second half of 2008. Depreciation expense and amortization expense increased \$0.6 million in the Storage Portfolio as a result of the 2008 Storage Acquisition.

## Other

(dollars in millions)	2009				2008			
	Core Portfolio	Opportunity Funds	Storage Portfolio	Other	Core Portfolio	Opportunity Funds	Storage Portfolio	Other
Equity in earnings from unconsolidated affiliates	\$ 0.1	\$ (3.4)	\$ —	\$ —	\$ —	\$ 13.2	\$ —	\$ —
Interest expense	(5.1)	(1.5)	(1.2)	—	(4.8)	(1.4)	(0.4)	—
Gain on extinguishment of debt	3.2	—	—	—	—	—	—	—
Income tax provision	0.5	—	—	—	1.8	—	—	—
Income from discontinued operations	—	—	—	5.8	—	—	—	0.7
Loss (income) attributable to noncontrolling interests in subsidiaries - Continuing operations	(0.2)	7.5	0.1	1.1	0.1	(6.5)	—	1.4
Loss (income) attributable to noncontrolling interests in subsidiaries - Discontinued operations	—	(4.9)	—	—	—	(0.2)	—	—

Equity in earnings of unconsolidated affiliates in the Opportunity Funds decreased primarily as a result of our pro rata share of gains from the sale of Mervyns locations in 2008.

Total interest expense in the Core Portfolio increased \$0.3 million in 2009. This was the result of a \$0.4 million increase attributable to higher average outstanding borrowings in 2009 offset by a \$0.1 million decrease attributable to lower average interest rates in 2009. Interest expense in the Opportunity Fund increased \$0.1 million in 2009. This was the result of an increase of \$1.0 million due to higher average outstanding borrowings in 2009 and \$0.5 million of lower capitalized interest in 2009. These increases were offset by a \$1.4 million decrease related to lower average interest rates in 2009. Interest expense in the Storage Portfolio increased \$0.8 million as a result of the 2008 Storage Acquisition.

The gain on extinguishment of debt of \$3.2 million is attributable to the purchase of our convertible debt at a discount in 2009.

The variance in income tax provision in the Core Portfolio primarily relates to income taxes at the taxable REIT subsidiary ("TRS") level for our share of gains from the sale of Mervyns locations in 2008.

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

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

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

### Funds from Operations

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

We consider FFO to be an appropriate supplemental disclosure of operating performance for an equity REIT due to its widespread acceptance and use within the REIT and analyst communities. FFO is presented to assist investors in analyzing our performance. They are helpful as they exclude various items included in net income that is 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 may be different from methods used by other REITs and, accordingly, may not be comparable to such other REITs. FFO does not represent cash generated from operations as defined by GAAP and are not indicative of cash available to fund all cash needs, including distributions. FFO should not be considered as an alternative to net income for the purpose of evaluating our performance or to cash flows as measures of liquidity.

The reconciliation of net income to FFO for the three months ended March 31, 2009 and 2008 is as follows:

(dollars in millions)	Three months ended March 31,	
	2009	2008
Net income attributable to Common Shareholders	\$ 10.3	\$ 8.2
Depreciation of real estate and amortization of leasing costs (net of noncontrolling interests' share)		
Consolidated affiliates	4.4	3.6
Unconsolidated affiliates	0.4	0.5
Gain on sale (net of noncontrolling interests' share)	(0.9)	<sup>3</sup> / <sub>4</sub>
Income attributable to noncontrolling interest in Operating Partnership (1)	0.1	0.1
Funds from operations	\$ 14.3	\$ 12.4
Cash flows provided by (used in):		
Operating activities	\$ 19.1	\$ (5.3)
Investing activities	(88.7)	(157.3)
Financing activities	98.8	135.1

Notes:

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

## USES OF LIQUIDITY

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

### Distributions

In order to qualify as a REIT for Federal income tax purposes, we must currently distribute at least 90% of our taxable income to our shareholders. For the three months ended March 31, 2009, we paid dividends and distributions on our Common Shares and Common OP Units totaling \$6.9 million. In addition, in December of 2008, our Board of Trustees approved a special dividend of approximately \$0.55 per share, or \$18.0 million in the aggregate, which was associated with taxable gains arising from property dispositions in 2008, which was paid on January 30, 2009, to shareholders of record as of December 31, 2008. 90% of the special dividend was paid through the issuance of 1.3 million Common Shares and 10%, or \$1.8 million, was paid in cash. Recognizing the need to maintain maximum financial flexibility in light of the current state of the economy and the capital markets, and considering the increased dividend requirements that would be necessary to maintain the current per share level of dividends on an increased number of shares issued in connection with our issuance of Common Shares during April 2009 (See SOURCES OF LIQUIDITY), we expect our per share dividend payments on our Common Shares for the balance of 2009 to be reduced. We expect that our current cash dividend per share of \$0.84 on an annualized basis will be reduced based on the 5.75 million Common Shares issued during April 2009. We expect to maintain our current aggregate annualized cash dividend of approximately \$28.6 million for 2009, including the dividend paid for the three months ended March 31, 2009. Notwithstanding the foregoing, the decision to declare and pay dividends on our Common Shares in the future, as well as the timing, amount and composition of any such future dividends will be at the sole discretion of our Board of Trustees.

### Investments

#### Fund I and Mervyns I

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

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

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

#### Fund II and Mervyns II

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

## Retailer Controlled Property Venture

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

### New York Urban Infill Redevelopment Initiative

In September 2004, we, through Fund II, launched our New York Urban Infill Redevelopment initiative. During 2004, Fund II, together with an unaffiliated partner, P/A Associates, LLC (“P/A”), formed Acadia P/A Holding Company, LLC (“Acadia P/A”) for the purpose of acquiring, constructing, developing, owning, operating, leasing and managing certain 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 \$2.2 million and Fund II, the managing member, has agreed to invest the balance to acquire assets in which Acadia P/A agrees to invest. Operating cash flow is generally to be distributed pro-rata to Fund II and P/A until each has received a 10% cumulative return and then 60% to Fund II and 40% to P/A. Distributions of net refinancing and net sales proceeds, as defined, follow the distribution of operating cash flow except that unpaid original capital is returned before the 60%/40% split between Fund II and P/A, respectively. Upon the liquidation of the last property investment of Acadia P/A, to the extent that Fund II has not received an 18% internal rate of return (“IRR”) on all of its capital contributions, P/A is obligated to return a portion of its previous distributions, as defined, until Fund II has received an 18% IRR.

To date, Fund II has invested in nine New York Urban Infill Redevelopment construction projects, eight of which are in conjunction with P/A, as follows:

Property	Location	Year acquired	Purchase price	Redevelopment (dollars in millions)		
				Anticipated additional costs	Estimated completion	Square feet upon completion
Liberty Avenue (1) (2)	Queens	2005	\$ 14.9	\$ —	Completed	125,000
216 <sup>th</sup> Street(3)	Manhattan	2005	27.7	—	Completed	60,000
Fordham Place	Bronx	2004	30.0	95.0	1 <sup>st</sup> half 2009	271,000
Pelham Manor Shopping Center (1)	Westchester	2004	—	65.0	Completed	320,000
161 <sup>st</sup> Street	Bronx	2005	49.0	16.0	Completed	232,000
Canarsie Plaza	Brooklyn	2007	21.0	53.0	1 <sup>st</sup> half 2011	257,000
Sherman Plaza	Manhattan	2005	25.0	30.0	(4)	216,000
CityPoint (1)	Brooklyn	2007	29.0	199.8	(4)	419,000
Atlantic Avenue (5)	Brooklyn	2007	5.0	18.0	2 <sup>nd</sup> half 2009	110,000
Total			\$ 201.6	\$ 476.8		2,010,000

### Notes:

- (1) Fund II acquired a ground lease interest at this property.
- (2) Liberty Avenue redevelopment is complete. The purchase price includes redevelopment costs of \$14.9 million.
- (3) 216<sup>th</sup> Street redevelopment is complete. The purchase price includes redevelopment costs of \$20.7 million.
- (4) To be determined
- (5) P/A is not a partner in this project.

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

Reference is made to Note 1 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for an overview of Fund III. As of March 31, 2009, \$96.5 million has been invested in Fund III, of which the Operating Partnership contributed \$19.2 million.

### New York Urban Infill Redevelopment Initiative

Fund III has invested in the New York Urban/Infill Redevelopment initiative and another investment as follows:

Property	Location	Year acquired	Purchase price	Redevelopment (dollars in millions)	
				Anticipated additional costs	Square feet upon completion
Sheepshead Bay	Brooklyn, NY	2007	\$ 20.0	\$ 89.0	240,000
125 Main Street	Westport, CT	2007	17.0	6.0	30,000
Total			\$ 37.0	\$ 95.0	270,000

### Other Fund III Investments

During February 2008, Acadia, through Fund III, and in conjunction with an unaffiliated partner, Storage Post, acquired a portfolio of eleven self-storage properties from Storage Post's existing institutional investors for approximately \$174.0 million. The properties are located throughout New York and New Jersey. The portfolio continues to be operated by Storage Post, which is a 5% equity partner.

During January 2009, Fund III purchased Cortlandt Towne Center for \$78 million. The property is a 640,000 square foot shopping center located in Westchester County, NY, a trade area with high barriers to entry for regional and national retailers.

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

Reference is made to Note 8 to the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for an overview of our preferred equity investment and notes receivable. At March 31, 2009, our preferred equity investment and notes receivable aggregated \$126.3 million and accrued interest thereon of \$9.6 million, and were collateralized by the underlying properties, the borrower's ownership interest in the entities that own the properties and/or by the borrower's personal guarantee. Effective interest rates on our preferred equity investment, mezzanine loan investments and notes receivable ranged from 3.41% to in excess of 20% with maturities through January 2017.

### **Purchase of Convertible Notes**

Repurchase of our Convertible Notes is another use of our liquidity. During the first quarter of 2009, we purchased an additional \$18.5 million in principal amount of our outstanding Convertible Notes for \$13.9 million. During April 2009, we purchased an additional \$11.1 million in principal amount for \$9.3 million.

### **Share Repurchase**

We have an existing share repurchase program that authorizes management, at its discretion, to repurchase up to \$20.0 million of our outstanding Common Shares. The program may be discontinued or extended at any time and there is no assurance that we will purchase the full amount authorized. Under this program we have repurchased 2.1 million Common Shares, none of which were repurchased after December 2001. As of March 31, 2009, management may repurchase up to approximately \$7.5 million of our outstanding Common Shares under this program.

### **SOURCES OF LIQUIDITY**

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

As of March 31, 2009, we had approximately \$134.6 million of additional capacity under existing debt facilities and cash and cash equivalents on hand of \$116.0 million.

### **Shelf Registration Statement and Issuance of Equity**

During April 2009, we filed a shelf registration on Form S-3 providing for offerings of up to a total of \$500.0 million of Common Shares, Preferred Shares and debt securities. During April 2009, we issued 5.75 million Common Shares and generated net proceeds of approximately \$65.0 million. We used \$33.0 million of these proceeds to reduce the outstanding balance on two of our lines of credit (see "Financing and Debt" below) and \$9.3 million to repurchase our Convertible Notes. Following this issuance, we have remaining capacity under this registration statement to issue up to approximately \$350 million of these securities.

### **Asset Sales**

Asset sales are an additional source of liquidity for us. On February 2, 2009, The Kroger Co. purchased the fee at six locations in Fund I's Kroger/Safeway Portfolio for \$14.6 million of which Fund I's share of the sales proceeds amounted to \$8.1 million after the repayment of the mortgage debt on these properties.

## Financing and Debt

At March 31, 2009, mortgage and convertible notes payable aggregated \$864.5 million, net of unamortized premium of \$0.1 million and unamortized discount of \$5.0 million, and were collateralized by 33 properties and related tenant leases. Interest rates on our outstanding mortgage indebtedness and convertible notes payable ranged from 1.10% to 7.18% with maturities that ranged from May 2009 to November 2032. Taking into consideration \$73.3 million of notional principal under variable to fixed-rate swap agreements currently in effect, \$487.1 million of the portfolio, or 56.3%, was fixed at a 5.35% weighted average interest rate and \$377.4 million, or 43.7% was floating at a 2.19% weighted average interest rate. There is \$135.9 million of debt maturing in 2009 at weighted average interest rates of 3.29%. Of this amount, \$5.4 million represents scheduled annual amortization. The loans relating to \$96.0 million of the 2009 maturities provide for extension options, which we believe we will be able to exercise. If we are unable to extend these loans and refinance the balance of \$34.5 million, we believe we will be able to repay this debt with existing liquidity, including unfunded capital commitments from the Opportunity Fund investors. As it relates to maturities after 2009, we may not have sufficient cash on hand to repay such indebtedness, we may have to refinance this indebtedness or select other alternatives based on market conditions at that time. Given the current lack of liquidity in the credit markets and the current economic recession, which may cause us to lose tenants or not secure new tenants for existing centers or projects under development, refinancing this debt will be very difficult. See the "Item 1A. Risk Factors," including the discussions under the headings "The current global financial crisis may cause us to lose tenants and may impair our ability to borrow money to purchase properties, refinance existing debt or obtain the necessary financing to complete our current redevelopment" in our 2008 Form 10-K.

We completed the following transactions related to mortgage loans during the three months ended March 31, 2009:

- i) borrowed \$6.6 million on three existing construction loans
- ii) paid off \$4.8 million of self-amortizing debt
- iii) closed on a \$19.0 million loan that bears interest at a floating rate of LIBOR plus 150 basis points and matures on January 15, 2010, the proceeds of which were used to repay a maturing loan of \$19.0 million; and
- iv) extended a note that was to mature March 1, 2009 for one year and adjusted the interest rate from LIBOR plus 100 basis points to LIBOR plus 250 basis points.

Subsequent to March 31, 2009, we paid down \$33.0 million on existing lines of credit which increased the amount available under credit facilities from \$134.6 million to \$167.6 million.

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

(dollars in millions)

Borrower	Total available credit facilities	Amount borrowed as of December 31, 2008	2009 net borrowings (repayments) during the three months ended March 31, 2009	Amount borrowed as of March 31, 2009	Letters of credit outstanding as of March 31, 2009	Amount available under credit facilities as of March 31, 2009
Acadia Realty, LP	\$ 72.3	\$ 48.9	\$ —	\$ 48.9	\$ 10.7	\$ 12.7
Acadia Realty, LP	30.0	—	25.0	25.0	—	5.0
Fund II	70.0	34.7	19.0	53.7	0.6	15.7
Fund III	245.0	62.3	81.0	143.3	0.5	101.2
Total	\$ 417.3	\$ 145.9	\$ 125.0	\$ 270.9	\$ 11.8	\$ 134.6

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

(dollars in millions)

Lender/Originator	March 31, 2009	December 31, 2008	Interest Rate at March 31, 2009	Maturity	Properties Encumbered	Payment Terms
<b><u>Mortgage notes payable – variable-rate</u></b>						
Bank of America, N.A.	\$ 9.6	\$ 9.6	1.90% (LIBOR +1.40%)	6/29/2012	(1)	(30)
RBS Greenwich Capital	30.0	30.0	1.90% (LIBOR +1.40%)	4/1/2010	(2)	(31)
PNC Bank, National Association	11.4	11.4	2.15% (LIBOR +1.65%)	5/18/2009	(4)	(41)
Bank of America, N.A.	15.5	15.5	1.80% (LIBOR +1.30%)	12/1/2011	(6)	(30)
Anglo Irish Bank Corporation	9.8	9.8	2.15% (LIBOR +1.65%)	10/30/2010	(10)	(31)
Eurohypo AG	84.6	80.5	2.25% (LIBOR +1.75%)	10/4/2009	(5)	(41)
Bank of China	—	19.0	2.35% (LIBOR +1.85%)	1/15/2009	(21)	(31)
Bank of America	19.0	—	2.00% (LIBOR +1.50%)	1/15/2010	(21)	(31)
Sub-total mortgage notes payable	179.9	175.8				
<b><u>Secured credit facilities:</u></b>						
Bank of America, N.A.	48.9	48.9	1.75% (LIBOR +1.25%)	12/1/2010	(7)	(32)
Bank of America, N.A./ Bank of New York	53.7	34.7	3.00% (LIBOR +2.50%)	3/1/2010	(8)	(30)
Bank of America, N.A.	143.2	62.2	1.10% (Commercial Paper +0.45%)	10/9/2011	(9)	(30)
J.P. Morgan Chase	25.0	—	1.75% (LIBOR +1.25%)	3/29/2010	(29)	(31)
Sub-total secured credit facilities	270.8	145.8				
Interest rate swaps (42)	(73.3)	(73.4)				
Total variable-rate debt	377.4	248.2				
<b><u>Mortgage notes payable – fixed-rate</u></b>						
RBS Greenwich Capital	14.5	14.6	5.64%	9/6/2014	(13)	(30)
RBS Greenwich Capital	17.6	17.6	4.98%	9/6/2015	(14)	(33)
RBS Greenwich Capital	12.5	12.5	5.12%	11/6/2015	(15)	(34)
Bear Stearns Commercial	34.6	34.6	5.53%	1/1/2016	(16)	(35)
Bear Stearns Commercial	20.5	20.5	5.44%	3/1/2016	(17)	(31)
J.P. Morgan Chase	8.3	8.3	6.40%	11/1/2032	(18)	(30)
Column Financial, Inc.	9.6	9.7	5.45%	6/11/2013	(19)	(30)
Merrill Lynch Mortgage Lending, Inc.	23.5	23.5	6.06%	10/1/2016	(20)	(36)
Cortlandt Deposit Corp	—	1.2	6.62%	2/1/2009	(22)	(40)
Cortlandt Deposit Corp	—	2.3	6.51%	1/15/2009	(23)	(40)
Bank of America N.A.	25.5	25.5	5.80%	10/1/2017	(3)	(31)
Bear Stearns Commercial	26.3	26.2	5.88%	8/1/2017	(11)	(37)
Wachovia	26.0	26.0	5.42%	2/11/2017	(12)	(31)
Bear Stearns Commercial	27.2	25.3	7.18%	1/1/2020	(27)	(41)
GEMSA Loan Services, L.P.	4.9	4.9	5.37%	12/1/2009	(24)	(30)
Wachovia	34.1	34.3	5.86%	6/11/2009	(25)	(31)
GEMSA Loan Services, L.P.	41.5	41.5	5.30%	3/16/2011	(26)	(30)
Bear Stearns Commercial	3.7	3.3	7.14%	1/1/2020	(28)	(39)
Interest rate swaps (42)	73.3	73.4	5.41%	(43)		
Total fixed-rate debt	403.6	405.2				
Total fixed and variable debt	781.0	653.4				
Unamortized premium	0.1	0.1				
Total	\$ 781.1	\$ 653.5				



Notes:

- (1) Village Commons Shopping Center
- (2) 161<sup>st</sup> Street
- (3) 216<sup>th</sup> Street
- (4) Liberty Avenue
- (5) Fordham Place
- (6) Branch Shopping Center
- (7) Line of credit secured by the following properties:
  - Marketplace of Absecon
  - Bloomfield Town Square
  - Hobson West Plaza
  - Town Line Plaza
  - Methuen Shopping Center
  - Abington Towne Center
- (8) Acadia Strategic Opportunity Fund II, LLC line of credit secured by unfunded investor capital commitments
- (9) Acadia Strategic Opportunity Fund III, LLC line of credit secured by unfunded investor capital commitments
- (10) Tarrytown Center
- (11) Merrillville Plaza
- (12) 239 Greenwich Avenue
- (13) New Loudon Center
- (14) Crescent Plaza
- (15) Pacesetter Park Shopping Center
- (16) Elmwood Park Shopping Center
- (17) Gateway Shopping Center
- (18) Boonton Shopping Center
- (19) Chestnut Hill
- (20) Walnut Hill
- (21) Sherman Avenue
- (22) Kroger Portfolio
- (23) Safeway Portfolio
- (24) Acadia Suffern
- (25) Acadia Storage Company, LLC
- (26) Acadia Storage Post Portfolio CO, LLC
- (27) Pelham Manor
- (28) Atlantic Avenue
- (29) Line of credit secured by the Ledgewood Mall
- (30) Monthly principal and interest.
- (31) Interest only monthly.
- (32) Annual principal and monthly interest.
- (33) Interest only monthly until 9/10; monthly principal and interest thereafter.
- (34) Interest only monthly until 12/08; monthly principal and interest thereafter.
- (35) Interest only monthly until 1/10; monthly principal and interest thereafter.
- (36) Interest only monthly until 10/11; monthly principal and interest thereafter.
- (37) Interest only monthly until 7/12 monthly principal and interest thereafter.
- (38) Interest only monthly until 11/12 monthly principal and interest thereafter.

- (39) Interest only monthly until 12/1/14 monthly principal and interest thereafter
- (40) Annual principal and semi-annual interest payments.
- (41) Interest only upon draw down on construction loan.
- (42) Maturing between 1/1/10 and 11/30/12.
- (43) Represents the amount of the Company's variable-rate debt that has been fixed through certain cash flow hedge transactions (Note 9).

## CONTRACTUAL OBLIGATIONS AND OTHER COMMITMENTS

At March 31, 2009, maturities on our mortgage notes ranged from May 2009 to November 2032. In addition, we have non-cancelable ground leases at seven of our shopping centers. We also lease space for our corporate headquarters for a term expiring in 2015. The following table summarizes our debt maturities and obligations under non-cancelable operating leases as of March 31, 2009:

(dollars in millions)

Contractual obligation	Payments due by period				
	Total	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
Future debt maturities	\$ 864.5	\$ 135.9	\$ 473.0	\$ 23.1	\$ 232.5
Interest obligations on debt	148.6	24.5	48.7	29.9	45.5
Operating lease obligations	121.8	3.8	10.3	10.7	97.0
Construction commitments <sup>1</sup>	17.8	17.8	—	—	—
<b>Total</b>	<b>\$ 1,152.7</b>	<b>\$ 182.0</b>	<b>\$ 532.0</b>	<b>\$ 63.7</b>	<b>\$ 375.0</b>

Notes:

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

## OFF BALANCE SHEET ARRANGEMENTS

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

Reference is made to Note 7 in the Notes to Consolidated Financial Statements in Part 1, Item 1 in this Form 10-Q for a discussion of our unconsolidated investments. Our pro rata share of unconsolidated debt related to these investments is as follows:

(dollars in millions)

Investment	Pro rata share of mortgage debt	Interest rate at March 31, 2009	Maturity date
Crossroads	\$ 30.8	5.37%	December 2014
Brandywine	36.9	5.99%	July 2016
CityPoint	7.8	3.00%	August 2009
Sterling Heights	3.2	2.35%	August 2010
<b>Total</b>	<b>\$ 78.7</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, 2009, 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 \$11.8 million.

## HISTORICAL CASH FLOW

The following table compares the historical cash flow for the three months ended March 31, 2009 ("2009") with the cash flow for the three months ended March 31, 2008 ("2008")

(dollars in millions)	Three months ended March 31,		
	2009	2008	Change
Net cash provided by operating activities	\$ 19.1	\$ (5.3)	\$ 24.4
Net cash used in investing activities	(88.7)	(157.3)	68.6
Net cash provided by financing activities	98.8	135.1	(36.3)
<b>Total</b>	<b>\$ 29.2</b>	<b>\$ (27.5)</b>	<b>\$ 56.7</b>

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

An increase of \$24.4 million in net cash provided by operating activities resulted primarily from a net increase in cash provided by other assets, which was the result of additional cash used for the purchase of short term financial instruments in 2008 and the subsequent redemption of these financial instruments in 2009.

A decrease of \$68.6 million of net cash used in investing activities resulted from the following: (i) a decrease of \$59.0 million in expenditures for real estate, development and tenant installations in 2009 and (ii) an additional \$9.5 million, before amounts allocated to noncontrolling interests, in proceeds from the sale of Kroger properties in 2009.

The \$36.3 million decrease in net cash provided by financing activities was attributable to the following decreases in cash for 2009: (i) a decrease of \$46.0 million in capital contributions from partners and members in 2009, (ii) a decrease of \$18.2 million from borrowings in 2009 and (iii) an additional \$13.9 million of cash used for the purchase of convertible notes in 2009. These 2009 cash decreases were offset by the following: (i) \$36.3 million of additional cash used for the repayment of debt in 2008 and (ii) a decrease of \$5.5 million in cash dividends paid to Common Shareholders in 2009.

## **INFLATION**

Our long-term leases contain provisions designed to mitigate the adverse impact of inflation on our net income. Such provisions include clauses enabling us to receive percentage rents based on tenants' gross sales, which generally increase as prices rise, and/or, in certain cases, escalation clauses, which generally increase rental rates during the terms of the leases. Such escalation clauses are often related to increases in the consumer price index or similar inflation indexes. In addition, many of our leases are for terms of less than ten years, which permits us to seek to increase rents upon re-rental at market rates if current rents are below the then existing market rates. Most of our leases require the tenants to pay their share of operating expenses, including common area maintenance, real estate taxes, insurance and utilities, thereby reducing our exposure to increases in costs and operating expenses resulting from inflation.

## **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, 2009, we had total mortgage debt and convertible notes payable of \$864.5 million, net of unamortized premium of \$0.1 million and unamortized discount of \$5.0 million, of which \$487.1 million or 56.3%, was fixed-rate, inclusive of interest rate swaps, and \$377.4 million, or 43.7%, was variable-rate based upon LIBOR or commercial paper rates plus certain spreads. As of March 31, 2009, we were a party to seven interest rate swap transactions and one interest rate cap transaction to hedge our exposure to changes in interest rates with respect to \$73.3 million and \$30.0 million of LIBOR-based variable-rate debt, respectively.

Of our total consolidated outstanding debt, \$135.9 million and \$188.0 million will become due in 2009 and 2010, respectively. As we intend on refinancing some or all of such debt at the then-existing market interest rates which may be greater than the current interest rate, our interest expense would increase by approximately \$3.3 million annually if the interest rate on the refinanced debt increased by 100 basis points. After giving effect to noncontrolling interest, the Company's share of this increase would be \$1.3 million.

Interest expense on our consolidated variable-rate debt, net of variable to fixed-rate swap agreements currently in effect, as of March 31, 2009 would increase by \$3.8 million annually if LIBOR increased by 100 basis points. After giving effect to noncontrolling interest, the Company's share of this increase would be \$1.0 million. We may seek additional variable-rate financing if and when pricing and other commercial and financial terms warrant. As such, we would consider hedging against the interest rate risk related to such additional variable-rate debt through interest rate swaps and protection agreements, or other means.

## **Item 4. Controls and Procedures.**

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

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

**Part II. Other Information**

**Item 1. Legal Proceedings.**

There have been no material legal proceedings beyond those previously disclosed in our 2008 Form 10-K.

**Item 1A. Risk Factors.**

The most significant risk factors applicable to the Company are described in Item 1A of our 2008 Form 10-K. There have been no material changes to those previously-disclosed risk factors.

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

None

**Item 3. Defaults Upon Senior Securities.**

None

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

None

**Item 5. Other Information.**

None

**Item 6. Exhibits.**

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

**SIGNATURES**

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

**ACADIA REALTY TRUST**

May 7, 2009      /s/ Kenneth F. Bernstein  
\_\_\_\_\_

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

May 7, 2009      /s/ Michael Nelsen  
\_\_\_\_\_

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

## Exhibit Index

Exhibit No.	Description
3.1	Declaration of Trust of the Company, as amended (1)
3.2	Fourth Amendment to Declaration of Trust (2)
3.3	Amended and Restated By-Laws of the Company (3)
3.4	Fifth Amendment to Declaration of Trust (5)
3.5	First Amendment the Amended and Restated Bylaws of the Company (5)
4.1	Voting Trust Agreement between the Company and Yale University dated February 27, 2002 (4)
10.13	Description of Long Term Investment Alignment Program (9)
10.16	Note Modification Agreement, Note, Mortgage Modification Agreement, Mortgage, Assignment of Leases and Rents and Security Agreement between Acadia-P/A Sherman Avenue LLC and Bank of America N. A. dated January 15, 2009 (5)
31.1	Certification of Chief Executive Officer pursuant to rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (5)
31.2	Certification of Chief Financial Officer pursuant to rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (5)
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (5)
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (5)
99.1	Amended and Restated Agreement of Limited Partnership of the Operating Partnership (6)
99.2	First and Second Amendments to the Amended and Restated Agreement of Limited Partnership of the Operating Partnership (6)
99.3	Third Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (7)
99.4	Fourth Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (7)
99.5	Certificate of Designation of Series A Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (8)
99.6	Certificate of Designation of Series B Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (7)

### Notes:

- (1) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal Year ended December 31, 1994
- (2) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 1998
- (3) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2005.
- (4) Incorporated by reference to the copy thereof filed as an Exhibit to Yale University's Schedule 13D filed on September 25, 2002
- (5) Filed herewith.
- (6) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-3 filed on March 3, 2000
- (7) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2003
- (8) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended June 30, 1997
- (9) Incorporated by reference to page 20 to the Company's 2009 Annual Proxy Statement filed with the SEC April 9, 2009

**Exhibit 3.4**

Acadia Realty Trust

Fifth Amendment to Declaration  
of Trust

Dated: May 15, 2006

Acadia Realty Trust, a Real Estate Investment Trust formed pursuant to Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland (1993 Replacement Volume) (the "REIT"), hereby certifies to the State Department of Assessments and Taxation:

FIRST: That SECTION 1.5 of the Declaration of Trust of the REIT is hereby amended by deleting therefrom the following definition:

"Related Party Limit" means ownership, whether direct, indirect or as a result of attribution of ownership for purposes of the REIT Provisions of the Code, of in excess of 9.8% of either the number of total Shares or the total combined voting power of all classes of Shares entitled to vote.

SECOND: That SECTION 6.6(c) of the Declaration of Trust of the REIT is hereby amended by deleting therefrom the number "4.0%" and by substituting in lieu thereof the number "9.8%."

THIRD: That SECTION 6.6(d) of the Declaration of Trust of the REIT is hereby amended by deleting from the definition of "Excepted Person" the number "4.0%" and by substituting in lieu thereof the number "9.8%."

FOURTH: That SECTION 6.6(k) of the Declaration of Trust of the REIT is hereby amended by deleting therefrom the term "Related Party Limit" and by substituting in lieu thereof the term "Excess Shares."

FIFTH: The foregoing amendments were advised and approved by at least a majority of the Trustees of the REIT effective as of the 15<sup>th</sup> day of May, 2006, and approved by the affirmative vote of the holders of not less than two-thirds of the shares issued by the REIT and then outstanding on My 15, 2006, in each case in the manner prescribed by the provisions of the Corporations and Associations of the Annotated Code of the State of Maryland.

IN WITNESS WHEREOF, Acadia Realty Trust has caused these presents to be signed in its name on its behalf by its President and attested by its Secretary this 15<sup>th</sup> day of May 2006. Each of the undersigned officers of Acadia Realty Trust acknowledges, under the penalties for perjury, that this Fifth Amendment to Declaration of Trust is the act of the REIT and that, to the best of his knowledge, information and belief, the matters and facts set forth herein are true in all material respects.

ATTEST:

ACADIA REALTY TRUST

\_\_\_\_\_

By: \_\_\_\_\_

Robert Masters, Secretary

Kenneth F. Bernstein, President

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**Exhibit 3.5**

**FIRST AMENDMENT  
TO THE  
AMENDED AND RESTATED BYLAWS  
OF  
ACADIA REALTY TRUST**

**THIS FIRST AMENDMENT**, dated as of March 16, 2009 to the Amended and Restated Bylaws dated as of March 9, 2006 (the “Bylaws”) of Acadia Realty Trust, a Maryland real estate investment trust (the “Company”) was adopted by the Board of Trustees of the Company (the “Trustees”) on March 4, 2009.

**WHEREAS**, Article XIV of the Bylaws grants to the Trustees the exclusive power to adopt, alter or repeal any provision of the Bylaws; and

**WHEREAS**, the Trustees have determined that it is in the best interest of the Company to amend the voting provisions of the Bylaws to provide for majority voting in the case of uncontested elections.

**NOW THEREFORE**, the Bylaws are hereby amended as follows:

1. Article II, Section 7 of the Bylaws is hereby deleted in its entirety and the following is hereby substituted therefor:

Section 7. VOTING. (a) Trustees. Except as otherwise required by law or by the Declaration of Trust, each Trustee shall be elected by the vote of the majority of the votes cast by shareholders entitled to vote with respect to the election of Trustees at a meeting duly called at which a quorum is present; provided that if the number of nominees exceeds the number of Trustees to be elected, the Trustees shall be elected by the vote of a plurality of the votes cast by shareholders entitled to vote with respect to the election of Trustees at a meeting duly called at which a quorum is present. For purposes of this Section, a majority of the votes cast means that the number of shares voted “for” a nominee must exceed 50% of the votes cast “against” or “withheld” with respect to that nominee. Votes “against” or “withheld” with respect to a nominee will count as votes cast with respect to that nominee, but “abstentions” and broker non-votes with respect to that nominee will not count as votes cast with respect to that nominee. If a nominee that is already serving as a Trustee is not elected, such Trustee shall offer to tender his or her resignation to the Board. The Nominating and Governance Committee will make a recommendation to the Board on whether to accept or reject the resignation, or whether other action should be taken. The Board will act on the Committee’s recommendation [and publicly disclose its decision and the rationale behind it] within 90 days from the

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date of the certification of the election results. The Trustee who tenders his or her resignation will not participate in the Board's decision. Each Trustee shall hold office until his or her successor shall be duly elected and qualified, or until death, resignation or removal in the manner hereinafter provided, or until he or she shall cease to qualify. Each share may be voted for as many individuals as there are Trustees to be elected and for whose election the share is entitled to be voted.

(b) Matters other than Trustees. A majority of the votes cast at a meeting of shareholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute or by the Declaration of Trust.

(c) General. Unless otherwise provided in the Declaration, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

2. This Amendment was adopted by the Trustees to be effective on March 16, 2009.

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Robert Masters, Secretary

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NOTE MODIFICATION AGREEMENT

by and between

BANK OF AMERICA, N.A.,  
as Payee

and

ACADIA-P/A SHERMAN AVENUE, LLC,  
as Maker

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NOTE MODIFICATION AGREEMENT

NOTE MODIFICATION AGREEMENT (this "Agreement") made as of the 15th day of January, 2009 by and between BANK OF AMERICA, N.A., having an office at One Bryant Park, 35th Floor, New York, New York 10036 ("Payee"), and ACADIA-P/A SHERMAN AVENUE, LLC, a Delaware limited liability company having an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 ("Maker").

WITNESSETH:

WHEREAS, Payee is now the lawful owner and holder of the note (the "Note") secured by the mortgage more particularly described in Exhibit A attached hereto and made a part hereof;

WHEREAS, Maker is the obligor under the Note which, as of the date hereof, evidences an aggregate outstanding principal indebtedness of \$19,000,000 (the "Indebtedness"), plus interest thereon; and

WHEREAS, Payee and Maker have agreed to modify the Note in the manner hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein expressed, the parties hereto covenant and agree as follows:

1. The Note evidences the aggregate principal amount of the Indebtedness, together with interest accrued and to accrue thereon and all other sums evidenced thereby.

2. Maker hereby acknowledges that it is justly indebted to Payee under the Note, and covenants and promises to pay the Indebtedness, together with

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interest and other charges thereon, in accordance with the terms, covenants, conditions and provisions set forth in Exhibit B attached hereto and made a part hereof, including any exculpatory provisions contained in said Exhibit B, which terms, covenants, conditions and provisions shall supersede in their entirety all of the terms and provisions of the Note.

3. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, representatives, successors and assigns.

4. This Agreement and the rights and obligations of the parties hereto shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to New York's choice of law principles).

5. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and together which shall constitute but one and the same instrument.

6. The information set forth on the cover hereof is incorporated herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by each of the parties hereto as of the day and year first above written.

BANK OF AMERICA, N.A.

By \_\_\_\_\_

Gregory Egli  
Senior Vice President

ACADIA-P/A SHERMAN AVENUE, LLC,  
a Delaware limited liability company

By \_\_\_\_\_

Robert Masters  
Senior Vice President

This is to certify that this Note Modification Agreement was executed in my presence on the date hereof on behalf of the Maker identified above by the party or parties whose signature(s) appear(s) above in the capacities indicated.

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

My Commission Expires:

\_\_\_\_\_

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EXHIBIT A

Mortgage

All recording references are to recordings in the  
Office of the New York City Register, New York County.

Mortgage, Assignment of Leases and Rents in the original principal amount of \$19,000,000 made by Acadia-P/A Sherman Avenue, LLC to Bank of China, New York Branch dated as of September 8, 2005 and recorded September 19, 2005 as CRFN 2005000523844. Mortgage Tax Paid: \$532,000.

Said mortgage was assigned by Bank of China, New York Branch to Bank of America, N.A. by an Assignment of Mortgage dated January 14, 2009 and intended to be recorded.

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EXHIBIT B

Form of Modified Note

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NOTEDate of Note: January 15, 2009Note Amount: \$19,000,000Maturity Date: January 15, 2010

FOR VALUE RECEIVED, the undersigned (hereinafter, "Maker") does hereby covenant and promise to pay to the order of BANK OF AMERICA, N.A. or its successors or assigns (hereinafter collectively "Payee"), on the Maturity Date, at One Bryant Park, 35th Floor, New York, New York 10036, or at such other place as Payee may designate to Maker in writing from time to time (it being understood that all or any portions of the indebtedness evidenced hereby, whether principal or interest, at Payee's election, may be payable at, or for the account of, Payee's lending offices at other locations), the Note Amount or so much thereof as shall be advanced by Payee and remain unpaid, together with interest at the Floating Rate (as hereinafter defined), provided, however, that if the BBA LIBOR Daily Floating Rate (as hereinafter defined) is not available for any reason, or if Payee determines that no adequate basis exists for determining the BBA LIBOR Daily Floating Rate or that the BBA LIBOR Daily Floating Rate will not adequately and fairly reflect the cost to Payee of funding the Loan, or that any applicable law or regulation or compliance therewith by Payee prohibits or restricts or makes impossible the charging of interest based on the BBA LIBOR Daily Floating Rate and Payee so notifies Maker, then until Payee notifies Maker that the circumstances giving rise to such suspension no longer exist, interest shall accrue and be payable on the unpaid principal balance of this Note from the date Payee so notifies Maker until the maturity date of this Note (whether by acceleration, declaration, extension or otherwise) at a fluctuating rate of interest per annum equal to the Prime Rate (as hereinafter defined) of Payee plus 150 basis points per annum. If Payee (including any subsequent holder of this Note) ceases to exist or to establish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is then determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Interest shall be computed on an actual/360-day basis (i.e., interest for each day during which any portion of the Note Amount bearing interest at said rate is outstanding shall be computed at said rate divided by 360) on so much of the Note Amount as is from time to time outstanding (the "Principal Amount"), all as hereinafter provided, and with a late payment premium of 5% of any principal or interest payment (other than the balloon payment due on the Maturity Date) made more than ten (10) days after the due date thereof which shall be due with any such late payment. All payments of principal, interest and other sums hereunder shall be made in lawful money of the United States and in immediately available funds. All payments of principal, interest and other



sums hereunder shall be made in lawful money of the United States and in immediately available funds, without counterclaim or setoff and free and clear of, and without any deduction or withholding for, any taxes or other payments.

The following additional terms, as used in this Note, shall have the meanings indicated opposite them:

“Additional Costs” — Any costs, losses or expenses incurred by Payee which it determines are attributable to its making or maintaining the Loan, or its obligation to make any Loan advances, or any reduction in any amount receivable by Payee under the Loan or this Note.

“BBA LIBOR Daily Floating Rate” — A fluctuating rate of interest per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by Payee from time to time) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in Payee’s sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. A “London Banking Day” is a day on which banks in London are open for business and dealing in offshore dollars.

“Business Day” — Any day other than a Saturday, Sunday or day which shall be in the State of New York a legal holiday or day on which banking institutions are required or authorized to close.

“Dollars” and “\$” — Lawful money of the United States of America.

“Floating Rate” — A fluctuating rate per annum equal to the BBA LIBOR Daily Floating Rate plus 150 basis points per annum, each change in said rates to be effective as of the date of such change.

“Loan” — The loan in the Note Amount to be made to Maker by Payee and evidenced hereby.

“Loan Documents” — All instruments delivered (whether now or hereafter and whether by Maker or any other person or entity) to Payee or any other holder of this Note in connection with the Loan evidenced by this Note.

“Prime Rate” — On any day, the rate of interest per annum then most recently established by Payee as its “prime rate”. Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by Payee to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and Payee may make various business or other loans at rates of interest having no relationship to such rate.

“Regulation D” — Regulation D of the Board of Governors of the Federal Reserve System, as from time to time amended or supplemented.

“Regulatory Change” — With respect to the charging and collecting of interest at the Floating Rate, any change after the date hereof in United States federal, state or foreign laws or regulations (including Regulation D) or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks including Payee under any United States federal, state or foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof, excluding any change the effect of which is reflected in a change in the Floating Rate.

“Reserve Requirement” — The average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding one billion U.S. Dollars against “Euro-Currency Liabilities”, as such quoted term is used in Regulation D. Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (a) any category of liabilities which includes deposits by reference to which the Floating Rate is to be determined as provided in this Note or (b) any category of extensions of credit or other assets which includes loans the interest rate on which is determined on the basis of rates referred to in the definition of “Floating Rate” set forth above.

Interest on the Principal Amount shall be payable monthly on the first day of the first month (an “Interest Payment Date”) following the first advance of Loan proceeds which are evidenced hereby and on the first day of each month thereafter until this Note is repaid in full.

Maker shall pay to Payee, promptly upon demand, such amounts as are necessary to compensate Payee for Additional Costs resulting from any Regulatory Change which (i) subjects Payee to any tax, duty or other charge with respect to the Loan or this Note, or changes the basis of taxation of any amounts payable to Payee under the Loan or this Note (other than taxes imposed on the overall net income of Payee or of its applicable lending office by the jurisdiction in which Payee’s principal office or such applicable lending office is located), (ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, Payee, (iii) imposes on Payee or on the London interbank market, any other condition affecting the Loan or this Note, or any of such extensions of credit or liabilities or (iv) imposes any capital adequacy requirements on Payee by virtue of the Loan or this Note. Payee will notify Maker of any event occurring after the date hereof which would entitle it to compensation pursuant to this paragraph as promptly as practicable after it obtains knowledge thereof and determines to request such compensation, and will designate a different lending office for those portions of the Loan affected by such event if such designation will avoid the need

for, or reduce the amount of, such compensation and will not, in Payee's sole opinion, be disadvantageous to it, provided that Payee shall have no obligation to so designate a lending office located in the United States. For purposes of this paragraph, of the definition of "Additional Costs" set forth above and of the next succeeding four paragraphs, the term "Payee" shall, at Payee's option, be deemed to include Payee's present and future participants in the Loan.

Determinations by Payee of the existence or effect of any Regulatory Change on its costs of making or maintaining the Loan, or portions thereof, at the Floating Rate, or on amounts receivable by it in respect thereof, and of the additional amounts required to compensate Payee in respect of Additional Costs, shall be conclusive, provided that such determinations are made on a reasonable basis.

Maker shall have the right to prepay this Note, in whole or in part, without premium or penalty (subject, however, to the provisions of the immediately preceding paragraph of this Note) upon written notice thereof given to Payee by prepaid registered or certified mail at least ten (10) days prior to the date to be fixed therein for prepayment, and upon the payment of all accrued interest on the amount prepaid (and all late charges and other sums that may be payable hereunder) to the date so fixed. Any such notice of prepayment shall be irrevocable.

This Note is secured by, among other things, a mortgage(s) or deed(s) of trust (the "Mortgage") of premises situated as indicated below, which Mortgage specifies various defaults upon the happening of which all sums owing on this Note may be declared immediately due and payable.

If a default shall occur hereunder or under the Mortgage and such default shall continue after the expiration of any applicable grace period, interest on the Principal Amount shall, at the option of Payee, immediately and without notice to Maker, be converted to the Prime Rate. The foregoing provision shall not be construed as a waiver by Payee of its right to pursue any other remedies available to it under the Mortgage or any other instrument evidencing or securing the Loan, nor shall it be construed to limit in any way the application of the "Default Rate" as provided in the Mortgage.

Maker hereby agrees that it shall be bound by any agreement extending the time or modifying the above terms of payment, made by Payee and the owner or owners of the property affected by the Mortgage or any additional collateral documents delivered to Payee in connection with the Loan, whether with or without notice to Maker, and Maker shall continue to be liable to pay the amount due hereunder, but with interest at a rate no greater than the interest rate provided for herein according to the terms of any such agreement of extension or modification.

This Note may not be changed orally but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. All parties to this Note, whether Maker, principal, surety, guarantor or endorser, hereby waive demand, notice and protest. Written notices required to be given hereunder shall be given as provided in the Mortgage.

Should the indebtedness represented by this Note or any part thereof be collected at law or in equity, or in bankruptcy, receivership or any other court proceeding (whether at the trial or appellate level), or should this Note be placed in the hands of attorneys for collection upon default, Maker agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses.

Anything herein to the contrary notwithstanding, the obligations of Maker under this Note shall be subject to the limitation that payments of interest shall not be required to the extent that receipt of any such payment by Payee would be contrary to provisions of law applicable to Payee limiting the maximum rate of interest which may be charged or collected by Payee. All agreements between Maker and/or any guarantor of Maker's obligations hereunder and Payee are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Payee for the use or the forbearance of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. As used herein, the term "applicable law" shall mean the law in effect as of the date hereof, provided, however, that in the event there is a change in the law which results in a higher permissible rate of interest, then this Note shall be governed by such new law as of its effective date. In this regard, it is expressly agreed that it is the intent of Maker and Payee in the execution, delivery and acceptance of this Note to contract in strict compliance with the laws of the State of New York from time to time in effect. If, under or from any circumstances whatsoever, fulfillment of any provision hereof or of any of the loan documents at the time of performance of such provision shall be due, shall involve transcending the limit of such validity prescribed by applicable law, then the obligation to be fulfilled shall automatically be reduced to the limits of such validity, and if, under or from any circumstances whatsoever Payee should ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Maker and/or any guarantor of Maker's obligations hereunder and Payee.

Promptly upon receipt of an affidavit of an officer of Payee as to the loss, theft, destruction or mutilation of this Note, or of any other document evidencing or securing the loan evidenced hereby which is not of public record, Maker will issue and deliver, in lieu thereof, a replacement Note or other such document.

Payee may at any time pledge all or any portion of this Note or its rights hereunder or otherwise in respect of the Loan to any of the twelve (12) Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. Section 341. No such pledge or enforcement thereof shall release Payee from its obligations under the Loan.

**MAKER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY PAYEE ON THIS NOTE, ANY AND EVERY RIGHT IT MAY HAVE**

TO (I) INJUNCTIVE RELIEF, (II) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM AND (III) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT MAKER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST PAYEE WITH RESPECT TO ANY ASSERTED CLAIM. IN ADDITION, MAKER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THE FOREGOING WAIVERS CONSTITUTE A MATERIAL INDUCEMENT FOR PAYEE TO ACCEPT THIS NOTE AND TO MAKE THE LOAN EVIDENCED HEREBY.

This Note and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to New York's principles of conflicts of law). Maker hereby irrevocably submits to the non-exclusive jurisdiction of any New York State or Federal court sitting in The City of New York (or any county in New York State where any portion of the "Mortgaged Property", as such quoted term is defined in the Mortgage, is located) over any suit, action or proceeding arising out of or relating to this Note, and Maker hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any New York State or Federal court sitting in The City of New York (or such other county in New York State) may be made by certified or registered mail, return receipt requested, directed to Maker at the address indicated below, and service so made shall be complete five (5) days after the same shall have been so mailed.

Maker shall not be personally liable for payment of the principal of this Note or interest thereon, and in the event of any failure by Maker to pay any portion of such principal or interest, Payee will look, with respect to the then outstanding balance of such principal and interest, solely to the Mortgaged Property and such other collateral as has been, or hereafter shall be, given to secure payment of the Note and any guaranties thereof. The foregoing limitation on liability shall not impair or otherwise affect the validity or enforceability of (a) the debt evidenced by this Note or of any other obligations evidenced by this Note, the Mortgage or any of the Loan Documents or (b) Payee's liens, security interests, rights and remedies (including, without limitation, the remedies of foreclosure and/or sale) with respect to the Mortgaged Property or any other property, security, collateral and/or assets (including the proceeds thereof) encumbered, pledged or assigned by the Mortgages or any other security for the Loan. In addition, the foregoing limitation on liability shall not limit the obligations of Maker or any other party, or be applicable, with respect to: (i) liability under any guaranty(ies) or indemnity(ies) delivered or afforded to Payee; (ii) any fraud or material misrepresentation; (iii) taxes of any kind (whether characterized as transfer, gains or

other taxes) payable in connection with the foreclosure sale of the Mortgaged Property, irrespective of who pays such taxes; (iv) application of any proceeds of the Loan to any purpose other than as provided in the Loan Documents; (v) the application of any insurance or condemnation proceeds or other funds or payments other than strictly in accordance with the Loan Documents; (vi) the misapplication of any security deposits; (vii) rents, sales proceeds, or other sums received after default under the Loan Documents which are not applied to expenses of operating the Mortgaged Property or paid to Payee or a duly appointed receiver of the Premises; (viii) any failure to deliver to Payee, after demand therefor, any agreements relating to the operation, management, leasing, use, occupancy or construction of the Mortgaged Property; (ix) any intentional physical waste in respect of the Mortgaged Property; (x) any failure to pay or discharge any real estate tax, other tax, assessment, fine, penalty or lien against the Mortgaged Property to the extent revenue from leases of the Mortgaged Property was available to pay same; (xi) liability as landlord under any lease(s) relating to the Mortgaged Property which liability accrued prior to Payee's succeeding to such interest of Maker, which Payee is or becomes obligated for by virtue of Payee succeeding to the interests of Maker, provided, however, that such liability shall only apply with respect to any liability of Maker under such leases which Payee assumes pursuant to subordination, non-disturbance and attornment agreements required pursuant to the terms of such leases; (xii) liability under any agreement relating to the operation or maintenance of the Mortgaged Property which liability accrued prior to Payee's succeeding to such interest of Maker which Payee is or becomes obligated for by virtue of Payee succeeding to the interests of Maker, provided, however, that such liability shall only apply with respect to agreements which are not terminable by their terms upon thirty (30) days' written notice; (xiii) liability to pay for the premiums on and keep in full force and effect insurance in respect of the Mortgaged Property in accordance with the Loan Documents to the extent revenue from leases of the Mortgaged Property was available to pay same; or (xiv) liability for Hazardous Substances (as defined in the Mortgage) that may exist upon or be discharged from the Mortgaged Property. Maker shall in any event be and shall remain personally liable for each of the matters to which reference is made in the preceding sentence and Payee may seek, obtain and enforce one or more money judgments in any appropriate proceeding(s) with respect thereto. The limitation on personal liability contained in this paragraph shall become automatically null and void and shall be of no further force or effect, and Maker shall be and remain personally liable for payment of the principal of this Note and interest thereon, in accordance with the terms and provisions of this Note, in the event that Maker, or anyone acting on behalf of Maker, shall (A) file a petition or answer seeking any relief of any kind under the bankruptcy laws of the United States, or if an Insolvency Event (as defined in the Mortgage) shall otherwise occur, (B) assert in writing or in any legal proceedings of any kind that any provisions of any of the Loan Documents are in whole or in part unenforceable, invalid or not legally binding, or (C) fail fully to cooperate with Payee or a receiver in Payee's or such receiver's efforts to collect Rents directly from tenants after a default under the Loan Documents.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Maker has executed and delivered this Note on the day and year first above written.

ACADIA-P/A SHERMAN AVENUE, LLC,  
a Delaware limited liability company

By

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

Location of Premises:

4650-4060 Broadway (a/k/a 2-16 Sherman  
Avenue), New York, New York

Address of Maker

Acadia-P/A Sherman Avenue, LLC  
c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605

This is to certify that this Note was executed in my presence on the date hereof by the party whose signature appears above in the capacity indicated.

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

My Commission Expires:

\_\_\_\_\_



BLOCK: 2175  
LOT: 1  
COUNTY: New York  
ADDRESS: 4650-4660 Broadway (a/k/a 2-16 Sherman Avenue), New York, New York

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As of January 15, 2009

MORTGAGE MODIFICATION AGREEMENT

by and between

ACADIA-P/A SHERMAN AVENUE, LLC,  
as Mortgagor

and

BANK OF AMERICA, N.A.,  
as Mortgagee

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

Schiff Hardin LLP  
900 Third Avenue  
New York, New York 10022  
Attention: Paul G. Mackey, Esq.

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MORTGAGE MODIFICATION AGREEMENT

MORTGAGE MODIFICATION AGREEMENT (this "Agreement") made as of the 15th day of January, 2009 by and between BANK OF AMERICA, N.A., having an office at One Bryant Park, 35th Floor, New York, New York 10036 ("Mortgagee"), and ACADIA-P/A SHERMAN AVENUE, LLC, a Delaware limited liability company having an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605 ("Mortgagor").

WITNESSETH:

WHEREAS, Mortgagee is now the lawful owner and holder of the mortgages (collectively, the "Mortgage") more particularly described in Exhibit A attached hereto and made a part hereof, and of the note (the "Note") and other obligations secured thereby;

WHEREAS, the maximum outstanding principal amount which is or under any contingency may be secured by the Mortgage is \$19,000,000 (the "Indebtedness"), plus interest thereon and all additional interest and late payment and prepayment charges in respect thereof, plus all amounts expended by Mortgagee following a default thereunder in respect of insurance premiums and real estate taxes, and all legal costs or expenses of collection of the note(s) secured thereby or of the defense or prosecution of the rights and lien created thereby;

WHEREAS, the Mortgage is presently a valid lien on the real property described in Schedule A attached hereto and made a part hereof (the "Premises");

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

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WHEREAS, Mortgagee and Mortgagor have agreed to modify, amend and restate the terms of the Mortgage in the manner hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein expressed, the parties hereto covenant and agree as follows:

7. Mortgagor hereby agrees to pay the Indebtedness and interest thereon at the rate(s) of interest and on the terms provided for the payment of principal and interest in the Note, as modified by that certain note modification agreement, dated the date hereof, between Mortgagee and Mortgagor (the "Note Agreement").

8. The Mortgage is hereby amended and restated in its entirety by Exhibit B attached hereto and made a part hereof including any exculpatory provisions contained in said Exhibit B, and Mortgagor hereby agrees to comply with and be bound by all of the terms, covenants and conditions set forth in said Exhibit B.

9. Mortgagor hereby certifies that this Agreement secures the same indebtedness evidenced by the Note, as modified by the Note Agreement, and secured by the Mortgage, as modified, amended and restated hereby, and secures no new or further indebtedness or obligation.

10. Mortgagor represents and warrants that there exist no defenses, offsets or counterclaims with respect to its obligations under the Mortgage, as modified hereby, or under the Note, as modified by the Note Agreement, including its obligation for the payment of the Indebtedness.

11. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, representatives, successors and assigns.

12. This Agreement and the rights and obligations of the parties hereto shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to New York's choice of law principles).

13. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and together which shall constitute but one and the same instrument.

14. The information set forth on the cover hereof is incorporated herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by each of the parties hereto as of the day and year first above written.

BANK OF AMERICA, N.A.

By

\_\_\_\_\_  
Gregory Egli  
Senior Vice President

ACADIA-P/A SHERMAN AVENUE, LLC,  
a Delaware limited liability company

By

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

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

On the \_\_\_\_\_ day of January in the year 2009, before me, the undersigned, a notary public in and for said state, personally appeared Gregory Egli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

My Commission Expires:

\_\_\_\_\_

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

On the \_\_\_\_\_ day of January in the year 2009, before me, the undersigned, a notary public in and for said state, personally appeared Robert Masters, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

My Commission Expires:

\_\_\_\_\_

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SCHEDULE A

Property Description

ALL that lot or parcel of land, in the Borough of Manhattan, County of New York, City of New York, State of New York described as follows:

PARCEL A:

Lot Numbers 1 and 4 in Section Number 8, Block Number 2175 on the land map of the County of New York, and bounded and described as follows:

BEGINNING a point on the easterly side of Broadway at the northeasterly line of said Lot Number 4;

RUNNING THENCE easterly, or nearly so along said Lot Number 4, 220 feet 5 inches to the westerly line of Lot Number 100 on said map;

THENCE 113 feet 8 inches southeasterly along said westerly line of said Lot Number 100 to the northerly side of Sherman Avenue;

THENCE westerly or nearly so along the northerly side of Sherman Avenue to a point thereon distant 204 feet 4-3/8 inches westerly from the westerly side of said Lot Number 100;

THENCE running on a curved line, 96 feet 9-5/8 inches to a point on the easterly side of Broadway, distant 130 feet 5/8 inch southerly from the northerly line of said Lot Number 4;

THENCE northerly along the easterly side of Broadway, 130 feet 5/8 inch to the point or place of BEGINNING. Be the said several distances, more or less.

PARCEL B:

Lot Number 50 on a certain map entitled "Map of 128 acres of land situated in the 12th Ward of the City of New York, part of the Estate Of Isaac Dyckman, deceased, known as Fort George Property". Dated September 15th, 1868 by R. Rosa, Surveyor, and filed in the Office of the Register of the County of New York on November 7, 1868 as map number 697 and which said plot is bounded and described as follows:

BEGINNING at a point on the easterly side of Broadway or Kingsbridge Road, as widened, at the southwest corner of plot number 49 on said map;

THENCE easterly or nearly so along said plot number 49, 202 feet to plot number 53 on said map;

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THENCE southeasterly along the said plot number 53 on said map and parallel with a new street laid out by the Commissioners of the Central Park and designated on said map as boulevard or Dyckman Street, 53 feet 3 inches;

THENCE westerly or nearly so and along plot number 51 on said map, 220 feet 5 inches to the present easterly side of Broadway or Kingsbridge Road, as widened;

THENCE northerly or nearly so along the said present easterly side of Broadway or Kingsbridge Road, 50 feet to the point or place of BEGINNING.



EXHIBIT A

Mortgage

All recording references are to recordings in the  
Office of the New York City Register, New York County.

Mortgage, Assignment of Leases and Rents in the original principal amount of \$19,000,000 made by Acadia-P/A Sherman Avenue, LLC to Bank of China, New York Branch dated as of September 8, 2005 and recorded September 19, 2005 as CRFN 2005000523844. Mortgage Tax Paid: \$532,000.

Said mortgage was assigned by Bank of China, New York Branch to Bank of America, N.A. by an Assignment of Mortgage dated January 14, 2009 and intended to be recorded.

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EXHIBIT B

Form of Amended and Restated Mortgage

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EXHIBIT B

BLOCK: 2175  
LOT: 1  
COUNTY: New York  
ADDRESS: 4650-4660 Broadway (a/k/a 2-16 Sherman Avenue), New York, New York

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Date: As of January 15, 2009

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

FROM

ACADIA-P/A SHERMAN AVENUE, LLC,  
a limited liability company organized and existing under the laws of Delaware

("Mortgagor")

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

TO

BANK OF AMERICA, N.A.

("Mortgagee")

Address of Mortgagee: One Bryant Park, 35th Floor  
New York, New York 10036

Mortgage Amount: \$19,000,000

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

RECITAL

ACADIA-P/A SHERMAN AVENUE, LLC, a Delaware limited liability company, is the owner of the premises described in Schedule A. Mortgagor will borrow the Mortgage Amount from Mortgagee and has executed and delivered to Mortgagee a note modification agreement, dated the date hereof, obligating it to pay the Mortgage Amount (the note described in, and modified by, said note modification agreement, as the same may hereafter be amended, modified, extended, severed, assigned, renewed, replaced or restated, hereinafter, the "Loan Note"). In the event that all or any part of the Premises is located in the State of New York, then, notwithstanding the language in the Granting Clause and Section 1.10 or anything else contained herein to the contrary, the maximum amount secured hereby at execution or which under any contingency may become secured hereby at any time hereafter is the Mortgage Amount and all interest, Additional Interest and late payment and prepayment charges in respect thereof, plus all amounts expended by Mortgagee following a default hereunder in respect of insurance premiums and real estate taxes, and all legal costs or expenses of collection of the debt secured hereby or of the defense or prosecution of the rights and lien created hereby. In addition, Mortgagor may hereafter enter into the Hedging Agreement (as hereinafter defined) with Counterparty (as hereinafter defined), providing for one or more interest rate hedging transactions. The Loan Note and the Hedging Agreement are hereinafter referred to individually and collectively as the "Note". In connection with the Hedging Agreement, Counterparty has appointed or will appoint Mortgagee to act as its agent hereunder.

CERTAIN DEFINITIONS AND RULES OF CONSTRUCTION

Mortgagor and Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified.

"Additional Interest" means all sums payable by Mortgagor under the Hedging Agreement.

"Chattels" means all fixtures, furnishings, fittings, appliances, apparatus, equipment, building materials and components, machinery, boilers, oil burners, power systems, heating, ventilating and air conditioning systems, elevators, and all other chattels and articles of personal property, of whatever kind or nature, and any additions thereto and any replacements, proceeds or products thereof (other than those owned by lessees or those claiming under or through lessees or leased by lessees from parties other than Mortgagor) now or at any time hereafter intended to be or actually affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, development, occupancy or operation of the Premises, and whether located on or off the Premises.

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“Counterparty” means Bank of America, N.A., in its capacity as a party to the Hedging Agreement, and its successors and assigns in such capacity.

“Default Rate” means the rate (or, if more than one, the highest of the rates) of interest per annum provided in the Note plus 5%, but in no event to exceed the maximum rate allowed by law.

“Events of Default” means the events and circumstances described as such in Section 2.01.

“Financial Statements” means statements of the assets, liabilities (direct or contingent), income, expenses and cash flow of Mortgagor and Guarantor, prepared in accordance with generally accepted accounting principles in the United States as in effect from time to time and consistently applied (“GAAP”).

“Guarantor” means Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company (“ASOF II”).

“Guaranty” means, individually and collectively, that certain Guaranty of Payment-Mortgage Loan (Interest/Carrying Costs) made by ASOF II in favor of Mortgagee.

“Hazardous Materials” means any pollutant, effluents, emissions, contaminants, toxic or hazardous wastes, materials or substances, as any of those terms are defined from time to time in or for the purposes of any relevant environmental law, rule, regulation, code, permit, order, notice, demand letter or other binding determination (hereinafter, “Environmental Laws”) including, without limitation, asbestos fibers and friable asbestos, polychlorinated biphenyls and any petroleum or hydrocarbon-based products or derivatives.

“Hedging Agreement” means any ISDA Master Agreement or other documentation with respect to an interest rate hedging transaction entered into by and between Mortgagor and Counterparty, as may be amended, modified or supplemented from time to time, including any and all “confirmations” under any thereof.

“Improvements” means all structures or buildings, and replacements thereof, now or hereafter located upon the Premises, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures or buildings.

“Insolvency Event” means (1) the voluntary or collusive involuntary incurrence of any secured or unsecured indebtedness in contravention of the Loan Documents, (2) any voluntary or collusive involuntary filing of any bankruptcy, insolvency or similar proceeding by or against Mortgagor or Guarantor or (3) the voluntary or collusive involuntary creation of any pledge, lien or other encumbrance on the Mortgaged Property in contravention of the Loan Documents.

“lease” or “leases” means any lease or leases of all or any portion of the Premises, whether affecting the fee or leasehold portion thereof.

“Loan” means the loan made by Mortgagee to Mortgagor pursuant to the Note and secured hereby.

“Loan Documents” means this Mortgage, any other Mortgages held by Mortgagee which encumber the Premises (collectively, the “Other Mortgages”), the Note, the Guaranty, any Hedging Agreement and all other documents executed or delivered by Mortgagor or Guarantor to Mortgagee in connection with the Loan or the Other Mortgages, if any.

“Premises” means the premises described in Schedule A, including all of the easements, rights, privileges and appurtenances (including air or development rights) thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor therein and in the streets and ways adjacent thereto, either in law or in equity, in possession or expectancy, now or hereafter acquired, and as used herein shall, unless the context otherwise requires, be deemed to include the Improvements.

“Premises Documents” means all reciprocal easement or operating agreements, declarations, development agreements, developer’s or utility agreements, and any similar such agreements or declarations now or hereafter affecting the Premises or any part thereof.

All terms of this Mortgage which are not defined above shall have the meaning set forth elsewhere in this Mortgage.

Except as expressly indicated otherwise, when used in this Mortgage (i) “or” is not exclusive, (ii) “hereunder”, “herein”, “hereof” and the like refer to this Mortgage as a whole, (iii) “Article”, “Section” and “Schedule” refer to Articles, Sections and Schedules of this Mortgage, (iv) terms defined in the singular have a correlative meaning when used in the plural and vice versa, (v) a reference to a law or statute includes any amendment or modification to, or replacement of, such law or statute and (vi) a reference to an agreement, instrument or document means such agreement, instrument or document as the same may be amended, modified or supplemented from time to time in accordance with its terms. The cover page and all Schedules hereto are incorporated herein and made a part hereof. Any table of contents and the headings and captions herein are for convenience only and shall not affect the interpretation or construction hereof.

#### GRANTING CLAUSE

NOW, THEREFORE, Mortgagor, in consideration of the premises and in order to secure the payment of both the principal of, and the interest, Additional Interest and any other sums payable under, the Note or this Mortgage and the performance and observance of all the provisions hereof and of the Note, hereby gives, grants, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages,

hypothecates, deposits, pledges, sets over and confirms unto Mortgagee, all its estate, right, title and interest in, to and under any and all of the following described property (hereinafter, the "Mortgaged Property") whether now owned or held or hereafter acquired:

(i) the Premises;

(ii) the Improvements;

(iii) the Chattels;

(iv) the Premises Documents;

(v) all rents, royalties, issues, profits, revenue, income, recoveries, reimbursements and other benefits of the Mortgaged Property (hereinafter, the "Rents") and all leases of the Mortgaged Property or portions thereof now or hereafter entered into and all right, title and interest of Mortgagor thereunder, including, without limitation, cash, letters of credit or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash, letters of credit or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, and including any guaranties of such leases and any lease cancellation, surrender or termination fees in respect thereof, all subject, however, to the provisions of Section 3.01;

(vi) all (a) development work product prepared in connection with the Premises, including, but not limited to, engineering, drainage, traffic, soil and other studies and tests; water, sewer, gas, electrical and telephone approvals, taps and connections; surveys, drawings, plans and specifications; and subdivision, zoning and platting materials; (b) building and other permits, rights, licenses and approvals relating to the Premises; (c) contracts and agreements (including, without limitation, contracts with architects and engineers, construction contracts and contracts for the maintenance, management or leasing of the Premises), contract rights, logos, trademarks, trade names, copyrights and other general intangibles used or useful in connection with the ownership, operation or occupancy of the Premises or any part thereof; (d) financing commitments (debt or equity) issued to Mortgagor in respect of the Premises and all amounts payable to Mortgagor thereunder; (e) contracts for the sale of all or any portion of the Premises, the Improvements or the Chattels, and all amounts payable by the purchasers thereunder; (f) operating and other bank accounts, and monies therein, of Mortgagor relating to the Premises, including, without limitation, any accounts relating to real estate taxes or assessments; (g) interest rate protection agreements entered into by Mortgagor in respect of the Loan, whether pursuant to the Note or otherwise; and (h) commercial tort claims related to the Premises, the Improvements or the Chattels;

(vii) all rights of Mortgagor under promissory notes, letters of credit, electronic chattel paper, proceeds from accounts, payment intangibles, and general intangibles related to the Premises, as the terms “accounts”, “general intangibles”, and “payment intangibles” are defined in the applicable Uniform Commercial Code Article 9, as the same may be modified or amended from time to time;

(viii) all other assets of Mortgagor related in any way to the Premises, subject to certain limitations that may be set forth herein; and

(ix) all proceeds 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 all rights of Mortgagor to refunds of real estate taxes and assessments.

TO HAVE AND TO HOLD unto Mortgagee, its successors and assigns forever.

15.

#### COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees as follows:

(a) (i) Warranty of Title; Power and Authority. Mortgagor warrants that it has a good and marketable title to an indefeasible fee estate in the Premises subject to no lien, charge or encumbrance except such as are listed as exceptions to title in the title policy insuring the lien hereof; that it owns the Chattels, all leases and the Rents in respect of the Mortgaged Property and all other personal property encumbered hereby free and clear of liens and claims; and that this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property subject only to the exceptions referred to above. Mortgagor has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended hereafter to be done. Mortgagor will preserve, and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

(ii) Hazardous Materials. Mortgagor represents and warrants that (i) the Premises and the improvements thereon, and, to the best of Mortgagor’s knowledge, the surrounding areas, are not currently and have never been subject to Hazardous Materials or their effects, (ii) neither it nor any portion of the Premises or improvements thereon is in violation of, or subject to any existing, pending or threatened investigation or proceeding by any governmental authorities under, any Environmental Law, (iii) there are no claims, litigation, administrative or other proceedings, whether actual or threatened, or judgments or orders, concerning Hazardous Materials relating in any way to the Premises or the improvements thereon and (iv) Mortgagor is not required by any



Environmental Law to obtain any permits or licenses to construct or use any improvements, fixtures or equipment with respect to the Premises, or if any such permit or license is required it has been obtained and is capable of being mortgaged and assigned hereby. Mortgagor will comply with all applicable Environmental Laws and will, at its sole cost and expense, promptly remove, or cause the removal of, any and all Hazardous Materials or the effects thereof at any time identified as being on, in, under or affecting the Premises.

(iii) Flood Hazard Area. Mortgagor represents that neither the Premises nor any part thereof is located in an area identified by the Secretary of the United States Department of Housing and Urban Development or by any applicable federal agency as having special flood hazards or, if it is, Mortgagor has obtained the insurance required by Section 1.09.

(b) (i) Further Assurances. Mortgagor will, at its sole cost and expense, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms hereof, or for filing, registering or recording this Mortgage and, on demand, will execute and deliver, and hereby irrevocably authorizes Mortgagee to execute (including in Mortgagor's name) and/or file, at any time and from time to time, one or more financing statements (including amendments), chattel mortgages or comparable security instruments, to evidence or perfect more effectively Mortgagee's security interest in and the lien hereof upon the Chattels and other personal property encumbered hereby.

(ii) Information Reporting and Back-up Withholding. Mortgagor will, at its sole cost and expense, do, execute, acknowledge and deliver all and every such acts, information reports, returns and withholding of monies as shall be necessary or appropriate to comply fully, or to cause full compliance, with all applicable information reporting and back-up withholding requirements of the Internal Revenue Code of 1986 (including all regulations now or hereafter promulgated thereunder) in respect of the Premises and all transactions related to the Premises, and will at all times provide Mortgagee with satisfactory evidence of such compliance and notify Mortgagee of the information reported in connection with such compliance.

(c) (i) Filing and Recording of Documents. Mortgagor forthwith upon the execution and delivery hereof, and thereafter from time to time, will cause this Mortgage and any security instrument creating a lien or evidencing the lien hereof upon the Chattels and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of Mortgagee in, the Mortgaged Property.

(ii) Filing and Recording Fees and Other Charges. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment hereof, any mortgage supplemental hereto, any security instrument with respect to the Chattels, and any instrument of further assurance, and any expenses (including attorneys' fees and disbursements) incurred by Mortgagee in connection with the Loan, and will pay all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels or any instrument of further assurance.

(d) Payment and Performance of Loan Documents. Mortgagor will punctually pay the principal and interest, Additional Interest, and all other sums to become due in respect hereof and of the Note at the time and place and in the manner specified therein, according to the true intent and meaning thereof, all in currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts. Mortgagor will duly and timely comply with and perform all of the terms, provisions, covenants and agreements contained in said documents and in all other documents or instruments executed or delivered by Mortgagor to Mortgagee in connection with the Loan, and will permit no failures of performance thereunder.

(e) Type of Entity; Maintenance of Existence; Compliance with Laws. Mortgagor represents that its correct legal name, jurisdiction of formation/existence and chief executive office or, if applicable, sole place of business (or, if an individual, its principal residence) are as set forth on the cover page hereof. Mortgagor, if other than a natural person, further represents that it has delivered to Mortgagee a current, original certificate issued by the appropriate official of said jurisdiction evidencing such formation and existence, and agrees that it will, so long as it is owner of all or part of the Mortgaged Property, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or stock corporation, partnership, limited liability company, trust or other entity under the laws of such jurisdiction. Mortgagor, if other than a natural person, will not (a) modify or amend such certificate or change its legal name or jurisdiction of formation/existence without Mortgagee's prior consent, not to be unreasonably withheld or (b) change the location of its chief executive office or, if applicable, sole place of business without first giving Mortgagee at least thirty (30) days' prior notice. Mortgagor, if an individual, will not change its legal name or principal residence without first giving Mortgagee at least thirty (30) days' prior notice. Mortgagor will duly and timely comply with all laws, regulations, rules, statutes, orders and decrees of any governmental authority or court applicable to it or to the Mortgaged Property or any part thereof.

(f) After-Acquired Property. All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Premises, and all conversions of the security constituted thereby,

immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien hereof as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the Granting Clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien hereof.

(g) (i) Payment of Taxes and Other Charges. Mortgagor, from time to time when the same shall become due and payable, will pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), payments in lieu of taxes, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, all charges for utilities, and all other charges (public or private) whether of a like or different nature, imposed upon or assessed against it or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. Mortgagor will, upon Mortgagee's request, deliver to Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other charges imposed upon or assessed against it or the Mortgaged Property or any portion thereof.

From and after the occurrence of an Event of Default, Mortgagee may, at its option, to be exercised by thirty (30) days' notice to Mortgagor, require the deposit by Mortgagor, at the time of each payment of an installment of interest or principal under the Note (but no less often than monthly), of an additional amount sufficient to discharge the obligations under this clause (a) when they become due. The determination of the amount so payable and of the fractional part thereof to be deposited with Mortgagee, so that the aggregate of such deposits shall be sufficient for this purpose, shall be made by Mortgagee in its sole discretion. Such amounts shall be held by Mortgagee without interest and applied to the payment of the obligations in respect of which such amounts were deposited or, at Mortgagee's option, to the payment of said obligations in such order or priority as Mortgagee shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one (1) month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, Mortgagor within ten (10) days after demand shall deposit the amount of the deficiency with Mortgagee. Nothing herein contained shall be deemed to affect any right or remedy of Mortgagee under any provisions hereof or of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the Default Rate, to the indebtedness hereby secured.

(ii) Payment of Mechanics and Materialmen. Mortgagor will pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation

of, a lien on the Mortgaged Property or any part thereof, and in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of Mortgagor and without expense to Mortgagee.

(iii) Good Faith Contests. Nothing in this Section 1.07 shall require the payment or discharge of any obligation imposed upon Mortgagor by this Section so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided, however, that (i) during such contest Mortgagor shall, at Mortgagee's option, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest and (ii) if at any time payment of any obligation imposed upon Mortgagor by clause (a) above shall become necessary to prevent the delivery of a tax deed or other instrument conveying the Mortgaged Property or any portion thereof because of non-payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or other instrument.

(h) Taxes on Mortgagee. Mortgagor will pay any taxes (except income, franchise or similar taxes) imposed on Mortgagee by reason of its ownership of the Note or this Mortgage.

(i) Insurance.

Mortgagor will at all times provide, maintain and keep in force:

policies of insurance insuring the Premises, Improvements and Chattels against loss or damage by fire and lightning; against loss or damage by other risks embraced by coverage of the type now known as All Risk Replacement Cost Insurance with agreed amount endorsement, including but not limited to riot and civil commotion, vandalism, malicious mischief, terrorism and theft; and against such other risks or hazards as Mortgagee from time to time reasonably may designate in an amount sufficient to prevent Mortgagee or Mortgagor from becoming a co-insurer under the terms of the applicable policies, but in any event in an amount not less than 100% of the then full replacement cost of the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) without deduction for physical depreciation;

policies of insurance insuring the Premises against the loss of "rental value" of the buildings which constitute a part of the Improvements on a "rented or vacant basis" arising out of the perils insured against pursuant to clause (i) above in an amount equal to not less than one (1) year's gross "rental value" of the Improvements. "Rental value" as used herein is defined as the sum of (A) the total anticipated gross rental income from tenant occupancy of such buildings as furnished and equipped, (B) the amount of all charges which are the legal

obligation of tenants and which would otherwise be the obligation of Mortgagor and (C) the fair rental value of any portion of such buildings which is occupied by Mortgagor. Mortgagor hereby assigns the proceeds of such insurance to Mortgagee, to be applied by Mortgagee in payment of the interest and principal on the Note, insurance premiums, taxes, assessments and private impositions until such time as the Improvements shall have been restored and placed in full operation, at which time, provided Mortgagor is not then in default hereunder, the balance of such insurance proceeds, if any, held by Mortgagee shall be paid over to Mortgagor;

if all or part of the Premises are located in an area identified by the Secretary of the United States Department of Housing and Urban Development or by any applicable federal agency as a flood hazard area, flood insurance in an amount at least equal to the maximum limit of coverage available under the National Flood Insurance Act of 1968, provided, however, that Mortgagee reserves the right to require flood insurance in excess of said limit if such insurance is commercially available up to the amount provided in clause (i) above;

during any period of restoration under this Section 1.09 or Section 1.13, a policy or policies of builder's "all risk" insurance, written on a Standard Builder's Risk Completed Value Form (100% non-reporting), in an amount not less than the full insurable value of the Premises against such risks (including, without limitation, fire and extended coverage, collapse and earthquake coverage to agreed limits) as Mortgagee may reasonably request, in form and substance acceptable to Mortgagee;

a policy or policies of workers' compensation insurance as required by workers' compensation insurance laws (including employer's liability insurance, if requested by Mortgagee) covering all employees of Mortgagor;

comprehensive liability insurance on an "occurrence" basis against claims for "personal injury" liability, including, without limitation, bodily injury, death or property damage liability, with a limit of not less than \$15,000,000 in the event of "personal injury" to any number of persons or of damage to property arising out of one "occurrence". Such policies shall name Mortgagee as additional insured by an endorsement, and shall contain cross-liability and severability of interest clauses, all satisfactory to Mortgagee; and

such other insurance (including, but not limited to, earthquake insurance), and in such amounts, as may from time to time be reasonably required by Mortgagee against the same or other insurable hazards.

All policies of insurance required under this Section 1.09 shall be issued by companies having Best's ratings and being otherwise acceptable to Mortgagee, shall be subject to the reasonable approval of Mortgagee as to amount, content, form and expiration date and, except for the liability policies described in clauses (a)(v) and (vi)

above, shall contain a Non-Contributory Standard Mortgagee Clause and Mortgagee's Loss Payable Endorsement, or their equivalents, in favor of Mortgagee, and shall provide that the proceeds thereof shall be payable to Mortgagee. Mortgagee shall be furnished with the original of each policy required hereunder, which policies shall provide that they shall not lapse, nor be modified or cancelled, without thirty (30) days' written notice to Mortgagee. At least thirty (30) days prior to expiration of any policy required hereunder, Mortgagor shall furnish Mortgagee appropriate proof of issuance of a policy continuing in force the insurance covered by the policy so expiring. Mortgagor shall furnish to Mortgagee, promptly upon request, receipts or other satisfactory evidence of the payment of the premiums on such insurance policies. In the event that Mortgagor does not deposit with Mortgagee a new certificate or policy of insurance with evidence of payment of premiums thereon at least thirty (30) days prior to the expiration of any expiring policy, then Mortgagee may, but shall not be obligated to, procure such insurance and pay the premiums therefor, and Mortgagor agrees to repay to Mortgagee the premiums thereon promptly on demand, together with interest thereon at the Default Rate.

Mortgagor hereby assigns to Mortgagee all proceeds of any insurance required to be maintained by this Section 1.09 which Mortgagor may be entitled to receive for loss or damage to the Premises, Improvements or Chattels. All such insurance proceeds shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment thereof directly to Mortgagee. Mortgagor shall give prompt notice to Mortgagee of any casualty, whether or not of a kind required to be insured against under the policies to be provided by Mortgagor hereunder, such notice to generally describe the nature and cause of such casualty and the extent of the damage or destruction. Mortgagor may settle, adjust or compromise any claims for loss, damage or destruction, regardless of whether or not there are insurance proceeds available or whether any such insurance proceeds are sufficient in amount to fully compensate for such loss or damage, subject to Mortgagee's prior consent. Notwithstanding the foregoing, Mortgagee shall have the right to join Mortgagor in settling, adjusting or compromising any loss of \$250,000 or more. Mortgagor hereby authorizes the application or release by Mortgagee of any insurance proceeds under any policy of insurance, subject to the other provisions hereof. The application or release by Mortgagee of any insurance proceeds shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

In the event of the foreclosure hereof or other transfer of the title to the Mortgaged Property in extinguishment, in whole or in part, of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to any insurance policy, or premiums or payments in satisfaction of claims or any other rights thereunder then in force, shall pass to the purchaser or grantee notwithstanding the amount of any bid at such foreclosure sale. Nothing contained herein shall prevent the accrual of interest as provided in the Note on any portion of the principal balance due under the Note until such time as insurance proceeds are actually received and applied to reduce the principal balance outstanding.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section

1.09 unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee under standard mortgage endorsements of the character and to the extent above described. Mortgagor shall promptly notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

Any and all monies received as payment which Mortgagor may be entitled to receive for loss or damage to the Premises, Improvements or Chattels under any insurance maintained pursuant to this Section 1.09 (other than proceeds under the policies required by clause (a)(ii) above) shall be paid over to Mortgagee and, at Mortgagee's option, either applied to the prepayment of the Note and all interest, Additional Interest and other sums accrued and unpaid in respect thereof or disbursed from time to time to Mortgagor in reimbursement of its costs and expenses incurred in the restoration of the Improvements in accordance with Mortgagee's standard construction lending practices, terms and conditions, in either case, less Mortgagee's reasonable expenses for collecting and, if applicable, disbursing the insurance proceeds, or otherwise incurred in connection therewith.

(j) Protective Advances by Mortgagee. If Mortgagor shall fail to perform any of the covenants contained herein, Mortgagee may make advances to perform the same on its behalf and all sums so advanced shall be a lien upon the Mortgaged Property and shall be secured hereby. Mortgagor will repay on demand all sums so advanced on its behalf together with interest thereon at the Default Rate. The provisions of this Section shall not prevent any default in the observance of any covenant contained herein from constituting an Event of Default.

(k) (i) Visitation and Inspection. Mortgagor will keep adequate records and books of account in accordance with generally accepted accounting principles, consistently applied ("GAAP") and will permit Mortgagee, by its agents, accountants and attorneys, to visit and inspect the Mortgaged Property and examine its records and books of account and make copies thereof or extracts therefrom, and to discuss its affairs, finances and accounts with the officers or general partners, as the case may be, of Mortgagor, at such reasonable times as may be requested by Mortgagee.

(ii) Financial and Other Information. Mortgagor shall furnish directly to Mortgagee:

Annual Financial Statements; Tax Returns. As soon as available and in any event within one hundred twenty (120) days after the end of the fiscal year of Mortgagor, Financial Statements of Mortgagor and Guarantor, as of the end of and for such fiscal year, certified by the principal financial or accounting officer of Mortgagor, in reasonable detail, stating in comparative form the respective figures for the preceding fiscal year and compiled by a firm of certified public accountants reasonably satisfactory to Administrative Agent; and complete copies of Mortgagor's and Guarantor's federal and state income tax returns, within thirty (30) days of filing;

Semi-Annual Financial Statements. As soon as available and in any event within sixty (60) days after the end of each semi-annual period ending June 30 of each year, Financial Statements of Mortgagor and Guarantor, as of the end of and for such calendar quarter, certified by the principal financial or accounting officer of Mortgagor or Guarantor, as the case may be, in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the preceding fiscal year;

Compliance Certificate. At the time of the delivery of the Financial Statements required by paragraphs (i) and (ii) above, a certificate of the principal financial or accounting officer of Mortgagor or Guarantor, as the case may be, dated within five (5) days of the delivery of such statements to Administrative Agent, stating (a) that such officer knows of no Default or Event of Default which has occurred and is continuing, or, if any such Default or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action Mortgagor has taken or proposes to take with respect thereto and (b) with respect to Guarantor, that Guarantor is in compliance with the financial covenant(s) set forth in paragraph 13 of the Guaranty;

Notice of Litigation. Promptly after the commencement and knowledge thereof, notice of all actions, suits, and proceedings before any court or arbitrator or any Governmental Authority, affecting (i) Mortgagor which, if determined adversely to Mortgagor are likely to result in a Material Adverse Change or (ii) all or any portion of the Mortgaged Property under this Mortgage. For purposes of this Section 1.11(b)(i), a "Material Adverse Change" shall mean either (1) a material adverse change in the status of the business, results of operations, financial condition, property or prospects of Mortgagor or (2) any event or occurrence of whatever nature which is likely to (x) have a material adverse effect on the ability of Mortgagor to perform its obligations under the Loan Documents or (y) create, in the sole and absolute judgment (reasonably exercised) of Mortgagee, a material risk of sale or forfeiture of any Mortgaged Property (other than an immaterial portion thereof) under this Mortgage or otherwise materially impair any of the Mortgaged Property under this Mortgage or Mortgagee's rights therein;

Notices of Defaults and Events of Default. As soon as possible and in any event within ten (10) days after Mortgagor becomes aware of the occurrence of a Default or any Event of Default, a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken with respect thereto;

Material Adverse Change. As soon as is practicable and in any event within five (5) days after knowledge of the occurrence of any event or circumstance which is likely to result in or has resulted in a Material Adverse Change, written notice thereof;



Offices. Thirty (30) days' prior written notice of any change in the chief executive office or principal place of business of Mortgagor;

Environmental and Other Notices. As soon as possible and in any event within ten (10) days after receipt, copies of (i) all Environmental Notices received by Mortgagor which are not received in the ordinary course of business and which relate to the Premises or a situation which is likely to result in a Material Adverse Change and (ii) all reports of any official searches made by any Governmental Authority having jurisdiction over the Premises or the Improvements thereon, and of any claims of violations thereof;

Insurance Coverage. Promptly, such information concerning Mortgagor's insurance coverage as Mortgagee may reasonably request;

Bankruptcy of Tenants. Promptly after becoming aware of the same, written notice of the bankruptcy, insolvency or cessation of operations of any tenant in the Improvements on the Premises to which 5% or more of the aggregate minimum rent from such Improvements is attributable;

Leasing Reports and Property Information. (i) Upon request by Mortgagee, but no more often than quarterly, an updated rent roll, leasing report, and operating and cash statements for the Premises and (ii) as soon as available and in any event within ninety (90) days after the end of each Fiscal Year, tenant sales report for the Premises, to the extent Mortgagor is entitled to receive same pursuant to the terms of the respective leases; and

General Information. Promptly, such other information respecting the condition or operations, financial or otherwise, of Mortgagor, Guarantor or the Premises and Improvements as Mortgagee may from time to time reasonably request.

All financial statements of Mortgagor or Guarantor shall be prepared in accordance with generally accepted accounting principles and, in the case of Mortgagor, shall be accompanied by the certificate of a principal financial or accounting officer or general partner, as the case may be, of Mortgagor, dated within five (5) days of the delivery of such statements to Mortgagee, stating that he or she knows of no Event of Default, nor of any event which after notice or lapse of time or both would constitute an Event of Default, which has occurred and is continuing, or, if any such event or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action Mortgagor has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that Mortgagor has fulfilled all of its obligations hereunder and otherwise in respect of the Loan which are required to be fulfilled on or prior to the date of such certificate.

(iii) Estoppel Certificates. Mortgagor, within ten (10) days upon written request by Mortgagee, will furnish a statement, duly acknowledged, of the amount due

whether for principal or interest on the Loan and whether any offsets, counterclaims or defenses exist against the indebtedness secured hereby.

(l) Maintenance of Premises and Improvements. Mortgagor will not commit any waste on the Premises or make any change in the use of the Premises which will in any way increase any ordinary fire or other hazard arising out of construction or operation. Mortgagor will, at all times, maintain the Improvements and Chattels in good operating order and condition and will promptly make, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end. The Improvements shall not be demolished or substantially altered, nor shall any Chattels be removed without Mortgagee's prior consent except where appropriate replacements free of superior title, liens and claims are immediately made of value at least equal to the value of the removed Chattels. Notwithstanding anything to the contrary contained herein, Mortgagee shall be permitted to demolish the Improvements existing on the date hereof so long as Mortgagor has provided to Mortgagee such insurance as is reasonably requested by Mortgagee in connection with such demolition.

(m) Condemnation. Mortgagor, immediately upon obtaining knowledge of the institution or pending institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify Mortgagee thereof. Mortgagee may participate in any such proceedings and may be represented therein by counsel of its selection. Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit or facilitate such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to Mortgagee. Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. The proceeds of any award or compensation so received shall, at Mortgagee's option, either be applied to the prepayment of the Note and all interest, Additional Interest and other sums accrued and unpaid in respect thereof at the rate of interest provided therein regardless of the rate of interest payable on the award by the condemning authority, or be disbursed to Mortgagor from time to time for restoration of the Improvements in accordance with Mortgagee's standard construction lending practices, terms and conditions, in either case, less Mortgagee's reasonable expenses for collecting and, if applicable, disbursing the award, or otherwise incurred in connection therewith.

(n) Leases.

Mortgagor will not (i) execute an assignment of the rents or any part thereof from the Premises without Mortgagee's prior consent, (ii) [intentionally omitted], (iii) modify or terminate any lease except for valid business purposes, (iv) accept prepayments of any installments of rents to become due under such leases, except prepayments in the nature of security for the performance of the lessees thereunder, (v) modify, release or terminate any guaranties of any such lease except for valid business purposes or (vi) in any other manner impair the value of the Mortgaged Property or the security hereof.

Mortgagor will not execute any lease of all or a substantial portion of the Premises except for actual occupancy by the lessee thereunder, and will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases of the Premises or portions thereof now or hereafter existing, on the part of the lessor thereunder to be kept and performed and will at all times do all things necessary to compel performance by the lessee under each lease of all obligations, covenants and agreements by such lessee to be performed thereunder. If any of such leases provide for the giving by the lessee of certificates with respect to the status of such leases, Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by Mortgagee and shall deliver copies thereof to Mortgagee promptly upon receipt.

Each lease of the Premises, or of any part thereof, shall provide that, in the event of the enforcement by Mortgagee of the remedies provided for hereby or by law, the lessee thereunder will, upon request of any person succeeding to the interest of Mortgagor as a result of such enforcement, automatically become the lessee of said successor in interest, without change in the terms or other provisions of such lease, provided, however, that said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by said lessee of its obligations under said lease or (ii) any amendment or modification of the lease made without the consent of Mortgagee or such successor in interest. Each lease shall also provide that, (x) the lease is subordinate to this Mortgage (but shall also provide that Mortgagee, at its option, may subordinate this Mortgage to such lease) and (y) upon request by said successor in interest, such lessee shall execute and deliver an instrument or instruments confirming such attornment.

To the extent that any part of the Premises is located in the State of New York, reference is hereby made to Section 291-f of the Real Property Law of the State of New York for the purpose of obtaining for Mortgagee the benefits of said Section in connection herewith.

From and after the occurrence of an Event of Default, Mortgagor shall, promptly upon Mortgagee's request, deposit all tenant security deposits in respect of the Premises into an account with Mortgagee or as designated by Mortgagee, which deposits shall be held and disbursed to tenants as required under the terms of their respective leases.

(o) Premises Documents. Mortgagor shall (a) do all things necessary to cause the due compliance and faithful performance by the other parties to the Premises Documents with and of all obligations and agreements by such other parties to be complied with and performed thereunder and (b) deliver promptly to Mortgagee copies of any notices which it gives or receives under any of the Premises Documents.

(p) Utilities. Mortgagor will not, without the prior consent of Mortgagee, sell or contract to sell, or enter into an option to sell, or exchange, assign, convey, transfer possession of (including, without limitation, by lease) or otherwise

dispose of all or any part of the utilities, utility commitments or other agreements or rights of any nature relating to the utilities, drainage ditches and/or treatment plants associated with the Mortgaged Property. Mortgagor further covenants and agrees that it will take any such action and execute, acknowledge, deliver and record and/or file any and all instruments as may be necessary, desirable or proper to keep any existing or future utility commitments covering the Mortgaged Property in a current and valid condition and to keep the existing utility capacity for the Mortgaged Property at or above the level required for the contemplated uses thereof. As used herein, the term “utilities” includes, without limitation, water, gas, electricity and storm and sanitary sewer.

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

(r) Intentionally Omitted.

(s) Intentionally Omitted.

(t) Guarantor Financial Covenants. Guarantor shall comply with the covenants set forth in the Guaranty.

(u) Federal Law. The proceeds of the Loan are not being and will not be used, directly or indirectly, for the purpose of “purchasing” or “carrying” any “margin stock” in contravention of Regulation U or X promulgated by the Board of Governors of the Federal Reserve System. Mortgagor is incurring the Loan for business purposes only, and not for personal, family or household purposes. Neither the Premises nor any part thereof constitutes or is intended to constitute the personal residence of Mortgagor or any Guarantor at any time while the portion of the Premises so used is encumbered by this Mortgage. Mortgagor is a United States person, and is not a foreign person, as defined in the Foreign Investment in Real Property Tax Act.

16.

#### EVENTS OF DEFAULT AND REMEDIES

(a) Events of Default and Certain Remedies. If one or more of the following Events of Default shall happen, that is to say:

17

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if (i) default shall be made in the payment of any principal, interest, Additional Interest, fees or other sums under the Note, in any such case, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any payment or prepayment or otherwise, in each case, as herein or in the Note provided, and such default shall have continued for a period of ten (10) days or (ii) default shall be made in the payment of any tax or other charge required by Section 1.07 to be paid and said default shall have continued for a period of thirty (30) days; or

if default shall be made in the due observance or performance of any covenant, condition or agreement in the Note, this Mortgage, any guaranty executed by Guarantor or in any other document executed or delivered to Mortgagee in connection with the Loan (other than any such covenant, condition or agreement specifically provided for elsewhere in this Section 2.01), and such default shall have continued for a period of thirty (30) days after notice thereof shall have been given to Mortgagor by Mortgagee, provided, however, if such default is not susceptible of being cured within such thirty (30) day period and Mortgagor has commenced such cure within such thirty (30) day period is diligently pursuing such cure to Mortgagee's satisfaction, such thirty (30) day cure period shall be extended, but in no event shall such cure period exceed sixty (60) days, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein; or

if any material representation or warranty made by Mortgagor in Section 1.01 shall be incorrect, or if any other material representation or warranty made to Mortgagee in this Mortgage, any guaranty executed by Guarantor, or in any other document, certificate or statement executed or delivered to Mortgagee in connection with the Loan shall be incorrect in any material respect when made or remade; or

if by order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of Mortgagor shall be appointed and such order shall not be discharged or dismissed within ninety (90) days after such appointment; or

if Mortgagor shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Federal Bankruptcy Act or any similar federal or state law, or if, by decree of a court of competent jurisdiction, Mortgagor shall be adjudicated a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of its property; or

if any of the creditors of Mortgagor shall file a petition in bankruptcy against Mortgagor or for reorganization of Mortgagor pursuant to the Federal Bankruptcy Act or any similar federal or state law, and if such petition shall not

be discharged or dismissed within ninety (90) days after the date on which such petition was filed; or

if final judgment for the payment of money shall be rendered against Mortgagor in excess of Five Hundred Thousand Dollars (\$500,000) and Mortgagor shall not discharge the same or cause it to be discharged within sixty (60) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution or bond over such judgment by a commercially acceptable bonding company pending such appeal; or

if any of the events enumerated in clauses (d) through (g) of this Section 2.01 shall happen to Guarantor or any of its property; or

if it shall be illegal for Mortgagor to pay any tax referred to in Section 1.08 or if the payment of such tax by Mortgagor would result in the violation of applicable usury laws; or

if there shall occur a default which is not cured within the applicable grace period, if any, under any mortgage, deed of trust or other security instrument covering all or part of the Mortgaged Property regardless of whether any such mortgage, deed of trust or other security instrument is prior or subordinate hereto; it being further agreed by Mortgagor that an Event of Default hereunder shall constitute an Event of Default under any such mortgage, deed of trust or other security instrument held by Mortgagee; or

if there shall occur a default which is not cured within the applicable grace period, if any, or, if Mortgagor shall be entitled pursuant to the relevant Premises Documents to contest such default, if such default is contested pursuant to the applicable Premises Documents and such contest is resolved adversely to Mortgagor, under any of the Premises Documents; or if any of the Premises Documents is amended, modified, supplemented or terminated without Mortgagee's prior consent; or

if Mortgagor shall transfer, or agree to transfer (or suffer or permit the transfer or agreement to transfer), in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of the Mortgaged Property, or any interest or rights therein (including air or development rights) without, in any such case, Mortgagee's prior consent. As used in this clause, "transfer" shall include, without limitation, any sale, assignment, lease or conveyance except leases for occupancy subordinate hereto and to all advances made and to be made hereunder or, in the event Mortgagor or Guarantor (or a general partner, member or co-venturer of either of them) is a partnership, joint venture, limited liability company, trust or closely-held corporation, the sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of any class of the issued and outstanding capital stock of such closely-held corporation or of the beneficial interest of such partnership, venture,

limited liability company or trust, or a change of any general partner, joint venturer, member or beneficiary, as the case may be, or, in the event Mortgagor or Guarantor (or a general partner, co-venturer, member or beneficiary, as the case may be, of either of them) is a publicly-held corporation, the sale, conveyance, transfer or other disposition of more than 10%, in the aggregate, of the stock-holdings of any of the five (5) individuals or entities that own the greatest number of shares of each class of issued and outstanding stock, or effectuates or permits a reduction in the aggregate direct and indirect ownership interests of Guarantor in Mortgagor below that currently held by Guarantor, or effectuates or causes Guarantor to fail to control the managing member of Mortgagor, or effectuates or permits a transfer of the controlling interest in Mortgagor, other than to an entity owned and controlled by Guarantor. In the event Mortgagor or Guarantor is a limited partnership, and so long as a limited partner has contributed to (or remains personally liable for) the present and future partnership capital contributions required of such limited partner by the partnership agreement, such partner may sell, convey, devise, transfer or dispose of all or a part of his limited partnership interest to his spouse, children, grandchildren or a family trust in which his spouse, children or grandchildren are sole beneficiaries; or

if Mortgagor shall encumber, or agree to encumber, in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of the Mortgaged Property, or any interest or rights therein (including air or development rights) without, in any such case, Mortgagee's prior consent. As used in this clause, "encumber" shall include, without limitation, the placing or permitting the placing of any mortgage, deed of trust, assignment of rents or other security device. (Mortgagee may grant or deny its consent under this clause and the immediately preceding clause in its sole discretion and, if consent should be given, any such transfer or encumbrance shall be subject hereto and to any other documents which evidence or secure the Loan, and, if a transfer, any such transferee shall assume all of Mortgagor's obligations hereunder and thereunder and agree to be bound by all provisions and perform all obligations contained herein and therein; consent to one such transfer or encumbrance shall not be deemed to be a waiver of the right to require consent to future or successive transfers or encumbrances); or

if there shall occur a default under the Hedging Agreement that is not cured within the applicable grace or cure period, if any, thereunder;

then and in every such case:

I. Mortgagee, by notice to Mortgagor, may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest, Additional Interest, and other sums in respect thereof, to be due and payable immediately, and upon any such declaration the principal of the Note and said accrued and unpaid interest, Additional Interest, and other sums shall become and be immediately due and payable, anything herein or in the Note to the contrary notwithstanding.

II. Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Premises, and each and every part thereof, and is hereby given a right and license and appointed Mortgagor's attorney-in-fact and exclusive agent to do so, and may exclude Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, Mortgagee, at the expense of the Mortgaged Property, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid; and likewise, from time to time, at the expense of the Mortgaged Property, Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may deem advisable; and in every such case Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise as it shall deem best; and Mortgagee shall be entitled to collect and receive the Rents and every part thereof, all of which shall for all purposes constitute property of Mortgagor; and in furtherance of such right Mortgagee may collect the rents payable under all leases of the Premises directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists hereunder accompanied by a demand on such lessee for the payment to Mortgagee of all rents due and to become due under its lease, and Mortgagor FOR THE BENEFIT OF MORTGAGEE AND EACH SUCH LESSEE hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Mortgagee's statement of default and shall unequivocally be authorized to pay said rents to Mortgagee without regard to the truth of Mortgagee's statement of default and notwithstanding notices from Mortgagor disputing the existence of an Event of Default such that the payment of rent by the lessee to Mortgagee pursuant to such a demand shall constitute performance in full of the lessee's obligation under the lease for the payment of rents by the lessee to Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it engaged and employed, Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the principal of the Note and the interest and Additional Interest thereon, when and as the same shall become payable and in such order and proportions as Mortgagee shall elect and second, to the payment of any other sums required to be paid by Mortgagor hereunder.

III. Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may:



(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law (including, without limitation, if all or any part of the Premises is located in the State of New York, in accordance with Article 14 of the New York Real Property Actions and Proceedings Law, regarding which Mortgagor hereby consents and agrees that notices thereunder (including notices of sale) may be given to Mortgagor in any of the manners specified for the giving of notices set forth in Section 3.06), and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one (1) or more sales as an entity or in parcels or parts, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

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

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

(b) Other Matters Concerning Sales.

Mortgagee may adjourn from time to time any sale by it to be made hereunder or by virtue hereof by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Article II, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby appointed the true and lawful attorney irrevocable of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor, if requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings

or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

In the event of any sale or sales made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the entire principal of, and interest, Additional Interest, and other sums on, the Note, if not previously due and payable, and all other sums required to be paid by Mortgagor pursuant hereto or to the Note, immediately thereupon shall, anything in any of said documents to the contrary notwithstanding, become due and payable.

The purchase money, proceeds or avails of any sale or sales made under or by virtue of this Article II, together with any other sums which then may be held by Mortgagee hereunder, whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including reasonable compensation to Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee hereunder, and also including attorneys' fees, expenses and costs of investigation, all as actually incurred and including, without limitation, attorneys' fees, costs and expenses of investigation incurred in appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under any applicable bankruptcy or insolvency law, together with interest at the Default Rate on all advances made by Mortgagee, and of all taxes, assessments or other charges, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, and Additional Interest, with interest on the unpaid principal at the Default Rate from and after the happening of any Event of Default, in such order and amounts as Mortgagee may elect.

Third: To the payment of any other sums required to be paid by Mortgagor pursuant to any provision hereof or of the Note, including all expenses, liabilities and advances made or incurred by Mortgagee hereunder or in connection with the enforcement hereof, together with interest at the Default Rate on all such advances.

Fourth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

Upon any sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings

or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness secured hereby the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct hereunder.

(c) Payment of Amounts Due.

In case an Event of Default shall have happened and be continuing, then, upon demand of Mortgagee, Mortgagor will pay to Mortgagee the whole amount which then shall have become due and payable on the Note, for principal, interest or Additional Interest, or all, as the case may be, and after the happening of said Event of Default will also pay to Mortgagee interest at the Default Rate on the then unpaid principal of the Note, and the sums required to be paid by Mortgagor pursuant to any provision hereof or of the Note, and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to Mortgagee, its agents and counsel and any expenses incurred by Mortgagee hereunder. In the event Mortgagor shall fail forthwith to pay all such amounts upon such demand, Mortgagee shall be entitled and empowered to institute such action or proceedings at law or in equity as may be advised by its counsel for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against Mortgagor and collect, out of the property of Mortgagor wherever situated, as well as out of the Mortgaged Property, in any manner provided by law, moneys adjudged or decreed to be payable.

Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions hereof; and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions hereof, or the foreclosure of the lien hereof; and in the event of a sale of the Mortgaged Property, and of the application of the proceeds of sale, as herein provided, to the payment of the debt hereby secured, Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Note, and to enforce payment of all other charges, payments and costs due hereunder or under the Note or otherwise in respect of the Loan, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest at the Default Rate. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, then Mortgagee shall be entitled to prove the whole amount of principal, interest, Additional Interest, and other sums due upon the Note to the full amount thereof, and all other payments, charges and costs due hereunder or under the Note or otherwise in respect of the Loan, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property, provided, however, that in no case shall Mortgagee receive a greater amount than such principal, interest, Additional Interest, and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of Mortgagor.

No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien hereof upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

Any moneys thus collected by Mortgagee under this Section 2.03 shall be applied by Mortgagee in accordance with the provisions of clause (d) of Section 2.02.

(d) Actions; Receivers. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to obtain judgment for the principal of, or interest or Additional Interest on, the Note and other sums required to be paid by Mortgagor pursuant to any provision hereof or of the Note, or of any other nature in aid of the enforcement of the Note or hereof, Mortgagor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding and (b) if required by Mortgagee, consent to the appointment of a receiver or receivers of all or part of the Mortgaged Property and of any or all of the Rents in respect thereof. After the happening of any Event of Default and during its continuance, or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of Mortgagee, Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the indebtedness secured hereby, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of such a receiver or receivers.

(e) Mortgagee's Right to Possession. Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now or hereafter held hereunder.

(f) Remedies Cumulative. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given hereby to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing herein or in the Note shall affect the obligation of Mortgagor to pay the principal of, interest, Additional Interest, and other sums on, the Note in the manner and at the time and place therein respectively expressed.

(g) Moratorium Laws; Right of Redemption. Mortgagor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit

or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance hereof, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to any decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

(h) Mortgagor's Use and Occupancy after Default. During the continuance of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from all or any part of the Premises, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Premises or any portion thereof which are in its or any of its affiliates' possession for such period and, upon default of any such payment, will vacate and surrender possession of the Premises to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of premises for non-payment of rent, however designated.

(i) Mortgagee's Rights Concerning Application of Amounts Collected. Notwithstanding anything to the contrary contained herein, upon the occurrence of an Event of Default, Mortgagee may apply, to the extent permitted by law, any amount collected hereunder to principal, interest, Additional Interest, or any other sum due under the Note or otherwise in respect of the Loan in such order and amounts, and to such obligations, as Mortgagee shall elect in its sole and absolute discretion.

17.

#### MISCELLANEOUS

(a) Assignment of Rents. This Mortgage constitutes a present, absolute, unconditional and irrevocable assignment of all of the Rents now or hereafter accruing, and Mortgagor, without limiting the generality of the Granting Clause hereof, specifically hereby presently, absolutely, unconditionally and irrevocably assigns, transfers and sets over all of the Rents now or hereafter accruing to Mortgagee. The aforesaid assignment shall be effective immediately upon the execution hereof and is not conditioned upon the occurrence of any Event of Default or any other contingency or event, provided, however, that Mortgagee hereby grants to Mortgagor the right and license to collect and receive the Rents as they become due, and not in advance, so long

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as no Event of Default exists hereunder. Immediately upon the occurrence of any such Event of Default, the foregoing right and license shall be automatically terminated and of no further force or effect. Nothing contained in this Section or elsewhere herein shall be construed to make Mortgagee a mortgagee in possession unless and until Mortgagee actually takes possession of the Mortgaged Property, nor to obligate Mortgagee to take any action or incur any expense or discharge any duty or liability under or in respect of any leases or other agreements relating to the Mortgaged Property or any part thereof.

(b) Security Agreement. This Mortgage constitutes a security agreement under the applicable Uniform Commercial Code with respect to the Chattels and such other of the Mortgaged Property which is personal property. Mortgagor agrees that it will not terminate or amend any financing statements filed in connection with the Loan without Mortgagee's prior consent. In addition to the rights and remedies granted to Mortgagee by other applicable law or hereby, Mortgagee shall have all of the rights and remedies with respect to the Chattels and such other personal property as are granted to a secured party under the applicable Uniform Commercial Code. Upon Mortgagee's request, Mortgagor shall promptly and at its expense assemble the Chattels and such other personal property and make the same available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand, with interest at the Default Rate, any and all expenses, including attorneys' fees, incurred by Mortgagee in protecting its interest in the Chattels and such other personal property and in enforcing its rights with respect thereto. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Chattels and such other personal property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action shall constitute reasonable notice to Mortgagor. The proceeds of any such sale or disposition, or any part thereof, may be applied by Mortgagee to the payment of the indebtedness secured hereby in such order and proportions as Mortgagee in its discretion shall deem appropriate.

(c) Application of Certain Payments. In the event that all or any part of the Mortgaged Property is encumbered by one or more mortgages held by Mortgagee, Mortgagor hereby irrevocably authorizes and directs Mortgagee to apply any payment received by Mortgagee in respect of any note secured hereby or by any other such mortgage to the payment of such of said notes as Mortgagee shall elect in its sole and absolute discretion, and Mortgagee shall have the right to apply any such payment in reduction of principal and/or interest, Additional Interest, and in such order and amounts as Mortgagee shall elect in its sole and absolute discretion without regard to the priority of the mortgage securing the note so repaid or to contrary directions from Mortgagor or any other party.

(d) Severability. In the event any one or more of the provisions contained herein or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein, provided, however, that if such provision held to be invalid, illegal or unenforceable relates to the payment of any sum under the Note or any other material monetary sum,

then Mortgagee may, at its option, declare the indebtedness and any other sums secured hereby to be immediately due and payable.

(e) Modifications and Waivers in Writing. No provision hereof may be changed, waived, discharged or terminated orally or by any other means except an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating hereto shall be superior to the rights of the holder of any intervening or subordinate lien or encumbrance.

(f) Notices, Etc. All notices, demands, consents, approvals and statements required or permitted hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, three (3) days after mailing by registered or certified mail, postage prepaid, or one (1) day after delivery to a nationally recognized overnight courier service providing evidence of the date of delivery, if to Mortgagor at its address stated above, and if to Mortgagee to the attention of its Real Estate Finance office at its address stated above, or at such other address of which a party shall have notified the party giving such notice in accordance with the provisions of this Section.

(g) Successors and Assigns. All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the respective successors and assigns of Mortgagor and Mortgagee.

(h) Limitation on Interest. Regardless of any provision contained herein or in any of the other Loan documents, the total liability for payments in the nature of interest shall not exceed the applicable limits now or hereafter imposed by any applicable state or federal interest rate laws to which Mortgagee may be subject. If any payments in the nature of interest, fees and other charges made hereunder or under the Note or other Loan documents are held to be in excess of the applicable limits imposed by any such applicable state or federal interest rate laws, it is agreed that any such amount held to be in excess shall be considered payment of principal under the Note and the indebtedness evidenced thereby shall be reduced by such amount in the inverse order of maturity so that the total liability for payments in the nature of interest, fees and other charges shall not exceed the applicable limits imposed by any such applicable state or federal interest rate laws in compliance with the desires of Mortgagor and Mortgagee.

(i) Counterparts. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same mortgage.

(j) Substitute Mortgages. Mortgagor and Mortgagee shall, upon their mutual agreement to do so, execute such documents as may be necessary in order to effectuate the modification hereof, including the execution of substitute mortgages, so as to create two (2) or more liens on the Mortgaged Property in such

amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the Mortgage Amount; in such event, Mortgagor covenants and agrees to pay the reasonable fees and expenses of Mortgagee and its counsel in connection with any such modification.

(k) Mortgagee's Sale of Interests in Loan. Mortgagor recognizes that Mortgagee may sell and transfer interests in the Loan to one or more participants or assignees and that all documentation, financial statements, appraisals and other data, or copies thereof, relevant to Mortgagor, any Guarantor or the Loan, may be exhibited to and retained by any such participant or assignee or prospective participant or assignee.

(l) No Merger of Interests. Unless expressly provided otherwise, in the event that ownership hereof and title to the fee and/or leasehold estates in the Premises encumbered hereby shall become vested in the same person or entity, this Mortgage shall not merge in said title but shall continue to be and remain a valid and subsisting lien on said estates in the Premises for the amount secured hereby.

(m) CERTAIN WAIVERS. MORTGAGOR HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY FORECLOSURE OR SIMILAR ACTION OR PROCEDURE BROUGHT BY MORTGAGEE ASSERTING AN EVENT OF DEFAULT HEREUNDER, ANY AND EVERY RIGHT IT MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) A TRIAL BY JURY, (III) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM AND (IV) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING IN THIS SECTION SHALL PREVENT OR PROHIBIT MORTGAGOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST MORTGAGEE WITH RESPECT TO ANY ASSERTED CLAIM.

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

(o) Other Liens; Subrogation. In the event any or all of the proceeds of the indebtedness secured hereby have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property or to satisfy



any indebtedness or obligation secured by a lien or encumbrance of any kind, such proceeds have been advanced by Mortgagee at Mortgagor's request, and, to the extent of such funds so used, the indebtedness hereby secured shall be subrogated to all of the rights, claims, liens, titles and interest heretofore existing against the Mortgaged Property to secure the indebtedness or obligation so extinguished, paid, extended or renewed, and the former rights, claims, liens, title and interests, if any, shall not be waived but rather shall be continued in full force and effect and in favor of Mortgagee and shall not be merged with the lien and security for the repayment of the indebtedness hereby secured.

(p) New York Provisions. If all or any part of the Premises is located in the State of New York, (a) Mortgagor hereby makes the following statement: "This Mortgage does not cover real property principally improved or to be improved by one (1) or more structures containing in the aggregate not more than six (6) residential dwelling units, each having its own separate cooking facilities." and (b) the covenants and conditions contained herein, other than those included in the New York Statutory Short Form of Mortgage, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of Sections 254, 271 and 272 of the Real Property Law of the State of New York.

(q) Exculpation. Mortgagor shall not be personally liable for payment of the principal of the Note or interest thereon, and in the event of any failure by Mortgagor to pay any portion of such principal or interest, Mortgagee will look, with respect to the then outstanding balance of such principal and interest, solely to the Mortgaged Property and such other collateral as has been, or hereafter shall be, given to secure payment of the Note and any guaranties thereof. The foregoing limitation on liability shall not impair or otherwise affect the validity or enforceability of (a) the debt evidenced by the Note or of any other obligations evidenced by the Note, the Mortgage or any of the Loan Documents or (b) Mortgagee's liens, security interests, rights and remedies (including, without limitation, the remedies of foreclosure and/or sale) with respect to the Mortgaged Property or any other property, security, collateral and/or assets (including the proceeds thereof) encumbered, pledged or assigned by the Mortgages or any other security for the Loan. In addition, the foregoing limitation on liability shall not limit anyone's obligations or be applicable with respect to: (i) liability under any guaranty(ies) or indemnity(ies) delivered or afforded to Mortgagee; (ii) any fraud or material misrepresentation; (iii) taxes of any kind (whether characterized as transfer, gains or other taxes) payable in connection with the foreclosure sale of the Mortgaged Property, irrespective of who pays such taxes; (iv) application of any proceeds of the Loan to any purpose other than as provided in the Loan Documents; (v) the application of any insurance or condemnation proceeds or other funds or payments other than strictly in accordance with the Loan Documents; (vi) the misapplication of any security deposits; (vii) rents, sales proceeds, or other sums received after default under the Loan Documents which are not applied to expenses of operating the Mortgaged Property or paid to Mortgagee or a duly appointed receiver of the Premises; (viii) any failure to deliver to Mortgagee, after demand therefor, any agreements relating to the operation, management, leasing, use, occupancy or construction of the Mortgaged Property; (ix) any intentional physical waste in respect of the Mortgaged Property; (x) any failure to pay or discharge any real estate tax, other tax, assessment, fine, penalty or lien against the Mortgaged

Property to the extent revenue from leases of the Mortgaged Property was available to pay same; (xi) liability as landlord under any lease(s) relating to the Mortgaged Property which liability accrued prior to Mortgagee's succeeding to such interest of Mortgagor, which Mortgagee is or becomes obligated for by virtue of Mortgagee succeeding to the interests of Mortgagor, provided, however, that such liability shall only apply with respect to any liability of Mortgagor under such leases which Mortgagee assumes pursuant to subordination, non-disturbance and attornment agreements required pursuant to the terms of such leases; (xii) liability under any agreement relating to the operation or maintenance of the Mortgaged Property, which liability accrued prior to Mortgagee's succeeding to such interest of Mortgagor, which Mortgagee is or becomes obligated for by virtue of Mortgagee succeeding to the interests of Mortgagor, provided, however, that such liability shall only apply with respect to agreements which are not terminable by their terms upon thirty (30) days' written notice; (xiii) liability to pay for the premiums on and keep in full force and effect insurance in respect of the Mortgaged Property in accordance with the Loan Documents to the extent revenue from leases of the Mortgaged Property was available to pay same; or (xiv) liability for Hazardous Substances that may exist upon or be discharged from the Mortgaged Property. Mortgagor shall in any event be and shall remain personally liable for each of the matters to which reference is made in the preceding sentence and Mortgagee may seek, obtain and enforce one or more money judgments in any appropriate proceeding(s) with respect thereto. The limitation on personal liability contained in this paragraph shall become automatically null and void and shall be of no further force or effect, and Mortgagor shall be and remain personally liable for payment of the principal of the Note and interest thereon, in accordance with the terms and provisions of the Note, in the event that Mortgagor, or anyone acting on behalf of Mortgagor, shall (A) file a petition or answer seeking any relief of any kind under the bankruptcy laws of the United States (or if an Insolvency Event shall otherwise occur), (B) assert in writing or in any legal proceedings of any kind that any provisions of any of the Loan Documents are in whole or in part unenforceable, invalid or not legally binding, or (C) fail fully to cooperate with Mortgagee or a receiver in Mortgagee's or such receiver's efforts to collect Rents directly from tenants after a default under the Loan Documents.

(r) Priority of Loan and Hedging Agreement. Notwithstanding anything to the contrary contained in this Mortgage, the sums secured hereby payable under the Loan Note and Loan Agreement and otherwise in respect of the Loan shall have equal priority with the Additional Interest secured hereby.

IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered by Mortgagor.

ACADIA-P/A SHERMAN AVENUE, LLC,  
a Delaware limited liability company

By \_\_\_\_\_

Name:

Title:

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

On the \_\_\_\_\_ day of January in the year 2009, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

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



SCHEDULE A

LEGAL DESCRIPTION

ALL that lot or parcel of land, in the Borough of Manhattan, County of New York, City of New York, State of New York described as follows:

PARCEL A:

Lot Numbers 1 and 4 in Section Number 8, Block Number 2175 on the land map of the County of New York, and bounded and described as follows:

BEGINNING a point on the easterly side of Broadway at the northeasterly line of said Lot Number 4;

RUNNING THENCE easterly, or nearly so along said Lot Number 4, 220 feet 5 inches to the westerly line of Lot Number 100 on said map;

THENCE 113 feet 8 inches southeasterly along said westerly line of said Lot Number 100 to the northerly side of Sherman Avenue;

THENCE westerly or nearly so along the northerly side of Sherman Avenue to a point thereon distant 204 feet 4-3/8 inches westerly from the westerly side of said Lot Number 100;

THENCE running on a curved line, 96 feet 9-5/8 inches to a point on the easterly side of Broadway, distant 130 feet 5/8 inch southerly from the northerly line of said Lot Number 4;

THENCE northerly along the easterly side of Broadway, 130 feet 5/8 inch to the point or place of BEGINNING. Be the said several distances, more or less.

PARCEL B:

Lot Number 50 on a certain map entitled "Map of 128 acres of land situated in the 12th Ward of the City of New York, part of the Estate Of Isaac Dyckman, deceased, known as Fort George Property". Dated September 15th, 1868 by R. Rosa, Surveyor, and filed in the Office of the Register of the County of New York on November 7, 1868 as map number 697 and which said plot is bounded and described as follows:

BEGINNING at a point on the easterly side of Broadway or Kingsbridge Road, as widened, at the southwest corner of plot number 49 on said map;

THENCE easterly or nearly so along said plot number 49, 202 feet to plot number 53 on said map;

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THENCE southeasterly along the said plot number 53 on said map and parallel with a new street laid out by the Commissioners of the Central Park and designated on said map as boulevard or Dyckman Street, 53 feet 3 inches;

THENCE westerly or nearly so and along plot number 51 on said map, 220 feet 5 inches to the present easterly side of Broadway or Kingsbridge Road, as widened;

THENCE northerly or nearly so along the said present easterly side of Broadway or Kingsbridge Road, 50 feet to the point or place of BEGINNING.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I COVENANTS OF MORTGAGOR	5
Section 1.01	
(a) Warranty of Title; Power and Authority	5
(b) Hazardous Materials	5
(c) Flood Hazard Area	6
Section 1.02	
(a) Further Assurances	6
(b) Information Reporting and Back-up Withholding	6
Section 1.03	
(a) Filing and Recording of Documents	6
(b) Filing and Recording Fees and Other Charges	7
Section 1.04 Payment and Performance of Loan Documents	7
Section 1.05 Type of Entity; Maintenance of Existence; Compliance with Laws	7
Section 1.06 After-Acquired Property	7
Section 1.07	
(a) Payment of Taxes and Other Charges	8
(b) Payment of Mechanics and Materialmen	8
(c) Good Faith Contests	9
Section 1.08 Taxes on Mortgagee	9
Section 1.09 Insurance	9
Section 1.10 Protective Advances by Mortgagee	12
Section 1.11	
(a) Visitation and Inspection	12
(b) Financial and Other Information	12
(c) Estoppel Certificates	14
Section 1.12 Maintenance of Premises and Improvements	15
Section 1.13 Condemnation	15
Section 1.14 Leases	15
Section 1.15 Premises Documents	16
Section 1.16 Utilities	16
Section 1.17 Trust Fund; Lien Laws	17
Section 1.18 Intentionally Omitted	17
Section 1.19 Intentionally Omitted	17
Section 1.20 Guarantor Financial Covenants	17
Section 1.21 Federal Law	17
ARTICLE II EVENTS OF DEFAULT AND REMEDIES	17
Section 2.01 Events of Default and Certain Remedies	17
Section 2.02 Other Matters Concerning Sales	22
Section 2.03 Payment of Amounts Due	24
Section 2.04 Actions; Receivers	25
Section 2.05 Mortgagee's Right to Possession	25
Section 2.06 Remedies Cumulative	25
Section 2.07 Moratorium Laws; Right of Redemption	25
Section 2.08 Mortgagor's Use and Occupancy after Default	26

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Section 2.09 Mortgagee's Rights Concerning Application of Amounts Collected	26
ARTICLE III MISCELLANEOUS	26
Section 3.01 Assignment of Rents	26
Section 3.02 Security Agreement	27
Section 3.03 Application of Certain Payments	27
Section 3.04 Severability	27
Section 3.05 Modifications and Waivers in Writing	28
Section 3.06 Notices, Etc	28
Section 3.07 Successors and Assigns	28
Section 3.08 Limitation on Interest	28
Section 3.09 Counterparts	28
Section 3.10 Substitute Mortgages	28
Section 3.11 Mortgagee's Sale of Interests in Loan	29
Section 3.12 No Merger of Interests	29
Section 3.13 CERTAIN WAIVERS	29
Section 3.14 Satisfaction or Assignment of Mortgage	29
Section 3.15 Other Liens; Subrogation	29
Section 3.16 New York Provisions	30
Section 3.17 Exculpation	30
Section 3.18 Priority of Loan and Hedging Agreement	31



SECURITY AGREEMENT  
(Deposit Account at Bank of America, N.A.)

This Security Agreement (Deposit Account) (this "Agreement") is made as of January 15, 2009 by and between Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company (the "Pledgor"), and Bank of America, N.A. (the "Bank").

18. Grant of Security Interest. As security for any and all Indebtedness (as defined below), the Pledgor hereby irrevocably and unconditionally grants a security interest in and assigns and transfers the Deposit Account (as defined below) to the Bank.

19. "Indebtedness" means any and all existing and future indebtedness and liabilities of every kind, nature and character, direct or indirect, absolute or contingent, liquidated or unliquidated, voluntary or involuntary and whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, (a) of Acadia-P/A Sherman Avenue, LLC, a Delaware limited liability company (the "Debtor"), to the Bank, whether associated with any credit or other financial accommodation made to or for the benefit of the Debtor by the Bank or otherwise and whenever created, arising, evidenced or acquired (including all renewals, extensions, amendments, refinancings and other modifications thereof), and (b) of the Pledgor to the Bank hereunder, and all costs, attorneys' fees and expenses incurred by the Bank in connection with the collection or enforcement thereof or hereof, and whether recovery upon such indebtedness and liabilities may be or hereafter become unenforceable or shall be an allowed or disallowed claim under any proceeding or case commenced by or against the Debtor or the Pledgor under the Bankruptcy Code (Title 11, United States Code), any successor statute or any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally, and including interest that accrues after the commencement by or against the Debtor or the Pledgor of any proceeding thereunder. The Bank's books and records showing the amount of the Indebtedness shall be admissible in evidence in any action or proceeding, and shall be binding upon the Debtor and the Pledgor and conclusive for the purpose of establishing the amount of the Indebtedness.

20. Deposit Account. For purposes of this Agreement, "Deposit Account" means account no. 406718 opened or to be opened by the Pledgor with the Bank, any renewals or rollovers thereof, any successor or substitute deposit account(s) including, without limitation, any such deposit account as it may have been renumbered or retitled, any proceeds thereof (including without limitation any interest paid thereon), and any general intangibles and choses in action arising therefrom or related thereto.

21. Withdrawals; Renewals; Rollovers. The Pledgor shall not withdraw funds from the Deposit Account without the Bank's prior written consent. The Pledgor agrees that, upon maturity of any deposit with a maturity date, such deposit shall be renewed at the Bank's then prevailing rate of interest for successive ninety (90) day periods (or such other time period as may be agreed by the Bank and the Pledgor).

22. Interest Payments. Notwithstanding the Bank's security interest in the proceeds of the Deposit Account, the Bank will continue to pay to the Pledgor any interest accruing thereunder until the occurrence of an Event of Default under this Agreement.

23. Pledgor's Covenants, Warranties and Representations. The Pledgor covenants, represents and warrants that unless compliance is waived by the Bank in writing:

(a) Except as otherwise agreed by the Bank in writing, the Pledgor owns the Deposit Account free and clear of any and all liens, encumbrances, or interests of any third parties other than the security interest of the Bank, and will keep the Deposit Account free of all liens, claims, security interests and encumbrances of any kind or nature, whether voluntary or involuntary, except the security interest of the Bank.

(b) The Pledgor shall, at the Pledgor's expense, take all actions necessary or advisable from time to time to maintain the first priority and perfection of said security interest and shall not take any actions that would alter, impair or eliminate said priority or perfection.

(c) The Pledgor agrees to pay prior to delinquency all taxes, charges, liens and assessments against the Deposit Account, and upon the failure of the Pledgor to do so, the Bank at its option may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same.

(d) The Pledgor's exact legal name is correctly set forth on the signature page hereof. The Pledgor will provide the Bank with at least 30 days' prior written notice of any change in the Pledgor's name or identity.

(e) The Pledgor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the first paragraph above. The Pledgor shall give the Bank at least 30 days' notice before changing its type of organization, business structure or state of organization.

(f) The Pledgor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the signature page hereof. The Pledgor shall promptly notify the Bank (i) of any change of its organizational identification number, or (ii) if the Pledgor does not have an organizational identification number and later obtains one, of such organizational identification number.

24. Certificates. Upon the Bank's request, the Pledgor shall deliver any certificate evidencing any part of the Deposit Account to the Bank, duly endorsed over to the Bank as necessary.

25. Costs. All advances, charges, costs and expenses, including reasonable attorneys' fees, incurred or paid by the Bank in exercising any right, power or remedy conferred by this Agreement or in the enforcement hereof, shall become a part of the Indebtedness secured hereunder and shall be paid to the Bank by the Pledgor immediately and without demand, with interest thereon at an annual rate equal to the highest rate of interest that would be applicable to

any Indebtedness secured by this Agreement. Such costs and attorneys' fees shall include, without limitation, the allocated cost of in-house counsel.

26. Events of Default. Any one or more of the following shall be a default hereunder ("Event of Default"):

(a) The Pledgor, the Debtor or any comaker, accommodation maker, surety or guarantor of the Indebtedness or any endorser of any note or other document evidencing the Indebtedness (a "Credit Party") fails to pay any Indebtedness when due, or breaches any other term, provision, warranty or representation of any agreement evidencing or relating to the Indebtedness.

(b) Any custodian, receiver or trustee is appointed to take possession, custody or control of all or a substantial portion of the property of any Credit Party.

(c) Any Credit Party becomes insolvent, or is generally not paying or admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, or commences any case, proceeding or other action under any bankruptcy or other law for the relief of, or relating to, debtors.

(d) Any case, proceeding or other action is commenced against any Credit Party under any bankruptcy or other law for the relief of, or relating to, debtors.

(e) Any involuntary lien of any kind or character attaches to the Deposit Account.

(f) Any financial statement, certificate, schedule or other information now or hereafter furnished by any Credit Party to the Bank proves to have been false or incorrect in any material respect when furnished to the Bank.

(g) If any Indebtedness is an obligation or liability of any kind (including any renewals, extensions or modifications thereof) arising out of or relating to any transaction (including an agreement with respect thereto) now existing or hereafter entered into which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, spot or forward foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit swap or default transaction or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures (individually, a "Hedging Transaction;" collectively, the "Hedging Transactions"), any termination event, event of default or other similar event occurs under such Indebtedness.

27. Remedies. If an Event of Default occurs, the Bank may do any one or more of the following:

(a) Declare all Indebtedness to be immediately due and payable, whereupon the same shall become and be immediately due and payable, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all of which are hereby expressly waived; provided, however, that upon the occurrence of an Event of Default described in Paragraph 9(c) or 9(d), all Indebtedness shall become and be immediately due and payable, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all of which are hereby expressly waived.

(b) Exercise as to the Deposit Account all of the rights, powers and remedies of an owner and all of the rights, powers and remedies of a secured party under the UCC (as defined below) and any other applicable law.

(c) Apply, without notice, any funds in any Deposit Account against the Indebtedness.

(d) Exercise any other remedy provided under this Agreement or by any applicable law.

28. Additional Waivers. The Pledgor waives any right to require the Bank to (a) proceed against any person, (b) proceed against or exhaust any collateral, or (c) pursue any other remedy in the Bank's power; and waives any defense arising by reason of any disability or other defense of the Debtor or any other person, or by reason of the cessation from any cause whatsoever of the liability of the Debtor or any other person. Until the Indebtedness is paid in full, the Pledgor waives any right of subrogation, reimbursement, indemnification, and contribution (contractual, statutory or otherwise), including without limitation any claim or right of subrogation under the Bankruptcy Code (Title 11 of the U.S. Code) or any successor statute, arising from the existence or performance of this Agreement, and the Pledgor waives any right to enforce any remedy which the Bank now has or may hereafter have against the Debtor or against any other person and waives any benefit of and any right to participate in any collateral or security whatsoever now or hereafter held by the Bank. If the Pledgor is not also a debtor with respect to a specified Indebtedness, the Pledgor authorizes the Bank without notice or demand and without affecting the Pledgor's liability hereunder, from time to time to: (a) renew, extend, accelerate or otherwise change the time for payment of or otherwise change the terms of the Indebtedness or any part thereof, including increase or decrease of the rate of interest thereon; (b) take and hold security, other than the Deposit Account, for the payment of the Indebtedness or any part thereof, and exchange, enforce, waive and release the Deposit Account or any part thereof or any such other security; and (c) release or substitute the Debtor or any one or more of them, or any of the endorsers or guarantors of the Indebtedness or any part thereof, or any other parties thereto. The Pledgor agrees that it is solely responsible for keeping itself informed as to the financial condition of the Debtor and of all circumstances which bear upon the risk of nonpayment or the risk of a margin call or liquidation of the collateral.

29. Return of Collateral. The Bank may at any time deliver the collateral or any part thereof to the Pledgor and the receipt of the Pledgor shall be a complete and full

acquittance for the collateral so delivered, and the Bank shall thereafter be discharged from any liability or responsibility therefor.

30. Transfer of Collateral. Upon the transfer of all or any part of the Indebtedness, the Bank may transfer all or any part of the collateral and shall be fully discharged thereafter from all liability and responsibility with respect to such collateral so transferred, and the transferee shall be vested with all the rights and powers of the Bank hereunder with respect to such collateral so transferred; but with respect to any collateral not so transferred the Bank shall retain all rights and powers hereby given.

31. Continuing Agreement. This is a continuing Security Agreement and all the rights, powers and remedies hereunder shall apply to all past, present and future Indebtedness of the Debtor, including that arising under successive transactions which shall either continue the Indebtedness, increase or decrease it, or from time to time create new Indebtedness after all or any prior Indebtedness has been satisfied, and notwithstanding the death, incapacity, cessation of business, dissolution or bankruptcy of the Debtor or any other event or proceeding affecting the Debtor.

32. Continuing Powers. Until all Indebtedness shall have been paid in full, the power of sale and all other rights, powers and remedies granted to the Bank hereunder shall continue to exist and may be exercised by the Bank at the time specified hereunder irrespective of the fact that the Indebtedness or any part thereof may have become barred by any statute of limitations, or that the personal liability of the Pledgor or the Debtor may have ceased. The Pledgor waives the benefit of any statute of limitations as applied to this Agreement.

33. Other Rights. The rights, powers and remedies given to the Bank by this Agreement shall be in addition to all rights, powers and remedies given to the Bank by virtue of any statute or rule of law. Any forbearance or failure or delay by the Bank in exercising any right, power or remedy hereunder shall not be deemed to be a waiver of such right, power or remedy, and any single or partial exercise of any right, power or remedy hereunder shall not preclude the further exercise thereof; and every right, power and remedy of the Bank shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by the Bank.

34. Termination. This Agreement shall remain in full force and effect until terminated by the Bank.

35. Miscellaneous.

The Pledgor hereby authorizes the Bank to file one or more financing statements describing all or part of the collateral, and continuation statements, or amendments thereto, relative to all or part of the collateral as authorized by applicable law. Such financing statements, continuation statements and amendments will contain any other information required by the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether the Pledgor is an organization, the type of organization and any organizational identification number issued to the Pledgor. The Pledgor agrees to furnish any such information to the Bank promptly upon request.

At the request of the Bank, the Pledgor shall execute such other agreements, documents or instruments in connection with this Agreement as the Bank may reasonably deem necessary to evidence or perfect the security interests granted herein, to maintain the first priority of the security interests, or to effectuate the rights granted to the Bank herein.

This Agreement shall be governed by and construed according to the internal laws of the State of New York, except as otherwise required by mandatory provisions of law and except to the extent that remedies are governed by the laws of any other jurisdiction. The Pledgor hereby irrevocably (i) submits to the non-exclusive jurisdiction of any United States Federal or State court sitting in New York City in any action or proceeding arising out of or relating to this Agreement, and (ii) waives to the fullest extent permitted by law any defense asserting an inconvenient forum in connection therewith. Service of process by the Bank in connection with such action or proceeding shall be binding on the Pledgor if sent to the Pledgor by registered or certified mail at its address specified below. The Pledgor agrees that the Bank may disclose to any prospective purchaser and any purchaser of all or part of the Indebtedness any and all information in the Bank's possession concerning the Pledgor, this Agreement and the collateral. The state referred to above in this subparagraph is the "bank's jurisdiction" for purposes of the UCC (as defined below).

References to "UCC" in this Agreement shall mean the Uniform Commercial Code as in effect from time to time in the state referred to in subparagraph (d) above; provided that if by mandatory provisions of law, the perfection, the effect of perfection or non-perfection, or the priority of the security interests granted in this Agreement, as well as all other security interests created or assigned as additional security for the Indebtedness under the provisions of this Agreement, in any collateral is governed by the Uniform Commercial Code as in effect in any other jurisdiction, the "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of this Agreement relating to such perfection, effect of perfection or non-perfection, or the priority of security interests. Any term used or defined in the UCC and not defined in this Agreement has the meaning given to the term in the UCC, when used in this Agreement.

This Agreement shall benefit the Bank's successors and assigns and shall bind the Pledgor's successors and assigns, except that the Pledgor may not assign its rights and obligations under this Agreement. This Agreement shall bind all parties who become bound as a debtor with respect to the Indebtedness.

In all cases where more than one party executes this Agreement, all words used herein in the singular shall be deemed to have been used in the plural where the context and construction so require, and the obligations and undertakings hereunder are joint and several.

36. WAIVER OF JURY TRIAL. TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE PLEDGOR AND THE BANK EACH WAIVE TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING ON OR ARISING OUT OF THIS AGREEMENT.

37. NOTICE OF FINAL AGREEMENT. THIS WRITTEN SECURITY AGREEMENT AND ANY OTHER DOCUMENTS EXECUTED IN CONNECTION WITH

THIS SECURITY AGREEMENT REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized officers as of the date first above written.

PLEDGOR:

ACADIA STRATEGIC OPPORTUNITY FUND II,  
LLC, a Delaware limited liability company

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

By: Acadia Realty Limited Partnership, its sole member

By: Acadia Realty Trust, its general partner

By \_\_\_\_\_

Robert Masters  
Senior Vice President

BANK:

BANK OF AMERICA, N.A.

By \_\_\_\_\_

Gregory Egli  
Senior Vice President

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Acknowledgment and Consent of Debtor

The Debtor hereby acknowledges and consents to the terms of this Agreement. The Debtor acknowledges that the contact information below is correct for any margin call or other notice to the Debtor. The Debtor further agrees that any such notice of a margin call may be given orally or in writing, including facsimile, to the Debtor as provided below. Notices and other communications sent by (a) first class mail shall be deemed delivered on the earlier of actual receipt or on the fourth business day after deposit in the U.S. mail, postage prepaid, (b) overnight courier shall be deemed delivered on the next business day, and (c) telecopy shall be deemed delivered when transmitted. To the extent that oral notification is provided for or agreed to herein, such oral notification may be made by telephone to the number(s) set forth below for the Debtor; provided that any oral notification in person or at any other telephone number shall constitute notification hereunder and under the terms of any Indebtedness related hereto. The Debtor hereby agrees to promptly notify Bank in writing of any change in the notice information set forth below.

DEBTOR:

ACADIA-P/A SHERMAN AVENUE, LLC,  
a Delaware limited liability company

By

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

CONTACT INFORMATION FOR NOTICE PURPOSES

Telephone Numbers:

914-288-8139

914-288-8100

Facsimile, teletype or similar  
number for notices:

914-428-3646

Address for Notices:

c/o Acadia Realty Trust  
1311 Mamaroneck Avenue, Suite 260  
White Plains, New York 10605  
Attention: Mr. Robert Masters

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

I, Kenneth F. Bernstein, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Acadia Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Kenneth F. Bernstein

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Kenneth F. Bernstein  
President and Chief Executive Officer  
May 7, 2009

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

I, Michael Nelsen, certify that:

1. I have reviewed this 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 7, 2009

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

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

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

/s/ Kenneth F. Bernstein

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Kenneth F. Bernstein  
President and Chief Executive Officer  
May 7, 2009

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

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

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

/s/ Michael Nelsen

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Michael Nelsen  
Senior Vice President and  
Chief Financial Officer  
May 7, 2009

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